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FTC MOBILE HOME SALES AND SERVICE RULE

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HEARING

BEFORE THE

SUBCOMMITTEE FOR CONSUMERS

OF THE

COMMITTEE ON COMMERCE,

SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

FTC MOBILE HOME SALES
AND SERVICE RULE

AUGUST 20, 1980

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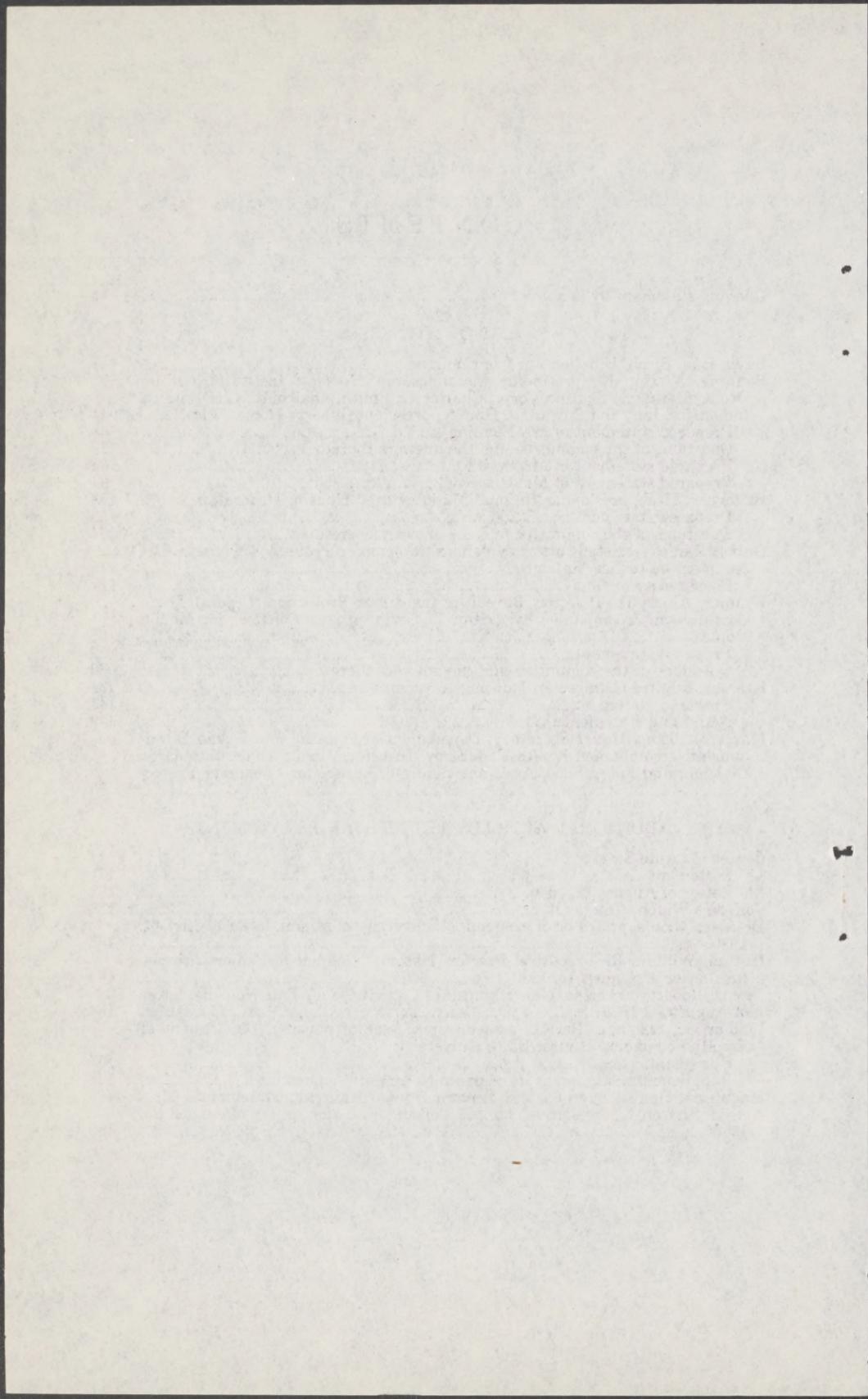
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FEDERAL TRADE COMMISSION MOBILE HOME SALES AND SERVICE RULE

WEDNESDAY, AUGUST 20, 1980

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

The subcommittee met at 9:02 a.m. in room 235, Russell Senate Office Building, Hon. Wendell H. Ford (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR FORD

Senator FORD. This morning, the Consumer Subcommittee will consider the FTC's proposed rule on mobile home sales and service. This is an important and growing segment of our housing industry.

At present, some 10 million Americans live in mobile homes. Each year, approximately 275,000 new units are sold.

It is important to note the history of the FTC's involvement with this issue. The FTC rulemaking proceeding began in 1975, after a 3-year industry-wide investigation by the agency. The final notice of proposed rulemaking was published on May 23, 1977. The Commission has held 41 days of hearings in Washington and San Francisco and has heard from more than 90 witnesses. After the hearings, the presiding officer's report was published in late 1979, and the staff report was recently published on August 11, 1980.

During the Senate floor debate on S. 1991, the FTC authorization bill, I agreed with Senator Bayh to hold a hearing on the FTC's mobile home rule. This hearing today is a part of my continuing commitment to oversight of the Federal Trade Commission.

I know that the witnesses here this morning all have had experience in the area of mobile homes. I'm pleased to see that we have a balanced witness list, with representatives of all sides of this important issue. Drawing from their expertise, I think the subcommittee will benefit from a full discussion of the proposed rule.

This morning, I am pleased to have as our first witness the distinguished Senator from Indiana, Birch Bayh.

Senator Bayh, we're delighted to have you with us this morning and look forward to your testimony.

STATEMENT OF HON. BIRCH BAYH, U.S. SENATOR FROM INDIANA

Senator BAYH. Mr. Chairman, I appreciate your thoughtfulness in making it possible to appear today and to participate in these oversight hearings. I think that perhaps the best thing to do from my perspective, as well as yours, because I know that you do have

a distinguished panel and a number of individual witnesses that I'm anxious, frankly, to hear, as well as to give you my thoughts—in fact, the latter would be less productive than the former—perhaps I should resist the temptation to take a 10-minute statement, 12-minute statement, and summarize it in 15 or 20 minutes.

And as much as I would rather just sort of think out loud with you, I've given some thought, and together with Mr. Moreau of my staff, who has given a lot of thought in this, and perhaps if I could just read this statement, that would be the best way to start.

Senator FORD. You can proceed as you wish, Senator.

Senator BAYH. I think, Mr. Chairman, you and this subcommittee have provided Congress with a model of what we should be doing to fulfill our important oversight function. This is not a task that I envy, inasmuch as I think it's fair to say the FTC has been one of the most active agencies of the executive branch. In many ways it has performed many worthwhile services.

It seems to be that we are faced with one key question when we fulfill the duty of oversight, whether it is oversight over an active agency, or over an inactive agency, and that question is: Has that agency carried out the will of the Congress in serving the public interest? That's what we create agencies for—to carry out the congressional intent of serving the public.

I've been involved in government long enough to know that this concept has no uniform definition. But when Congress is engaged in oversight of the Federal Trade Commission, I believe that we can fairly be guided by an inquiry into whether the FTC is examining ways to protect the consumer at the least cost to the consumer.

I've never been one to suggest that you can really put a price tag on the loss of the arm of a worker or, indeed, the loss of plumbing in a manufactured home. But if we can save a limb or make a house more functional and more what the consumer has demanded at half the cost, we would be foolish not to do so.

The recently passed FTC authorization legislation, the passage of which you, Mr. Chairman, I think can claim as testimony of your skill as a legislator and a leader, supports my claim that Congress is gravely concerned that the FTC is carrying out its duties without proper attention to the cost, benefits, need, and authority of its regulatory initiatives as far as manufactured housing is concerned.

This is a particularly important issue when it comes to the regulation of mobile homes or manufactured housing, as the industry appropriately desires to be called.

The manufactured housing industry now provides 93 percent of the housing available in this country for under \$35,000. More importantly, the median income of the mobile home purchaser is \$10,000 per year. People who live in manufactured homes tend to be young families, rural families, families living on fixed incomes.

In other words, the very people Congress should be most attentive to when examining Federal programs. We should be attentive to the kind of consumer protection afforded these people when they purchase mobile homes and we should be attentive to whether these people can afford the kind of consumer protection that's being proposed.

In other words, as the Joint Economic Committee said in its recent report on balance in government regulation, "we should

examine whether the contemplated regulatory initiative is cost effective."

When I took the Senate floor last December to announce that I intended to sponsor an amendment to the FTC authorization legislation to block the FTC's mobile home TRR, I did so because, based on information available to me at that time, I was gravely concerned that the Commission was about to promulgate a regulation that was not cost effective.

It seemed to me then, and without prejudicing the testimony that will be presented today, it seems to me now that the Commission has failed to address, to my satisfaction, anyhow, the role that one of its sister agencies plays in the regulation of the mobile home industry.

I'm referring, of course, to HUD's regulation of mobile home construction and safety. I am confident that the distinguished undersecretary of HUD, who is here today and will testify, and the industry representatives present will describe HUD's mobile home program in detail.

For my part, allow me to go back and provide a little history on the subject of manufactured housing regulation.

In the early 1970s, it became clear that there were product difficulties with mobile homes. The FTC began a proceeding in 1972, but in 1974, Congress responded to consumer complaints by passing the National Mobile Home Construction and Safety Standard Act of 1974. At that time, Congress decided that mobile homes were part of the housing industry and gave authority to HUD to regulate all aspects of the manufacture and design of mobile homes in order to insure their quality and soundness.

At about the same time, Congress also enacted the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, which was aimed at promoting the full and complete disclosure of the terms and conditions of warranties, and setting standards for classifications of full and limited warranties.

I supported both pieces of legislation because I believe, on balance, that the consumers of this country would be well served by them.

Significantly, the manufactured housing industry is the only segment of the housing industry that is regulated to this extent. The modular housing industry is not as thoroughly regulated and, of course, the site-built housing industry is not as thoroughly regulated.

As a result of the Mobile Home Act, consumer complaints have declined dramatically. The number of mobile home complaints coming into HUD in 1979 represented about one-tenth of 1 percent of the total mobile homes built. I believe everyone will agree that the quality of mobile homes available to consumers is significantly better since the implementation of the Mobile Home Act in June of 1976.

And over the recess, I had the opportunity to go to South Bend, Ind., to the big convention center at Notre Dame and to, once again, tour the manufactured housing/RV display. The Senator from Kentucky has had a similar opportunity in Louisville. And it is amazing to me what creative genius has done in the manufac-

tured housing industry to provide high quality, low-cost homes for consumers who could otherwise not afford it.

Now, based on consumer complaints that predate the implementation of the Mobile Home Act—at least a great many of them do—the staff of the FTC has recommended in a 700-page report that was made available only 10 days ago that the Commission go forward with a trade regulation rule that will result in an inflationary impact on a product designed for people who can least afford further price increases without any promise of significant benefits to these consumers.

There have been a wide variety of cost assessments. The FTC staff says between \$100 and \$125. An expert consulted by the Commission testified that it would be \$278. The industry is concerned that this might increase the price per home from \$700 to \$1,200. There's little question about the fact that it will increase the cost.

I'm also concerned, Mr. Chairman, about the impact that the rule will have on the small businesses that comprise 30 percent of the producers and almost all of the dealers of manufactured housing.

The big companies can afford the cost of compliance, but what about the smaller manufacturers who have already incurred great costs in complying with the Mobile Home Act? And what about the dealers? I am concerned that the bigger companies will simply expand their direct marketing efforts and drive the dealers out of business so as to reduce the number of consumer complaints.

Returning to the FTC staff's estimate of the inflationary impact of the proposed rule, even if I were to accept that estimate at face value, and based on my experience, regulatory agencies frequently underestimate the inflationary impact of their decisions, I am not convinced that the FTC staff asked itself the key question: Should they be involved in this proceeding at all? It's all well and good for them to assess the problem, but should they be involved in solving it?

The staff report says that HUD does not have the authority to undertake the regulation of mobile home sales and service—which, in my view, is open to some question—and, as a result, the FTC's proceeding is justified.

The question of whether the FTC has the expertise to involve itself in this procedure is never addressed, or whether it is the best place to address the problem, nor the need for this regulation in 1980.

When an agency begins an inquiry into an issue in 1972, it seems to me that what we may be seeing is an example of institutional inertia. Once the process begins moving, it continues to move regardless of the changes that occur along the way; changes like the Mobile Home Act.

Since 1976, the Department of Housing and Urban Development has built an impressive program for regulating the construction of manufactured housing—mobile homes, and possesses a staff with expertise in mobile home issues.

I should point out that HUD personnel know the difference between a mobile home and a modular home. I'm not sure that the experts at the FTC do.

You may be aware, Mr. Chairman, that one of the consumer complaints that has been brought to the attention of the Senator from Indiana that the FTC has been carrying around Capitol Hill as evidence of the problem that exists, involves a letter from a law firm in Kentucky that concerns a modular home. And of course we're not talking about modular homes here; we're talking about manufactured housing.

This letter is supposed to serve as an example of the need for trade regulation for mobile home sales and service. When you couple this example with the problem that I stated earlier, that the staff report makes no effort to differentiate between complaints based on homes built before the implementation of the Mobile Home Act and those built afterward, I have serious doubts as to whether there is a need for any further regulation and if there is, whether the FTC is the appropriate agency to be involved in the regulation of the mobile home industry.

So, Mr. Chairman, I think that we need to keep in mind two questions as we proceed today: First, is there a need for further regulation of the manufactured housing industry to protect consumers, and is that regulation cost effective; and if the further regulation is needed and an increased price in a mobile home to consumers can be justified, the second question is: Should the FTC be running the program?

In closing, let me return to the Joint Economic Committee report I referred to earlier. The authors of the Joint Economic Committee report make a number of policy recommendations on how Congress can do a better job of making Government regulations more responsive to the needs of the society. The first recommendation calls on Congress to encourage those regulatory initiatives that are cost effective. The second recommendation is that Congress should assist in the identification of cost effective means of implementing regulatory goals.

One of the ways that Congress can do that, the report states, is to coordinate the reporting requirements of regulatory agencies and reduce the number of overlapping agency jurisdictions.

We have an opportunity today to begin implementing some of the worthy policy recommendations of the joint committee.

One last comment, Mr. Chairman. Protection of the consumer is the goal of everyone in this room. I think anyone who examines my record will see that I have strongly supported all efforts to protect consumers. This proceeding is designed as an inquiry into how we can achieve that goal in the most cost-effective way. If a regulation is promulgated which prices manufactured housing out of the reach of a lower income family, or forces a small businessman out of business, we have not fulfilled the goal of consumer protection. We have not made our communities better places in which to live.

By the same token, if there are gaps in the Federal Government's response to real consumer protection problems, we must make certain that the agency with the best understanding of the existing problem is the one charged to fill those gaps.

Well, Mr. Chairman, I would hope that after, you are through—and I again thank you for your thoughtfulness in permitting me to be here today, as well as holding these hearings—I think we need to examine: Are there legitimate complaints? And there could well

be. Perhaps there is a gray area, and additional efforts need to be made. But what got me involved early on, as I discussed this with you on the floor at the time you were moving the bill through, is that at a time when we're trying to become more efficient in solving consumer complaints of an industry that is already regulated, to solve those consumer complaints by letting one group of regulators regulate the regulators, makes absolutely no sense at all.

Let us solve these complaints and see that the consumer is served in an efficient, cost-effective manner.

I am looking forward to working with you and the members of the industry and the FTC and HUD and everyone who, I think, wants to accomplish the same goal. The question is how we reach it?

Senator FORD. Thank you, Senator. And I'd be delighted to have you join me here at the podium and question any of the witnesses that we have today.

Congressman Brademas, I understand, was to be here this morning. I haven't seen him yet.

So until he comes, then, we will proceed.

Senator BAYH. Thank you, Mr. Chairman. I appreciate that.

Senator FORD. The next witness will be Albert Kramer, Director, accompanied by Arthur B. Levin, Program Adviser for Mobile Homes, Bureau of Consumer Protection, Federal Trade Commission, Washington.

We have so many witnesses today, I'm going to attempt to try to hold everybody to 10 minutes in their testimony. We'll have a little green, yellow, and red light go on up here in a minute. Green is go, yellow is caution, and red, time's up. We'll apply that and we hope that our questions won't be any longer than that, also.

Albert, you can put your total statement in the record, highlight it, or you may give your whole statement, as long as it stays within that 10 minutes.

Mr. KRAMER. Mr. Chairman, with your permission, I would like to insert the entire statement in the record. I would like to attempt to summarize it and, in the course of that, at least indicate some areas of response to some of the issues, the important issues, that I think Senator Bayh has raised.

STATEMENT OF ALBERT H. KRAMER, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; ACCOMPANIED BY ARTHUR B. LEVIN, PROGRAM ADVISER FOR MOBILE HOMES

Mr. KRAMER. I should state at the outset, Mr. Chairman, that our comments today represent only the views of the staff of the Bureau of Consumer Protection, and they should not be construed as the views of the Commission or the individual Commissioners.

I think, Mr. Chairman, that Senator Bayh has adequately summarized the importance of mobile homes in the entire structure of providing housing for the American public and I will not repeat that part of the testimony.

I would like to note that it has been a longstanding practice among manufacturers of mobile homes to offer a warranty to pur-

chasers. The typical warranty runs for 1 year and covers defects in materials and workmanship of the home.

From the perspective of the consumer, the warranty provides an assurance of the quality of the home and it constitutes a promise on the part of the manufacturer and its service agents that they will repair defects that arise in the home during the warranty period.

The mobile home rulemaking has focused on the important question of the adequacy of the service received by consumers under the terms of their warranties. In fact, the proceeding is largely designed to complement the policies articulated by Congress in title I of the Magnuson-Moss Warranty Act.

The warranty provisions of the Magnuson-Moss Act are intended to improve the adequacy of warranty information available to consumers and to improve competition in the marketing of consumer products based on this warranty information.

When the promise of warranty service is not fulfilled, consumers and competitors are injured and, thus, the congressional policy is thwarted. The purpose of the rulemaking is to insure that consumer reliance on the promises contained in their mobile home warranties is not misplaced.

Mr. Chairman, you recited the history of the Commission's investigation and I will not repeat that, except to note that during the 2-year investigation that led to the proposal of the rulemaking, the staff obtained records and data from 16 manufacturers. It interviewed hundreds of industry officials, State representatives, as well as consumers.

It was based on this investigation that the staff concluded that a warranty rulemaking proceeding was warranted.

During that investigation, the staff found that many mobile home manufacturers did not have effective warranty performance systems. Substantial responsibility for providing warranty repairs was delegated to dealers, but the investigation revealed that the delegation is often informal and unclear.

The staff found that due to inadequate record-keeping systems, many manufacturers were unaware of the nature of the service being provided by their dealers, and that no monitoring was done by these manufacturers to insure that adequate service was being rendered.

These practices had several results. They resulted in disputes between manufacturers and dealers and a number of problems arising between the dealers and the manufacturers. Most important from our perspective, Mr. Chairman, they resulted in a situation where warranty service was improperly refused to consumers and there was often ineffective repairs when warranty service was provided.

As you noted, the staff did then initiate a notice of proposed rulemaking through the Commission. The nature of the proceeding is detailed in the prepared testimony, and I will not go through it again here, as is the history of the proceeding. And I want to emphasize, Mr. Chairman, that it's important to look at the history of this proceeding because the history of the proceeding does reflect the kind of growth and learning process that goes on through a rulemaking proceeding.

In fact, the staff report contains an appendix which shows the difference between the rule as it was proposed and the rule as it has finally been recommended by the staff in the staff report. That difference is dramatic and significant.

I would invite your attention to that appendix as an illustration of the manner in which the staff has attempted to focus this rulemaking and to assure that some of Senator Bayh's concerns about the inflationary impact and duplicative regulation and overburdensome regulation are addressed.

The recommended rule has been focused by the staff so that it rests on three basic principles: First, that mobile home owners are entitled to effective and timely repairs under their warranties; second, that disputes between manufacturers and dealers which delay or impede warranty service should be reduced; and third, that consumers should be able to enforce their rights fully under the warranty.

The provisions of the rule have been designed to implement these principles. Let me summarize briefly what the rule would do.

Briefly, the rule would define reasonable warranty service as follows: There must be an inspection of the home after it is set up. Nonemergency repairs must be completed within 30 days of notice of the problem, although emergency conditions must be alleviated within 5 days of notice.

In order to reduce service disputes, manufacturers and their dealers would be required to enter into written agreements clarifying their respective obligations, and manufacturers would be required to have a system for monitoring the adequacy of factory and dealer warranty repairs.

In order to reduce disputes over the causes of defects and to insure that consumers receive a new home that is in habitable condition, manufacturers will be required to assume responsibility for the proper transportation and setup of the homes which they or their agents deliver.

And finally, the rule would enable consumers to enforce their rights by requiring disclosure of the service deadlines in the warranty.

It is important to note, Mr. Chairman, that many of these provisions recommended by the staff have been drafted as performance standards. For example, the original rule addressed alleged failures by the industry to respond promptly to consumer service complaints by requiring all of the following: (1) Implementation of a specific system to process complaints; (2) for large companies, a designated focal point to handle complaints with responsibility for complaints vested in personnel that were not involved in sales; (3) the establishment of mechanisms to resolve consumer complaints; (4) recordkeeping for all complaints; and (5) a regular review and evaluation of the complaint-handling procedures.

Now what emerges in the staff recommendation now is quite different. In contrast with that original proposal, the rule now recommended by the staff requires only that a manufacturer respond to complaints in 7 days, that complaints be resolved within 30 days, and that the manufacturer keep records concerning complaints.

The manner in which these requirements are implemented would be entirely within the discretion of the manufacturer. There is no attempt to prescribe detailed procedures for carrying out any of these activities.

Similarly, with respect to warranty performance, the original rule required that manufacturers evaluate the service capabilities of new dealers before taking them on. Manufacturers would have been required to establish regular procedures to evaluate dealer service, including periodic visits to each dealership and the preparation of monthly performance reports.

These provisions have been deleted from the rule recommended by the staff. The staff proposal recognizes that since ultimate responsibility for the performance of warranty obligations rests with the manufacturer, there will be sufficient incentive for the manufacturers to develop their own cost effective monitoring mechanisms.

The scope of the rule has also been narrowed. As presently drafted, the rule would cover only manufacturers who offer written warranties. The decision whether to offer a warranty in the first instance would be left up to a manufacturer. And similarly, manufacturers would be free to compete on the basis of providing greater warranty protection.

Now one point Senator Bayh mentioned which I think it is critical to address is the costs and benefits of the recommended rule. The staff did work with the Bureau of Economics in order to assess these costs. As Senator Bayh indicated, the cost estimate is now \$120 per home. Many of the cost estimates, including many of those cited by Senator Bayh which were included in the evidence, were based on the original rule proposal.

That original rule proposal has now been substantially cut back and the relevant cost estimate has to be based on the cost of the rule as it is now being recommended by the staff.

As presently recommended by the staff and in response to Senator Bayh's concern, the rule has been structured in a manner that will not impose greater costs on smaller manufacturers per unit than it would on larger manufacturers.

As I indicated in discussing, for example, the system for monitoring dealers, a number of the administrative costs that would have been imposed have now been eliminated, and instead, costs are keyed to the number of units sold and the costs would vary with the number of units sold.

That means that smaller manufacturers would not be placed at any significant relative disadvantage as compared to larger manufacturers.

Furthermore, the costs that are imposed have been determined on the basis of the record evidence to be substantially outweighed by the improved warranty service that would result from the rule.

Now Mr. Chairman, one area that I think is very important and which Senator Bayh raised is whether or not we considered the threshold question: Should the FTC be in this business at all? Why is the FTC in the business of regulating housing when HUD is the agency with housing expertise?

During the Commission's rulemaking proceeding, HUD submitted official comments on the relationship between its program and

the FTC's proposed rule. Two HUD officials testified at the hearings. According to HUD representatives, their program is limited to three major areas—establishing construction standards for major components of the home; mandating a factory inspection of each home to monitor the production process; and requiring post-sale correction of only those safety defects—I stress it—safety- and health-related defects—that are related to errors in design and assembly.

Problems like plumbing, roof leaks, jammed or drafty doors and windows, would not be within the scope of HUD's correction program.

In contrast, the FTC rule in our proceeding is directed toward the warranty service problems of the individual consumer. It addresses the need for prompt and effective repair of the large number of warranted defects not covered by the HUD program.

In the view of the HUD officials who testified, their program does not address these individual warranty service problems, nor does it directly cover transportation or set up of the mobile home, even though both of these are frequent sources of defects and performance problems.

The HUD officials concluded that the proposed FTC rule would offer mobile homeowners significantly different protection than those provided by the HUD program and would not be duplicative with that program.

Mr. Chairman, I would like to address generally the issue of why the FTC, apart from the specific fact that this program is not duplicative and does not cover any area covered by HUD. The FTC, in general, is an agency, as this Congress recognizes, that does have expertise in the area of warranties, in the area of warranty performance, and in the area of responding to consumer complaints.

While HUD has housing expertise, and we have worked very closely with HUD and, as I indicated, HUD testified in our hearings and we are in constant contact with HUD officials regarding the questions of housing expertise, HUD is not an agency that has particular expertise with regard to warranties, with regard to warranty performance, with regard to the handling of consumer complaints, and matters of this sort. That is an area that is within the province of the expertise of the FTC and, indeed, which Congress has charged the FTC with ensuring that consumers receive adequate protection in those areas.

So we do not believe that we are infringing on the housing expertise of HUD. HUD itself has recognized that our regulations are not duplicative and cover areas not within their expertise. And therefore, we do not view ourselves as adding an additional regulatory layer that is not warranted because of the HUD program.

Mr. Chairman, there is additional information contained in the prepared statement. The red light has been on for a few moments, so I will stop.

Senator FORD. I appreciate you recognizing the red light.

I have two or three questions and then I'm sure that Senator Bayh will have some questions of you. I believe a Mr. Rhine, Raymond Rhine, presided at the hearings for the proposed rule.

Mr. KRAMER. Yes, sir.

Senator FORD. He used the words "tip of the iceberg" theory when he discussed the prevalence of unlawful acts and practices.

Do you consider this to be a valid economic theory?

Mr. KRAMER. Mr. Chairman, it is less of an economic theory, I think, than a general recognition of the fact that the number of complaints that we are likely to receive is less than the number of actual problems that exists simply because people are not always motivated to write letters and you receive letters only about the most egregious kinds of problems.

Senator FORD. Would that mean that some of them are taken care of?

Mr. KRAMER. It would mean that some of them are taken care of. It would also mean a lot of them are not remedied and you just simply never hear about them because there are a lot of consumers who don't write letters.

But on the issue of prevalence, I think again Senator Bayh made a point which bears focusing on. At the time the FTC record was compiled, the record in this rulemaking was compiled, both the Magnuson-Moss Act, the act directing HUD to establish performance and design standards, as well as several State regulations, had been on the books for at least, in some cases several years, and in other cases, for at least a year and a half.

The record evidence, including the Ohio and California surveys, surveyed mobile homes that were built after the HUD regulations designed to implement the standards that Congress directed HUD to establish, were already on the books. And even in the case of those homes that were supposedly built in conformity, and which we assume were built in conformity with the HUD regulations, the same kinds of warranty problems seemed to be occurring in the same numbers as in the period prior to the HUD program.

So that the record in this proceeding is not based on evidence that was compiled prior to 1975, or prior to the 1976 HUD guidelines. There is evidence that consists of pre-1976 material. There is also substantial evidence that consists of evidence after the HUD guidelines went into effect. There is no indication in attempting to distinguish between those two classes of homes that there was any significant improvement in the problem with which we are concerned, which, as I indicated, is the problem of peculiar FTC expertise—warranty, warranty service, and handling and processing of consumer complaints.

Mr. LEVIN. If I might just add there for a moment, many States had adopted extensive construction standards for mobile homes prior to the implementation of the HUD program. And one of the surveys that was conducted for the FTC in 1977 was conducted in California, a state which had adopted extensive construction standards for mobile homes in the early 1970s.

So, therefore, all the homes that were examined in that survey had been built to tough construction standards.

Senator FORD. How do you explain the reduction in complaints to HUD, then, after the legislation was implemented?

Mr. LEVIN. It's our understanding that HUD has experienced an increase in complaints since their legislation was adopted.

Senator FORD. That's contrary to some information that I have. I'd like to have your information that HUD has given you indicat-

ing that their complaints have accelerated. Would you supply that for me?

Mr. KRAMER. Yes, we will provide that information.

Senator FORD. Would existing law, such as the Magnuson-Moss, title I, and the FTC's holder-in-due-course rule cover warranty problems?

Mr. KRAMER. Mr. Chairman, they would not. As we stated in the part of the testimony that I don't believe I got to read, we view what we are doing here largely as an elaboration of the principles expressed in the Magnuson-Moss Warranty Act. The Magnuson-Moss Warranty Act, in itself, as regards warranty performance, the performance of warranties is not self-executing. It is, in some respects, self-executing with respect to the disclosure of warranty terms, but not with respect to warranty performance.

And, indeed, I think, Mr. Chairman, as you are aware from our earlier oversight hearings, it is not only in the area of mobile homes where we are conducting industrywide investigations of the adequacy of warranty performance and of warranty service.

There are a number of industries where it is necessary to insure that even given the existence of the warranty, the warranty is also being performed.

The holder-in-due-course rule to which you alluded is not an adequate response to this problem because often the warranty period will not extend as long as the payment period extends.

Furthermore, it will depend on the nature of the financing whether the holder-in-due-course rights are available to the consumer to be asserted.

Also on holder-in-due-course, holder-in-due-course is limited to credit transactions. So in approximately 25 percent of mobile homes sales that are cash transactions, the holder rule would have no effect. And in addition—

Senator FORD. You mean people just walk in and pay cash?

Mr. LEVIN. They would not have any rights under the holder-in-due-course.

Senator FORD. But 25 percent of all mobile home purchases are cash?

Mr. LEVIN. Approximately.

Mr. KRAMER. They're cash in the sense, at least in this sense, Commissioner Ford—excuse me—Senator Ford.

Senator FORD. If I were your commissioner, you'd be in trouble.

Mr. KRAMER. I hope not, at least in this sense. They will be financed by purchase money loans. So insofar as the dealer is concerned, their dealer receives cash and is not involved in the financing and is unconnected to the financing.

That was the point I made with respect to its depending on the nature of the financing, whether the holder-in-due-course remedy would be available to the consumer.

Senator FORD. Holder-in-due-course would only run to the dealer if he is part of the financial transaction?

Mr. KRAMER. If he is in some manner involved in the financing.

Senator FORD. Well, he has to be the middleman. He sells and the consumer buys and takes it to the bank, or credit union.

Mr. KRAMER. He may not be the person in the middle. It may be that the consumer may make the loan finance arrangements directly with the bank prior to purchase, and then the bank pays.

Senator FORD. Well, somebody gets a lien on that piece of property.

Mr. KRAMER. Oh, yes, the bank.

Senator FORD. And I don't consider that a cash transaction.

Mr. LEVIN. Well, the important thing is that the holder right preserves the consumer's rights against either the dealer or the lender. But the party that holder does not have a direct impact on is the manufacturer who actually issues the warranty. Under holder, the consumer would have no additional rights to go against the manufacturer.

I would also add that the holder-in-due course rule has limited application to a transaction in excess of \$25,000. And many mobile homes are now being sold for amounts above \$25,000.

Senator FORD. Well, I'll just say to you that if I bought a mobile home and I borrowed the money from the bank and the bank put the money in my checking account and I wrote a check for it, they still have the paper on my mobile home and I still think that the manufacturer would be involved.

I'm not a lawyer, so I understand things different from lawyers.

Mr. KRAMER. Well, the manufacturer is not involved in this sense, Senator Ford. The manufacturer has received the money. The manufacturer had no involvement in the direct financing and therefore, since the manufacturer did not participate in the arranging of the financing, the manufacturer is not in those circumstances in any manner accountable—

Senator FORD. If the manufacturer is not in some manner involved in the financing then he's not involved in the holder-in-due-course?

Mr. KRAMER. Then he's not involved in holder-in-due-course, that's correct.

Senator FORD. OK, well that needs to be reviewed, in my opinion. How will the FTC enforce the rule?

Mr. KRAMER. Mr. Chairman, there are about 200 manufacturers at the present time who are in the business of producing mobile homes. We believe that the rule is enforceable and does have, within those dimensions—the rule does seek, as the Magnuson-Moss Act directs, to impose—

Senator FORD. You are using the Magnuson-Moss Act?

Mr. KRAMER. Pardon me?

Senator FORD. You're using the Magnuson-Moss Act to promulgate this rule?

Mr. KRAMER. I'm not sure that I understand the question.

Senator FORD. Well, I had asked you about existing law—Magnuson-Moss, title I, and holder-in-due-course. The Magnuson-Moss Act does give you the authority, then, to propose this rule?

Mr. KRAMER. Yes, title II of the act does, yes.

Senator FORD. Title II?

Mr. KRAMER. Yes, certainly. And we would be using that as the enforcement authority.

Senator FORD. OK. We had been discussing title I and I wanted to differentiate between the two.

Mr. KRAMER. Yes.

Senator FORD. I want to ask you one more question.

In my State, in 1 county, on the tax rolls, this county had 6,000 mobile homes in that 1 county. It is a mountainous county. It is an area of coal production. It's an area where a mobile home is probably better than anything that they've been living in all their life. A man goes out into the valley, up a creek, and cuts off a bench.

Are you familiar with a bench? Do you know what a bench is? That's a little flatland in the mountains and the man digs it out to put a mobile home on.

Mr. KRAMER. They didn't teach me that in law school.

Senator FORD. Sir?

Mr. KRAMER. They didn't teach me that in law school, unfortunately.

Senator FORD. I want to tell you, experience teaches you a lot.

If you give the manufacturer so many days to repair, I think you have to have some flexibility in the number of days because it's going to be very difficult, one, for the man to get in under certain circumstances to complain; two, it's going to take some time for that dealer to get out there. It's going to be some time in some of those areas to get a contractor or whoever to repair it.

Now you've set a time limit. You've set a time limit of 5 days on emergency repairs and 30 days on minor repairs.

Is there any flexibility here for the dealer or manufacturer exerting his best effort? In some of those areas, it just would be very difficult for him to comply.

Mr. KRAMER. Mr. Chairman, first of all, the time does not begin to run until the dealer has received notification. So to the extent there was a time lapse between the time it was reported and the time the damage occurred, there would be no problem.

Second, there have been specific time limits imposed. Both the former assistant director of the division, Barbara Rowan, and myself, raised questions in the call for public comment as to whether those specific time limits were reasonable or whether additional flexibility was needed.

Third, as a matter of enforcement policy, it has never been the policy of the Commission to enforce rules on the basis of isolated instances of violations or where there has been a good-faith effort to attempt to comply. And there will be those instances in remote areas where it's impossible to get in to make the repair in time. Our concern is with insuring that there is a good-faith effort, particularly where there are emergency conditions that may render the home uninhabitable, such as loss of heat, broken pipes, or something of that sort, to insure that those conditions are alleviated within a short period of time.

Senator FORD. How can you insure that? I thought that that was HUD's responsibility?

Mr. KRAMER. Well, it is not HUD's responsibility to insure, unless it is a safety-related defect, health- or safety-related defect.

Senator FORD. Well, health or safety defects cover plumbing, sewage, heating. So you wouldn't be involved in those things, then, would you?

Mr. KRAMER. Well, to the extent that that item was also covered by warranty, there would be some overlap. But only in those areas where there were health or safety—

Senator FORD. Well, who would be responsible, then, for the repair, then, you or HUD?

Mr. KRAMER. For the warranty performance?

Senator FORD. You said it's your responsibility if it's included under the warranty. But then you said in your testimony that it would be HUD's responsibility if it were a health or safety defect. I assume that would include sanitation problems. I assume that would include heating.

Mr. LEVIN. It may or may not be some of those problems.

Senator FORD. We're getting into a gray area now, aren't we? That's one of the things that Senator Bayh has been discussing.

Mr. KRAMER. I think, Senator Ford, that to the extent that the problem was covered by the warranty—

Senator FORD. You would take it away from HUD, then?

Mr. KRAMER. We don't take it away from HUD.

Mr. LEVIN. There's a distinction.

Senator FORD. One of you at a time.

Mr. LEVIN. One of the distinctions to make is that if there is a safety defect related to an error design or assembly, HUD may order a correction in some instances. Now that does not affect the fact—

Senator FORD. Is that the law?

Mr. LEVIN. It depends on the particular defect. But that does not affect the fact that the consumer has received the warranty and is entitled under the warranty to repairs, and at any time can request repairs under the warranty and should have repairs forthcoming.

Senator FORD. But who has the responsibility, then?

Mr. LEVIN. It would be the manufacturer who would have the responsibility.

Senator FORD. But what agency would be responsible to see that it was repaired?

I want to know which agency is responsible for the safety problems?

Mr. KRAMER. Mr. Chairman, if it were, as you've indicated—

Senator FORD. Health or safety.

Mr. KRAMER. Health or safety, and it were related to an error or a failure to comply with design or construction standards, then HUD could order the manufacturer to make the repair.

Senator FORD. But he's got 5 days to do it. Is that right?

Mr. KRAMER. Pardon me?

Senator FORD. How many days does he have to do that?

Mr. KRAMER. Under the HUD regulations?

Senator FORD. Yes.

Mr. LEVIN. They have approximately 100 days.

Mr. KRAMER. I think they have 100 days to submit a plan for repair and then to implement the plan under the HUD regulations.

Now if that particular defect turned out to also be something that were under a warranty, then the provisions of the FTC rule would apply also and the manufacturer would have 5 days under

the staff's proposed recommended rule within which to make the repair.

So in that instance where there was a health- and safety-related problem that was also covered by the warranty and that was the result of a failure to comply with the construction or design standards that had been set by HUD, there would be some overlapping regulations.

At the same time, it's very important to recognize that the manufacturers' compliance with either—for example, the manufacturers' compliance with the FTC rule—would also constitute compliance with the HUD regulation so that the manufacturer would not be put through the burden of doing the same repair twice. Once the manufacturer complied with one regulation, it would have complied with both, and that's very important.

So there is no requirement here that the manufacturer do something twice. Once they comply with the FTC rule, they have complied with the HUD regulations as well.

So even though the regulations both apply, there's no double burden; it's the same burden of having to perform the same repair only once.

Senator FORD. It's the difference of 5 days and 100 days.

Mr. LEVIN. This issue was addressed in the comments that HUD submitted to our proceeding. Some of the things that they said were that their deadlines are intended to not only provide for correction, but also to identify all homes that might have the same defect. And to do that, a manufacturer must first determine there is a defect, determine how many homes were affected, then submit a plan of correction, and that's what would take 100 days.

HUD, in their comments, recognized that 100-day deadline to accomplish all those purposes might not be as adequate as what an individual consumer would need and the timely kind of service that the individual consumer would need. They recognized that there may well be a need for different deadlines to reflect the different purposes: The deadline for individual service to a consumer who may not have heat and a deadline which HUD has which includes a determination of the number of affected homes and what may be happening in the factory to produce the particular defect.

Senator FORD. Senator Bayh?

Senator BAYH. Thank you, Mr. Chairman.

Gentlemen, I appreciate your concern for this problem. I assume that what you're after to solve the problem might not just increase the staff or the authority for the FTC.

Mr. KRAMER. That's correct, Senator. Indeed, the entire mobile home program is already contemplated within the agency's budget that does not contain any growth factor for the mobile home program.

Senator BAYH. But it would contain an increase in authority in an area where you do not now have authority.

Mr. KRAMER. Well, there's no increase in authority involved, Senator Bayh. We would be implementing existing authority already granted to us under the Magnuson-Moss Improvement Act of 1975.

Senator BAYH. How are you going to enforce this without additional staff? How many people do you have down there now at FTC working in the mobile home area?

Mr. KRAMER. I don't have the exact number. My guess would be at the moment it's three or four.

Senator BAYH. I think four is accurate. How are you going to enforce a whole nationwide program with four people?

Mr. KRAMER. Senator Bayh, we believe that we will be able to enforce the program for a variety of reasons. First, as I indicated to Senator Ford, the number of manufacturers in the industry is limited. There are only 200 manufacturers. Second, we anticipate that if the rule goes into effect, the manufacturers themselves will attempt to comply with the rule. We do not view the industry as being constituted of belligerent law resisters. We assume that these are law-abiding businessmen who will do their best to comply.

Third, we will, because there is a limited number of mobile home manufacturers, we will be able to engage in an extensive industrywide education campaign and to work with the industry in attempting to get the rule implemented.

Fourth, the rule does create some private rights of action because a lot of the terms of the rule will be incorporated into the warranty so that there will be some private enforcement.

And fifth, and finally, nothing in the rule is inconsistent with any State law and, indeed, there would be a number of States that could, under their little FTC acts, initiate proceedings to attempt to enforce the rule where there were violations within their own States.

We think the rule is enforceable and that we will be able to enforce it within the constraints of existing staff limitations.

Senator BAYH. You said the industry is not comprised of violators, willful law violators I certainly agree. I assume this would be the same if the authority of HUD were more clearly defined so that HUD's authority did, indeed, specifically include this part with the service delivery. They still would not be law violators, and they would still be striving to comply, would they not?

Mr. KRAMER. Well, I think they would, Senator Bayh.

Senator BAYH. And they still would have the right to private enforcement. The State laws would still apply. Everything you said just now about your thinking you can handle it with four people, that would still apply if it were done in HUD, would it not?

Mr. KRAMER. Not necessarily. First of all, a lot of the State enforcement would occur under the State little FTC acts. We're not clear those State little FTC acts would incorporate provisions of Federal law that are in the housing act, as opposed to being in the Federal Trade Commission Act.

Senator BAYH. That couldn't be taken care of by the States in question?

Mr. KRAMER. Well, it would take amendments to the 50 State laws.

Senator BAYH. Give me one State law that wouldn't cover this.

Mr. KRAMER. I would have to supply that for the record. I don't know the State laws well enough to give you that answer, Senator.

Senator BAYH. You're making your statement right now. You see, you don't have any flexibility at all. You've already made the

decision. FTC's got to do it. You're the only ones that can do it. You don't even respond positively to something that seems rather obvious.

You have the same private rights. You've got to deal with the same people who are not law violators. I've got to believe that as far as State laws are concerned—well—

Mr. LEVIN. One of the things about State law is that one of the chief comments of the attorney generals' offices that participated in our rulemaking, and there were some 26 of them, and one of the things that they indicated was that in trying to help consumers with service problems, there is no standing definition of what is reasonable warranty service, other than in four States which have set 30 days as a reasonable time for warranty repair on a mobile home.

And so one of the things that State officials ask for was some specific definition of the timeliness of warranty services.

Senator BAYH. That couldn't be done through HUD?

Mr. KRAMER. Senator, that could be done through HUD. The question you asked me was a question of legal interpretation. It does not reflect that my mind is closed. My mind is very open on the issue.

As a matter of legal interpretation, what I was attempting to indicate was that there is an open question as to whether the provisions that are under Federal housing law would also be incorporated into little FTC acts, since many of those acts, and I don't have the specific acts in front of me, and I will be glad to provide them for the record, provided that they incorporate determinations of the Federal Trade Commission as to what is unfair and deceptive, but they are silent with respect to determinations of other agencies of the Federal Government.

It's not a question of my mind being made up; it's a question of there being an open legal question.

And the same is true, by the way, with regard to private rights of action and private enforcement. It's not clear that the same rights would accrue because many of those are also keyed to determinations by the Federal Trade Commission. Those are provisions of State law. We don't have control over those.

I also pointed out to Senator Ford that while I think you're right in theory that HUD could do all of this, we do not question HUD's expertise in the housing area. As I indicated, we worked very closely with HUD. We're in constant contact with HUD. They have participated in this rulemaking.

Congress has, on the other hand, and this is the point that I was making, charged the FTC with responsibility for insuring that warranty performance is carried out. It has charged the FTC with responsibility for dealing with questions and comments that relate to consumers' complaints and to transactions arising out of commerce that result in unfair and deceptive acts. It's certainly within the prerogative of Congress to change that. All I was saying is that at the moment we are doing it, and within our current compliance mandate, it would be possible for us to enforce that rule given the network of existing State laws and given the expertise that we have developed over the years in the area of warranties.

Senator BAYH. Well, you perform some worthwhile functions there at FTC. When you're trying to do something, let's say, with toy safety or with medicine, foods, do you have people on the staff down at FTC that have expertise in toy manufacturing, safety?

Mr. KRAMER. Well, Senator Bayh, insofar as there are safety issues involved with regard to toys, it would be in the jurisdiction of the Consumer Products Safety Commission. And before we attempt to do anything with regard to a toy safety issue, we would check to find out if that were a matter that were more appropriately directed to CPSC and a problem which CPSC should address.

If it were a problem which CPSC felt it could not address and which we should address, we would then enlist technical expertise of CPSC and work closely with them in that area, as we have done.

Senator BAYH. Well, how about child television viewing?

Mr. KRAMER. I'm sorry.

Senator BAYH. Kidvid, the child television thing. In order to make that interpretation, do you have somebody down at the FTC watch these films to make an assessment of that?

Mr. KRAMER. Well, first of all, in connection with the children's rulemaking proceeding, Mr. Chairman, we deal only with advertising; we are not dealing with programs. We do have an advertising monitoring program, so that we do—don't literally sit and watch them. We do have a monitoring program and a system for collecting the advertisements that are directed to children or for having them called to our attention.

And we deal there with advertising, which is, again, I think as you recognize, an area that has been specifically charged to the FTC by Congress.

Senator BAYH. But you have dealt with the advertisers.

Mr. KRAMER. Oh, yes.

Senator BAYH. And you watch the advertising to make an assessment?

Mr. KRAMER. We do monitor the advertising to make an assessment.

Senator BAYH. Have you ever been in a mobile home, a manufactured housing plant?

Mr. KRAMER. Have I personally?

Senator BAYH. Yes.

Mr. KRAMER. I have not. Members of the staff have.

Mr. LEVIN. I have, Senator. I've been to many mobile homes and several plants.

Senator BAYH. Which plants?

Mr. LEVIN. Plants out in Colorado.

Senator BAYH. Could you give me the names of a couple?

Mr. LEVIN. I'd submit that for the record.

Senator BAYH. You can't remember?

Mr. LEVIN. Not at this time.

Senator BAYH. Let me ask you about the complaints. How many complaints have you had on the mobile home industry? From the time you got involved in this to now, how many complaints have you had, the total number of complaints?

Mr. LEVIN. We have approximately 2,300 consumer letters on the record.

Senator BAYH. Complaining about manufactured housing?

Mr. LEVIN. Complaining about mobile homes.

Senator BAYH. Complaining about mobile homes. Apparently you have some about modular homes. I've seen one of those.

Mr. LEVIN. That is not a letter that is on the record. The letters on the record, we have additional letters about modular homes. We have additional letters about recreational vehicles. But those are not on the record at the mobile home proceeding, and were not considered in our analysis of complaints.

Senator BAYH. One that's been floating around the Hill would tell us why we needed to go along and let you get involved in regulating the industry to protect the consumer, but one of them had to do with modular homes. I saw that.

Now how long have you been collecting these letters? You say you have 2,300.

Mr. LEVIN. Yes.

Mr. KRAMER. It would go back to 1972.

Senator BAYH. How many of them have come in in the last year?

Mr. KRAMER. I don't know the specific answer to that and the reason that I don't know the answer to that, Senator Bayh, is because those would not be on the rulemaking record. The record has been closed since 1978 and we do not submit materials received post record. We do not put the materials received postrecord on the rulemaking record. That has to be based on an evidentiary record for judicial review proceedings and parties have to have an opportunity to comment on the matters in the record.

Senator BAYH. How many of them came in prior to 1978?

Mr. LEVIN. That would be approximately 1,600 or 1,700.

Senator BAYH. How many of them came in prior to 1976?

Mr. KRAMER. We can provide all that information for the record. I don't have a numerical breakdown of the numbers that came in.

Senator BAYH. Don't you think it's a relevant question to ask, how many complaints have you had since the law governing HUD's regulation?

Mr. KRAMER. It most certainly is.

Senator BAYH. And you can't answer that question?

Mr. KRAMER. Well, it most certainly is a relevant question and we do view anecdotal evidence of that sort, such as the number of complaints.

Senator BAYH. That doesn't seem to be anecdotal. That seems to be rather basic.

Mr. KRAMER. Well, if I might just finish the reponse.

Senator BAYH. Please. I wish you would.

Mr. KRAMER. We do view the number of complaints and anecdotal material of that sort as important. What we view as more important, Senator, is the kind of systematic data that we can collect that reflects the experience that consumers are having.

For that reason, we attach more evidentiary significance and more weight to things such as the surveys that were performed in 1977 of mobile home owners in California and in Ohio.

Now as I indicated to Senator Ford, in those surveys which are extensively discussed in the staff report, there was no indication that there had been any significant improvement in the number of experiences that consumers were having with either warranty defects or the quality of service that they were getting between

homes that were built prior to the implementation of the HUD regulations and homes that were built after the HUD regulations had been adopted.

In other words, the HUD regulations did not appear to have—in a systematic survey—the HUD regulations did not appear to have any significant impact on the quality or the nature of the service that was being provided to mobile home owners.

Senator BAYH. In the survey—excuse me—in the survey, did the type of home or vehicle that was being surveyed, was that differentiated?

Mr. KRAMER. You mean by brand name?

Senator BAYH. Yes.

Was it broken down between mobile home, modular home?

Mr. KRAMER. It was mobile homes only.

Senator BAYH. No modular homes?

Mr. KRAMER. They were not included in the tabulations. I don't know, some may have slipped into the sample, but they were not included in the tabulation.

Senator BAYH. How would you tell if they weren't? How would you tell that you weren't looking at a park model?

Mr. LEVIN. In the California surveys, the interviewers went out to a mobile home park and were able to examine and identify the brand name of the mobile home involved, were able to determine whether or not it was a mobile home, and simply eliminated from the survey any housing that was not a mobile home.

In the Ohio survey, the questionnaires were sent only to people who had registered their homes as mobile homes under State law.

Senator BAYH. Did the questionnaire determine how old the mobile home was?

Mr. KRAMER. There is a distinction between those that were built pre the HUD implementation, pre the HUD guidelines and post HUD guidelines. So it did determine how old they were, yes.

Senator BAYH. Well, that's not the question I asked. Let me be more specific because I suppose you can misinterpret that. Could you tell whether a person had a home which was manufactured in the year of the survey, a year before, 2 years before, or 3 years before?

Mr. KRAMER. Yes.

Senator BAYH. How many of the unfavorable responses were from homes that had been built less than a year prior to the time that the question was being asked?

Mr. LEVIN. In both surveys, Senator, the evidence showed no significant reduction in defects or service problems in homes that had been built after 1976.

Senator BAYH. That's not what I'm after, Mr. Levin. You're after authority to deal with warranties, foreseen warranties to protect consumers. The warranties in this industry are 1-year in duration. If you're talking to someone who has a complaint the second year or the third year, it wouldn't be covered, would it?

Mr. LEVIN. In the Ohio survey, consumers were asked how soon after they bought the home did the defects occur? And it is common in the industry that warranties went for a period of 1 year.

In the California survey, the data was analyzed for people who had bought homes within a year of the survey, and those people had the same defects and service problems as other people in the survey.

I might add that California has a mandatory 1-year warranty on mobile homes.

Senator BAYH. Well, what percentage of the response was negative in people who had lived in homes less than a year?

Mr. LEVIN. It was approximately the same as people who lived in homes more than a year. There was very little variation.

Senator BAYH. What percentage? Can you give me the specific figures on that?

Mr. KRAMER. We can provide the study.

Mr. LEVIN. The general figure in the California survey is that approximately 70 to 80 percent of the people had defects in their homes and of the people that sought service, approximately 45 percent did not receive an adequate repair. This would include: instances where repairs took more than 30 days, and I would point out that California requires repair within 30 days; instances where repairs were not effected, the serviceman came out, but they were unable to correct the defect, or they might have even caused additional damage; and instances where repairs were refused.

Mr. KRAMER. So that still leaves about 30 percent with inadequate warranty service.

Senator BAYH. What really concerns me is that you're proposing that FTC now assumes authority to deal with the problem that State law hasn't been able to provide, hasn't been able to solve.

Thank you, Mr. Chairman. I won't inconvenience you or these witnesses any longer. I appreciate your courtesy in letting me ask these questions.

Senator FORD. There may be other questions that come to mind. We'll submit those to you, Al, and hope that you'll respond in normal time to it.

Senator FORD. Thank you both for your courtesy this morning and your testimony.

[The statement follows:]

STATEMENT OF ALBERT H. KRAMER,¹ DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Mr. Chairman and Members of the Subcommittee, My name is Albert H. Kramer and I am the Director of the Federal Trade Commission's Bureau of Consumer Protection. Accompanying me today is Mr. Arthur Levin, who has been the managing attorney of the FTC's mobile home program for the past 15 months. We are very pleased to have this opportunity to review with you the FTC's trade regulation rulemaking proceeding on mobile home sales and warranty service. As you know, the Staff Report was published only recently, and the public comment period on the Report extends into October 1980. The Commission has not yet begun its consideration of the proposed mobile home rule. Therefore, our comments today represent only the views of the staff of the Bureau of Consumer Protection, and should not be construed as those of the Commission or of any individual Commissioner.

Contrary to popular perceptions, mobile homes are expensive products, which are purchased by many consumers as permanent or long-term dwellings. A quarter of a million new mobile homes will be sold this year, at an average retail price of \$17,000 to \$20,000. Ten million Americans, many of whom are senior citizens,

¹ This testimony reflects the views of the staff of the Commission's Bureau of Consumer Protection. It does not necessarily represent the views of the Commission or of any individual Commissioner.

presently live in mobile homes. Thus, mobile homes are an important segment of the housing inventory in this country.

It has been a long-standing practice among manufacturers of these homes to offer a warranty to purchasers. The typical warranty runs for the first year of ownership and covers defects in the materials and workmanship of the home. From the perspective of the consumer, this warranty provides an assurance of the quality of the home, and it constitutes a promise on the part of the manufacturer and its service agents to repair defects that arise in the home during the warranty period. Indeed, many consumers buy mobile homes based on representations that they will be "maintenance-free."

Against this background, the mobile home rulemaking proceeding has focused on the important question of the adequacy of service received by consumers under the terms of their warranties. In fact, the proceeding largely complements the policies. In fact, the proceeding largely complements the policies articulated by Congress in Title I of the Magnuson-Moss Warranty Act. The warranty provisions of Magnuson-Moss are intended to improve the adequacy of warranty information available to consumers and improve competition in the marketing of consumer products based on this warranty information. When the promise of warranty service is not fulfilled, consumers and competitors are injured and the Congressional policy expressed in the Magnuson-Moss Act is thwarted. Thus, this rulemaking proceeding seeks to ensure that consumer reliance on the promises contained in their mobile home warranties is not misplaced.

Before turning to the provisions of the rule recommended by the staff, let me first review the history of the rulemaking. During the period 1972-74, FTC staff investigated warranty service problems in the mobile home industry. The staff obtained repair records and data from 16 manufacturers and interviewed hundreds of industry officials, state representatives, and consumers. Based on this investigation, the staff concluded that inadequate warranty service was an industrywide problem.

Specifically, the staff found that many mobile home manufacturers did not have effective warranty performance systems. Although substantial responsibility for providing warranty repairs is delegated to dealers, the investigation revealed that this delegation is often informal and that many responsibilities are left ambiguous. The staff also found that, due to inadequate recordkeeping systems, many manufacturers were unable to determine the adequacy of the service provided by their dealers, and did not otherwise monitor the service provided by their dealers.

These practices resulted in disputes between manufacturers and dealers about warranty service responsibilities, unreasonable delays in providing repairs to consumers, instances in which warranty service was improperly refused to consumers, and ineffective repairs.

Based on the staff's investigation, the Commission pursued two courses of action. In 1975, the Commission entered into consent orders with four major manufacturers—Skyline, Fleetwood, Redman and Commodore. The orders, while not an admission of wrongdoing, obligated the companies to fulfill specific requirements with respect to their warranty service systems.

In addition, in May of 1975, the Commission initiated the mobile home rulemaking proceeding, based on evidence that warranty service problems were widespread in this industry. The proposed rule that was published in 1975 was similar in terms to the four consent orders accepted by the Commission.

After a lengthy public comment period, extensive hearings were conducted in San Francisco and Washington, D.C. in 1977 and 1978. More than 7,000 pages of transcript and 200 hearing exhibits were produced. Ninety-one witnesses, representing a broad range of interests, testified at the hearings. The witnesses included state government officials, representatives of national consumer groups, mobile home manufacturers and dealers, mobile home industry trade associations, a representative of mobile home transporters, officials from the Department of Housing and Urban Development (HUD) and the Small Business Administration (SBA), several economists, and individual consumers.

Following the hearings, interested parties filed rebuttal submissions challenging factual assertions in the record. In the fall of 1979, based on his review of the accumulated evidence, the Presiding Officer issued his Report. The Presiding Officer made specific factual findings, generally concluded that there is a persistent warranty service problem in the mobile home industry, and recommended promulgation of a trade regulation rule.

The Final Staff Report, which analyzes the record evidence and recommends a revised rule, was recently published. Based on a record that includes thousands of consumer letters, numerous surveys, and extensive testimony and written comments, the staff has concluded that inadequate warranty service is a major problem in this industry. The evidence indicates that many new mobile homes contain

defects such as roof leaks, malfunctioning plumbing, damage to the frame, inoperative doors and windows, and other problems. In many instances when homeowners request warranty service, repairs are improperly refused, or delayed for several months, or do not effectively remedy the problem. The evidence also shows that delayed or inadequate warranty repairs often result in additional damage to the consumer's home.

Based on its analysis of the record, the staff has concluded that a Commission rule concerning mobile home warranty service is needed. Even at this interim stage, a brief review of the staff's present recommendations demonstrates the learning process that takes place in a rulemaking proceeding. The original rule published in 1975 has been substantially modified and simplified by the staff. Many rule provisions have been deleted, particularly those that would have imposed administrative burdens on the industry. Alternative provisions have been considered, guided in part by numerous suggestions made by industry members and the public, and a careful cost estimate has been prepared for each of the recommended provisions.

The recommended rule has been refocused by the staff, and rests on three basic principles: (1) That mobile homeowners are entitled to effective and timely repairs under their warranties; (2) that disputes between manufacturers and dealers, which delay or impede warranty service, should be reduced; and (3) that consumers should be able to enforce their rights fully under mobile home warranties.

The provisions of the recommended rule have been designed to implement these principles. Briefly, the rule would define reasonable warranty service as follows: an inspection of the home after it is set up; non-emergency repairs within 30 days of notice of the problem; and the alleviation of emergency conditions within 5 days of notice. To reduce service disputes, manufacturers and their dealers would be required to enter into written agreements clarifying their respective obligations, and manufacturers would be required to have a system for monitoring the adequacy of factory and dealer warranty repairs. To reduce disputes over the causes of defects and to ensure that consumers receive a new home that is in habitable condition, manufacturers would be required to assume responsibility for the proper transportation and setup of the homes which they or their agents deliver. Finally, the rule would enable consumers to enforce their rights by requiring disclosure of the service deadlines in the warranty.

It is important to note that many of the rule provisions recommended by the staff have been drafted as performance standards, rather than in the form of detailed prescriptions for industry conduct. For example, the original rule addressed alleged failures by the industry to respond promptly to consumer service complaints by requiring: (1) implementation of a specific system to process complaints; (2) for large companies, a designated corporate focal point to handle complaints, with responsibility for complaints vested in non-sales personnel; (3) the establishment of mechanisms to resolve consumer complaints; (4) recordkeeping for all complaints; and (5) regular review and evaluation of complaint-handling procedures. In contrast, the rule now recommended by the staff requires only that a manufacturer respond to complaints in 7 days, resolve such complaints within 30 days, and keep records concerning complaints. The manner in which these requirements are implemented would be entirely within the discretion of the manufacturer. Similarly, with respect to warranty performance, the original rule required that manufacturers evaluate the service capabilities of new dealers before taking them on, and that they establish regular procedures to evaluate dealer service, including periodic visits to each dealership and the preparation of monthly performance reports. These provisions have been deleted from the rule recommended by the staff, on the ground that since the ultimate responsibility for the performance of warranty obligations rests with the manufacturer who offers the warranty, there will be sufficient incentives for manufacturers to develop their own, cost-effective monitoring mechanisms.

The scope of the rule has also been narrowed. As presently drafted, it would cover only manufacturers that offer written warranties or are required by state or federal law to provide written warranties. Thus, the rule leaves to the discretion of individual manufacturers the decision to offer a warranty for their mobile homes. Moreover, since the provisions of the rule would merely set minimum standards for warranty performance, manufacturers would be free to compete with each other by offering greater protection to consumers, longer warranty periods, and so on.

The potential costs and benefits of the recommended rule have also been carefully considered. Working in conjunction with members of the Commission's Bureau of Economics, the rulemaking staff reviewed economic evidence presented during the proceeding to determine the potential impact of the rule on industry members and consumers. (In fact, the reinspection requirement found in the original rule was deleted by the staff largely on the ground that its costs would exceed the benefits it was expected to provide.) Although it is difficult to provide an exact figure for

compliance costs, the range indicated in the Staff Report suggests that the per unit costs to comply with the recommended rule would not exceed \$120, which is substantially less than one percent (1%) of the current average retail price of a mobile home. The Report indicates that this cost is unlikely to affect industry sales significantly, and that the recommended rule provisions would not alter the present structure of the industry. Furthermore, these costs would be substantially smaller for those companies that presently provide above-average warranty service, and would vary in proportion to the number of homes sold by the company. Finally, based on the record evidence, the staff concluded that the benefits to consumers from improved warranty service would substantially outweigh the costs of the recommended rule.

I would like to spend a few moments addressing the issue of duplicative regulations. Much attention during the rulemaking proceeding was directed at exploring the scope and effect of other regulatory efforts that affect the mobile home industry. Concern has centered particularly on the relationship between any Commission rule and the mobile home program administered by HUD. In 1974, Congress directed HUD to promulgate national design and construction standards for mobile homes, and regulations establishing those standards took effect in 1976.

During the Commission's rulemaking proceeding, HUD submitted official comments on the relationship between its program and the FTC's proposed rule, and two HUD officials testified at the rulemaking hearings. According to HUD representatives, their program is limited to establishing construction standards for major components of the home, mandating a factory inspection of each home to monitor the production process, and requiring post-sale correction of only those safety defects that are related to errors in design and assembly. For example, plumbing problems, roof leaks, jammed or drafty doors and windows, and similar problems generally are beyond the scope of the HUD correction program. In contrast, the FTC's proceeding is directed toward the warranty service problems of the individual consumer and the need for prompt and effective repair of the large number of warranted defects not covered by the HUD program. In the view of HUD officials who testified at the hearings, their program does not address individual warranty service problems and does not directly cover transportation or setup of the mobile home—both of which are frequent sources of defects. As a result, the HUD officials concluded that the proposed FTC rule would offer mobile homeowners significantly different protections than those provided by the HUD program, and would not be duplicative. The officials further observed that the FTC rule would be of great benefit to consumers, and would complement HUD's own efforts.

I would also like to note, in this context, that staff members in the Commission's Division of Product Reliability are presently examining the adequacy of warranty performance in several different industries. Title I of the Magnuson-Moss Act conferred specific authority on the Commission to address warranty issues. The Commission is responsible for enforcing the Act, and has promulgated several rules to implement its disclosure requirements. Thus, examination of warranty performance issues is an important Commission responsibility.

Our efforts in this area are enhanced by our familiarity with warranty practices in general, and are guided by a desire to ensure that the Congressional policies articulated in the Magnuson-Moss Act are fulfilled.

Concern has also been expressed about the interaction between the FTC's proposed rule and state regulations. In the past decade, the states have enacted a variety of laws regulating the mobile home industry, including licensing and bonding of dealers, mandatory warranties, site inspections, and time deadlines for repairs. The extent of such legislation, however, varies greatly. While 17 states have adopted fairly extensive regulations, other states have adopted minimal requirements. State and local officials were active participants in the rulemaking proceeding. Officials from 32 states, including representatives of 23 Attorneys General offices, testified or commented in support of the rule. These officials represented states with a wide variety of mobile home legislation. Officials from only one state expressed opposition to the proposed rule.

Although state officials were supportive of the proposed rule, several expressed concern that the Commission's efforts not preclude their own enforcement activities. To accommodate these views, the recommended rule expressly states that only the narrowest possible preemptive effect is intended. In addition, the recommended rule has been drafted to be consistent with the statutes enacted by those states with extensive regulation of the mobile home industry. In its present form, the rule would preempt very few state law requirements. Should the Commission determine to promulgate a rule, we would hope to work closely with state officials as part of our enforcement activities, without in any way precluding forceful state action in this area.

Mr. Chairman, I believe that the changes and refinements reflected in the Staff Report illustrate the learning process that occurs—and should occur—in any rulemaking proceeding. Based on input from all affected segments of the industry and the public, the original proposal has been substantially revised and pared down by the staff. Moreover, our past experience suggests that subsequent stages of the proceeding will result in additional refinement of the staff proposal. As the two memoranda appended to the Staff Report indicate, many issues remain to be addressed during the comment period on the Staff and Presiding Officer Reports. Those memoranda suggest remedial alternatives that could be considered, and solicit public comments on issues ranging from the need for certain provisions to the drafting format followed in the rule.

In other rulemaking proceedings, comments from members of the public have been particularly helpful to the staff in formulating its final recommendations, and to the Commission as it begins consideration of the rule. I have no doubt that the comments will likewise be helpful in this proceeding. Furthermore, while questions remain to be answered, I am confident that, if the Commission determines to issue a rule, it will select a carefully tailored, cost-effective remedy that provides significant and needed protection to consumers.

We appreciate this opportunity to appear before you, and welcome any questions that the Members might have.

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

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., September 19, 1980.

HON. WENDELL H. FORD,
Chairman, Subcommittee on Consumer, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate the opportunity to respond to several specific questions which were raised during the recent Senate oversight hearing on the Commission's mobile home rulemaking proceeding and to answer the additional questions posed in your letter of August 22, 1980. In addition I am providing supplementary information on two issues in which you and Senator Bayh expressed interest: the coverage of the HUD Mobile Home Program and how it relates to the proposed FTC trade regulation rule; and the effect of the recommended rule provision on set up.

I hope that this letter and enclosure are responsive to the questions raised by you and Senator Bayh about the mobile home proceeding. I would be glad to respond to any further questions you may have.

Sincerely,

ALBERT H. KRAMER,
Director.

Enclosures.

A. THE HUD PROGRAM

The Subcommittee hearing focused in major part on the relationship between the HUD Mobile Home Construction and Safety Standards Act and the Commission staff's recommended trade regulation rule. Because of the importance of the interrelationship of these two programs, and to put in perspective the answers which follow, I would like to outline briefly the coverage of the HUD Program as compared with the scope of the recommend rule.¹

General coverage

As the Undersecretary of HUD, Victor Marrero, testified during the Subcommittee hearing, the HUD Program is directed toward improving the overall quality and safety of mobile homes but cannot ensure that each home is produced without defects. In brief, the HUD Program establishes design and construction standards for mobile homes and, where these standards are violated in a class of homes, HUD can order the manufacturer to notify owners of affected homes. If the defect occurs in only individual homes, HUD cannot require notification. In addition, HUD can order a manufacturer to correct a defect after sale only when the defect is safety-

¹Throughout the rulemaking proceeding, Commission staff and HUD staff have worked closely to avoid duplication and to accomplish the shared concern of ensuring that mobile home owners receive quality homes and adequate performance of warranty service. The staffs will continue to work together and we expect that comment received from HUD in the post-record comment period will help guide the final drafting of the rule.

related. As noted in the recently published HUD Fourth Annual Report to Congress on Mobile Homes, corrections cannot be ordered by HUD for most warranty defects:

"The National Mobile Home Construction and Safety Standards Act requires manufacturers to repair, at their own expense, only those units that contain a defect that presents an unreasonable risk of injury or death to the occupants of the mobile home. Under the Act, defects that do not present such a safety hazard, even though they can be related to an error in design or assembly of the mobile home by the manufacturer, need not be repaired by the manufacturer. At most, if these less serious problems arise and can be proven to exist in a class of mobile homes, the manufacturer must provide notification to the occupants of the mobile homes; if only one home is involved, no action can be required of the manufacturer."

"The experience of the Office of Mobile Home Standards has shown that the program's delineation of manufacturer responsibilities excludes from mandatory correction many categories of defects affecting a home's liveability or durability about which consumers complain. Examples of defects which manufacturers generally need not correct under the Department's jurisdiction include: minor roof leaks and plumbing leaks, warped walls or floors, inoperable plumbing fixtures, inoperable windows (other than windows designed to be used for emergency egress) and air infiltration."

The types of defects cited by HUD as outside its jurisdiction occur frequently in new mobile homes and are covered by most manufacturers' warranties. Such defects would fall within the coverage of the FTC staff's recommended rule.

One area where HUD jurisdiction and the recommended rule could overlap is in the case of emergency situations caused by manufacturing defects. Under staff's recommended rule, an emergency situation involving a defect under the warranty (e.g., no electricity, heat or water) would have to be alleviated within 5 days of the consumer's request for service and the underlying defect would have to be repaired within 30 days. In contrast, the HUD Program allows upwards of 100 days for repair of a safety-related defect (regardless of whether or not a consumer sought repair). Because the HUD Program is generally aimed at detecting whether a defect has arisen in a class of homes, manufacturers are allowed this additional time in order to locate the flaw in the production process before beginning corrections.²

However, this overlap would not require manufacturers to take inconsistent or duplicative action. The time deadlines in the recommended rule would only apply when a homeowner notifies the dealer or manufacturer that warranty service is needed. A finding by HUD that a correction is necessary for a class of homes would not trigger the proposed FTC deadlines for warranty performance. Moreover, once a particular home is repaired in compliance with the recommended TRR deadlines, the manufacturer would not be required to repair it again to comply with the HUD regulations. In fact, because HUD does not require prior approval of corrections,³ the manufacturer could apply for a waiver of HUD's requirements for a plan and notification, based upon having already made the repair in compliance with the TRR.

Question. Could you describe the recordkeeping system required by the recommended rule and contrast it with the recordkeeping system required by HUD?

Answer. Recordkeeping requirements. In your letter you have asked for a description and comparison of the current HUD recordkeeping requirements and the recordkeeping requirements proposed by Commission staff. The recommended rule's recordkeeping provision is intended to be complementary with the not duplicative of the HUD requirements. In the few instances where a defect is subject to the FTC Rule and the HUD Program, the records kept to comply with the recommended rule could be used to fulfill the requirements for both programs; there would be no need to keep two separate sets of records.

Section 441.6(b) of the recommended rule would require that manufacturers establish a recordkeeping system which will enable them to determine whether full and timely warranty service is being provided to consumers. Manufacturers would be required to maintain records of requests for warranty service and consumer complaints, as well as the inspection reports and buyer questionnaires required by the rule. To facilitate prompt response to consumer complaints, the recommended rule would require that these records be organized so that the manufacturer can locate relevant documents when given only the consumer's name. The service records must show: the date service was requested; the date an authorized service agent was notified; the type of defect involved; the date service was provided and by whom;

² Under HUD regulations, manufacturers have 40 days to determine responsibility and formulate a notification and correction plan, and 60 days to implement the plan, not including time for approval of the plan by HUD or appeal of HUD's decision by the manufacturer. 24 C.F.R. § 3282.404, .407, .411 (1979).

³ 24 C.F.R. § 3282.404(e) (1979).

and what actions were taken if no repairs were made or service was refused. Staff has deleted from the original rule the requirements for particular forms, files, personnel and monthly reports; thus, manufacturers are allowed flexibility in developing documents and data systems which produce the required information.

HUD regulations require manufacturers to maintain records concerning actions taken to correct defects or to notify consumers of such defects, including the date the complaint was received, the action taken and the date action was completed.⁴ However, as Undersecretary Marrero testified, the HUD requirements apply only to actions under the HUD Program, which do not include most requests for warranty service. HUD also requires that manufacturers enclose a set of data cards in each mobile home for the consumer to complete and return.⁵ The card asks for the serial number of the home, and the name and address of the retail purchaser, and the date of purchase.⁶

Question. Based on the information the Commission collected, approximately how many warranty complaints are related to improper installation and set-up?

Answer. Increase in HUD complaints. During the hearing you asked for evidence supporting staff's statement that the number of consumer complaints received by HUD had increased since the inception of the HUD Program in 1976.

HUD's Third (April, 1978) and Fourth (August, 1980) Annual Reports to Congress on Mobile Homes indicate that there has been a substantial increase in the number of complaints received by HUD and its designated State Administrative Agencies (HUD's agents in implementing its Program in the states) since enactment of the HUD Program in 1976. According to these reports, the HUD Office of Mobile Home Standards received 344 consumer complaints during the two-year period from July, 1976 through June of 1978, and 309 in the one-year period from July 1978 through June 1979. The State Administrative Agencies received 2,740 complaints in 1977, 7,013 in 1978, and 7,481 in 1979.

B. SET UP

1. Number of complaints

In your letter you asked about the evidence gathered by the FTC on the number of warranty complaints which are related to improper installation and set up. According to industry experts, certain types of defects are often caused by improper set up: roof and window leaks; buckled frames; misaligned windows, doors and cabinets; and malfunctioning plumbing, electrical and gas systems. Since it can often be difficult to determine whether a particular defect is caused by the factory or the set up, it is not possible to establish a precise breakdown of the number of defects caused by set up. HUD's Fourth Annual Report indicates that a significant number of complaints which HUD and its SAA's receive are related to improper set up.⁷ In addition, the rulemaking record contains evidence which indicates that many defects in new mobile homes are related to set up. Eighteen percent of the 1643 consumer letters placed on the record by the Commission staff, as well as 23 percent of the 652 letters placed on the record by the Center for Auto Safety (a consumer group representative in the rulemaking proceeding) specifically complained of set up problems. In addition, a significant percentage of the complaints received by the Assistant Attorney General of Arizona and the Assistant Attorney General of Ohio reported defects related to set up. The Georgia State Fire Marshal commented that 40 percent of the mobile home complaints he receives involve set up. Nearly 80 percent of the 1,996 respondents in the 1977 Housing Advocates Mail Survey of Ohio mobile home owners reported one or more defects which are commonly caused by set up. Five and one-half percent of the 652 respondents in the GSMOL survey of California mobile home owners specifically complained of defective set up and substantially more reported defects that are often caused by improper set up. Finally, a study performed at MIT concluded that as many as 70 percent of all consumer complaints relating to mobile homes may be due to improper set up.

⁴ 24 C.F.R. § 3282.404(b), (c) (1979).

⁵ 24 C.F.R. § 3282.211 (1979).

⁶ Staff revised the original rule to avoid duplication of the HUD requirement by deleting a provision that would have required manufacturers to separately obtain consumer names and addresses and dates of purchase. To comply with the recommended rule, manufacturers need only cross-reference their present records so that they can locate consumer files by name rather than number.

⁷ The report discussed the serious problems which can result from incorrect set up techniques: "This may lead eventually to leaks, loose interior or exterior wall panels, or an overall degradation of the structural integrity of the home. In a chain-reaction type situation, these problems may cause still others. Serious and prolonged leaks causing damaged electrical equipment or causing the weakening and eventual failure of wall and floor panels is an example of this chain-reaction phenomena." [At p. VIII-1.]

2. The recommended rule provision on set up

Based on evidence in the rulemaking record that improper set up often causes damage to mobile homes and that exclusion of set up from manufacturers' warranties frequently results in disputes, staff has recommended that those manufacturers that offer warranties be prohibited from excluding coverage for set up. However, this recommended rule provision would not require manufacturers actually to perform set up. Just as manufacturers presently delegate most warranty service to dealers, they can continue to delegate responsibility for performing set up to dealers so long as the manufacturers are ultimately responsible for repairs. The recommended rule would relieve consumers of the burden of proving whether a defect was caused by the factory or by set up (and whether the manufacturer or the dealer is responsible), and of waiting for needed repairs until disputes as to responsibility between the manufacturer and the set up agent are resolved. The recommended rule should eliminate the exclusion of a frequent cause of defects which is beyond the control of the consumer.

C. COST OF THE RULEMAKING PROCEEDING

Question. What has it cost the Commission to promulgate this rule (i.e., appropriations from 1972 to present)?

Answer. In your letter you inquired about the cost to the Commission of the rulemaking from 1972 to the present. As you know, the rulemaking proceeding was initiated in 1975, and was based upon an industry-wide investigation that took place from 1972 to 1974.

The costs for 1972 through 1976 for both the investigation and the rulemaking proceeding are grouped together in the attached chart (Appendix I), which sets forth the Commission's annual expenditure to date on the mobile home proceeding. From 1976 onward the chart shows expenditures for only the rulemaking. As the chart indicates, the total expenditure from 1972 to date for salaries and benefits, program contracts, and public participation funding is \$1,011,000. That represents a total of 21.9 professional workyears (i.e. attorneys, economists and other professionals), and 7.9 clerical workyears.

D. METHODOLOGY OF SURVEYS USED IN THE RULEMAKING

During the hearing, Senator Bayh posed a number of questions about two 1977 surveys cited in the Staff Report: The Golden State Mobile Home Owners League (GSMOL) Survey conducted in California, and the Housing Advocates Mail and Telephone Surveys conducted in Ohio. The Senator was concerned about whether the survey methodologies ensured (1) that only mobile homes were included in the sample and (2) that the problems reported were covered by a warranty, and arose while the warranty was in effect.

The Staff Report reviews the survey methodologies and results in detail in Chapters III and IV. However, to briefly respond to the Senator's questions:

Question. Did the survey methodologies ensure that only mobile homes were included in the sample?

Answer. The GSMOL Survey was conducted in mobile home parks in California, and each home was examined by the interviewers to ensure that it was a mobile home. The sample in the Housing Advocates' surveys was drawn from persons listed by the Ohio Department of Motor Vehicles as having been issued certificates of title on new mobile homes. Only consumers who had purchased a new mobile home from January 1975 to July 1977 were contacted.

Question. Did the survey methodologies ensure that the problems reported were covered by the warranty and arose while the warranty was in effect?

Answer. The GSMOL Survey was designed to sample only respondents who had bought a new home or a used home still under warranty. In California there is a statutory one year warranty on new mobile homes. This warranty covers most of the home, including substantial defects in materials and workmanship, electrical, plumbing, and heating systems, and appliances. The defects mentioned by respondents were checked against a list of defects that are covered under the statutory warranty or typical manufacturer's warranty. Some defects were reported which were not covered by the warranty and data on these problems was separately tabulated. The GSMOL Survey did not specifically ask when the reported problems occurred. However, 38 percent of the respondents were interviewed during their first year of ownership, while the warranty was in effect. When the number of problems reported by this group (post-July 1, 1976 purchasers) is compared with the problems reported by respondents who had had their homes for more than a year, the results are quite similar. The data indicate that most of the problems occur within the first year, while the warranty is in effect. These results also reveal that

implementation of the HUD construction and design standards in 1976 did not significantly change the incidence of warranty defects:

[In percent]

	Purchased before July 1, 1976	Purchased after July 1, 1976
No problem	21.7	25.5
1 problem	22.9	13.5
2 problems	21.7	18.3
3 or more problems	33.7	42.6

The Housing Advocates survey ascertained whether consumers had received a warranty with their mobile home (there is no mandatory warranty in Ohio) and limited questions about repairs to service requested under warranty. To determine whether reported problems arose during the warranty period, the Housing Advocates survey asked how long after installation or purchase the defect arose. Eighty-seven percent of the mail survey respondents and 70 percent of the telephone survey respondents reported factory defects; the majority of these occurred within 3 months after purchase, and nearly all arose during the first year of ownership. The types of problems reported involved major components of the home and are those that are typically covered by manufacturers' warranties: Roofs, walls, doors, windows, and plumbing, electrical and heating systems. In addition, the Housing Advocates survey divided responses into six month periods from homes bought in 1975 to 1977. The results show a consistently high percentage of factory defects, although there is a slight overall increase after 1975, despite the implementation of the HUD standards in 1976. Moreover, nearly 50 percent of the respondents who specifically mentioned having the HUD-required data plate (indicating that the home is designed to comply with Federal construction standards) on their homes had problems with plumbing, waterproofing and doors.

E. LITTLE FTC ACTS

During the hearings Senator Bayh asked whether state consumer protection statutes—so-called "Little FTC Acts"—might be used to enforce the HUD Mobile Home Construction and Safety Standards Act. As they presently exist, the Little FTC Act would not be useful for that purpose. The Little FTC Acts prohibit unfair or deceptive commercial practices. None of these state laws look to the HUD Act to determine whether a practice is unfair or deceptive. On the other hand, 24 states, either by statute or judicial decision, give deference to FTC trade regulation rules and cases in determining whether a practice is unfair or deceptive under their Little FTC Acts. Thus, trade regulation rules are relied upon in those states to determine what acts or practices violate state law.

F. CONSUMER LETTERS RECEIVED BY FTC

During the hearings you asked for a breakdown of the number of consumer letters received by the Commission which concern warranty problems on mobile homes. The rulemaking record contains 1,952 letters received through 1975, 126 letters received in 1976, and 195 letters in 1977. The Staff Report relies only upon those letters on the record. Since the close of the rulemaking record in July 1978 the Commission has received an additional 51 consumer letters. (These figures do not include letters regarding modular homes, motor homes or recreational vehicles.)⁸

G. EXTENT OF THE COMMISSION'S INVESTIGATION

Another question asked during the hearings was the extent of the FTC rulemaking staff's familiarity with the mobile home production process. Staff's investigation has covered every aspect of the mobile home industry. In addition to the 40 days of rulemaking hearings, during which all segments of the industry participated, staff has reviewed thousands of written comments on the proposed rule. Staff interviewed

⁸ During the hearing a consumer letter which staff had provided to the Subcommittee was discussed. There appeared to be some concern that staff had failed to distinguish between a mobile and a modular home. A copy of our subsequent correspondence to Senator Ford, in which we clarified that the home involved was a mobile home, is attached as Appendix II.

and visited a number of dealers and mobile home owners during the course of the investigation and the rulemaking proceeding. During the pre-rulemaking investigation and in the initial stages of the rulemaking proceeding, staff members visited a mobile home plant in Cucamonga, California. Subsequently, several other factories, among them a Fleetwood plant and a Redman plant, in Colorado and California were visited by the staff attorneys on the project. Staff has also attended industry trade shows, and meetings of the HUD National Mobile Home Advisory Council.

APPENDIX I

MOBILE HOMES MATTER—ESTIMATED RESOURCE HISTORY

Rule/program matter number	Fiscal year					Total
	1976 ¹ and prior years	1977	1978 ²	1979	1980 ³	
Mobile Homes, J06, File Nos. R511022, 7323015:						
Professional work-years.....	2.6	4.6	5.7	6.1	2.9	21.9
Clerical work-years.....	.9	1.5	1.9	2.3	1.3	7.9
Total work-years.....	3.5	6.1	7.6	8.4	4.2	29.8
Salaries and benefits.....	\$81	\$153	\$208	\$245	\$124	\$811
Program contracts.....		\$16		\$24		\$40
Public participation.....	26	68	61		5	160

¹ The hours for fiscal year 1976 include prior years hours reported to the pre-rule investigation.

² Starting with fiscal year 1978 all hours are those reported to the rule.

³ Work-hours reported through July 31, 1980.

Estimates are provided since Agency accounting and workhour reporting systems have various data limitations. The accounting system records costs only to the program level (while most rulemaking matters are subparts of a program); the Weekly Activity Report system records professional workhours at the matter level. Thus, an estimation process combining data from the two systems was used to develop the direct costs of this rulemaking (no allocations for overhead are included).

Prior to 1976, agency accounting and workhour reporting systems did not record resources by case, but by organization. Prior year data was added in total to the WAR system when the system was initiated.

APPENDIX II

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., August 25, 1980.

HON. WENDELL FORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FORD: At the recent legislative oversight hearings on the Commission's mobile home sales and service rulemaking proceeding, Senator Bayh inquired about a letter provided by Commission staff to the Consumer Subcommittee. The letter was written by Quentin Wesley and concerned a Vindale home. This letter was also the subject of a recent letter from Walter Benning, President of the Manufactured Housing Institute, to Chairman Pertschuk.

The Chairman requested that I respond to Mr. Benning's comments. In the response that I prepared, I have explained that the letter was not offered to the Subcommittee as evidence of warranty service problems in the mobile home industry. The Wesley letter is not part of the rulemaking record and was not considered in the drafting of the Staff Report on Mobile Home Sales and Service.

The letter was provided to the Subcommittee to respond to concerns which have been expressed over the appropriateness of the Commission's involvement in regulating mobile home warranty service. You have asked why the Commission, rather than HUD, should have continued responsibility for resolving problems in the performance of warranty service. The letter from Mr. Wesley, which thanks staff for its efforts to assist his clients, is one of many illustrations of staff's ongoing activity in the resolution of consumer complaints about warranty service in general. As we

have pointed out, we believe that the Commission's expertise in the warranty service area is an important basis for our involvement in the mobile homes area.

Incidentally, further contact with the consumers whom Mr. Wesley represented indicates that the home involved may have been, in fact, a mobile home. In the course of the sales presentation, the home was apparently represented by the dealer as a modular home. However, as we are now informed, a photograph of the unit in question shows that it has the HUD certification seal, which is only intended to be placed on mobile homes. We are also now told that the warranty and sales contract also identify the home as mobile and not modular.

A copy of my letter to Mr. Benning is attached for your consideration.

Sincerely,

ALBERT H. KRAMER,
Director.

Enclosure.

FEDERAL TRADE COMMISSION,
BUREAU OF CONSUMER PROTECTION,
Washington, D.C., August 25, 1980.

Mr. WALTER BENNING,
*President, Manufactured Housing Institute,
Arlington, Va.*

DEAR MR. BENNING: The Chairman has asked me to respond to your letter of August 11, 1980, in which you express concern about a letter from Mr. Quentin Wesley which was submitted by the FTC to the Senate Commerce Committee, Subcommittee on Consumers. You indicate that Mr. Wesley's letter related to a modular home rather than a mobile home, and question whether the rulemaking staff has properly distinguished between mobile and modular homes in the course of the Commission's rulemaking proceeding concerning mobile home sales and service.

The Wesley letter was provided to the Subcommittee staff in the course of their preparation for oversight hearings on the mobile home rulemaking, which were held on August 20, 1980. One of the issues raised by the Subcommittee staff concerned the Commission's experience in the handling of consumer complaints about warranty service, a matter which is not addressed in the Final Staff Report. The letter was not provided as evidence of warranty service problems in the mobile home industry, but rather to inform the Subcommittee of FTC staff efforts to resolve consumer complaints. Although it does not appear to involve a mobile home, this letter does concern a closely-related product which was manufactured by a company that testified at the rulemaking hearings. As Mr. Wesley indicated in his letter, staff advice and assistance was instrumental in his efforts to obtain a refund for his clients on the unit in question.

The second letter you mention was also furnished to the Subcommittee to indicate FTC staff efforts in handling warranty service complaints, and not as evidence of warranty problems with mobile homes. That letter concerned a Tennessee consumer who purchased a mobile home in Kentucky. That consumer wrote to thank the staff for their assistance with her problems in obtaining warranty service and to inform the staff that the dealer who had sold her the home was being sued by the Kentucky Attorney General for failing to meet its warranty obligations.

The mandate of the Commission does not generally encompass the resolution of individual consumer problems. However, providing information and advice to consumers regarding their complaints is an important adjunct of our consumer protection mission.

The staff's evidence concerning warranty service problems in the mobile home industry was provided to the Subcommittee in the form of a draft of the Final Staff Report. The draft Report was provided to the Subcommittee in response to their request. The Report contains the staff's analysis of the rulemaking record with respect to the issues of warranty service in the mobile home industry and its recommendations for a trade regulation rule. The Report, at pages 22-23, discusses the differences between mobile homes and related products, such as modular homes and recreational vehicles, and § 441.2(c) of the recommended rule defines mobile homes. In addition, the Report describes some of the efforts that were undertaken to exclude from the rulemaking record evidence about products other than mobile homes. Neither of the two letters you mention are part of the rulemaking record in the mobile home proceeding and neither was considered in the drafting of the Staff Report or in the preparation of the staff recommendations.

I appreciate your concern about this matter and assure you that in the future, as has been the case throughout the rulemaking proceeding, only evidence about mobile homes will be considered by the staff in formulating its recommendations.

Sincerely,

ALBERT H. KRAMER,
Director.

Senator FORD. The next witness is Victor Marrero, the Undersecretary of the Department of Housing and Urban Development.

Good morning, Mr. Marrero.

Mr. MARRERO. Good morning, Mr. Chairman.

Senator FORD. We took a little longer maybe than we should have on the last witness and we hope that you will hold your comments to approximately 10 minutes. We'll turn the light on you and ask that you identify these gentlemen accompanying you this morning.

STATEMENT OF VICTOR MARRERO, UNDERSECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ACCOMPANIED BY JESSE McELROY, DIRECTOR, MOBILE HOME STANDARDS DIVISION; AND PETER RACE, ASSISTANT GENERAL COUNSEL FOR CONSUMER PROTECTION

Mr. MARRERO. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to appear before you today to discuss HUD's role in the mobile home construction and safety standards program. In my remarks, I will describe how the Department's program would relate to the proposed Federal Trade Commission rule on mobile home warranties.

With me this morning are: Jesse McElroy, to my right, director of HUD's Mobile Home Standards Division; and Peter Race, assistant general counsel for consumer protection.

The HUD program was authorized by the National Mobile Home Construction and Safety Standards Act of 1974, which was passed as title VI of the Housing and Community Development Act of 1974.

Under this program, each mobile home manufacturer must hire a HUD-approved Design Approval Agency to review the manufacturer's designs and quality assurance manual. Each manufacturer must also hire a HUD-approved Factory Inspection Agency to perform an initial plant approval inspection and to monitor the manufacturer's production process.

A manufacturer may not sell any mobile homes until after the Factory Inspection Agency has completed the initial plant approval inspection and has certified that the manufacturer is capable of producing homes that conform to the Federal standards. Once the plant is certified, the Factory Inspection Agency supplies the manufacturer with a limited quantity of labels. The manufacturer must attach a label to each unit certifying that the mobile home conforms to the Federal standards.

After a plant is approved, the Factory Inspection Agency inspects each mobile home at least once from start to end of production. Very few homes are inspected by the Factory Inspection Agency in their entirety. The primary purpose of this inspection is to determine whether the manufacturer is following the quality control program which was approved by the Design Approval Agency.

If the Factory Inspection Agency finds that the manufacturer is not following its quality control program, the Factory Inspection Agency increases the frequency and intensity of inspections. In extreme cases, the Factory Inspection Agency withdraws the manufacturer's labels and proceeds with 100 percent inspection until the manufacturer has again demonstrated its capability to control quality. Generally, this inspection system is adequate to assure that mobile homes meet the Federal standards.

HUD's mobile home program is administered by the Office of Mobile Home Standards with assistance from 35 State agencies. The Department presently has a staff of 27 people who are responsible for administering the program. HUD also has a contractor, the National Conference of States on Building Codes and Standards, which employs 33 people and engages approximately 44 staff-years of assistance from approved States to monitor the inspection process.

The funds for the contractor's activities come from a monitoring inspection fee of \$19 per unit paid by the manufacturers. Factory Inspection Agencies and Design Approval Agencies must be approved by the Department but are hired and paid by the manufacturers.

Because HUD's mobile home program became effective quite recently and because of limitations on staffing that we encounter, we have not been able to do an exhaustive evaluation of the program's effectiveness. Our preliminary findings appear to indicate that the number of deaths, injuries and property damage is lower in mobile homes produced to the Federal standards than in homes built before the program took effect. However, this data is skewed since all the mobile homes built under the standards are relatively new and we cannot yet determine the effects of aging on the homes.

Though the HUD program appears to have been successful in improving the overall quality, safety, and durability of mobile homes, the program cannot guarantee that every mobile home will be manufactured without defects or noncompliances. Nor does the program guarantee that consumers will not need the protection of warranties.

The Department has not investigated in detail the adequacy of warranty performance by mobile home manufacturers. However, we have concluded that a warranty performance system would provide consumers with protection not currently provided by the act. The correction requirements of section 615 of the act are limited to reach only defects in the home which present an unreasonable risk of injury or death to occupants of the home.

HUD receives approximately 400 consumer complaints a year, primarily from States not participating in the program. HUD has five State coordinators who handle consumer complaints, as well as monitoring State programs. The 35 HUD-approved State administrative agencies receive and process approximately 7,000 additional complaints annually.

When the Department receives a consumer complaint, the complaint is referred to the appropriate State agency. If the complaint comes from a State without a State agency, the Department handles the complaint. About two-thirds of the complaints received by

the Department are referred to the States. The complaint is then forwarded to the manufacturer, who has 20 days to investigate the complaint.

In its investigation, the manufacturer must determine the seriousness of the complaint and whether the problem affects a class of homes. If the complaint involves a defect, but not an unreasonable risk of injury or death in a class of homes, the manufacturer must submit to HUD or the State agency a plan for notifying the owners of the homes involved.

The plan must be submitted within 20 days of the determination of defect. The plan must describe the class of mobile homes affected and how the manufacturer intends to notify owners of the defects. In the case of a single defective home, the manufacturer need not submit a plan if the home is corrected within the 20-day period.

Unless a consumer complaint involves a serious safety risk, there is little else the Department can do to resolve the complaint. For example, HUD cannot help consumers who complain about problems such as malfunctioning plumbing, warped walls, minor roof leaks, inoperable light switches and problems with built-in furniture.

Under the act, HUD can require action by manufacturers after retail sale in only two situations: First, if a mobile home contains a defect or noncompliance, HUD can order the manufacturer to notify consumers; but the Department cannot force the manufacturer to correct the problem. Also the Department can compel a manufacturer to make corrections only in cases where a defect presents "an unreasonable risk of injury or death to occupants of the affected mobile home. This is under 42 U.S.C. section 5414(g).

Where problems with mobile homes are caused by faulty installation of the home, there are almost no cases where HUD can do anything even if a problem poses a serious risk of injury or death to occupants. The Department has found that faulty installation and set up are a major source of problems for consumers. In some instances, the absence of satisfactory siting and installation standards may negate performance required by the Federal standards. However, HUD is not authorized at present under the act to regulate the installation and set up of mobile homes.

The great bulk of consumer complaints under the HUD program are handled by the State agencies. Neither the Department nor the States can compel manufacturers to correct nonsafety-related defects. Once the manufacturers are contacted by HUD or the State agencies, a number of consumer complaints are resolved by manufacturers who voluntarily correct defects. However, we do not know how many complaints of this sort are resolved or the reasons for the resolutions.

The original version of the FTC rule contained certain provisions which seemed to conflict with requirements of the Department's program. These conflicting provisions have been eliminated in the final version of the FTC rule and any overlap between the two programs has been minimized.

The recommended rule addresses different problems than does the HUD program. The rule would provide consumers with necessary protection which HUD cannot currently provide under the Mobile Home Act. However, there is a legitimate question for

Congress to address as to whether that protection should be provided through an expansion of HUD's current statutory authority along with necessary increases in resources, or by another entity, such as the FTC.

The National Mobile Homes Construction and Safety Standards Act states that the purpose of HUD's mobile home program is to "reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and to improve the quality and durability of mobile homes."

The recommended rule is designed to assure that consumers are able to enforce their private contractual rights against mobile home manufacturers and dealers.

Because of our current legislative mandate and present staffing limitations, HUD must focus its efforts on the notification and correction of defects in classes of mobile homes rather than on the resolution of individual consumer complaints. There are many cases where a consumer may have a legitimate complaint covered by a warranty in which the Department can do little to help.

The proposed rule is designed to enforce warranties but does not specify what is covered by the warranties. Thus, there could be cases where corrections are required under the HUD program but not required under the FTC rule. For example, a manufacturer might not warrant an item which is found to cause an imminent safety hazard.

The only overlap between the HUD and FTC systems would occur in areas where a defect presents an unreasonable risk of injury or death and is an item covered by warranty. It was not the intent of the act to create an exclusive system of regulation concerning every issue relating to mobile homes. The act is silent on the issue of consumers' private remedies such as action for breach of warranty.

The Department's program is designed to identify and correct defects in classes of homes. Our program does not focus on individual cases nor the resolution of individual problems.

In addition, as I indicated earlier, we do not have statutory authority to regulate installation and mobile home warranty performance. These are issues which should be addressed by some Federal agency's program so that mobile homeowners and their families will receive additional and much needed consumer protection.

Again, I wish to thank you for the opportunity to appear before you, and of course I'll be delighted to answer any questions.

Senator FORD. Thank you very much for your testimony. I appreciate your cooperation. I have just two or three questions I'd like to ask you, Mr. Marrero.

Do you have any warranty authorization under existing law?

Mr. MARRERO. No, Mr. Chairman, we do not.

Senator FORD. What are the regulations, on recordkeeping by manufacturers for notification to purchasers of defects?

What kind of recordkeeping do you require of the manufacturer?

Mr. MARRERO. Whenever a manufacturer receives a complaint which indicates a possible failure of the home to conform to Federal standards, the manufacturer is required to investigate the com-

plaint and determine whether the manufacturer is responsible for providing notification and correction.

The manufacturers are required to maintain records of the complaints received and the determinations they make in a manner so that the Secretary can discern who made the determination, what the determination was and the basis for the determination.

The manufacturer must maintain these records for a minimum of 5 years after receiving the complaint. Additional records are required when a manufacturer is required to provide notification or take corrective action. Where notification is required, the manufacturer is then required to maintain for 5 years a copy of the notice sent and a list of the purchasers to whom it was sent.

I want to stress in this connection, Mr. Chairman, that the consumer complaint records are required only in cases where the complaint raises the possibility of standards-related problems. HUD does not require manufacturers to maintain records of all consumer complaints, even though these complaints might be covered by warranties.

Senator FORD. Does the manufacturer have the ability under the recordkeeping procedure that you require—if a major defect is reported, will that record be such that a thousand purchasers could be notified?

Mr. MARRERO. Yes. Under our standards, if the complaint was one that affects class of mobile homes and we determine—

Senator FORD. Who's "we"? I understood that you left the determination up to the manufacturer.

Mr. MARRERO. The manufacturer is asked to make the determination. Our inspectors and our agents are supposed to examine that to make sure, of course, that there is followup and that the determination is correct.

If it is determined pursuant to that process, whether by the manufacturer or by the State agency or by HUD, in the appropriate case, because not all States have agencies, that the complaint affects a class, in those cases, the manufacturer is required to notify all members of that class.

Senator FORD. Under your determination, does the FTC have any authority to do anything similar to that?

Mr. MARRERO. Under our understanding of the FTC rule, no, they are only required to deal with individual complaints on an individual basis.

Senator FORD. Let me ask you this. Have the number of complaints risen each year since HUD entered the field?

Mr. MARRERO. We have to, in answering that question, consider that the program is relatively new, since 1976. In the first year or so of the program, the complaints were fewer than they are today. I believe that in the first year or so of the program, there were about 3,000.

Senator FORD. Per year?

Mr. MARRERO. Yes.

Senator FORD. 3,000.

Mr. MARRERO. In the first year.

Senator FORD. You had 3,000 complaints. How many mobile homes were sold?

Mr. MARRERO. Well, again, let me put that into perspective. HUD receives about 400. The State agencies that administer programs for us received about 7,000 in the past year. The total number of homes manufactured over this period exceed over a million. They've been running at about 275,000 per year.

Now, again, that does not mean that these are the only complaints that are received because most complaints are not sent to HUD or to the States. Most complaints, as we understand, go directly to the manufacturers or to the dealers first. I think, it's only, after people either are not able to get adequate response from either the dealer or the manufacturer, that they might as a last resort turn to the State or to HUD.

Senator FORD. All right. Now you're saying that the first year you received 3,000. Then I understood you to say 4,000.

Mr. MARRERO. No. In the first year, we received roughly 3,000. The following 2 years there were about 7,000.

Senator FORD. Each year?

Mr. MARRERO. Yes, each year, received by the States and about 400 each year received by HUD.

Senator FORD. So the States receive the majority of complaints, not HUD, and HUD received only 400 complaints?

Mr. MARRERO. We received about 400 per year for the past 2 years. The States received about 7,000 per year for the past 2 years.

Senator FORD. Does this indicate, then, that the States are handling more claims and more complaints than HUD? Are they in place to do—

Mr. MARRERO. Well, they work with us as part of the program. They are our agents. We designate them as our agents pursuant to the act.

Senator FORD. I recall that in the testimony of the representatives of the FTC a few moments ago, they said that the States could not handle what they were doing. And you lean on the States to do your job.

Am I correct in my recollection? I thought I understood Mr. Kramer to say that the States couldn't handle what the FTC was doing.

Mr. MARRERO. Well, again, you have to be clear as to exactly what is being discussed. What the States do for us are the inspections of the plants and the followup.

Senator FORD. Is that the spot inspection that's required during the construction of the home?

Mr. MARRERO. Yes, yes, in the construction of the homes. And of course, to the extent that consumers complain about defective homes, some of these complaints are first submitted to the manufacturer and then to the States or the State agencies. They make the determination on our behalf as to whether or not a defect is one that requires notification and/or correction.

Senator FORD. Did you promulgate the standards under which you're now operating?

Mr. MARRERO. We promulgated the standards.

Senator FORD. Standards, all right. OK.

Mr. MARRERO. Yes.

Senator FORD. And then you have people to inspect to see that those standards are complied with?

Mr. MARRERO. Yes.

Senator FORD. How much paper was required in the development of that standard?

Mr. MARRERO. I'm afraid that I can't answer that, Mr. Chairman. I don't have that in front of me.

Senator FORD. Well, you know that under this particular rule, the FTC record is over half a million pages. I wondered if it took a half million pages for you to develop your standards.

Mr. MARRERO. I don't have the precise number, but if it's important, I will submit it for the record.

Senator FORD. Well, I just wondered. I just wanted to know how much time and expense it took compared to the FTC.

I understand that you use the States to inspect and determine if the standards are complied with and it's basically a spot check. It isn't a thorough inspection from the first splinter to the final nail.

Mr. MARRERO. That is correct, sir.

Senator FORD. All right. How do you charge the manufacturers—is it a flat rate per unit or a percentage of the wholesale cost?

Mr. MARRERO. It's \$19 per unit.

Senator FORD. Is that a flat charge that you make?

Mr. MARRERO. Yes.

Senator FORD. Are you making money or losing money? Do you have any money left over?

Mr. MARRERO. Well, the costs that we charge are supposed to be reasonably related to the cost of our administering the program, so that it's not a moneymaker.

Senator FORD. You don't have any money left?

Mr. MARRERO. No.

Senator FORD. You wouldn't have \$2 million sitting over there somewhere that you've got to play with? You'd better be careful now how you answer that because I think I know the answer.

Mr. MARRERO. Mr. McElroy will be able to answer that.

Senator FORD. Good. I think you'd better let Mr. McElroy answer it because you may be going down the wrong path.

Mr. McELROY. There is an amount of money that has been collected for those States that are not participating in the program.

Senator FORD. The so-called "pot"?

Mr. McELROY. Yes.

Senator FORD. Do you have any idea of what that figure might be? It is self-sufficient, though, isn't it?

Mr. McELROY. It's self-sufficient, the program is.

Senator FORD. All right. And as of the moment, you've had enough money to put on, for example, seminars about mobile homes and that sort of thing?

Mr. McELROY. We have training connected with the inspections, yes.

Senator FORD. And you've had the extra money to do that from the \$19?

Mr. McELROY. I wouldn't call that extra money, sir.

Senator FORD. You wouldn't call that extra money. Well you've got enough to pay for the inspectors, to train them and that sort of thing, and then have money left. Am I correct?

Mr. McELROY. Well, that money left is only because there are 15 States that are not participating in the program.

Senator FORD. But that's the 15 States, then, that you collect for?

Mr. McELROY. Right.

Senator FORD. And you furnish—

Mr. McELROY. That we furnish the support for.

Senator FORD. OK. Well, I think the point I'm trying to make is that \$19 per unit in 15 States gives you a surplus. I just wanted to know that there was one agency in town that has a surplus.

I want to compliment you. I think that's great. Just be sure that you don't siphon any funds we give you to make that look good.

Mr. MARRERO. We're very sensitive about that issue these days, Mr. Senator, as you probably recall.

Senator FORD. I want you to know that you're going to be more sensitive about it.

I'm having fun. But I guess I'd better turn it over to Senator Bayh.

Senator BAYH. I'm having fun watching you having fun, Mr. Chairman.

Senator FORD. Well, if you can't liven it up, why, this place wouldn't be any fun at all.

Senator BAYH. Mr. Secretary, is there any reason why your department could not be organized in such a way by the responses to complaints from consumers as they relate to inadequacies in manufactured housing that's purchased?

Mr. MARRERO. I think with proper legislative authority and proper and adequate resources, there's no reason why we should not be able to do anything that the Congress wishes us to do.

The present authority that we have from the act does not permit us to do everything that we would want to do or feel is required to be done for consumers to receive the full protection. Nor do we have adequate staff, even if the authority were there, to do it all.

So I think that the Congress would have to address both issues of our authority and the staff before we could do the full job.

Senator BAYH. Well, the 7,000 complaints that were given to the people in the States, the authority for the states to act, as the need or whatever might be, that could still be the case so that this matter could be dealt with under the present framework of responding to the complaints?

Mr. MARRERO. I'm not quite sure of the nature of the question, Senator.

Senator BAYH. You have a response mechanism—part of it is to respond to 400 complaints in Washington.

Mr. MARRERO. Yes.

Senator BAYH. Part of it is to respond to 7,000 complaints given to States.

Mr. MARRERO. Yes.

Senator BAYH. I assume that that same mechanism could be used to respond to other kinds of complaints.

Mr. MARRERO. Yes. If we were to have additional legislative authority to handle complaints that we do not now have the authority to handle, the same mechanism could be put in place. We would not necessarily create a new bureaucracy in Washington to deal with it. We could still use the States to handle the additional burden.

Some amount would still have to be handled in Washington because of the States that do not have administrative agencies. But basically, the same mechanism could handle it with augmented resources.

Mr. RACE. We don't have the authority to handle the warranty problems. That's the crucial issue. The problems dealing with the enforcement of the warranties and the purchaser's rights to carry out warranties, we don't have the authority under present legislation.

Senator BAYH. If that authority were granted, then could not complaints of violations of warranty be handled the same way the other kinds of complaints that you now have jurisdiction to handle are handled?

Mr. MARRERO. The nature of my response, Senator, if Congress deems it proper to give us the authority over that area, then, again, there's no reason, with the staffing necessary, that we could not set ourselves up to handle the additional workload.

I must admit, however, that our expertise is not necessarily in the area of warranties. But, again, if the Congress sees fit to give us that responsibility with the resources that are required, we would do our best to provide a service.

Senator BAYH. What kind of complaints are we talking about? Give me a couple of examples of complaints in the 7,000 that the States receive, or the 400 that it receives that you do have the competence now to deal with.

Mr. MARRERO. Well, the bulk of the complaints that the States and we received over the past few years have dealt mostly with structural problems, such as plumbing, and some have dealt with what we call cosmetics.

We have a breakdown of that, which is contained in the Department's fourth report to Congress on mobile homes. They're outlined there.

Senator BAYH. I don't want to go into a great deal of detail. You can put that in the record. I don't want to truncate your response.

But what I'm after here is the response about your expertise. Apparently, if there is an imperfection in the roof, the truss mechanism that holds the roof and, as a result of that, it blows off or falls in, you are prepared to deal with that.

Mr. MARRERO. If under the act, it is determined that that is an item, a defect that might present an unreasonable risk of danger or death, yes, that's the kind of defect that we could order the manufacturer to correct.

Senator BAYH. Well, describe one. I'm having difficulty finding out what you do. If the roof blows off or falls in—describe a complaint or two. Give me the ends of your authority, as you envision it here.

Mr. MARRERO. Well, the homeowner may have a problem—and perhaps I can give you two kinds. The problem may simply be defective windows or closet doors that don't lock properly. That complaint, if we receive it or it's received by a State agency, it's then referred to the manufacturer to make a determination as to whether or not it is a complaint that affects a class of homes.

If it is determined that it does affect the class of home, a determination also has to be made whether it is of the nature that would involve an unreasonable risk of injury or death.

In the case of one affecting just faulty windows, clearly, it is not one that presents an unreasonable risk of injury or death. So that the manufacturer then is not required—we cannot require the manufacturer to make the correction.

As a matter of practice, the manufacturers do make the corrections in those items, in part, because of their desire to be responsive. They don't want to be regarded as bad business people. So, generally, they make the corrections.

They also want to avoid the responsibility of having to notify thousands of consumers if, in fact, that does affect many more homeowners than just the one who's complaining.

So it's in their interest in that sort of case simply to make the correction.

In a case of something that's much more serious, maybe cases where whole systems, electrical systems, may be faulty, which might, for example, create a risk of fire, a defect which might be generic to a class of homes would require the manufacturer not only to make the correction—and we could force the manufacturer to make that correction—but also, the manufacturer would be required to correct all similarly situated homeowners.

Senator BAYH. Can you make any judgment in HUD or the States about the merit of that complaint when it's made? In other words, when it's a faulty electrical system or a faulty window, do you have someone in the State—

Mr. MARRERO. The State agencies, on behalf of HUD, in most instances make those determinations for us. In the case of States where there are no agencies, HUD's own staff would have to handle it.

Senator BAYH. They would make that determination?

Mr. MARRERO. Yes.

Mr. RACE. If there appears to be something that is a serious risk to health, if there is a safety risk, an unreasonable risk of injury or death, at that time either the State agency, on our behalf, or HUD investigators can look at a particular case and see if it would involve a class or whether it requires the manufacturer to correct that serious defect.

Senator BAYH. Is it fair to say that if you have the expertise to deal with making a determination of whether a window is faulty or an electronic system is faulty as far as it deals with the specific authority that you now have, that that same expertise could determine whether that faulty window or that faulty electric system violated the warranty against such faults?

Mr. MARRERO. In some instances, Senator, warranty items, as you undoubtedly know, are matters of contract law. And how far a warranty goes depends upon how it's phrased. Whether or not a particular statement of warranty covers an item sometimes involves contractual interpretations rather than just a mechanical determination as to whether something is or is not faulty.

Yes, we can make the determination as to whether a defect exists. But the determination as to whether or not it's covered by a warranty is something entirely different. It's, again, not to say that

we could not develop that over time if we had the responsibility, but not being in that business, we don't necessarily have that capacity in-house now.

Senator BAYH. Well, you can make a factual determination.

Mr. MARRERO. Yes.

Senator BAYH. You're concerned about the expertise of whether it's covered by warranty. The FTC, on the other hand, feels that they can determine whether it's covered by warranty.

My judgment is that they probably don't have very many people. Despite the assertion to the contrary in a rather vague way here this morning that there had been a lot of visits to mobile home manufacturing plants, I doubt if they have the expertise that you do in dealing with those thousands of complaints.

Thank you very much, gentlemen.

Senator FORD. I only have one final question. Do you spot-check insulation of the mobile homes? Or do you just check electrical and plumbing systems?

Mr. MARRERO. Well, our standards cover plumbing and electrical and other systems, but we don't necessarily do any spot-checks. Under the system we operate, the plant agents make one inspection of a unit sometime in the process of production. It may or may not necessarily be at the stage at which the electricals were being installed.

But not every system would be spot-checked.

Senator FORD. I'm talking about the insulation.

Mr. MARRERO. Yes. I'm saying that, again, the spotcheck is not necessarily at any one stage of the process, we don't identify any one item at any one stage of production for inspection. Insulation is not one.

Senator FORD. It's not one that you would inspect for?

Mr. MARRERO. There is a standard for insulation, yes.

Senator FORD. There is a standard for insulation.

Mr. MARRERO. Yes.

Senator FORD. All right. And that standard is yours or do you get it from another agency?

Mr. MARRERO. It's HUD's standard, but our standards are developed with the consultation of other agencies and our own advisory council.

Mr. McELROY. Insulation, not installation.

Senator FORD. Insulation.

Mr. MARRERO. Insulation.

Senator FORD. Yes, what keeps you warm in the winter.

Mr. MARRERO. Insulation is what he's saying, yes.

Senator FORD. I'm sorry about my southern English. I know about installation. I'm worried about insulation.

Mr. McELROY. We do have insulation standards; yes.

Senator FORD. All right. Do you set those standards or are they accepted from another agency?

Mr. McELROY. The mobile home has a thermal envelope. It has a heating and cooling standard which requires the insulation be in there to measure up to a heating and cooling standard for mobile homes.

Senator FORD. And the material used in that is subject to your approval?

Mr. McELROY. Approval, yes.

Senator FORD. Okay. I'm leading up to some questions for other witnesses. Thank you, gentlemen. We appreciate it.

Mr. MARRERO. Thank you, Senator. Just in closing, I want to make a general statement that whereas we recognize the limitations under which we operate, we do think that we have a program that is functioning well, it's properly administered, and we would be prepared to follow the lead of Congress in any other area in which you feel that we ought to be involved.

Senator FORD. Thank you very much.

The next will be a panel of witnesses, which will be Walter L. Benning, president of the Manufactured Housing Institute, Arlington Va.; Charles O. Smith, chairman, C. O. Smith Industries of Atlanta, Ga.; Edward J. Hussey, president, Liberty Homes, Goshen, Ind.; Arthur Decio, president, Skyline Corp., Elkhart, Ind.

Gentlemen, will you identify yourselves here, from your right, my left.

STATEMENTS OF WALTER L. BENNING, PRESIDENT, MANUFACTURED HOUSING INSTITUTE, ARLINGTON, VA.; ARTHUR DECIO, PRESIDENT, SKYLINE CORP., ELKHART, IND.; CHARLES O. SMITH, CHAIRMAN, C. O. SMITH INDUSTRIES, INC., ATLANTA, GA.; AND EDWARD J. HUSSEY, PRESIDENT, LIBERTY HOMES, INC., NORTH GOSHEN, IND.

Mr. DECIO. Mr. Chairman, Arthur J. Decio.

Senator FORD. Mr. Decio.

Mr. SMITH. C. O. Smith.

Mr. BENNING. Walter L. Benning.

Senator FORD. Yes, sir.

Mr. HUSSEY. Ed Hussey.

Senator FORD. All right, sir. Mr. Benning?

Mr. BENNING. I will start. Mr. Chairman, although my written statement is extensive, I'm prepared to summarize my remarks and offer my full statement for the record.

Senator FORD. It will be included in the record.

Mr. BENNING. Thank you, sir.

My name is Walter L. Benning. I am the president of the Manufactured Housing Institute, Inc., the national trade association for mobile home manufacturers and suppliers of services and materials to the mobile home industry.

My testimony today is based upon my knowledge of the industry via my role at the institute and my direct involvement on behalf of the industry in the Federal regulatory process.

The principal points which I would like to address today before this committee relating to the merits of adopting the Federal Trade Commission's trade regulation rule on mobile home sales and service are: One, the quality and safety of mobile homes under the HUD Mobile Home Construction and Safety Standards Act and subsequent protections offered to consumers against poor quality mobile homes; two, the redundancy of the rule in light of existing Federal and State regulations affecting the mobile home industry; three, the superfluity of further regulating mobile homes as a segment of the housing market as compared to existing regulation of conventional site-built homes; and four, the impact of the pro-

posed rule on low income consumers' ability to purchase affordable housing.

The mobile home industry has grown rapidly since the advent of the travel trailer at the turn of the century. Of approximately 330 manufacturers producing mobile homes in 1972, only 225 survived in the 1974-75 recession. The number of operating plants declined from 800 to 500 during the same period. Today, there are an estimated 200 mobile home manufacturers in the United States with approximately 550 manufacturing facilities distributing to 49 States.

The Federal Trade Commission began its investigation of the advertising sales and service practices of the mobile home industry in August of 1972. Ignoring the dramatic changes that have occurred in the industry as a result of Federal and State legislation enacted since 1972, the FTC has continued its rulemaking proceeding based on a paucity of outdated information which fails to consider the current state of the mobile home industry.

I find it particularly disconcerting that although the FTC staff report was available almost 4 weeks ago, the staff has chosen to release this voluminous 629-page report 1 week prior to today's hearing. This tactic has effectively precluded any meaningful comments on this report and recommended rule in my statement to you today.

The mobile home industry is currently subject to HUD's regulatory scheme which addresses and goes beyond the scope of the FTC trade regulation rule. In 1974, Congress, pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, delegated to the Department of Housing and Urban Development the responsibility for promulgating a complete mobile home housing code and an enforcement system extending from the first stage of production to the consumer's use as a home. In accordance with this congressional mandate, HUD developed the Federal mobile home construction and safety standards, initiated research to improve these standards, and implemented a comprehensive enforcement system.

The HUD housing code for mobile homes is unique in the housing industry. There is no such mandatory Federal code and enforcement system for any other type of housing. In fact, modular homes, which are built under the same manufacturing process and often cannot be distinguished from mobile homes, have no such regulatory oversight, but have been treated different than mobile homes for purposes of State and Federal regulation.

Pursuant to this congressional mandate, HUD issued a comprehensive code which meets the threefold purpose of the act: To insure the safety, quality, and durability of mobile homes. In the 5-year period from 1975 through 1980, HUD expended \$4.8 million in research and testing concerning the HUD standards. Not only does HUD use this input, but it also uses input from its National Mobile Home Advisory Council composed of 24 members equally balanced between three public sectors—the consumer, the industry, and State governments.

The enforcement system set up by HUD to insure compliance with the mobile home standards represents the most comprehensive system set up by any Federal agency to regulate any private

industry in America today. The HUD Mobile Home Act and regulations set forth a series of remedial actions which HUD, the 35 HUD-approved State administrative agencies and dealers can use to insure that the mobile home manufacturer builds homes which conform to the HUD code and corrects those homes which concern defects after they leave the factory.

With its power to impose civil and criminal penalties, HUD has the same enforcement tool under the HUD Mobile Home Act as the FTC has. However, in almost all cases, the manufacturers elect to voluntarily correct defects in a timely manner to obtain a waiver by the SAA's or HUD of the stringent notification requirements of the HUD Act and regulations. HUD's second, third, and fourth annual reports to Congress provide numerous examples of voluntary correction of defects and noncompliances under this system. According to HUD's 1978 annual report, in 1978, the SAA's resolved over 6,800 complaints, while HUD's staff resolved more than 400 additional complaints. These figures demonstrate the effectiveness of HUD's regulatory system.

The Federal mobile home construction and safety standards constitute a housing code which addresses each segment in the design and assembly of the home. Those few areas which are not completely addressed by this code, the setup, component parts—carpeting, drapes, and furniture—are either adequately addressed by the State laws and suppliers' warranties, or would not be addressed by the proposed FTC rule because they are not included under warranty coverage.

The proposed FTC rule requiring manufacturers to warrant transportation and setup go far beyond the scope of the FTC warranty act. This twisting of its authority to impose substantive warranty requirements clearly discriminates against the mobile home industry. The Magnuson-Moss Act already governs the warranties provided by the Mobile home manufacturers. Further, mobile home manufacturers provide warranties on a universal basis as opposed to other segments of the housing industry.

Transportation and setup requirements are already imposed on the industry by both HUD regulations and State laws. The HUD regulations require that specific information on setup be included in each consumer manual. This manual includes an explanation of procedures to be followed in setting up the home and recommendations that the home be professionally inspected after setup.

Since the issuance of the FTC proposed rule, the States with the largest mobile home population, as well as many other States, have adopted State laws regulating the entire mobile home industry, manufacturers, dealers, and installers. These laws set forth requirements relating to warranties, installation, and tiedown, and licensing and bonding.

There are presently 23 States that have special requirements for mobile home warranties. In 1979, mobile home manufacturers produced over 276,000 homes. Almost 134,000, or approximately one half of these homes, were shipped into States with express mobile home warranty requirements. Another 25,000 were shipped into States with specific requirements relating to implied warranties and resolution of consumer complaints. Forty-one States into which over 91 percent of all homes produced in 1979 were shipped, cur-

rently have licensing and bonding requirements affecting mobile home manufacturers and/or dealers and installers.

The FTC TRR unfairly discriminates against the mobile home industry in contrast to the conventional housing industry. The proposed trade regulation rule discriminates against mobile home manufacturers as a segment of the housing industry. When placed on a permanent foundation, or a basement, mobile homes manufactured today are in most cases indistinguishable from new conventional housing.

The purported rationale for the FTC's rule frequently cited by consumer groups and implicit in the FTC's statement of basis and purpose is that the rule will offer greater warranty protection to lower income consumers who purchase and live in mobile homes. These arguments fail to consider either the cost impact of the rule on low and middle income consumers' ability to purchase housing or the realities of the marketplace with respect to differences in consumer preferences and needs.

Based on an independent review of the testimony presented during the TRR hearings by the FTC and industry witnesses, including economic experts, manufacturers, dealers, and consumers, Prof. Louis DeAlessi of the University of Miami concluded that:

Granting the poor quality of the data and recalling that the assumptions made strongly favor the TRR, some rough calculations suggest annual cost of \$104 million, annual benefits of \$26 million, and a net annual welfare loss of \$78 million. This yields a present value deadweight loss of approximately \$788 million in 1977 dollars, or over \$1 billion in current 1980 dollars.

While there was little evidence supporting the initial announcement of the TRR in 1975, there is even less evidence indicating that widespread warranty abuses are prevalent in the mobile home industry today. The FTC has relied primarily on consumer complaints gathered from three principal sources and subsequently placed on the public record as a basis for the proposed rule.

MHI conducted an analysis of the Center for Auto Safety's correspondence which was submitted for the public record during the hearings on the rule. This analysis revealed that of the 509 complaints where year of manufacture could be determined, 424 were manufactured before 1974 prior to the implementation of the HUD Act, while only 13 were manufactured during 1976. During the period in which the FTC Center for Auto Safety and HEW complaints occurred, 1967 through 1977, over 4 million homes were produced by mobile home manufacturers in the United States.

Assuming the arguando that all the 2,200 consumer files were valid mobile home warranty complaints, these figures would indicate that one-twentieth of 1 percent of all mobile homes sold during the period experienced problems which resulted in consumer complaints.

Senator FORD. Mr. Benning, could you accelerate your statement?

Mr. BENNING. Yes, sir, Mr. Chairman.

The mobile home industry, which I am proud to represent, supplies housing to those least able to afford their own homes in the United States. The housing we supply is built according to the Federal standard backed by civil and criminal penalties, while site-built housing has no such national regulation.

Warranty protection is voluntarily provided on a universal basis by our manufacturers subject to the Magnuson-Moss Act. The FTC, furthermore, has never checked the allegations in the so-called letters of complaint. The staff relied totally on consumer groups who were sponsored and paid by the FTC to support the rule. The consumer groups, in turn, did not check date of manufacture and never counted warranty performance, only complaints. And a large percentage of them were satisfied.

Another example of the FTC propensity for regulating without checking the facts is the selection of formaldehyde as a cause for emergency action under its new rule. HUD is enable, despite research, to establish whether formaldehyde is a problem or at what level of concentration or whether any regulation is necessary. Industry has spent millions of dollars to research this.

The dramatic effect of the imposition of this rule will be increased cost with no benefit to the consumers. The FTC's own expert testified the rule would cost \$272 per home. Our figures indicate that the cost is at least double that amount and that is the manufacturer's cost. The ultimate burden on the consumer is twice the base figures.

Senator, members of the committee, we urge you to put a stop to the blind implementation of this rule based on a misguided concept of the mobile home industry. This industry is already pervasively regulated by HUD, the FTC, under the Magnuson-Moss Warranty Act, other Federal agencies, such as CPSC and DOE and by the States. Placing another layer of costly and duplicative regulation on this industry is both overburdensome and unjustified.

Chairman Ford, the entire industry thanks you and greatly appreciates your convening these hearings today. Thank you for your consideration.

[The statement follows:]

STATEMENT OF WALTER L. BENNING, PRESIDENT, MANUFACTURED HOUSING INSTITUTE

My name is Walter L. Benning. I am president of the Manufactured Housing Institute, Inc., the national trade association for mobile home manufacturers and suppliers of services and materials to the mobile home industry. My testimony today is based upon my knowledge of the industry via my role at the Institute and my direct involvement on behalf of the industry in the federal regulatory process. Although the mobile home industry must interact with several Federal agencies, our major activities have related to rules and regulations affecting our industry which have been either proposed or adopted by the Department of Housing and Urban Development and the Federal Trade Commission. My testimony is also based in part on my involvement at the state level in state legislative activities affecting the mobile home industry.

The principal points which I would like to address today before this Committee relating to the merits of adopting the Federal Trade Commission's Trade Regulation Rule on Mobile Home Sales and Service are (1) the quality and safety of mobile homes under the HUD Mobile Home Construction and Safety Standards Act and the subsequent protections offered to consumers against poor quality mobile homes; (2) the redundancy of the rule in light of existing federal and state regulations affecting the mobile home industry; (3) the superfluity of further regulating mobile homes as a segment of the housing market as compared to existing regulation of conventional site built homes; and (5) the impact of the proposed rule on low income consumers' ability to purchase affordable housing.

Before turning to the substance of my remarks, I think that it is appropriate that I briefly describe the Manufactured Housing Institute (MHI) and the industry it represents. MHI was originally founded in 1936 as the Mobile Home Manufacturers Association. Since that time the Association's membership has grown to represent over 66 manufacturers of mobile and modular homes, as well as approximately 265

supplier members who provide service and materials to our industry. The Institute's members produce approximately 70 percent of all mobile homes manufactured today.

The mobile home industry has grown rapidly since the advent of the travel trailer; from an annual production level of 1,300 units in 1930, the industry shipped over 275,000 units in 1979. The greatest period of growth occurred in the late 1960's and early 1970's, when production more than doubled from 240,000 units in 1967 to 576,000 units in 1972.

However, in 1974 and 1975, largely as a result of the severe recession in the entire housing industry, mobile home shipments dropped to 329,000 and 212,000 units, respectively. This sudden decline in sales had an extremely astringent impact on our industry. Of approximately 330 manufacturers producing mobile homes in 1972, only 222 survived the 1974-75 recession; the number of operating plants declined from 800 to 500 during this same period. Today, there are an estimated 200 mobile home manufacturers in the United States with approximately 580 manufacturing facilities distributing to the 48 continental states and Alaska.

I. BACKGROUND OF FTC RULE

The Federal Trade Commission (FTC) began its investigation of the advertising sales and service practices of the mobile home industry in August 1972. Although the investigation was directed primarily at 16 mobile home manufacturers, MHI, in response to allegations that consumer warranty abuses were prevalent throughout the industry, petitioned the FTC for an industry-wide trade regulation rule in November of 1973. However, subsequent to the FTC's initial investigation of the industry, other Federal regulations addressing mobile home construction, safety, sales and service became effective. In 1974, Congress, under Title VI of the Housing and Community Development Act of 1974, enacted the National Mobile Home Construction and Safety Standards Act (HUD Mobile Home Act) to improve the safety, quality and durability of mobile homes. Comprehensive construction and safety standards and procedural and enforcement regulations were developed pursuant to the Act and became effective June 15, 1976. On January 4, 1975 the Magnuson-Moss Warranty Federal Trade Commission Federal Improvements Act (FTC Warranty Act) was enacted to regulate warranties given for consumer products, including mobile homes.

Because the HUD Mobile Home Act and the FTC Warranty Act addressed the concerns reflected in the FTC's proposed trade regulation rule with respect to sales and service practices in the mobile home industry, MHI petitioned the FTC to abandon the rulemaking proceeding on March 20, 1975. Less than three months later, on May 29, 1975, the FTC published its Proposed Trade Regulation Rule on Mobile Home Sales and Service. Final notice of the rulemaking was issued on May 23, 1977 and three sets of hearings on the rule, covering over 34 days and 75 witnesses, were held from September 1977 through April 1978. On August 31, 1979 the Presiding Officer issued his report and findings on the rule; the staff recommendations were issued on August 11, 1980 approximately one year later. I find it particularly disconcerting that although the Staff Report was available almost four weeks ago, the Staff has chosen to release their 629-page report one week prior to today's hearing. These tactics, which are typical of the FTC's strategy throughout the proceedings, have effectively precluded any meaningful comments on the FTC's findings and recommended rule in this submission.

The FTC has failed to consider the dramatic changes that have occurred in the industry as a result of federal and state legislation enacted subsequent to the beginning of the original FTC investigation in 1970 and have proceeded to continue their rulemaking proceeding based on a paucity of outdated information which fails to consider the current state of the mobile home industry.

II. THE MOBILE HOME INDUSTRY IS CURRENTLY SUBJECT TO HUD'S REGULATORY SCHEME WHICH ADDRESSES AND GOES BEYOND THE SCOPE OF THE FTC TRADE REGULATION RULE

In 1974 Congress, pursuant to the National Mobile Home Construction and Safety Standards Act of 1974, delegated to the Department of Housing and Urban Development ("HUD") the responsibility for promulgating a complete mobile home housing code and an enforcement system extending from the first stage of production to the consumer's use as a home. In accordance with this Congressional mandate, HUD developed the Federal Mobile Home Construction and Safety Standards, initiated research to improve this standard, and implemented a comprehensive enforcement system. On December 18, 1975, HUD published as final the Federal Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (the HUD Code), which

govern the design and construction of mobile homes. On May 13, 1976, HUD published the mobile Home Procedural and Enforcement Regulations, 24 CFR Part 3282, which implement HUD's responsibilities to develop a comprehensive enforcement system to assure compliance with the standards and to assure that consumer complaints are adequately handled.

The Federal Mobile Home Program is comprised of an entire network of organizations to assure conformance to the HUD Code. There are 35 state agencies approved by HUD to oversee manufacturers' handling of consumer complaints and "recalls" of certain defective mobile homes.

Manufacturers contract with third-party engineering firms (both state and private agencies) known as primary inspection agencies (PIAs). HUD has also contracted with the National Conference of States on Building Codes and Standards (NCSBCS) to monitor all PIAs in their performance of design reviews and plant inspections. To advise HUD on standards' development and enforcement, HUD convenes the National Mobile Home Advisory Council twice a year. This Council consists of 24 representatives, evenly balanced among three groups—consumers, industry and state officials.

A. *The HUD code is comprehensive*

The HUD housing code for mobile homes is unique in the housing industry. There is no such mandatory Federal Code and enforcement system for any other type of housing. In fact, modular homes, which are built under the same manufacturing process and often cannot be distinguished for mobile homes, have no such regulatory oversight and have typically been treated different than mobile homes for purposes of state and Federal regulation. The FTC's recommended trade regulation rule has specifically excluded modular homes from the requirements of the rule.

The Congressionally stated purpose of the Mobile Home Act is set forth in the preamble to the Act as follows: "The Congress declares that the purposes of this title are to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and to improve the quality and durability of mobile homes. 42 U.S.C. 5401.

Therefore, the focus of the HUD Mobile Home Act is on quality and durability of mobile homes as well as safety. Pursuant to this stated purpose, Congress required HUD to establish "mobile home construction and safety standards." 42 U.S.C. 5403(a). These standards relate not only to safety but also construction, and constitute a complete mobile home housing code found at 24 CFR Part 3280 of the HUD Regulations. The comprehensive nature of the HUD Mobile Home Standards is reflected in the Code's subparts which address: Fire safety; body and frame construction requirements; testing; thermal protection; plumbing systems; heating, cooling, and fuel burning systems; electrical systems; transportation.

Moreover, the regulation states that "This standard covers all equipment and installations in the design, construction, fire safety, plumbing, heat-producing and electrical systems of mobile homes which are designed to be used as dwelling units." 24 CFR 3280.1.

1. *Improvements in construction of mobile homes under the act*

The HUD regulations were based on standards and codes which had been generally recognized in the mobile home industry under the designation NFPA 501B—1974/ANSI A119.1—1975, (NFPA stands for National Fire Protection Association, ANSI is the abbreviation for American National Standards Institute). Mobile homes built under the HUD Code have not experienced the same problems as homes built under the ANSI Code largely as a result of two factors: (1) Varying levels of enforcement and adoption of state mobile home codes and (2) several improvements in the HUD Code from the existing NEPA/ANSI standards.

Prior to adoption of the HUD Standard, the NFPA/ANSI standard was not mandatory in all states. As pointed out by Dr. Arthur Bernhardt of the Massachusetts Institute of Technology in his report prepared in 1976 for HUD,¹ the legislation which established a state mobile home code based on A119.1 was virtually ineffective without certain key provisions. Dr. Bernhardt noted that although the A119.1 was continually updated and revised by ANSI and NFPA most states did not automatically update their codes to conform to the latest version of A119.1 and that in 1974 less than 1/5 of the states with mobile home legislation used the most current codes. In addition to the problem of antiquated codes, many states exercised

¹ This five-volume, 5,000 page report contracted for by the Department of Housing and Urban Development is considered to be the most comprehensive study of the mobile home industry to date. The results of this report have been condensed in Dr. Arthur Bernhardt's book "Building Tomorrow: The Mobile/Manufactured Housing Industry," published March 15, 1978, MIT Press, Cambridge, Massachusetts, and London, England.

different levels of enforcement of the ANSI standards or did not require mandatory preemption of the standards over local codes.

To obviate these problems a federal mandatory standard was developed which would preempt state codes and which would require automatic nation-wide updates of reference codes. HUD has recognized that uniform national enforcement of mobile home standards was a critical factor in solving problems experienced with pre-HUD homes: "While some problems in mobile homes have been caused by inadequacies in the standards, others have resulted from unsatisfactory enforcement of applicable standards. The Title VI enforcement program provides the consumer additional protection and insures compliance with Federal standards through the application of the uniform and universal system for approving mobile home designs and manufacturing processes and through the inspection of mobile homes during the manufacturing process." Second Annual Report, page I-5.

The HUD Code also incorporated significant changes from the existing ANSI standard. As stated by HUD in its Third Annual Report to Congress: "The Federal standards provide greater protection to the mobile home owner than previous standards, and also contribute to durability and livability of the home in several ways. For example, the standards: (1) Require use of interior materials having a limited flammability in those areas of the home where heat and flame increase the likelihood of inadvertent ignition; (2) specify minimum space requirements for livability; (3) require improved egress windows or doors in any rooms used for sleeping (the improvements in the egress windows and doors will allow easier operation in case of an emergency, thus enhancing escape possibilities); (4) limit accepted smoke-detecting systems to those that are most effective, and require that such systems be located where they are most effective; (5) adopt specific universal test procedures for all critical elements of the mobile homes; (6) require that designers of mobile homes consider the effect of transportation shock and vibrations on the durability of the home; and (7) require additional insulation and improved methods of calculating heat loss or gain, thereby significantly increasing the energy-saving characteristics of mobile homes." First Annual Report, page 14; Second Annual Report, page I-4, and I-5; Third Annual Report, page I-2.

Title 24, Section 3280 of the Code of Federal Regulations (CFR) incorporates by reference, not only existing standards and codes of agencies of the United States Government, but reference standards which are the identical construction standards used in production of housing on site. Mobile homes also adhere to standards set forth in nationally accepted gas, mechanical, plumbing and electrical codes.

The most impressive summary of the current state of the art in mobile home design and construction was made by Dr. Arthur Bernhardt, in his report for HUD, who stated: "The mobile home from an engineering point of view, is a more sophisticated structure than the conventional home. It is engineered to satisfy the same loading conditions of a conventional home while selling at a fraction of the cost. At the same time, it must meet the greater, sharper, and unpredictable, dynamic conditions caused by over-the-road movement."

"The claim that the mobile home is of inferior construction is not justified. The basis of this claim is caused by a one-to-one comparison of structural members in a conventional home and a mobile home. Such a comparison, however, is meaningless because of the difference in structure design principles used. Mobile home design principles are more efficient than those used in the structural design of the conventional home." Bernhardt [Unpublished Study for the U.S. Department of Housing & Urban Development] "Manufacturing," pages 86, 93.

2. HUD is carrying out its responsibility of assuring that the mobile home housing code is revised to meet the threefold purpose of the act

HUD is assuring that the mobile home code is a dynamic code which is continually upgraded based on research findings and its experience in administering the Federal Mobile Home Program since 1976. Not only does HUD use input from its research contractors but it also uses input from the National Advisory Council and the public at large through its proposed rulemaking procedures and consumer complaint handling system.

Since 1975, HUD has conducted extensive research projects, many of which were multi-years in duration. These research projects have addressed each subpart of the HUD Code. In the five-year period from FY 1975-80, approximately \$4.8 million was expended on research and testing concerning the HUD Standard (Fourth Annual Report, page V-3). The major area of HUD's mobile home research are: Fire safety; wind safety; transportation; indoor air quality; long term structural durability; plumbing/electrical safety and durability; and energy conservation.

Most of these research projects have been recently completed or are in their final stages of completion.

In this ongoing process of evaluation of the HUD mobile home code, HUD has utilized the advice and expertise of its National Mobile Home Advisory Council. HUD established this Advisory Council pursuant to the mandate of Congress in the Mobile Home Act. The Act requires the Council membership to be equally divided among consumers, state and local officials, and industry representatives. The Council has met four times since December 1978. In December 1978 the Chairman established five subcommittees to study the sections of the HUD Code concerning the following areas: Energy, heating and cooling; transportation durability and safety; air quality; fire safety; and wind.

Each subcommittee is composed of a member from each of the segments represented. The Advisory Council is used by HUD and serves as a forum for extensive consumer input. Further, all Council meetings are completely open to the public for comments and advice. The use of such a forum is unique to the Federal regulatory process.

Further, HUD on June 7, 1979, issued an Advance Notice of Proposed Rulemaking (ANPR) to give notice and ask for public comments on revisions to the HUD Code in eight major areas: Fire safety; egress safety; transportation; energy conservation; structural performance; wind safety; protection against freezing; and safety glazing.

HUD received extensive comments on this ANPR and has analyzed these comments. HUD's Office of Mobile Home Standards is currently working with a group of consultants to bring together all of the above information for making proposed revisions to the HUD Code.

In summary, the HUD mobile home code is a complete construction as well as safety code mandated by HUD. HUD, since 1975, has issued this entire code, implemented an enforcement system, and conducted research for evaluation of each major aspect of the Code as well as addressed newly perceived problems. The mobile home industry, unlike the conventional or modular housing industry, must build its homes to a federally mandated code.

B. HUD through its pervasive enforcement system insures consumer protection

The enforcement system set up by HUD to ensure compliance with the mobile home standards represents the most comprehensive system set up by any federal agency to regulate any private industry in America today. The HUD procedures and enforcement regulations provide for a five tier system to ensure that consumers receive a home which meets the highest standards of quality. This system is comprised of (1) design approval; (2) in-plant inspection; (3) monitoring of inspection and design performance; (4) consumer complaint handling; and (5) HUD oversight.

1. Design approval and plant inspection

Each manufacturer is required to hire a design approval primary inspection agency (DAPIA) which is approved by HUD. The DAPIA is responsible for reviewing the manufacturer's design and its quality assurance manual. Each manufacturer must also hire a production inspection primary inspection agency (IPIA) which is approved by HUD. The IPIA performs an initial plant inspection to determine whether the plant is capable of manufacturing a home meeting the HUD standards.

The IPIA is also responsible for ensuring that the plant continues to follow the quality assurance manual, by making a complete inspection of every phase of production and of every visible part of every mobile home which is in every stage of production. If the IPIA finds that the mobile home does not conform with the approved design or standards during the course of these inspections, the IPIA is required to withhold the label which must be attached to each unit to certify that the mobile home conforms to the federal standards. In addition to withholding the label from the unit, the IPIA may proceed to red tag the home until the failure to conform is corrected. These inspection agencies alone performed over 40,000 factory inspections and design approvals in 1978 (1978 Annual Report, U.S. Department of Housing and Urban Development. p. 37).

2. Monitoring and consumer complaint handling

To monitor the activities of all IPIAs and DAPIAs, HUD has contracted with the National Conference of States on Building Codes and Standards (NCSBCS). NCSBCS performs its monitoring function by forming joint monitoring teams whose members, which are composed of members of NCSBCS staff and state administrative agency staff, visit individual manufacturing plants and review manufacturers' design specifications.

Individual states also participate in the HUD inspection and enforcement programs through the HUD approved state administrative agency (SAA). The primary function of the SAAs is to assure that consumer complaints and information which

they receive relating to mobile home problems are correctly handled and to assure that remedial actions relating to consumer complaints are carried out expeditiously.

Basically the SAA in a state where a mobile home is located is responsible for contacting the owner of the home concerning a complaint and for handling the entire matter. Many SAAs also monitor dealer performance and inspect installation. There are presently 35 HUD approved SAAs participating in the HUD program.

The Secretary of HUD through its Office of Mobile Home Standards has the ultimate responsibility for this pervasive enforcement system. HUD monitors the performance of its agent, NCSBCS, by sending its own inspectors to factories and by having its engineers review DAPIA packages. HUD also is responsible for monitoring the performance of the SAAs and for acting as the SAA in the remaining states. Further, HUD is ultimately responsible for resolving all consumer complaints.

3. Reporting requirements under the act

The HUD system also provides for elaborate reporting requirements with regard to occurrences of defects in mobile homes, resolution of consumer complaints and overall manufacturer performance under the HUD standards. Manufacturers are required to maintain files detailing information on each mobile home sold including the name and address of the purchaser, the date of purchase and their receipt of any complaints relating to each home sold. In addition, IPIAs are required to submit monthly reports to SAAs which include the number of homes labelled, the number of inspection visits, and the number of homes with a failure to conform or an imminent safety hazard found in the manufacturer's plant in the preceding month. The SAAs are required to submit monthly reports to the secretary of HUD, including descriptions of SAA oversight findings and corrective action during the preceding month. HUD's extensive recordkeeping requirements and reporting requirements for manufacturers, IPIAs, and SAAs are intended to establish a detailed and comprehensive system to ensure that not only individual defects but also classes of defects can be identified and in most cases corrected after the home leaves the factory.

C. The HUD Mobile Home Act provides for a wide spectrum of consumer remedies

The HUD Mobile Home Act and Regulations set forth a series of remedial actions which HUD, the SAAs, and the dealers can use to assure that the mobile home manufacturer builds homes which conform to the HUD Code and corrects those homes which contain defects after they leave the factory. The remedies may be imposed by either an administrative hearing officer of the SAAs or HUD or by a federal or state court. They are as follows: (1) an injunction to restrain violation of the Act or sale of nonconforming homes, 42 USC 5411(a); (2) an injunction to require a manufacturer to repurchase a nonconforming home or reimburse a dealer for its expenses in repairing such a home, 42 USC 5412; (3) an order by HUD or an SAA to notify purchasers of defects in their homes, 42 USC 5414; (4) an order by HUD to correct defects in mobile homes, 42 USC 5414; (5) an order assessing a civil penalty of \$1,000 for each violation of the HUD Code and for the commission of a series of other prohibited acts, 42 USC 5416(a); and (6) an order assessing a criminal penalty for willful commission of any one of the prohibited acts under the Act, 42 USC 5410(b).

The FTC has claimed that the HUD Mobile Home Act and implementing regulations do not provide sufficient remedies for obtaining correction of defects. However, the FTC has overlooked the fact that the HUD Mobile Home Act provides for the same threat for its violation as the FTC Act; that is, the power to impose severe civil and criminal penalties on both manufacturers and retailers for violations of this Act. Section 611 of the HUD Mobile Home Act provides for the imposition of a civil penalty of \$1,000 for each violation of the prohibited acts section of the Act, Section 610, and any regulation or final order of the Secretary issued pursuant to this section. This penalty may be as much as \$1,000,000 for any related series of violations occurring within one year from the date of the first violation. 42 U.S.C. 5410(a). Further, an individual or a director, officer, or agent of a corporation who "knowingly and willfully violates Section 610" (of the Act) can be fined up to \$1,000 or imprisoned up to one year or both. 42 U.S.C. 5410(b).

Not only HUD but the SAAs approved to enforce the Federal Mobile Home Standards on the state level have the authority to seek civil and criminal penalties identical to those contained in the Act. For the Secretary to grant full approval to an SAA for enforcement of the HUD Mobile Home Code, an SAA must demonstrate that it has such authority. 42 U.S.C. 5422(c)(4), 24 CFR 3282.302(b)(3). This power to impose civil and criminal penalties for selling or leasing mobile homes which do not

comply with the HUD Mobile Home Standards is a substantial deterrent to violations and an incentive to provide correction if defects are found after sale.

HUD has demonstrated its readiness to use the threat of civil penalties to obtain correction for violations by negotiating consent agreements with manufacturers of "park models" in the fall of 1979. Under these agreements HUD would waive a civil penalty if certain corrections were made, i.e. the installation of smoke detectors. HUD has further demonstrated its eagerness to use the civil penalty provision of the Act as an enforcement tool in its publication on December 21, 1979, of proposed amendments to its administrative hearing regulations. 44 Fed. Reg. 76176. These proposed amendments provide for administrative hearings before administrative law judges to determine if violations occurred and the amount of civil penalty to be assessed if so warranted. Proposed 24 CFR 3282.154(a), 24 CFR 3282.156.

The HUD Mobile Home Act and Regulations provide an entire gamut of remedial actions which can be required by the SAAs and HUD if defects are discovered in homes after they have left the factory, which will result in correction. In most all cases, a manufacturer or dealer will elect to voluntarily correct defects in a timely manner to obtain a waiver by the SAAs or HUD of the stringent violation requirements of the Act and regulations. In fact, HUD on various occasions has confirmed that this does in fact occur.

D. HUD has jurisdiction over dealers which assures consumer protection

The HUD Mobile Home Act gives HUD jurisdiction over dealers and distributors of mobile homes as well as manufacturers of mobile homes to assure consumer protection. 42 U.S.C. 5402(2), (4). A dealer or distributor is prohibited by the Act and Regulations from selling a home which does not contain a manufacturer's certification of conformance to the HUD Code or which he has reason to know does not conform to this Code. 42 U.S.C. 5409(a), (b)(2); 24 CFR 3282.252(a). Further, a dealer or distributor who alters a mobile home in such a way, as to create a condition which causes a failure to conform to the HUD Code may not sell this home until it is corrected. 24 CFR 3282.254.

The FTC contends that HUD lacks authority to require dealers to make corrections. As discussed above, under Section 611 of the Mobile Home Act, HUD can seek to impose onerous civil penalties upon a dealer who sells a mobile home which he has reason to believe does not conform to the HUD Code or if the dealer sells a home which has been taken out of conformity with the HUD Code by his alteration. Further, the Secretary of HUD through the appropriate United States Attorney may obtain an injunction against a dealer's sale of nonconforming mobile homes. 42 U.S.C. 5411(a).

HUD is demonstrating that it will use this authority by its present investigation of a dealership in Nevada. HUD is able to use such authority to obtain an agreement to correct in lieu of seeking the imposition of a civil penalty. This is equal to, if not greater than, the authority of the FTC under the proposed TRR.

E. HUD's pervasive enforcement system has proven to be effective

When the FTC announced its proposed trade regulation rule on "Mobile Home Sales and Services" in May 1975, the HUD Code had not become effective and its enforcement system had not been implemented. Even during the time of the FTC hearings, HUD's Federal Program was just getting off the ground. We are now in mid-1980 and must evaluate the need for the FTC rule in light of the recognized effectiveness of HUD's pervasive regulatory scheme which is assuring high quality housing to low and moderate income families.

Today's HUD's entire enforcement network is in full force. HUD has taken measures to weed out unqualified inspection agencies and to train all inspection agencies and SAAs towards the goal of uniform compliance to a uniform code. Finally, when defects have been discovered, HUD has taken action through its recall program, usually resulting in voluntary correction.

NCSBCS, HUD's agent, for monitoring the performance of all the design and in-plant production inspection agencies is now performing all the required inspections plus additional ones in plants cited for potential problems. This step-up in inspection activities is shown by the following number of factory monitoring inspections performed per year: 1977, 1,250; 1978, 1,735; 1979, 2,035.

HUD has also increased the number of inspections performed by its own inspectors of homes in factories, on dealer lots, and on the consumer's site.

Since 1977 all primary inspection agencies have been evaluated by NCSBCS and HUD to determine whether their performance warrants full acceptance by HUD. Of the 38 original Production Inspection Primary Agencies (IPIAs), 11 have dropped out of the program and four have been disqualified. Sixteen of the twenty-three

which have been approved are State agencies. Of the 34 original Design Approval Primary Inspection Agencies (DAPIAs), 16 have dropped out of the program and the other 18 have been fully approved after extensive evaluation. In some cases approval was withheld by both the agency demonstrated the required correction of performance deficiencies. Seven of those fully approved are state agencies.

During 1978, HUD developed and implemented a system of field monitoring reviews of all SAAs. These reviews are to assure that the SAAs are adequately performing the consumer complaint handling activities under their approved state plans. HUD has the authority to deny full approval or disqualify any state which is not adequately performing.

Since the FTC proposed rule and hearings, HUD has even taken additional steps to assure that its responsibilities under the Federal Mobile Home Program are effectively carried out. Since 1978, HUD has conducted five training workshops for SAAs and issued a Guidebook for SAAs on how to perform their enforcement responsibilities. HUD, in 1979 and 1980, also conducted training workshops for DAPIAs and IPIAs to assure understanding of their inspection responsibilities.

In summary, HUD has taken many measures since the program's inception to assure superior enforcement of the HUD Code to meet the threefold purpose of the Act of safety, quality, and durability of mobile homes for the homeowner. HUD as recently as May 1980, at the National Mobile Home Advisory Council meeting in Atlanta, recognized the current effectiveness of this enforcement system. Mr. Aubrey Edwards, Special Assistant to Patricia M. Worthy, Deputy Assistant Secretary for Regulatory Functions, stated in answer to a question regarding the effectiveness of the enforcement system: "I'll tell you right now, I think that we can all be assured that the inspection process that has been developing over the several—the last several years is showing that we have substantial conformance with the standards and I think I want to put that on the record." (May 30, 1980, TR 598).

Richard A. Mendlen, Director of the Standards Division of the Office of Mobile Home Standards supported this position with the following statement:

"Jim, I think in fairness that it is too bad that Mr. Mason is not here today. He would have had some stronger comments than I am about to make to you regarding the status and nature of our enforcement program.

"In the Annual report to Congress, which is presently in the Department(a) Clearance, I think there is some very strong statements being made regarding the effectiveness of the enforcement program. It does appear to be working in a very substantial manner, not just in Mr. Steele's favor, Mr. Cummings' state; but throughout the United States. We feel very confident about the fact that the enforcement program is working." (May 30, 1980, TR 623).

HUD's effective implementation of a pervasive regulatory system over the mobile home industry demonstrates that the FTC rule if ever justified, certainly is no longer warranted.

III. EXISTING FEDERAL AND STATE REGULATIONS OBIVATE THE NEED FOR THE FTC PROPOSED TRADE REGULATION RULE ON WARRANTY SERVICE

A. Warranty aspects of the HUD mobile home program

The Federal Mobile Home Construction and Safety Standards constitute a housing code which addresses each segment in the design and assembly of the home. Those few areas which are not completely addressed by this code—set up, component parts, and carpeting, drapes, and furniture—are either adequately addressed by state laws and suppliers' warranties or would not be addressed by the proposed FTC Rule because they are not included under warranty coverage. Further, the HUD Mobile Home Program's enforcement system adequately provides protection for the consumer to assure correction of defects discovered in mobile homes once they leave the factory.

1. Coverage of defects in the components of a mobile home

The statement has been made by the Federal Trade Commission that the proposed rule would be beneficial because the HUD standards do not govern several aspects of the home which would presumably be covered by a warranty such as carpets, draperies or furniture, nor do they reach aesthetic or cosmetic problems such as discoloration of panelling. As a preliminary point, it is important to note that the HUD Act does include standards which relate to most items covered under a typical mobile home manufacturer's warranty. While the standards do not cover carpets, draperies, or furniture, these items which may be warranted by the supplier, are not normally warranted separately by a mobile home manufacturer and thus would not be covered by the proposed FTC rule. This is also true of aesthetic and

cosmetic problems which are normally not covered under the typical manufacturer's warranty.

Components, such as appliances, typically are warranted separately by suppliers to the mobile home industry. Therefore, most mobile home manufacturers exclude such items from coverage under their warranties. Consequently, the FTC's proposed rule is not applicable to problems occurring in components which are not warranted by the mobile home manufacturer. The HUD standards, moreover, do apply to many components not warranted by the manufacturer. The HUD Code Clearly states that it covers "all equipment and installations in the design, construction, fire safety, plumbing, heat producing and electrical systems of mobile homes . . ." 24 CFR 3280.1. Equipment is defined in the Code to include "materials, appliances, devices, fixtures, fittings or accessories both in the construction of and in the fire safety, plumbing, heat-producing and electrical systems of mobile homes." 24 CFR 3280.2(a)(8). Thus the HUD Code is extremely broad in scope.

2. The HUD code covers transportation durability and set-up

(a) *Transportation.*—The FTC has argued that the HUD Code and Enforcement System does not adequately cover transportation related defects. Subpart J of 24 CFR 3280.901 et. seq. of the HUD Code is entitled "Transportation." It requires a manufacturer to design and build a mobile home to "fully withstand the adverse effects of transportation shock and vibration without degradation of the integrated structure or of its component part" during its useful life. It also contains specific requirements pertaining to the home's transportation system and its relationship to the structure. Thus, this Code goes beyond the typical warranty which either excludes transportation or limits its coverage to a certain period of years.

HUD has also been involved in extensive research to evaluate this part of the Code and to make any necessary improvements. An extensive 3 year research project (1976-1979) tested the effect of highway shock and vibration on the long-term performance of mobile home structural durability and made recommendations for improvements to the standards. HUD now plans to measure the results on a greater number of mobile homes built since the HUD Code to determine if the findings are valid.

In spite of this, the FTC concerns in the area of transportation do not relate to the present usage of mobile homes. According to the National Mobile Home Advisory Council Subcommittee on Transportation's report to HUD, less than five percent of all mobile homes produced today undergo secondary moves. Today's manufactured home is transported a relatively short distance and often permanently installed on a site. Any concern in this area should be left to the expertise of HUD and its Advisory Council.

(b) *Proper set-up of mobile homes.*—The Federal Trade Commission has argued that because the HUD Act does not cover set up and installation, additional FTC authority is needed in this area to address problems and defects resulting from improper set up and installation of homes. The significance of proper set up and installation as a means of obviating subsequent problem areas in mobile homes has been concurred in by state and local officials, consumers and industry members who testified throughout the FTC hearings. This was also addressed by the Presiding Officer in his final report and has been acknowledged by HUD as stated in its Third Annual Report to Congress that "improper siting and installation of a mobile home may present serious safety problems to a mobile home owner. In some instances the absence of a safety siting and installation practice may negate performance required by the federal standards (which only covers safety and construction of the unit as designed)". The importance of proper installation as it relates to the proposed FTC rule was stated by Dr. Bernhardt in his report to HUD:

"Dealers who invest the time and money in assuring that the unit is properly blocked and leveled will have fewer service requests for corrections from buyers. Incorrect blocking and leveling can cause buckling and loosening of parts of the unit. Improper closing, binding, sagging of the windows, doors and cabinets, as well as malfunctions of plumbing and electrical systems are other possible consequences of a poor installation.

"Since as many as 70 percent of warranty claims are due to improper setting up and leveling, the Federal Trade Commission has proposed regulations to require inspection of the unit during the 90 days following installation. Since dealers have traditionally assumed these activities, such requirements would call for a restructuring of manufacturer and dealer activities and could prove to be costly to the manufacturers of mobile homes. If all dealers could guarantee full inspection of the home upon installation, the time and cost consuming FTC regulations would be unnecessary as would many of the present warranty claims." (Volume 3—Distribution, Section 6.5 Site Installation, pp. 124-127)

Although the recommended rule has eliminated the 90-day reinspection requirement, the new section requiring that the manufacturer warrant set up and installation will have an even greater impact on industry structure and cost.

Proper set up and installation has already been indirectly addressed by the industry via the guidelines developed for the consumer manual required for each mobile home. The HUD regulations at 24 CFR 3283.104 require that the following information be included in the consumer manual:

(a) The manual should include an explanation of procedures recommended to be followed in setting up the mobile home. The explanation should include: (1) site preparation procedures; (2) the types of foundations for which the home was designed; (3) procedures for leveling the home; (4) procedures for connecting the utilities, and (5) suggested anchoring procedures for wind-upset and sliding. If practicable, the manual should include a list of sources the consumer may contact to obtain set-up and anchoring services. The manual should advise the consumer of the differing requirements for mobile homes located in "hurricane" and "non hurricane" wind zone.

(b) The manual should include a recommendation that the home be professionally inspected after it is set up to assure that it has not been damaged in transit and is properly set up."

It is important to note that since promulgation of the HUD Act, 21 states have adopted legislation setting forth requirements relating to installation and tie down of mobile homes; many of these include requirements relating to the licensing of installers and dealers who perform set up of the mobile homes. In addition, HUD has recently awarded a contract to NCSBCS to develop a uniform set up and installation standard which could be adopted by individual states.

MHI submits that there is no plausible reason justifying the FTC involvement via a trade regulation rule in the area of warranty requirements relating to set up and installation or with respect to requiring manufacturers to be responsible for a function which is traditionally performed by dealers. Because standards for proper set up and installation are dependent on soil conditions and other factors which vary in each state and locality, regulation of set up is uniquely a state function.

Although many states have adopted installation regulations, a federal performance standard for set up and installation, which would allow individual states to adopt specific rules and regulations would be beneficial. MHI believes that such a standard, which is more properly within the jurisdictional function of HUD, would address many of the major problems to which the proposed FTC rule is directed. While HUD has stated that it does not presently have the authority to regulate set up, MHI believes that such authority does exist under the HUD Mobile Home Act and believes congressional clarification of such authority is appropriate.

The stated purpose of the HUD Mobile Home Act is to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and to improve the quality and durability of mobile homes, 42 U.S.C. 5401. To effectuate this purpose, Congress authorized HUD to establish Federal construction and safety standards for mobile homes. The Act defines "Federal mobile home construction and safety standard" as "a reasonable standard for the construction, design and performance of a mobile home which meets the needs of the public including the need for quality, durability and safety." 42 U.S.C. 5402(7)

If, as stated by HUD, faulty installation and set up are a major source of problems for consumers and may present serious safety problems to a mobile home owner and may in fact "negate performance required by the Federal standards," (Third Annual Report) a standard for installation would by definition be a standard relating to the performance of a mobile home to meet the need for durability and safety.

Because the definition of mobile home safety and mobile home construction under the Act suggests that construction and safety standard refers to design, assembly and manufacture of the homes, which are in-plant functions, congressional clarification relating to HUD authority to establish regulations relating to installation and set up may be necessary. Such clarification should clearly indicate that construction, design, and performance under the definition of federal mobile home construction and safety standard was intended to include standards for installation and set up.

C. Transportation and set-up related problems are beyond the scope of the warranty act and discriminate against the mobile home industry

Damage related to transportation or improper set up is also excluded from most manufacturers' warranties because manufacturers do not perform set up of the home and because mobile home transporters are individually responsible for prob-

lems arising during transportation. If, a problem arises during transportation, which is the result of the manufacturers' failure to meet the HUD standards, the manufacturer would be responsible under its warranty.

Although many states have passed warranty laws which set forth specific warranty requirements which mobile home manufacturers must comply with, including prohibitions against exclusions of transportation and set up related problems from warranties, there exists no federal law which gives the FTC the authority to require a manufacturer to either provide a warranty or to warrant against specific problems if a warranty is provided. Under the FTC Warranty Act, the FTC has authority to require mobile home manufacturers to meet various disclosure requirements if a warranty is given. It does not allow the FTC to require that consumers be given warranties or to impose substantive warranty requirements on mobile home manufacturers. Therefore, the proposed FTC rule's requirements that transportation and set up be warranted go far beyond the scope of the authority granted the FTC by the FTC Warranty Act and unfairly discriminates against the mobile home industry.

3. HUD's enforcement system assures correction of defects covered under manufacturers' warranties

There has been considerable controversy as to the effect of the HUD Mobile Home Act with respect to the correction and notification requirements relating to imminent safety hazards, serious defects, defects and noncompliances. The FTC has alleged that the proposed rule is necessary because the HUD Mobile Home Act does not require correction of defects and noncompliances and because imminent safety hazards and serious defects must be related to the design and assembly of the home before HUD can require the manufacturer to correct them.

The purpose of the HUD program is twofold: (1) the construction and safety standards are intended to ensure that manufacturers build homes to high standards of safety, quality and durability, thus diminishing the likelihood that defects and problems will occur in the mobile home subsequent to its purchase; and (2) the procedural and enforcement regulations are intended to ensure that homes are built to comply with the standards and that problems occurring after the home leaves the factory are discovered and addressed by the manufacturers. The elaborate inspection and monitoring system was established to isolate and correct problems in homes before they leave the factory; the consumer complaint handling mechanism was established to provide notification and/or correction for problems in mobile homes which were not discovered during the inspection process, but after the homes leave the factory.

The HUD system, of course, does not "guarantee that consumers will not need the protection of warranties." However, as a result of the HUD standards and the HUD inspection system, it is expected that problems typically covered under a warranty will be significantly reduced. Subpart I—HUD's Consumer Complaint Handling Mechanism, ensures that many warranty related defects will be corrected under the Act and that in those cases where correction is not required, the onerous notification requirements will encourage manufacturers to correct the home as expeditiously as possible. Where problems or defects are not required to be corrected under the Act or are not corrected voluntarily by the manufacturers, consumers have enforceable rights and remedies as provided for under the manufacturer's warranty. The HUD program serves to minimize consumer reliance on warranties both by reducing problems at the front end and by requiring correction and notification of problems after the home leaves the manufacturer's plant.

As stated in the Department's Third Annual Report "one purpose of Title VI is to provide consumers with protection against poor quality mobile homes by creating and enforcing federal standards with which mobile homes must comply." Subpart I of the HUD Regulations, 24 CFR 3282.401 et seq., provides manufacturers with procedures for handling consumer complaints. Consumers are asked to notify mobile home manufacturers of any complaints since manufacturers have the primary responsibility of ascertaining that the mobile home they produce meets the standards.

Under the HUD Mobile Home Act, when the Department or an SAA receives a complaint relating to a home which does not comply with the Federal Standard, the complaint is forwarded directly to the manufacturer of the home. The manufacturer is required to investigate the complaint to determine whether it is valid and to determine if other homes are affected. If the complaint is valid and unique to one home, 24 CFR § 3282.404(c)(2)(i) of the HUD Regulations requires that the manufacturer correct the imminent safety hazard, serious defect, defect or noncompliance to bring the home into compliance with the Federal Standard. If the manufacturer does not correct the problem under this section, he must submit a plan of notifica-

tion and correction under 24 CFR § 3282.410. In either case, serious defects and imminent safety hazards must be corrected by the manufacturer.

If the Secretary or SAA decides that a defect or noncompliance exists in a class of mobile homes, which can be as small as two, and if a manufacturer decides not to proceed with correction of defects and noncompliances under § 3282.404(c)(2)(i), § 3282.407(b) provides that the SAA or Secretary shall direct the manufacturer to furnish notification and a plan in accordance with § 3282.410. The plan for notification and correction under this section is extremely onerous with regard to the nature and detail of information required to be provided to the consumer or consumers by the manufacturer. As a rule, it is normally less time consuming and costly for a manufacturer to correct the defect or noncompliance than to meet the notification requirements under § 3282.410-411.

The purpose of allowing a manufacturer to correct an imminent safety hazard, serious defect and noncompliance unique to one home, thus avoiding the formal notification and correction requirements was explained by the Department in its May 13, 1976 final rule notice on the "Mobile Home Procedural and Enforcement Regulations," as follows:

"These informal action procedures or similar procedures were included in the proposed regulations. Some comments objected to allowing manufacturers to avoid formal requirements. The Department has rejected these comments on the ground that the providing of manufacturers with the ability to avoid formal notifications and other formalities will give manufacturers an incentive to provide corrections and act more expeditiously than they would under more formal procedures. The Department also believes that these informal procedures are beneficial to consumers because they encourage manufacturers to act more quickly with respect to complaints about mobile homes in which problems are known to exist. The manufacturers can obtain approval of corrections without going through the entire system. Finally, these informal procedures are also intended to reflect the fact that manufacturers may act under other authority, such as warranty provision, and any actions thereunder which are acceptable should be allowed though they do not precisely meet the formal requirements of this program. Further, the Department will monitor the effectiveness of procedures and take such steps as are necessary to insure protection of consumers." 41 Fed. Reg. 19846, 19851.

HUD's Second, Third and Fourth Annual Reports to Congress provide numerous examples of voluntary correction of defects and noncompliances under this system in their summaries of recall cases for 1976, 1977, 1978, and 1979. As of December 31, 1979, HUD had handled 44 recall cases involving imminent safety hazards, serious defects, defects and noncompliances in over 34,000 affected mobile home units. Of the 44 cases cited, one related to an imminent safety hazard, 10 related to serious defects, 5 related to defects, 6 related to noncompliances and 19 cases were unclassified.

With respect to cases involving defects and noncompliances, the number of units affected in each case range from as few as two (2) to as many as 20,000 and involved over 25,000 units. In the 11 cases relating to defects and noncompliances, 9 were voluntarily corrected; in one case HUD determined the home was in conformance to the standard and in the other, HUD determined that the likelihood that the non-compliance would result in any problems was so minute that the manufacturer was not required to provide notification to the consumers. It is significant that of the 21 cases related to imminent safety hazards, serious defects, defects and noncompliances, in 15 cases the manufacturer notified HUD originally of the existence of the problem. Of the 19 cases which were unclassified, in 15 instances the manufacturer corrected the units voluntarily, in two cases the problem was determined not to be prevalent and the cases were closed, in one case it was determined that there was no safety hazard and the case was closed, and the remaining cases is open to date.

HUD's consumer compliant system has proven to be effective in solving consumer problems. According to HUD's 1978 Annual Report, in 1978 the SAAs resolved over 6,800 consumer complaints while HUD staff resolved more than 400 additional complaints (p. 37).

These figures demonstrate the effectiveness of HUD's notification system which was designed to encourage voluntary correction of defects and noncompliances in an expeditious manner. The fact that in a majority of the cases the manufacturer notified HUD of the existence of the problems is also indicative of the industry's awareness and concern relating to correction of problems occurring in mobile homes after they leave the factory.

The FTC has asserted that the HUD regulations covering non-safety defects are inadequate because the manufacturer must notify the consumer of the defect only if the defect occurs in a class of homes. The FTC believes that this provision is

ineffective because "most defects do not appear in a class of homes since the production process is piece-work and largely manual." The HUD regulations, however, provide that a state agency can have information on one home and conclude on the basis of this single home that a class of defects may be involved. As acknowledged by Mr. William Jordan, an attorney from HUD's Office of General Counsel, in his testimony during the FTC hearings, there have been instances where manufacturers have corrected a defect which involve only two homes in terms of a class of defects.

It is also likely, due to the nature of the mobile home production process, that a defect occurring in one home will be repeated in a large number of homes. In the "MIT" study, "Building Tomorrow: The Mobile/Manufactured Housing Industry," Dr. Bernhardt states at page 129 that the role of quality control is especially important in mobile home production for the following reasons:

"* * * when an assembly line production method is employed, errors in quality control problems are likely to be costly. When the production schedule is close, a flow in one unit can adversely affect production in the entire plant because of the continuous and repetitive nature of mass production.

Mr. John Mason, Director of the Enforcement Division of the Office of Mobile Home Standards for HUD, in his testimony during the FTC hearings, also stated that if an error was introduced by failure of an employee of a plant "it is very likely to have gone on for 10 to 15 to 20 days at a rate of 5 a day, which could be 100 units, and I don't remember ever seeing a situation where only two units were involved. About the smallest number I ever saw involved was something like 30." (Tr. 2830, Nov. 1, 1977.)

Thus, contrary to the FTC's out-moded conception of the mobile home production process, the existing production process is such that a defect introduced in the assembly line process will be likely repeated in a large number of homes.

B. State regulations relating to warranties, licensing and bonding, and set-up

The FTC's preoccupation with the effective coverage of the HUD Act vs. problems covered under a typical manufacturer's warranty is misdirected in the context of mobile homes as a housing product which is equivalent to site built homes. Regardless of whether or not there may be some areas in which the HUD standards do not address problems covered by a manufacturer's warranty, a myriad of state legislation as well as the Magnuson-Moss Warranty Act provide more that adequate protection in these areas. Although many states require that manufacturers provide warranties with their homes, almost all manufacturers have voluntarily provided warranties in all states in which their homes are sold. The manufactured housing industry has done this as a matter of good business policy in order to provide consumers with a degree of security in the purchase of their homes and as a means of competitively differentiating their product in the marketplace.

The effectiveness of state laws as a supplement to the federal standards has been recognized by HUD in their recently submitted Fourth Annual Report to Congress:

"As a result of its general experience with consumer complaint handling, and its review of State Administrative Agency performance, the Office of Mobile Home Standards has identified a number of factors that often contribute significantly to consumer protection but which are not called for or required by the Act. These include licensing, bonding, warranty enforcement programs, and toll-free consumer hot-lines.

"In a number of states, manufacturers, dealers, salesmen, and other agents are required to hold a license to operate in the mobile home business within the state. In other states, only manufacturers and dealers need have a license; salesmen and agents do not. Regardless of whether universal licensing of all parties involved in the sale of a mobile home is required, or licensing only the manufacturer and dealer, licensing has proven to be a powerful tool in providing full protection to consumers.

"In most states that require licensing, licenses may be revoked for a variety of infractions, including such things as fraudulent or misleading sales practices, which are not covered by the Federal standards. In several states there is a licensing board which reviews cases involving revoking the license of a manufacturer or dealer. Hearings before these boards assure that all parties in the dispute will have an opportunity to state their position.

"Bonding is another effective device for consumer protection. In most states that require licensing bonding is required as an adjunct to licensing. Manufacturers and dealers are required to post a bond to assure that monies will be available to assist consumers in the event the manufacturer or dealer is found culpable for repairs to a home and lacks the funds to carry out the necessary work.

"Several states have laws designed to enable a state agency—usually the Attorney General's Office—to assist consumers who are attempting to have the manufacturer make repairs pursuant to the warranty he issues with each new mobile home. The warranty enforcement laws cover many items in the non-safety related "cosmetic" category. * * * Thus, consumers who have problems which fall in the less serious categories and who live in states that have warranty enforcement laws, have an important avenue of recourse not available under the Federal program. (p. I-26.)

There are presently 23 states that have special requirements for mobile home warranties. In at least 17 of these states, express written one-year warranties are required for correction of substantial defects in material or workmanship; in almost half of these states the manufacturer and dealer are jointly liable for warranty defects and are responsible for warranting appliances and equipment installed by the manufacturer and dealer as well as plumbing and electrical problems. In 12 of these states, corrections of defects must be made at the site of the home and in 5 of these states, manufacturers and dealers are not allowed to exclude defects resulting from improper set up or transportation unless the set up function is performed by an independent third party with no agreement or relationship with the manufacturer or dealer. In 4 of these states regulations impose implied warranties from the manufacturer to the consumer, and in one of these states upon filing of a written consumer complaint, the Department of Mobile Home and Manufactured Standards has the authority to require satisfaction of the complaint.

In 1979 mobile home manufacturers produced over 276,000 units. Almost 134,000 or approximately one-half of these homes were shipped into states with express mobile home warranty requirements. Another 25,000 were shipped into states with specific requirements relating to implied warranties and resolution of consumer complaints.

Forty-one states into which over 91% of all units produced in 1979 were shipped, currently have licensing and/or bonding requirements effecting mobile home manufacturers and/or dealers, and installers. While these statutes generally ensure minimum operating standards and some measure of state control over industry activities, in at least 14 of these states (into which over 46% of all homes produced in 1979 were shipped), the bonding requirements and/or licensing provisions (qualifications, denial, suspension, or revocation) are tied directly to warranty service. In many of these states performance bonds required for manufacturers, dealers and/or installers may be used as a recovery fund for consumers or the state when liability is established against a manufacturer, dealer or installer for damages, penalties or expenses resulting from a cause of action connected with sale of a mobile home. These enforcement mechanisms can serve as a powerful incentive to provide good warranty service for two reasons: (1) they affect a manufacturer's or dealer's ability to manufacture or sell homes in any given state, and (2) if the manufacturer or dealer has financial exposure to claims made against his bond, he is more likely to act promptly in settling the complaint; surety companies are also anxious to avoid exposure and provide additional leverage to consumers.

State consumer protection laws and warranty laws have provided state agencies with a wide variety of enforcement tools. In a number of states, many of these powers are exercised through State Mobile Home Commissions. These State Commissions work closely with state and local consumer agencies as well as with industry representatives to develop, sponsor, and in some cases actively enforce a variety of mobile home regulations. One of their more important activities from the standpoint of warranty service, has been the implementation of effective consumer complaint settlement mechanisms.

The FTC has alleged that state laws addressing mobile home warranty service are not effectively enforced. If existing laws are not enforced under various state systems, it is mystifying how the FTC expects to utilize this additional Federal regulation, considering the mobile home industry produces over 270,000 units per year.

C. The mobile home industry is also pervasively regulated by other Federal agencies

HUD has the primary responsibility for regulation of the mobile home industry. However, the industry is also pervasively regulated by other Federal agencies. This regulation fills in any gaps in the HUD Code and regulatory scheme.

Since the FTC already regulates the mobile home industry under the Magnuson-Moss Federal Trade Commission Improvements Act (FTC Warranty Act) which became law on January 4, 1975, a separate FTC rule directed at warranties provided by the mobile home industry is not necessary. The FTC Warranty Act prescribes terms and enforcement procedures for written warranties and service contracts on all consumer products manufactured on or after July 4, 1975. Mobile homes are specifically included as a consumer product under this Act. Under this Act, the FTC

already extensively regulates the entire mobile home industry since almost all mobile home manufacturers provide either a limited or full warranty. This Act governs three broad areas of warranties: (1) It establishes minimum standards for the protection to be provided consumers; (2) it ensures that consumers will be given detailed and comprehensive information on warranty rights and procedures; and (3) it creates certain judicial, administrative and informal remedies for enforcement of warranty obligations and rights.

The most important provision of the FTC Warranty Act affecting mobile home manufacturers relates to disclosure of warranty terms. The implementing regulations specify the information which must be included in all written warranties. 16 CFR § 701.3(a). These regulations also regulate mobile home dealers by requiring the dealers to use one of the methods listed for making warranties available. 16 CFR Part 701.

Since the enactment of the FTC Warranty Act, the FTC has vigorously enforced its provisions as they apply to the mobile home industry. This Act, as well as the HUD Mobile Home Code and Enforcement System, did not become effective until after the TRR was proposed. Since that time, together they demonstrate that a separate FTC TRR regulating the mobile home industry is not only unnecessary but unduly burdensome.

The FTC's promulgation of the Holder-in-Due-Course Rule on November 18, 1975 gave consumers even more clout in enforcing mobile home manufacturers' warranty obligations. Since the consumer can stop making installment payments on his loan and raise the breach of warranty claim as a defense, lenders have a great incentive to place significant pressure on the dealer and manufacturer to resolve outstanding warranty claims in a timely manner.

Further, other Federal agencies also regulate the mobile home industry. The Consumer Product Safety Commission (CPSC) administers the Consumer Product Safety Act, 15 U.S.C. 2051 et seq, which was enacted to protect the public from unreasonable risks of injury associated with consumer products. Since a defective mobile home component can also be a consumer product, CPSC can require the supplier of such a component to undertake certain remedial actions. CPSC and HUD have an informal mechanism for coordinating their enforcement efforts over the mobile home component suppliers and mobile home manufacturers.

The Department of Energy (DOE) pursuant to its authority under Title III of the Energy Conservation and Production Act of 1976, 42 U.S.C § 6831 et seq, is currently developing energy performance standards for new buildings which include mobile homes. Under this Act, HUD is charged with the implementation responsibility for Title III. Under the Mobile Home Act, HUD already has issued mandatory energy performance standards for mobile homes. The conventional housing industry as yet is not subject to mandatory energy performance standards. Further, Title III of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6281 et seq requires DOE to establish test procedures and energy efficiency standards for certain categories of consumer products which include the same appliances covered by the HUD Mobile Home Code. Thus, it is apparent that not only the mobile home manufacturer but also its component supplier are adequately regulated and that there is a growing tendency to add layer upon layer of Federal regulation over this industry.

IV. THE FTC TRR UNFAIRLY DISCRIMINATES AGAINST THE MOBILE HOME INDUSTRY IN CONTRAST TO THE CONVENTIONAL HOUSING INDUSTRY

The proposed trade regulation rule discriminates against mobile manufactured housing as a segment of the housing industry. Mobile homes built under the HUD Code are, with very few differences, comparable to conventionally constructed site built homes and are designed and engineered to standards which, in most cases, are equal if not stricter than conventional housing. In many instances relatively small cost will bring a unit into compliance with state and local building codes for site built homes. When placed on a permanent foundation, mobile homes manufactured today are in most cases indistinguishable from new conventional housing.

The proponents of the FTC's proposed trade regulation rule have argued that because mobile homes do not meet the quality and safety standards afforded to purchasers of site built homes, that problems and defects in mobile homes occur more frequently, necessitating additional federal regulation to ensure adequate warranty performance. Specifically, with respect to the quality, durability and safety of mobile homes, it has been alleged that problems relating to fire safety, wind safety, and more recently, formaldehyde emissions are significantly greater for mobile homes than for conventional homes. Despite these claims, the FTC's proposed trade regulation rule would not address these problems because they are not within the scope of warranty coverage. These issues are presently being widely addressed by the mobile home industry, HUD, states, and other Federal agencies. In

fact, mobile homes compare very favorably to conventional site built homes in each of these areas.

A. Fire safety of mobile homes versus conventional homes

Various consumer groups such as the Center for Auto Safety have alleged before the FTC that mobile homes are built to standards which are inadequate with respect to fire safety, particularly when compared to conventional homes. However, mobile homes do compare favorably to site built homes with respect to (1) vulnerability to fires; (2) fire fatality rates; (3) severity of fires; and (4) adequacy of fire safety standards.

The fire safety record of mobile homes of all ages is equivalent to that of conventional site built homes, while the safety records of mobile homes built in accordance with the HUD Mobile Home Code is superior to site built homes. Moreover, the fire safety requirements of the HUD Act exceed those for conventional homes and have served to significantly reduce the deaths, injuries and property loss from fires.

The notion that mobile homes are more vulnerable to fires than are conventional homes, reflects a widespread opinion that is totally inaccurate. Based on 1978 data in the National Fire Incident Reporting System ("NFIRS"), a recent analysis prepared for MHI by Howard Gates entitled "Comparison of Fire Risk in Mobile Homes and Site-Built Houses" indicates that the incidence of fire for all mobile homes was 534.045 per 100,000 mobile homes compared to 534.5 per 100,000 for all site-built homes. Although the fire incidence rate for all mobile homes is fractionally less than the fire incidence rate for all site built homes, the study reported that the fire incidence rate for mobile homes drops significantly to 378.9 per 100,000 for mobile homes built after implementation of the HUD Act in 1976.

Mobile home fire data for California, a state which has one of the largest mobile home populations, also indicates that the fire incidence rate for mobile homes is significantly less than that for conventional homes. In a 1977 memorandum from the Acting Chief of the Division of Codes and Standards, California Department of Housing and Urban Development, to the California Commission of Housing and Community Development, it was noted that, based on the second annual report of the California State Fire Marshal " * * * one out of every 122 dwellings had a fire occurrence while one out of 409 mobile homes had a fire occurrence."

Because California, unlike most states, has a mandatory fire incidence reporting system, these figures indicate that the fire incidence rate for conventional homes in California is over three times the rate for mobile homes and are positive, reliable evidence that mobile homes are not more vulnerable to fires than are conventional homes.

With respect to fire fatalities, mobile homes also compare favorably to site built homes of similar size. The frequent allegation that the fatality rate for mobile home fires is significantly greater than that for conventional homes is a distortion of the facts based on a comparison of aggregate statistics for all mobile homes with aggregate statistics for all site built homes. Because of the wide variation of risk, due primarily to size among different classes of mobile homes and among the different classes of site built homes, this comparison is neither useful nor meaningful. The only valid comparison would be between site built and mobile homes of similar size.

In early mobile homes which were considerably smaller than the average site built home, the vulnerability of mobile home occupants in the event of fire was higher than for site built homes. However, in mobile homes built during the last several years, three phenomena have occurred which have resulted in a substantial reduction in the mobile home fire fatality rate: (1) more rigorous construction and safety standards have improved the design and safety of mobile homes under the HUD Mobile Home Act; (2) beginning in 1974 smoke detectors were required under the ANSI A119.1 standard and were subsequently required under the HUD Code; and (3) mobile homes have almost doubled in size in the last sixteen years.

For conventional homes less than 1,000 square feet, which is the average size of the existing inventory of mobile homes, the fatality rate increases sharply compared with larger homes and is almost identical to the fatality rate for all mobile homes. According to the results of the Gates Study, the fatality rate per 100,000 occupied one and two family houses under 1,000 square feet was 20.6 per 100,000 dwellings in 1978, almost three times the rate for any other size of conventional homes; the fatality rate for mobile homes of all ages was 21.1.

The fire fatality rate in mobile homes built subsequent to the implementation of the HUD Act, 3.44 per 100,000 mobile homes, is less than the fatality rate for site built homes of all ages, 4.20 per 100,000 homes. The fatalities per million occupants for mobile homes and site built houses are almost identical: 13.8 for recent mobile homes; 13.5 for site built houses. The effectiveness of the HUD Act is dramatically

highlighted by the fact that the fatality risk in mobile homes manufactured during the past 4½ years, after implementation of the HUD Act, was less than one quarter (¼) that in mobile homes of earlier manufacture.

With respect to the severity of fires in mobile homes compared to conventional dwellings, it is also important to consider the impact of the size of a house on the severity of a fire. In a small house a larger fraction of the home is likely to be damaged by fire. Compared with a population of conventional homes which average twice the size of mobile homes, the average percentage of loss from fire in a mobile home can be expected to be greater even if the dollar values are significantly lower.

The most recent data available indicate that the incidence rate, fatality rate, and the severity of the mobile home fires have decreased significantly for mobile homes built under the HUD standard and that these homes compare favorably to conventional homes of the same size with respect to fire safety. The HUD fire safety regulations for mobile homes as compared to standards for conventional homes were analyzed by the California Department of Housing and Community Development as follows:

Fire Safety.—In the area of fire safety the mobilehome requirements exceed those for conventional dwellings, for example, a minimum of two exits are required for mobilehomes where only one is required for conventional dwellings. Interior flame-spread requirements for walls and ceilings in mobilehomes are more restrictive, also flame-spread requirements are not applicable to kitchens and bathrooms of conventional single family dwellings.

The bottom of secondary exits from bedrooms of mobilehomes are required to be no more than 36 inches from the floor; in dwellings this distance may be 48 inches.

Locks, latches and operating handles are regulated in mobilehomes for safety of the occupants relating to distance from the floor, number and method of operation and operating instructions. There are no such requirements for dwellings.

Additional fire safety requirements are provided for mobilehomes that are not required in dwellings such as flame-spread ratings for: (a) Interior finish of furnace and water heater compartments; (b) kitchen cabinets and countertops; (c) interior surfaces and adjacent to cooking ranges; and (d) fixtures such as plastic bathtubs, shower units and bathtub and shower doors.²

B. Formaldehyde emissions in mobile homes versus conventional homes

During the last year, wide attention has been directed towards problems caused by emissions of ureaformaldehyde gas in mobile homes and conventional site built homes. It has been suggested by groups seeking additional mobile home regulation that the problem occurs primarily in mobile homes and results in a significant health and safety hazard for mobile home owners.

The question of air quality in mobile homes is of major concern to both industry and HUD. The Consumer Product Safety Commission and various state legislators have also studied the problem and have held hearings on this subject. As a preliminary observation, the following points should be made: (a) The emission of gases from building materials is the same in mobile homes and site built housing. Both types of housing use largely the same materials; (b) there are more complaints from conventional home occupants at this time about formaldehyde emissions than from mobile home occupants; and (c) the problems with mobile homes were not identified nor were known to exist until tightened construction was initiated under the HUD Act to ensure energy conservation.

1. HUD research activities

On July 25, 1979, HUD initiated an investigation of air quality in mobile homes, publishing a notice of requests for proposals, (RFP), H-5105—"An Evaluation of Formaldehyde Problems in Residential Mobile Homes." HUD has also conducted discussions with members of the National Mobile Home Advisory Council and the public at meetings of the Council.

One of the major problems, acknowledged by HUD in its "Statement of Work" in its RFP is that "with the improvements of construction, spurred by energy conservation research, the structures of mobile homes have been getting physically tighter. Consequently, the number of air changes in the home's living space has been diminished resulted in occupant awareness of more pollutants in the air."

The HUD research project represents a major effort by the Federal agency responsible for regulating the mobile home industry to determine the extent of the formaldehyde problem in mobile homes and to develop cost effective solutions to

²Memorandum to Commission of Housing and Community Development from Xavier Mendoza, Acting Chief, Division of Codes and Standards, Department of Housing and Community Development, February 14, 1977, p. 4.

that problem. The final contract awarded to Technology and Economics, Inc. is directed at performing basically two tasks:

Task one is to collect and analyze all information and data from all industry associations, including the Formaldehyde Institute, all formaldehyde oriented products groups, the mobile home industry, the vendors, and from various segments of the government, including CPSC, NIOSH (HEW), FTC and DOE, in addition to information available from universities which have studied the formaldehyde problem, and from foreign governments. This data was collected and reviewed in order to assess the magnitude of the formaldehyde problem. The results of this study were presented to HUD's Mobile Home Advisory Council on May 22, 1980. The Council found the report deficient in several respects and has solicited additional comments before acceptance of the report. The second task of the HUD project will be directed at examining data collected during task one to analyze the problems in terms of valid complaints, exposure levels, possible fixes in terms of reduced levels, and to hypothesize standards or regulatory options which the Department could take.

2. Industry efforts to resolve formaldehyde problem

When formaldehyde complaints arose a year ago, the mobile home industry and its suppliers reacted promptly by appropriating funds to investigate the factors involved. During the last 18 months well over a million dollars for research on the formaldehyde issue has been committed and expended. The mobile home industry, the plywood industry, and the Formaldehyde Institute have embarked on extensive research projects, the results of which have been shared with HUD and other government agencies. Manufacturers and suppliers are also continuing to explore the various methods of product improvement such as the use of ventilation techniques, coating, the use of absorbers, and the use of ammonia fumigation as long term solutions to any air quality problems.

C. Wind safety of mobile homes versus conventional/modular homes

It has also been suggested by various consumer groups that wind safety problems are not adequately covered by the HUD Code. However, with respect to wind damage, the body and frame construction under the HUD Code is more specific and in excess of that required by conventional or modular housing codes.

The HUD standard at 24 CFR 3280.306 entitled "Windstorm Protection" requires each mobile home to have "provision for support and anchoring systems, which, when properly designed and installed will resist overturning and lateral movement (sliding) of the mobile home as imposed by the respective design loads." The manufacturer must also provide printed instructions and drawings with each mobile home of at least one acceptable anchorage system. 24 CFR 3280.306(b). Since 1976 many states have issued regulations on anchoring systems for mobile homes. This is an area of mobile home construction and tie-down that is regulated by both the states and HUD. Further the FTC proposed trade regulation rule on Mobile Home Sales and Services does not relate to the area of wind safety because problems occurring as the result of wind damage are not subject to coverage under a warranty but are rather normally covered under home hazard insurance.

D. Defects in conventional homes versus mobile homes

HUD's Office of Mobile Home Standards reviewed data from the Department of Commerce 1977 Annual Housing Survey in its evaluation of the effectiveness of the HUD Mobile Home Code. This survey contains information on the frequency of certain quality and durability problems found in mobile homes and conventional homes in 1977. The preliminary conclusion of HUD in its review of this data was:

(1) For every performance measure but one (repairs \$200 or more) the incidence of problems in post-standard mobile homes was lower than those of pre-standard homes. The largest percentage reductions were with "roof leaks" (from 6.7% to 2.4%), and "rats or mice during preceding three months" (from 21.4% to 9.8%).

(2) For each performance measure mobile homes compared reasonably well with conventional homes. In no case did the incidence of a particular problem in newer mobile homes appear to be significantly greater than the incidence of the problem in conventional homes. Additionally, mobile homes required repairs of \$200 or more less frequently than conventional homes and had a significantly lower incidence of "cracks in wall or ceiling." Fourth Report to Congress on Mobile Homes, Title VI of the Housing and Community Development Act of 1974, VI-26-VI-27 (1980).

HUD, by using the 1977 Annual Housing Survey data, made a comparison between mobile homes built prior to and after the HUD Mobile Home Code and conventional homes built before and after this Code. This comparison is shown in

the Table recently published by HUD in the Fourth Annual Report to Congress on Mobile Homes. (Attachment I)

This Table shows that the frequency of occurrence of the problems in each of the categories decreased substantially between mobile homes built prior to the adoption of the HUD Mobile Home Code and those built pursuant to it, except for the category of repairs costing \$200 or more. The reason for the increase in repairs costing \$200 or more since 1976 can be attributed to the spiraling inflation occurring during that period which has drastically increased the costs of even minor repairs.

The Table further demonstrates that mobile homes built pursuant to the HUD Code have a smaller number of problems in 4 of the 6 categories surveyed as compared to pre-standard and post-standard conventional homes. When HUD Code mobile homes are compared to those conventional homes classified as old, mobile homes showed fewer defects in all categories. Further, it also shows that mobile homes built prior to the HUD Code compare very favorably to new conventional homes. In 3 of the 6 categories old mobile homes experienced fewer problems than new conventional homes. These comparisons serve to dismiss any myth that mobile homes have a larger number of defects than conventional homes.

In summary, a realistic comparison of mobile homes to conventional site built homes defeats the argument that the proposed TRR is needed because mobile homes do not meet the quality, durability, and safety standards afforded to purchasers of site built homes. The additional costs imposed by the proposed TRR would unjustifiably discriminate against mobile homes as a form of housing for low and moderate income consumers.

V. MOBILE HOMES ARE UNIVERSALLY WARRANTED AS OPPOSED TO CONVENTIONAL HOMES

Mobile home manufacturers almost universally provide a warranty with each mobile home they sell. They then make arrangements with the dealers selling their products to provide onsite warranty service. This service is provided as quickly as possible to assure the continued good reputation of their product and company.

Purchasers of conventionally built housing, however, typically are not afforded the luxury of a warranty. Because a large number of the homes purchased are from the existing housing stock, only a relatively small number of purchasers of newly constructed site built housing are given warranty protection. Moreover, warranty performance by builders has generally been described by many housing authorities as providing less than adequate consumer protection.

In mid 1974, HUD released a special report describing current U.S. housing practices with regard to building warranties. The introduction in that report cited an article which had appeared in Business Week describing the warranty problems experienced by the owner of a new conventional home:

"In late 1971 Mr. LaVigna bought a new \$44,000 house which carried the traditional one-year warranty from the builder. In the first six months the heating system did not work, the floor in the den sank three inches, the foundation slab cracked, and the driveway "erupted and collapsed." The builder sent several men to look at the defects, but not one was fixed to the new owner's satisfaction. When the warranty period ended, the buyer found it impossible to contact the builder except through the builder's attorney, who disclaimed further responsibility. When Mr. LaVigna appealed to the savings and loan association that had given him the mortgage, he discovered that the Association's lawyer was the same one hired by the builder. Frustrated and angry, he began to fix the defects at his own expense."³

The report then noted that:

"Despite its record production of good quality housing in past years, the industry is now faced with a rising number of widely publicized complaints concerning everything from major structural defects to the house of inferior materials and shoddy workmanship.

"Even where the builder's intentions are the best, quality control is difficult to insure because a house is put together in the open air by as many as 40 workers from 14 different trades. Its materials shrink and move; a new three-bedroom house, for example, may contain about 2,000 gallons of water in its bricks, timber, plaster, and concrete.

"The provision of adequate protection for the home buyer is a very complex matter involving many considerations, such as the definition and enforcement of building and finishing standards; protection against hidden structural defects which

³ HUD International Foreign Information News Item: An Insured Building Warranty Plan for Home Buyers, Office of International Affairs, U.S. Dept. of Housing and Urban Development, Washington, D.C., June 1974.

may occur even with good inspection; and safeguards against the default and bankruptcy by the builder.⁴

In a 1973 study conducted by Mr. Eugene Gulledge an independent consultant for the National Association of Home Builders (NAHB), it was found that existing registered building programs varied greatly in their effectiveness in protecting the consumer. It was reported that:

"Under the program, the builder offers a one-year warranty; however, the typical performance bond taken out by the registered builder to assure performance under the warranty is only \$2,000 or \$3,000. Therefore, concluded Gulledge, if minor or major defects appeared in any or all the houses built by a registered builder and the builder was unable to do the work because of financial difficulty, the performance bond would frequently be inadequate to rectify outstanding defects."⁵

The conventional housing industry has experienced many of the same problems which allegedly support the need for a trade regulation rule in the mobile home industry. Builders who retire or who go bankrupt many times fail to ensure that that outstanding warranty obligations will be handled; other builders simply refuse to perform requested warranty service.

In response to these problems the NAHB established a Homeowners Warranty Program (HOW Program) approximately three years ago. Pursuant to this program, conventional home buyers are provided with a limited warranty under which the builder offers a one-year warranty against defects in workmanship and materials and a two-year warranty against major structural defects. Although a two-year warranty is offered against defects in the plumbing, heating, cooling and electrical systems, the builder is not responsible if the failure is due to defects in the appliances, equipment, or fixtures. The second year coverage is also limited in that it is a warranty on piping, wiring and duct work—items in which a defect would ordinarily appear within the first year.⁶ For the third through tenth years, the buyer has additional protection through a national insurance policy which provides direct insurance protection against major structural defects. If for any reason the builder cannot or will not perform warranty obligations during the first two years, the national insurance policy will do so.

Although the homeowners warranty agreement provides extensive warranty coverage which has heretofore not been offered in the traditional one-year conventional builders warranty, it is limited in several respects. Consequential damages are excluded and defects must be due to noncompliance with the Approved Standards; these include local codes and certain quality standards that have been adopted by the Local Council for all participating HOW builders. While builders agree to deal with home buyers' complaints fairly and promptly, there are no specific time requirements to insure prompt complaint handling. All complaints must be submitted in writing to the builder. If there is a disagreement concerning warranty obligations or a failure to respond, the owner may request informal dispute settlement. This involves conciliation and possibly a nonbinding arbitration process before a complaint is resolved and a defect is corrected.

The HOW program is funded by an initial registration fee and an annual re-registration fee payable by the builder and set by the HOW Council. There is also a one time cost of enrolling a home in the program of \$2 per \$1000 of the sale price which is paid by the builder and which is added to the purchase price of the home.

As of the end of December 1977, approximately 254,000 HOW policies were in effect.⁷ This means that only 7.3 percent of the single family units produced during this three year period were sold under the HOW program. Of NAHB's 1978 membership of 84,000 home builders, approximately 7,300 builders had enrolled in the HOW program or 8.6 percent of member builders.

Although presently the Magnuson-Moss Warranty Act regulates mobile homes as a consumer product, this Act affects conventional housing only to the extent that component items within the house are warranted. The only national warranty requirements affecting conventional housing are those set forth in the Housing Act of 1954. Under the Act, all new houses purchased with mortgages guaranteed by the Federal government are required to carry a builder's warranty.

"This one-year warranty is to insure that a house is constructed in "substantial conformity with the plans and specifications" so that any defects arising from construction practices in "substantial non-conformity" become the responsibility of the builder during the warranty period. However, if defects are discovered in a

⁴ Ibid.

⁵ NAHB Housing Warranty Program by Patricia McKinney, Urban Land, February 1974.

⁶ Understanding HOW, What it Means to the Home Builder, Home Owners Warranty Corp., Washington, D.C. June 1977, pp. 1.

⁷ Information supplied by National Association of Home Builders, Washington, D.C., conversation on Jan. 5, 1978.

house during the first year and that house was found to have been built in "substantial conformance to the plans and specifications, the repair of the defects was not regarded as the responsibility of the builder. As might be imagined, there are frequent differences of opinion as to what exactly constitutes a defect."⁸

In effect then, a vast majority of new and almost all existing houses sold in the conventional market at an average price of \$77,000 are being sold without any Federal government protection to assure that defects related to poor construction or design, arising subsequent to the purchase of the home, are corrected by the builder.

The conventional housing market is being allowed to develop its own warranty programs without any noticeable degree of federal intervention. The HOW Program is a good example of an innovative and commendable attempt by the housing industry to solve what it perceived to be a serious problem with an existing system. In light of the present state and federal warranty legislation affecting the mobile home industry, it seems only fair that any remaining incentives for innovation not be quashed by additional federal regulation in the form of a trade regulation rule.

In conclusion almost 100 percent of all mobile homes carry at least a limited or a full warranty. However, conventional site built homes rarely carry a warranty of any type. This means that purchasers of mobile homes are provided greater warranty protection than purchasers of conventional housing.

VI. ECONOMIC IMPACT OF FTC TRADE REGULATION RULE

The purported rationale for the FTC's rule, frequently cited by consumer groups and implicit in the FTC statement of Basis and Purpose is that the rule will offer greater warranty protection to lower income consumers who purchase and live in mobile homes. Consequently, it is argued that because these consumers are less able to exercise various rights available under existing state laws, additional federal regulation is necessary. These arguments fail to consider either the cost impact of the rule on low and middle income consumers' ability to purchase housing or the realities of the marketplace with respect to differences in consumer preferences and needs.

As a result of the spiraling cost of conventional housing in recent years, a large majority of American families are currently unable to purchase conventional site built homes. Mobile homes, however, have remained affordable and available to low and moderate income families. The manufactured Housing Institute, Inc. estimates that approximately 250 man hours are required to build a mobile home on a production line which runs as long as required, and which is impervious to the weather. Due primarily to this production efficiency, the average sale price in 1973 of a mobile home was \$7,770 at a cost of \$8.84 per square foot compared to an average sales price of \$35,500 for site built homes at \$17.60 per square foot. By 1978 the average cost per square foot for a mobile home had increased to \$15.77 while site built homes had risen to \$28.50 per square foot.

As a result of the cost consciousness of the mobile home industry, 80 percent of all single family homes sold under \$35,000 in 1978 were manufactured in factories.⁹ More recent data from the United States Department of Commerce indicates that in 1979 the average cost of a mobile home was \$17,600 compared to the average price of a site built home of \$71,900.¹⁰

In a recent study entitled "Regulating Post Purchase Relation: Mobil Homes" prepared by Louis De Alessi, Professor of Economics at the University of Miami Law and Economic Center,¹¹ the economic consequences of the FTC's rule were studied and analyzed. The report, which reviewed extensive data on the mobile home industry, included an analysis of the evidence accumulated during the entire course of the FTC investigation of the mobile home industry.

Based on review of the testimony presented during the TRR hearings by FTC and industry witnesses, including economic experts, manufacturers, dealers, and consumers, Professor De Alessi concluded that

⁸ HUD International Foreign Information News Item: An Insured Building Warranty Plan for Home Buyers, Office of International Affairs, U.S. Dept. of Housing and Urban Development, Washington, D.C., June 1974.

⁹ United States Department of Commerce, Bureau of Census Data Conventional Homes—Construction Reports (C25-75-13; C25-76-12).

¹⁰ United States Department of Commerce, Bureau of Census Housing Starts Construction Reports, April 1980, C20-80-4; Price Index of New One Family Houses Sold, April 1980, C-2-79-Q4.

¹¹ This study will appear as Chapter 12 in Kenneth W. Clarkson and Timothy J. Muris (eds.), *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior*, Cambridge University Press, forthcoming. This study has been submitted to this Committee to be included as part of the record in this proceeding.

"* * * it is tempting to estimate the costs and benefits of the proposed TRR. Granting the poor quality of the data, and recalling that the assumptions made strongly favor the TRR, some rough calculations suggest annual costs of \$104 million, annual benefits of \$26 million, and a net annual welfare loss of \$78 million; this yields a present-value deadweight loss of about \$78 million in 1977 dollars or over \$1 billion in current (1980) dollars. Even in the face of grossly overestimated benefits, costs would have to be less than one-fourth at the amount estimated in order for the TRR to yield a net benefit.

"Lower-income consumers typically will be worse off. These consumers by definition have a stricter budget constraint, and are thus the most likely buyers of lower-priced, lower-quality MHs. These homes will exhibit the highest percentage increase in price and may be expected to exhibit the largest percentage decrease in sales. Some lower-income consumers will simply be priced out of the market, and they will be worse off. The lower-income consumers who, as a result of the TRR, will buy higher-quality, higher-priced MHs but who would have preferred to buy lower-priced MHs no longer available, will also be worse off. This group includes individuals who had a comparative advantage in performing their own repairs, or had a greater tolerance for inconvenience or, at existing prices, preferred better medical care, better food, or other things to better MH warranties. (De Alessi report, pp. 18-19 and 21, footnotes omitted.)

With respect to the impact of the rule on mobile home manufacturers and dealers, the cost of the rule is predicted to fall heavily on small business operations, many of which will be forced out of business.

Dealers, whose primary function other than to sell the home, is to provide warranty service as well as set up and installation of the home for the manufacturer will also be affected by the rule. Manufacturers, who will be required to closely scrutinize all dealer operations, enter into strict contractual arrangements with dealers, and assume primary responsibility for functions traditionally performed by mobile home dealers, will discontinue use of smaller dealers located furthest from manufacturers central offices. Moreover, the rule's requirements will encourage manufacturer purchase and control of independent dealer operations. The end result of the proposed rule will be foster vertical integration in the mobile home industry and to reduce the number of competing manufacturers and dealers, the number of manufacturing plants and the number of dealers represented by each firm.¹²

In summary, the rule will adversely affect low and moderate income families' ability to purchase housing as well as adversely affect the structure and health of the mobile home industry. The economic impact of the proposed rule is particularly alarming in light of the fact that the benefits of the rule are questionable at best when viewed in the context of existing Federal and State regulations of the mobile home industry. These regulations have been enacted to achieve either directly or indirectly the same goals as the proposed FTC rule—higher quality mobile homes and greater consumer protection for mobile home owners.

As such, the FTC proposed TRR runs counter to the President's mandate to Federal agencies to eliminate duplicative and overlapping regulations by his issuance of Executive Order 12044 on March 23, 1978. As recent as June 1980, the President reaffirmed his commitment to his Executive Order by telling Executive Branch agencies and independent agencies to find alternatives to conventional regulatory techniques often called "command and control" regulation. President Carter in a memo to heads of independent agencies stated: "Alternatives that allow flexibility or use market forces can make regulation more cost-effective."¹³ At a time when overlapping and duplicative regulation has been recognized by the President and Congress as costly and unnecessary, the FTC persists in going forward with a TRR concerning an industry which is already extensively and adequately regulated. The FTC needs to follow the President's mandate in Executive Order 12044 that regulators "shall not impose unnecessary burdens on the economy, on public or private organizations."

VII. NO BASIS FOR THE FEDERAL TRADE COMMISSION TRADE REGULATION RULE HAS BEEN ESTABLISHED

The FTC's prolonged investigation of alleged unfair and deceptive sales and service practices in the mobile home industry has failed to produce any evidence which would justify imposition of a trade regulation rule on the entire mobile home industry. While there was little evidence supporting the initial announcement of the

¹² De Alessi report, pp. 23-26

¹³ "Regulation Programs Review Set," *Washington Post*, C-1 (June 14, 1980).

TRR in 1975, there is even less evidence indicating that wide-spread warranty abuses are prevalent in the mobile home industry today.

The factual basis for the proposed rule was set forth in the "Staff Statement of Position, Proposed Trade Regulation Rule Regarding Mobile Home Sales and Service issued on November 11, 1975, as follows:

"* * * a close examination of their [manufacturers'] practices reveals that a significant number of such manufacturers have failed to take the necessary affirmative actions to assure that consumers will receive warranty repairs within a reasonable time.

"There is also substantial information which indicates that a significant number of mobile home consumers have had great difficulty in obtaining adequate performance of warranty obligations by manufacturer/warrantors and that a significant number of these mobile home consumers have never received the warranty service to which they are entitled," Staff Statement of Position, Proposed Trade Regulation Rule Regarding Mobile Home Sales and Service, Federal Trade Commission (November 11, 1975) [hereafter referred to as BCP Statement (1975)], pp. 15 and 77.

These statements summarized the results of a two-year investigation of the industry beginning in August 1972. However, the staff statement of position fails to point to a single instance of any such practice that was found to have occurred. Nowhere in the statement is the information provided on the frequencies with which manufacturers fail to honor warranties and the resulting consequences of data to support a conclusion that the market is not functioning properly.

Regardless of the sufficiency of the basis for issuing the original notice of proposed rulemaking, the FTC's continuation of the rulemaking, proceeding and publication of the final rule completely ignored the significant changes which occurred in the mobile home industry beginning in 1974. During the late 60's and early 70's the industry experienced a period of rapid growth, when production more than doubled from 240,000 units in 1967 to over 576,000 in 1972. However, in 1974 and 1975, largely as result of the severe recession in the entire housing industry, mobile home shipments dropped to 329,000 and 212,000 units, respectively.

This sudden decline in sales had an extremely astringent impact on our industry. Of approximately 330 manufacturers producing mobile homes in 1972, only 222 survived the 1974-75 recession; the number of operating plants also declined from 800 to 500 during this same period.

Immediately following this severe economic shakedown, other significant events occurred which positively impacted further on the maturation of the industry in terms of the quality of mobile homes built and industry recognition of their responsibility to mobile home consumers. As discussed earlier, the Magnuson-Moss Warranty Act was passed in 1975, the National Mobile Home Construction and Safety Standards Act was passed in 1974 and became operative in 1976, and a myriad of state laws were passed during the mid-70's to regulate mobile home warranties, licensing and bonding of manufacturers, dealers and installers and mobile home installation.

The FTC has relied primarily on consumer complaints gathered from three principal sources and subsequently placed on the public record as a basis for the proposed rule. Notably, a large portion of these complaints occurred during the late 60's and early 70's, and were received from owners of homes built prior to the implementation of the HUD Act. The majority of the complaints placed on the public record regarding mobile home warranty service consist of approximately 1200-1400 items of correspondence collected by the FTC staff; some 629 items of correspondence collected by the Center for Auto Safety; and some 200 items of correspondence in the files of HEW.

MHI conducted an analysis of these complaints which was submitted for the public record during the hearings on the rule. Because the Center for Auto Safety correspondence was supposedly more recent than the FTC correspondence, and in-depth analysis was conducted for all of those complaints. This analysis revealed that of the 509 complaints where year of manufacturer could be determined, 424 were manufactured before 1974 while only 13 were manufactured during 1976. Six hundred and seven (607) or 96.5% of all the letters concerned homes that were clearly manufactured before the advent of the HUD program in June of 1976. With respect to the validity of the complaints, a significant percentage of the letters did not state whether they were warranty service complaints or whether the problems occurred within the warranty period, or had been reported to either the dealer or the manufacturer. Approximately 21 percent of the letters were addressed to problems unrelated to warranty service such as complaints regarding park conditions, lot rental rates, request for advice, and instances of consumer neglect or abuse. In some cases the letters were not complaints at all but letters expressing satisfaction with the warranty service provided.

A cursory analysis of the FTC complaints indicated that a majority of the correspondence dated from late 1974 and 1975, many of the letters concerned used mobile homes, recreational vehicles, requests for information and many were duplicate correspondence. Moreover the dates of the correspondence were often several years after the date of purchase and after the expiration of the warranty period.

The 200 HEW consumer letters reported to be on file related to the period prior to September 1976; and although reportedly on file could not be retrieved by the HEW computer and have apparently been lost or destroyed. Of 53 additional consumer letters received after September 1976 and purportedly pertaining to mobile homes, 24 related to recreational or other vehicles. Of the remaining 29 letters, 8 did not concern warranty service and one was a duplication.

During the period in which the FTC, CAS and HEW complaints occurred, 1967 through 1977, over four million homes were produced by mobile home manufacturers in the United States. Assuming that all of the 2200 consumer files were valid mobile home warranty complaints, these figures would indicate that $\frac{1}{2}$ of 1 percent of all mobile homes sold during the period, experienced problems which resulted in consumer complaints. Based on the analysis done on the complaints that were available, which indicated that a substantial number of the complaints did not relate to mobile homes, could not be verified, or were not valid warranty complaints, a more realistic conclusion would be that one-fortieth of 1 percent of the homes produced during this period experienced problems resulting in consumer complaints.

The Presiding Officer has characterized the small number of complaints on the public record as only the "tip of the iceberg". However, multiplying these figures a hundredfold to 2.5 percent would still not support a conclusion that the alleged warranty service problems occurring in the mobile home industry are either prevalent or wide-spread.

Because of the paucity of consumer complaints available to the FTC to support its basis for the proposed rule, the FTC funded two consumer groups, the Golden State Mobile Homeowners League (GSMOL) and the Ohio Housing Advocates, to conduct studies relating to warranty experiences of mobile home owners in their respective states. Both of these studies contained numerous discrepancies and neither study made any attempt to ensure that the results reflected "warranty" complaints rather than "problems" experienced by mobile homeowners. One of these groups, whose survey failed to ask the basic question of whether the problem occurred during the warranty period, sought and received additional funds at the end of the hearings to conduct a further study to rectify this omission.

The Presiding Officer's report in this proceeding was barely distinguishable from the staff statement of position issued in 1975, restating in almost identical language the original staff contentions. The report presented no sound figures or reliable data as to the prevalence of the alleged warranty abuses in the mobile home industry. Rather than provide a systematic summary of empirical evidence bearing on relevant issues, the Presiding Officer's determinations with respect to prevalence are couched in a series of meaningless descriptive phrases such as "significant large numbers, many and substantial." Not once does the Presiding Officer confront comparative numbers such as the number of warranty sales versus mobile home transactions or the size of the "iceberg." At no place in the staff statement of position, at no place in the initial notice, and at no place in the Presiding Officer's report is there any citation to evidence in the rulemaking record that justifies a conclusion that the alleged warranty abuses in the mobile home industry are prevalent.

The evidence that is available indicates that while problems relating to warranty service may have occurred during the 60's and early 70's, these problems have been solved by subsequent federal and state legislation in conjunction with industry recognition of their responsibilities to mobile home consumers. Warranty problems will always exist to some degree in an industry which manufacturers and sells over a quarter of a million homes to consumers a year. This does not however justify imposition of a costly trade regulation rule on the entire industry to ensure a perfect product.

VIII. CONCLUSION

In summary, the mobile home industry since 1976 has been building its homes to a comprehensive housing code issued and enforced by HUD, pursuant to the National Mobile Home Construction and Safety Standards Act of 1974. Since the implementation of this system, HUD has been taking many measures to assure that mobile homes are built to meet the Act's goals of quality, durability, and safety. Further, the industry has not remained static since 1972 but has continued to improve its designs and production to meet these goals and the demands of the buyers of its homes. In 1980, because of HUD's effective implementation of this vast

regulatory system, there is certainly no justification for the FTC Trade Regulation Rule of Mobile Home Sales and Services, if there ever was such a need.

The FTC has operated under a misguided perception that the proposed rule will fill in substantial gaps in the current Federal and State mobile home regulatory scheme.

First, the HUD Code addresses almost every aspect of the design and assembly of the home. Any defects discovered after the home reaches the dealer or consumer will almost always be corrected voluntarily by the manufacturer because of the wide spectrum of remedial actions available to HUD under the HUD Mobile Home Act and to the states under their mobile home laws. Further, many of the examples used by the FTC to support gaps in the current regulatory system, such as defects in components and cosmetic flaws, could not be reached by the FTC because they are excluded from the typical manufacturer's warranty.

With this rule, the FTC has stretched and twisted its authority to mandate that the mobile home manufacturers warrant two aspects—set-up and transportation—over which they have no control. Besides the fact that these aspects are already regulated by HUD and the states, such requirements go far beyond any requirement placed upon any other segment of the housing industry in the United States today. They also demonstrate the FTC's lack of understanding of the structure of the industry.

The FTC has failed to recognize that mobile homes manufactured today are in most cases indistinguishable from conventional housing. In fact, mobile homes are universally warranted as opposed to conventional homes. These mobile home warranties are already extensively regulated by the FTC pursuant to the Magnuson-Moss Warranty Act.

Aside from the fact that there is no need for the proposed rule, the implementation of this rule will adversely effect the ability of low and moderate income families to purchase affordable housing. The FTC has failed to recognize the extreme price elasticity of the industry. Professor De Alessi clearly points out in his study that there are few, if any, benefits of this rule in comparison to its adverse economic impact.

Finally, the FTC after eight years of investigation of this industry, costing taxpayer millions of dollars, has failed to produce any evidence which would justify imposition of a trade regulation rule on the entire industry. Thus, it has not even met its own standard of prevalence but continues to press forward, refusing to recognize this fundamental flaw.

ATTACHMENT I

TABLE VI-11.—COMPARISON OF THE INCIDENCE OF QUALITY AND DURABILITY PROBLEMS IN MOBILE HOMES BUILT BEFORE AND AFTER THE FEDERAL STANDARDS, AND IN CONVENTIONAL HOMES

Performance problem	Mobile homes		Conventional homes		
	Pre-Standard ¹	Post-Standard ¹	Old homes ¹	Pre-Standard ¹	Post-Standard ¹
Holes in floor.....	2.0	0.8	1.9	0.4	2.3
Roofleaks.....	6.7	2.4	5.9	3.1	0
Cracks in wall or ceiling.....	1.8	.8	4.6	2.5	4.7
Blown fuses or breakers.....	10.8	8.9	12.9	8.5	9.3
Repairs \$200 or more.....	1.8	3.3	8.0	8.2	4.7
Rats or mice last 3 months.....	21.4	9.8	15.2	9.9	7.0
Sample size.....	3,166	123	1,648	754	² 43

¹ Figures denote percentages of homes in which problem occurred during 1977.

² Since there were only 43 conventional homes in this category, these incidence figures for conventional homes built after the Federal Mobile Home Standards became effective, may lack statistical reliability.

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

MANUFACTURED HOUSING INSTITUTE,
Arlington, Va., September 26, 1980.

Senator WENDELL H. FORD,
Chairman, Consumer Subcommittee of the Committee on Commerce, Science and
Transportation, U.S. Senate, Washington, D.C.

DEAR SENATOR FORD: You have requested that I respond to the following questions relating to the hearings held by your Committee on August 20, 1980 on the Federal Trade Commission's Proposed Trade Regulation Rule on Mobile Home Sales and Service:

Question 1. Will you comment on the results of the Housing Advocates Survey of mobile home owners, in particular the fact that the Survey found that one-half of the owners of mobile homes received unsatisfactory warranty service?

Answer. The survey conducted by the Housing Advocates, Inc. of Ohio during the Federal Trade Commission's rulemaking proceeding on mobile home sales and service was funded by the Federal Trade Commission and was conducted to study the warranty experiences of mobile home consumers living in the state of Ohio. The survey methodology was seriously flawed. Furthermore, the results of the survey do not support the conclusion that "one-half" of the owners of mobile homes in Ohio received unsatisfactory warranty service. Mr. E. Kramer was aware of the numerical inaccuracies which are related below because he also testified and acted as attorney at the hearing.

METHODOLOGY PROBLEMS

Dr. T. Holland who designed the questionnaire admitted he had never read a mobile home warranty nor was he generally familiar with warranty language (TRR 05527).¹

Although the purpose of this survey was to study mobile home warranty performance, the questionnaire used by the Housing Advocates made no attempt to determine the date the home was purchased nor the time period in which the defect occurred. Because mobile home manufacturers usually offer a one-year warranty, these questions were critical in determining whether a defect was a warranty problem. Mobile home warranties also usually cover "substantial" or major defects in material and workmanship and exclude damages resulting from consumer misuse or abuse or consequential damages resulting therefrom. Although in the pre-test phase, respondents were asked whether there were major or minor "problems," the question which was used in the final survey did not provide an opportunity to distinguish between major and minor "problems". This omission may have resulted in the inclusion of many problems which were in fact not covered under the usual warranty.

Dr. Holland who was responsible for preparing the survey testified that it was a possibility that the Housing Advocates, Inc. was unable to reach conclusions as to whether the "problems" were major, minor, or inconsequential or the result of consumer misuse (TRR 5614). Mr. E. Kramer, attorney and expert witness for the Housing Advocates explained the failure to include additional questions which might have clarified the cause of a given problem as consistent with their position that "... any sort of exclusion, limitation, or disclaimer should be eliminated because ... they are deceptive practices" (TRR 05606). No industry in America has a warranty which does not contain some limits.

The Housing Advocates' questionnaire also failed to distinguish between a "defect" under a warranty and a "problem". This omission is consistent with the Housing Advocates acknowledgement that one of their prime sources of knowledge was the Owens-Corning survey on mobile homes. Owens-Corning surveyed "maintenance problems" not warranty defects. The proposed trade regulation rule was supposed to deal not with "problems" in mobile homes but rather with warranty defects. The Housing Advocates failure to distinguish between "problems" and warranty defects is indicative of their failure to understand warranty performance generally as well as their pre-determined belief that all problems should be resolved by the warrantor regardless of whether they actually are covered under the manufacturer's warranty.

BIAS AND MANIPULATION OF FIGURES IN THE SURVEY

The protocol omissions in the study's methodology are particularly critical when analyzing the number of mobile home owners who were not successful in obtaining warranty service. Although 651 responded that they were not successful vs. 833

¹References are to the transcript of the rulemaking proceedings conducted by the Federal Trade Commission, October 1977 through June 1978. More detailed transcript references are set forth in Attachments A and B.

who were successful, the limitations of the survey's questions preclude a determination as to whether or not the problems encountered by the 651 respondents were actually covered by the warranty. A reasonable conclusion might have been that many of these respondents were not able to have defects repaired under the warranty, because the defects were not covered under the warranty.

The Housing Advocates' original survey was sent out to approximately 10,000 registered mobile home owners in the state of Ohio. The cover letter to the questionnaire stated that "as one of Ohio's mobile home owners, you have been selected to play an important role in the development of national regulations regarding mobile home sales and service . . . the survey results would be used at the Federal Trade Commission, FTC, hearings on the mobile home industry. Your response combined with others will provide the necessary information so that the Federal Trade Commission regulation adopted will protect your, and future owners, investment in your home." The obvious biased slant of this cover letter would logically tend to elicit responses from mobile home owners who were dissatisfied with their mobile home in any number of respects.

The actual respondents consisted of 1,996 mobile home owners; approximately 8,000 mobile home owners did not respond. Despite the fact that a non-respondent in all likelihood experienced no problems in obtaining warranty service, the Housing Advocates projected their 20 percent respondent sample to all mobile home owners in Ohio and to all mobile home owners in the United States. An equally sound and logical approach would have been to compare the 651 respondents who were not successful in obtaining warranty service to the total population of 10,000 mobile home owners to which the survey was sent. Such a comparison would have resulted in a finding that 6.51 percent of all mobile home owners, not 50 percent, failed to obtain warranty service. Thus, the conclusion that one-half of all mobile home owners have received unsatisfactory warranty service is based on percentages derived from a small biased sample of mobile home owners who experienced problems, not necessarily covered under their warranty. In addition, the survey and the results based on that survey were riddled with inconsistencies and ambiguities. (Attachment A and B.)² Although Dr. Holland testified that the recommended procedure in mail surveys is to conduct follow-up surveys, one was not conducted following the original study prior to acceptance and endorsement of the figures by the FTC (TRR 5591).

FOLLOW-UP TELEPHONE SURVEY

To resolve the many questions raised with respect to the original survey, the Housing Advocates, Inc. received additional funding from the Federal Trade Commission to conduct a follow-up telephone survey. Ignoring the purpose of this follow-up survey, no attempt was made to resolve the many problems inherent in the original questionnaire. Once again, the use of the term "warranty defects" was deleted from the telephone survey. Instead the word "problem" was used despite its vagueness. Question 10 of the telephone survey asked blandly about "problems" without qualifying their nature, e.g. financial, delivery, site, warranty, etc. The survey commentator subsequently concluded that one-third of the 355 respondents experienced "problems" supposedly of a warranty nature.

The word "problem" was in fact further modified in the telephone survey by a new ambiguous phrase "with the original condition." The purpose of this term was to ensure that defects due to "set up" errors would thereby be excluded, because set up problems are not covered under a typical manufacturer's warranty. Unfortunately, this phrase may have been subject to a varied interpretation by respondents to the survey which could well have included "set up" related defects. This was confirmed by Dr. Holland, who under cross-examination, conceded that "original condition" did not exclude "set up" induced defects. Consequently, the answers to this question and related questions are useless in assessing manufacturers' performance of warranty responsibilities.

The telephone survey was also riddled with inconsistencies and curious contradictions in numbers in the tabulation of the telephone survey results. A prime example of this can be seen in the calculation of the percentage of those who had success in obtaining repairs. The Housing Advocates reported 42 percent, [representing 149 divided by 355 persons interviewed] of the respondents had success in obtaining repairs. However, a smaller denominator, 232 was used in the very same question to determine that 35.8 percent of the respondents were not successful in obtaining warranty service. Had the same denominator been used (355) this percentage would

² Attachment A—Excerpt from a submission by Group 2 to the Federal Trade Commission dated April 17, 1978, which analyzes the survey results. Attachment B—A subsequent submission analyzing the testimony of the Housing Advocates, especially the telephone survey, dated June 29, 1978. These are in the Subcommittee files.

have been 23.3 percent. When asked to explain this uneven treatment, Dr. Holland replied merely that different methods of calculating percentages may be used (TRR 7193). This response was typical of Dr. Holland's responses to many of the questions regarding inconsistencies in calculations. An analysis of the Housing Advocates' original survey and the follow-up telephone survey, which discusses in detail the deficiencies, inconsistencies and ambiguities inherent throughout both surveys, is attached for your information. (Attachment A and B.)

In addition to the problems associated with the actual survey and survey computations, the Housing Advocates made absolutely no attempt to verify either the accuracy of their allegations and assertions, nor to determine whether in fact manufacturers and/or dealers performed warranty service on the homes involved. No attempt was made to identify even elementary criteria of evaluation do determine whether the correspondence stated facts that would, if verified, lead the Commission to believe that mobile home manufacturers have not been providing timely and proper warranty service or that a large number of mobile home owners have not received satisfactory warranty service. FTC staff counsel studiously avoided questions during the proceedings which would elicit any deficiencies in the Housing Advocates study.

I believe that the extent of funding provided by the FTC to the Housing Advocates, Inc., not only to conduct a study which supports the Commission's rule but to conduct a follow-up study to correct deficiencies in the original survey, is particularly relevant in light of the broadening activity of the counsel for Housing Advocates, Inc. Mr. Kramer, according to a release by the Ohio Manufactured Housing Association is filling a \$15 million class action damage suit against mobile home manufacturers and dealers in the state of Ohio. This is relevant to the line of questioning initiated by you at the hearing relating to possible conflicts of interests for consumer groups involved in FTC rulemaking proceedings.

Question 2. Compare the Recommended Rule with the Proposed Rule.

Answer. The FTC's recommended rule is significantly different from the rule on mobile home sales and service which was originally proposed. Although various provisions of the proposed rule have been omitted from the recommended rule, these deletions are insignificant when compared with the provisions which have been added to the recommended rule. The new rule is far more onerous.

The following provisions and changes incorporated in the new rule go far beyond the original proposed recommendations and will result in a substantial increase in compliance costs for mobile home manufacturers and consumers:

a. One of the most obvious changes which reflects the more comprehensive open-ended concept of warranty service required under the recommended rule is the deletion of the definition of the term "written warranty." Although the new definition of "warrantor" (section 441.2(b)) includes a statement that "a written warranty includes any warranty covered by the Magnuson-Moss Warranty Act . . . and required to be designated as a "full" or "limited warranty" (emphasis added), the failure to include a definition of "written warranty" in traditional legal language suggests an expanded and uncertain scope of applicability of the new rule. This deletion is particularly disconcerting in view of the fact that the definition of "defect" under the recommended rule (section 441.2(e)) now includes "any problem covered under the written warranty offered to the consumer, any problem related to the set up or transportation of the mobile home, or any problem covered by applicable state laws, including implied warranties arising under section 2-314 or section 2-315 of the Uniform Commercial Code." (Emphasis added.) Traditional warranty concepts are completely ignored.

The equation of "defect" with "problem" is inconsistent with both the definition of defect under precedential warranty law and the definition of defect under the HUD Mobile Home Act. It is, however, consistent with the definition of warranty used throughout the Ohio Housing Advocates Study, which was funded and relied upon by the FTC to support the need for the proposed rule. This expanded definition of defects for which a manufacturer is responsible under the warranty, represents a significant enlargement of the coverage of the rule as originally proposed. Obviously the FTC had no statistical support for alleged poor warranty performance. Therefore the new rule relies on the existence of "problems" which embrace many other matters.

b. The old proposed rule required that the warrantor reinspect each mobile home within a reasonable time, not to exceed ninety (90) days after the tender or possession of the home to the consumer, to determine the existence of defects relating from improper set up (section 441.2(f)). It also required that manufacturers evaluate dealer service capabilities prior to signing a sealer and that the manufacturer periodically visit dealer premises to scrutinize records and service capabilities. (Section 441.3(b)-(c).) Although these provisions have been deleted from the recom-

mended rule, the recommended rule now requires that manufacturers warrant set up and transportation defects when the manufacturer or its agent perform set up or transportation of the home. (Section 441.4.) From a practical standpoint, a manufacturer will have to reinspect the home after it is set up, and will have to closely scrutinize dealer set up capabilities and their performance of set up on an ongoing and regular basis in order to ensure that these functions for which they are now responsible, are performed correctly by the dealer, installer or transporter.

Because set up and transportation of the home are not performed by the manufacturer, responsibility for problems related to set up and transportation have traditionally and understandably been excluded from manufacturers' warranties. The new requirement that set up and transportation be warranted goes far beyond the intent of the Magnuson-Moss Act, which addresses disclosure in warranties. The Act does not require that a manufacturer either provide a warranty nor does it dictate the substantive requirements if a manufacturer does provide a warranty. Imposing substantive warranty requirements on manufacturers for responsibilities which they do not perform will result in additional costs to the manufacturer which may be as high as \$2,000 per home.

c. The recommended rule has added a new definition—"notice" (section 441.2(f)) which provides that a warrantor has notice of a defect whenever a consumer reports a defect in writing or by telephone, to you, to the dealer that sold the mobile home, or to the authorized service agent, or when a defect is listed in an inspection report or buyer questionnaire. Thus, a manufacturer is responsible for complying with the requirements relating to the correction of problems, whenever a consumer gives any indication of dissatisfaction regardless of whether or not the manufacturer is aware of such dissatisfaction. The notice provision injects even further confusion by including defects listed in inspection reports, which may or may not be made available to the manufacturer. In view of the strict time limits for manufacturer correction of defects, and the penalties for non-compliance, written notice of defects should be required, consistent with warranty requirements for all other consumer products.

d. The recommended rule contains a new definition—"warranty service" (section 441.2(g)) which includes any repair, replacement or other action necessary to correct a defect at no charge to the consumer. This provision is inconsistent with standard warranty practice which allows warrantors under various circumstances, to require consumers to pay for certain aspects of warranty service related to correction of defects under a warranty.

e. The recommended rule contains a new definition—"consumer complaint" (section 441.2(i)) which includes any indication of consumer dissatisfaction including letters, telephone calls or third party referrals. Under this definition, a resident in a mobile home park could casually mention to a mobile home dealer that a neighbor was dissatisfied with their mobile home, and the manufacturer would conceivably have been placed on notice under section 441.2(f) of the rule.

f. The recommended rule has expanded the definition of "emergency service" (section 441.3(a)(1)) to include defects such as noxious fumes. It is impossible to eliminate noxious fumes from a mobile home within 5 days notice of such problems. Moreover, there is no meaningful criteria to establish whether a noxious fume creates a risk to health of occupants or whether it renders the home substantially uninhabitable, or what a noxious fume is and what its source is.

g. The definition of "normal course of business" relating to service deadlines in the proposed rule has been eliminated in the recommended rule. Section 441.3(a)(5) of the recommended rule, which sets forth excuses for not meeting service deadlines, i.e., unforeseen events beyond manufacturer control, excludes lack of replacement parts or service personnel as a valid excuse. This exclusion applies to any parts, regardless of whether their availability can be reasonably anticipated, which must now be provided within the 30-day requirement of the rule.

h. The recommended rule has added a provision (section 441.7(a)) which provides that it is an unfair or deceptive act or practice to exclude consequential or incidental damages caused by failure to meet the service deadlines and that the consumer must be informed in the written warranty of this fact. This provision is inconsistent with the Magnuson-Moss Warranty Act and the FTC Warranty rules promulgated thereunder.

i. A new provision has been added to the recommended rule (section 441.3(a)(3)) which requires that even though a defect may not be covered under the manufacturer's warranty, if the consumer requests that it be repaired, the manufacturer must correct the problem within the rule's deadlines. If the manufacturer can subsequently establish that he was not responsible for repair he may then bill the consumer for the reasonable costs of the repair. This requirement is consistent with the FTC's apparent belief that all problems in a mobile home should be corrected by the manufacturer and that despite traditional warranty law, mobile home manufac-

turers should not be allowed to exclude any problems from warranty coverage, regardless of whether they are responsible for the defect or problem. The inability of many manufacturers to obtain reimbursement for minor problems not covered under the warranty or the costs of obtaining reimbursement will result in substantial additional costs to the manufacturer which are beyond predictability. These costs will be passed on to all consumers.

j. The recommended rule has added a new section (section 441.3(a)(2)(ii)) which provides that the time deadlines for correction begin to run when notice of an inadequate repair is received by an agent of HUD. Despite the fact that the FTC has refused to recognize the HUD Mobile Home Construction and Safety Standards Act as an important factor in this proceeding, the recommended rule is now relying on the HUD system as a means of activating the rule's notice requirements.

k. A new section 441.3(a)(6) has been added to the recommended rule to require that the warrantor disclose in his written warranty, his obligation to provide warranty service within the time deadlines of the rule. This provision is in direct contravention of the Magnuson-Moss Warranty Act and the FTC Warranty rules promulgated thereunder.

l. Under the proposed rule, if the initial set up was arranged independently by the mobile home owner, the manufacturer was not required to make the inspections under the proposed rule which could not be accomplished prior to the initial set up. Section 441.3(b)(1) now required that even if the consumer has arranged for someone other than the manufacturer or authorized service agent to set up the home, the warrantor is responsible for inspecting the mobile home within 7 days after it has been set up and for providing warranty service for defects.

m. The recommended rule has added a new section (section 441.6(b)(2)) which requires that the manufacturer must be able to readily locate the records of any consumer who is eligible for warranty service if only the consumer name is provided. This provision ignores the fact that most manufacturers' record keeping systems are set up according to serial number, not consumer names, and would require manufacturers to completely reorganize all record systems for both manufacturing and service functions.

n. The proposed rule required that manufacturer service agreements contain a clear and accurate description of the scope of the duties, burdens and responsibilities of the manufacturer and of the dealer or other third party. Section 441.5(b)(1) now requires that the manufacturer must set out in the service agreement who is responsible for providing warranty service on specific parts of the mobile home. Due to the hundreds of components and materials in a mobile home, this new provision is not only an impossible requirement but would produce unnecessary lengthy and complicated written service agreements.

o. The recommended rule includes a new provision which requires that the manufacturers' service agreement sets out the types of warranty service which are reimbursable as well as the rate of compensation and the method by which compensation will be determined. The inflexibility of this requirement is unreasonable and will require manufacturers to study and monitor prevailing wage rates in numerous geographical areas. Moreover it would disregard the traditional reliance of manufacturers on dealers to provide a fair and accurate accounting cost of services rendered. It also ignores the fact that many dealer service personnel are retained on a full time basis and at rates which are not necessarily equivalent to those paid to service personnel in other businesses.

p. Although many of the sections in the proposed rule relating to manufacturer monitoring and evaluation of dealer performance and service capabilities have been deleted, the new sections of the recommended rule effectively require that a manufacturer perform these obligations deleted in the recommended rule. Section 441.5(b)(8) requires that the manufacturer must set out in the written service agreement a plan by which the manufacturer will keep regularly informed of the dates that consumers notify dealers of defects, the nature and type of defects and the dates that warranty service is started and completed. IN addition, Section 441.6 of the recommended rule provides that it is an unfair or deceptive act or practice to fail to effectively monitor the adequacy of the warranty service provided by the authorized service agent.

q. Section 441.9(a) of the recommended rule has been added to provide that the rule will not preempt state or local laws except to the extent that compliance with both the rule and the state or local laws would be impossible. This section would impose a myriad of concurrent responsibilities on manufacturers regardless of whether or not there are direct conflicts between the trade regulation rule and state or local laws.

r. The recommended rule has deleted the section in the proposed rule (section 441.5) which permits the sale of used mobile homes on an "as is, where is" basis outside the requirements of the trade regulation rule.

These significant changes in the recommended rule set forth requirements which are far more onerous, costly, and unreasonable than those in the proposed rule. If you would like further comment or analysis as to the effect of the differences between the proposed and recommended FTC rules on mobile home sales and service, I would be happy to provide additional information to the Consumer Subcommittee of the Senate Committee on Commerce, Science and Transportation.

Sincerely,

WALTER L. BENNING, *President.*

Senator FORD. We'll start from the left. Mr. Decio, why don't you start, then we'll move to Mr. Smith and Mr. Hussey. Pass the microphone down.

Hopefully, we can hold the statements to 10 minutes, so that we'll have an opportunity to question, particularly by Senator Bayh. He has a very important hearing to conduct this afternoon, and he wants to be here during most of the testimony.

Mr. DECIO. Mr. Chairman, are we ready?

Senator FORD. Yes. The green light's on.

Mr. DECIO. My name is Arthur J. Decio. I'm chairman of the board and chief executive officer of the Skyline Corp. We are the Nation's largest builder of mobile homes. I've been totally personally involved in the business of the company since its beginning in 1952. I have at all times given my close personal attention to the company's warranty and service program. Ever since we were a tiny organization producing a few units per month, I have considered it a matter of personal responsibility, pride, and commitment to stand behind our homes. This is how we achieved our position in an industry where sales are built on word-of-mouth reputation, not television campaigns.

Skyline is unique among the parties testifying at this hearing. We have been involved with the FTC for 8 years. We have been operating for more than 5 years under a consent order very similar to the trade regulation rule as originally proposed. We have thus also dealt on a day-to-day basis with requirements substantially equivalent to most of the revised draft rule just published by the FTC staff. Our perspective is based on solid, practical experience with real homes, real homeowners, real dealers—and the real Federal Trade Commission.

When the FTC began its investigation of our industry in 1972, we complied with the Commission's investigative demands and subpoenas in a spirit of cooperation. It was not just a matter of submitting to the powers granted to the Commission by Congress. We are proud of our long record of providing housing that is an exceptional value, and backing it up with an honest warranty and conscientious service—service, by the way, that has always gone beyond that required by any Government regulation. As we proceeded to meet the Commission's ever-growing demands for documents and testimony, we became more and more confident that the cumulative weight of evidence supported our position.

We spent over 2 years of strenuous effort, producing volumes of testimony and a small room full of documents. Nevertheless, in 1974, we found ourselves threatened with an FTC complaint containing all the allegations we had just refuted. We were forced to

choose between the prospect of seemingly endless litigation, or a consent order.

After long, detailed and exceedingly difficult negotiations, we chose to sign a consent order. Why? Primarily because we were already doing essentially what we were called upon to do by the order as finally proposed by the FTC staff.

Secondarily, because we therefore felt it would be a lot less expensive and taxing on our lean staff than long drawnout litigation with the Commission. We signed the order despite Commission staff's insistence upon including some provisions in the order which we questioned at the time, and which later proved to be unrealistic because they attempted to regulate, through us, independent non-exclusive dealers, over whom the manufacturer has little control.

It was never our intention to agree to direct manufacturer responsibility for transportation and setup, something we considered impossible. Three other manufacturers agreed to essentially the same order, which became effective in March 1975.

Our firsthand experience indicates that the order, as interpreted by the staff, and the rule as now proposed, are unworkable and beyond the powers of the manufacturer.

A word about our warranty and service program. Skyline's warranty is one of the clearest and most readable warranties offered, according to the FTC's own staff study. We voluntarily provide a full 1-year warranty which fully complies with the Magnuson-Moss Warranty Act. Our warranty covers the entire home and everything sold in and with it by Skyline. Many items, such as appliances, are also warranted by the manufacturers, giving double coverage.

Our homeowners manual, which incorporates the warranty, gives concise but detailed step-by-step instructions for obtaining warranty service. We have a followup system to insure that we receive the name and address of every purchaser of a new home. We then follow up again to see that the home is inspected and later re-inspected to make certain that any problems are promptly resolved.

As an additional check, approximately 120 days after retail delivery, we send a questionnaire to every known purchaser, providing postage-free return. It is designed to bring to light any remaining problems that may exist so that they may be promptly resolved. All warranty service is performed at the homesite without charge to the owner. To back up this system, we have a detailed written service agreement with every Skyline dealer, and every dealer's service capability is evaluated and periodically reevaluated.

We also maintain extensive factory service facilities nationwide. To put the importance of Skyline's commitment to its service program in perspective, Skyline spent approximately \$6,800,000 on warranty service in the past fiscal year. During the same year, our company's net income was approximately \$6 million.

I sincerely believe that our warranty and service program are unsurpassed on any "big-ticket" item, in or outside of our industry. To emphasize our commitment to this program, which is not something forced upon us by the Federal Trade Commission, Skyline voluntarily maintains virtually the same program for all of its recreational vehicle products. This program is not mandated by any governmental order or rule.

Skyline's approach to carrying out its obligations under its consent order has been consistent with our approach to service from the beginning: "If it's wrong, fix it." We have also gone to great lengths to establish and maintain all the formal systems and documentation called for by the order.

As required, we submitted detailed compliance reports 9, 18 and 24 months after the effective date of the order, with no indication from the FTC staff that we had not fully complied with the order.

We were shocked when, 4 years after the effective date of the order and 2 years after Skyline's final compliance report, the Commission alleged that we were not in full compliance, and the FTC staff began yet another investigation involving yet another round of subpoenas and the submission of still more detailed documentation.

Once again, Skyline has furnished evidence we consider solid proof of substantial compliance. Once again, the Commission staff has made contrary allegations that focus on paperwork rather than performance and which we believe ignore the facts. So, once again, we are faced with the prospect of litigation or some form of settlement with the Commission. After 5 years, tens of millions of dollars and countless man-hours devoted to implementing our warranty and service system, we find ourselves where we were back in early 1975, except that now we are under the threat of \$10,000 in civil penalties per alleged violation.

Incidentally, the FTC staff attempts to use our experience to support what we believe to be seriously underestimated costs of compliance with the rule they now propose. Their conclusions fail to take into account, for example, the cost of making the manufacturer directly responsible for transportation and setup. We think these costs would be very high. The staff also fails to acknowledge that the Commission's adversary approach to compliance guarantees high expenditures for legal services and related costs.

I am not here to talk about our differences with the FTC staff, or to attack the staff or the Commission. However, I am most grateful for this opportunity to be heard, because for the very first time, Skyline has access to a forum that has not, in our opinion, preprogrammed itself to follow a particular approach or course of action regardless of the facts. The pattern of the Commission's dealings with Skyline—and the industry as a whole—is, to me, inescapably clear: It reveals an approach that has been constantly adversary—even punitive—rather than regulatory. The emphasis has not been "evaluate the facts in the public interest," but "restructure the industry—our way."

In exactly the same fashion as it has dealt with Skyline, the Commission has proceeded toward issuance of a trade regulation rule covering the entire industry despite its evident failure, in the face of a record extending to hundreds of thousands of pages, to establish prevalence of real warranty and service shortcomings in the industry by any reasonable standard.

Of equal importance, the Commission has stubbornly ignored other facts that are by their nature absolutely essential in evaluating the proposed trade regulation rule. These facts include:

One, the already pervasive and growing regulation of the industry by HUD and the States;

Two, the passage of the Magnuson-Moss Act and numerous State mobile home warranty laws;

Three, in 1980, as in 1972, mobile homes are normally sold, set up, and serviced by local independent dealers, not by manufacturers, and for the same practical reasons; and

Four, manufacturers do not have the kind of control or influence over dealers that has prevailed in the automobile industry.

To sum up, Skyline has spent 8 years, a great deal of money, and untold personal effort in dealing with the Federal Trade Commission. We have a highly effective warranty and service system, despite the Commission's actions, not because of them. I submit that even if the industry were not already elaborately regulated by HUD and the States, the FTC's approach, as evidenced by their behavior to date, is an extremely inefficient, even destructive form of regulation.

In today's economy, I sincerely question whether the industry can afford it, or whether the country can afford it. Millions of Americans dream of owning their own homes, but watch with despair as the cost of conventional housing moves further and further out of reach. Our industry can still provide homeownership for people of modest means, and without government subsidies. But we cannot do it with one hand while we battle inflation, a near-disastrous depression in housing, and redundant, unrealistic regulation with the other.

I want to emphasize that our attitude toward the proposed rule is not the "knee jerk" response of some businessmen who oppose all regulatory efforts on general principles. We have always stood behind our products, so we have never been afraid of reasonable regulation. Our objections to the Commission's approach to our industry run much deeper than that. We are convinced that they are using the broad powers given them by Congress to demolish a straw man—the same false, out-of-date, negative image of our industry that they had in 1972. We feel that the committee will understand our concern that the FTC is trying to restructure our industry on such a basis.

We are so grateful for the interest shown by Congress and this subcommittee because this gives us hope. Now at last we feel that there is a real chance for the matter of the proposed trade regulation rule to be exposed to the fresh air of commonsense, practicality, and recognition of the obvious. Then, and only then, will the public interest be served. Thank you.

Senator FORD. Thank you. Mr. Smith?

Mr. SMITH. In light of the time we have, I'll be happy to summarize.

Senator FORD. Your statement will be included in the record.

Mr. SMITH. Thank you, sir. I'm C. O. Smith, Jr., president of C. O. Smith Industries, Inc., a mobile home manufacturing company, with corporate headquarters in Atlanta, Ga. I'm also chairman of the board of MHI, which is a nationwide trade organization representing the manufactured housing industry.

I want to express my appreciation to you and the rest of the distinguished Senators on your subcommittee for convening this hearing and extending an invitation to me to testify on behalf of my company and the mobile home industry.

I've been in the industry since 1969, when I set up my first mobile home plant in Moultrie, Ga. Presently, C. O. Smith Industries operates three plants: The original is in Moultrie; a second in Henrietta, Tex.; and a third in Ruston, La.

And I'd like to hasten to add that I am a small manufacturer and am appearing before you in that role today.

But we ship to dealers for sale throughout the South and South-west United States. As a small mobile home manufacturer, I strongly oppose the FTC proceeding with its plans to impose its trade regulation rule on the mobile home industry. I'd like to explain to you today from my company's perspective the principal reasons for our opposition.

The advent and implementation of the HUD Code and Enforcement System under the National Mobile Home Construction and Safety Standards Act of 1974 eliminated any justification for the FTC rule on mobile home sales and service. The HUD enforcement system has imposed strict quality control procedures at the plant level which has proven to be a most effective means of guaranteeing a product free from defects.

Pursuant to the HUD regulations, we developed a detailed quality assurance manual to meet the HUD mobile home construction and safety standards. This quality control system is based on several tiers of inplant checks to assure that each home which we produce meets the Federal mobile home standards.

Our quality control program is constantly inspected by HUD pursuant to its enforcement system. The key to the HUD system is the HUD label, the label required by HUD to be offered before a mobile home can be sold. The manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal mobile home construction and safety standards in effect on the date of manufacture.

We as a company take this certification seriously and believe it constitutes our corporate affirmation that the home is built in conformance with the HUD code. The inplant inspection, IPIA, makes a complete investigation of every phase of construction and of every visible part of every mobile home at each stage of production. The IPIA also monitors the performance of our quality assurance program and periodically inspects our raw materials and test equipment. The IPIA assures that no HUD label is put on a mobile home which does not conform to the approved DAPIA package, and we cannot sell a home in the United States without this label.

In each of our three plants, the IPIA inspector comes to inspect at least two times a week. HUD supervises the monitoring of the overall inplant inspection and enforcement program performed by its contract agent, NCSBCS and joint monitoring teams composed of inspectors from NCSBCS staff and State administrative agencies.

Under the HUD enforcement system, a mobile home manufacturer is required to keep detailed records on each home which it builds. C. O. Smith Industries, Inc., at each plant keeps a file by serial number on each mobile home which is sold. And we were doing that a long time before the HUD regulations.

Under the HUD enforcement system, we are also required to maintain records of any consumer complaints which are received and action is taken to respond to these complaints. HUD-approved SAA's in each State review these records to assure our response to any complaint and to check for classes of problems.

This entire system of Federal enforcement is already very expensive for the small mobile home manufacturer. In fact, since it was first implemented in June of 1976, many small companies have been forced to either sell out to larger companies, or have gone out of business because of the cost that it imposes.

For each IPIA, we pay approximately \$21 per mobile home floor. The initial plant certification by the IPIA costs approximately \$2,400 to \$5,000. Other inspections or services are charged in addition to the above cost.

For our DAPIA, an initial amount of approximately \$2,000 is paid for approval of our design package. For each new set of five floor plans, we pay approximately \$650 to the DAPIA for its review and approval. We submit floor plan sets to the DAPIA about 10 times each year at a cost of approximately \$6,500. Any other design revisions, which under the HUD regulations must be submitted to the DAPIA for review and approval prior to the implementation, are paid for on an hourly basis.

Besides the above costs, we must pay the HUD a monitoring inspection fee of \$19 for each mobile home we manufacture, \$9 of which goes to the SAA to support the consumer complaint handling.

I firmly believe that a uniform Federal regulatory system designed to run quality control substantially eliminates problems prior to homes leaving our factory. Not only does the HUD Mobile Home Act and regulations provide front-end quality assurance and conformity to a federally mandated housing code, but they also assure protection to purchasers of mobile homes if these defects are found after the home leaves the factory.

Under the HUD Act and regulations, HUD and 35 HUD-approved State agencies participate in a joint consumer complaint handling system. The FTC has argued that even though many of the same problems it is addressing in the proposed rule would also constitute a defect under HUD's jurisdiction, HUD's enforcement system would not require correction of problems classified as defects.

The FTC, in persisting with this view, is as unrealistic as the Queen of Heart's shouting "off with their heads" in its efforts to needlessly decapitate the mobile home industry.

First, the HUD notification requirements are onerous in themselves and can be waived if the manufacturer chooses to correct. Second, a manufacturer who sends out notification of a defective condition in the consumer's home is sending out an open invitation for product liability suits unless he voluntarily corrects the problem.

Finally, and foremost, the mobile home industry is a highly competitive industry where a small manufacturer, such as my company, can only survive by maintaining its reputation of good quality homes and good service performance. As a matter of corporate policy, we attempt to satisfy each consumer complaint that we

receive, even though many relate to purely cosmetic problems or component problems which would not be covered by either the proposed FTC rule or HUD Act.

The proposed FTC trade regulation rule would cause a vertical integration of the entire industry, which would seriously impact on the small mobile home manufacturer. This is very, very important in terms of the problems that the small manufacturer would have.

Presently, all our relationships with dealers are completely on an arms' length bargaining basis. With respect to warranty service, the dealers handle setup, setup related defects, and small warranty problems. C. O. Smith Industries repairs all other warranty-related problems.

To comply with this rule would cause considerable hardship on my company. This rule would force us to use fewer dealers because it would require us to either inspect a home after setup or supervise the dealer's performance of this inspection and then warrant setup.

Further, the proposed FTC rule imposes impossible time limits on repair service which will prohibit the geographic "batching" of repair orders. The proposed rule would have the effect of causing a vertical integration of the industry leading to exclusive franchising. If the manufacturer is going to be made responsible for activities which currently are the responsibility of an independent dealer, he will want to obtain reimbursement for these services. Exclusive franchising would adversely affect the small mobile home manufacturers who do not have the capital to acquire dealerships.

This, of course, also means that the small, independent dealer will cease to exist.

A majority of the States where we ship our homes have imposed substantive warranty requirements upon the mobile home manufacturer, the dealer, and the installer. These States and other States where we ship also often have strict licensing and bonding requirements and installation laws. Many of these laws have been enacted since the FTC issued its proposed trade regulation rule in 1975. These laws in many cases may be inconsistent with the requirements of the FTC rule, but address the same issues.

The FTC staff recommended rule states that the FTC rule does not preempt State or local laws, except to the extent that compliance with both this regulation and such State or local laws would be impossible. This vague statement leaves it up to a mobile home manufacturer to decide whether he must comply only with the FTC rule or both it and the State law.

If he decides to comply only with the FTC rule, he may face suspension and revocation of his licensing and bonding in the State, or heavy fines.

Today, the mobile home industry, as it is presently structured, is highly competitive with a low level of concentration. Many mobile home manufacturers, such as ours produce less than 5,000 homes per year. We produce about 2,500. Most dealers in the industry represent at least three or more manufacturers and many represent five or more.

As a small manufacturer, the costs of compliance with the proposed FTC trade regulation rule will have a severe impact on my company. We estimate that the cost of just postinspection setup

required by the rule will be at least \$100 more per home to the manufacturer, which would result, after markup and financing, in a retail price increase of \$270 per home.

The recommended staff rule would even cost us more for compliance since it requires the manufacturer to warrant both setup and transportation. The rule will also impose more recordkeeping requirements. Further, the recommended rule would require us to make the repair within the specified timeframes, even though we have concluded that it is not covered by our warranty.

The small mobile home manufacturers will be squeezed out of business by the increased cost of compliance and by the FTC requirements, causing a vertical integration of the industry. We presently sell high quality mobile homes over several States to many independent dealers; 75 percent of these dealers sell only one or two of our homes per month.

If this rule becomes effective, the dealers will not want to incur the cost of compliance with the rule for only selling one or two homes. The alternative is to sell only to dealers within close proximity to our plants, which will squeeze us out of business because of lack of sales. This will encourage the exit from the industry of many high quality small companies who typically ship their homes considerable distances.

In summary, on behalf of the small company, I strongly urge you to put a stop to the implementation of the FTC proposed trade regulation rule on mobile home sales and service. The national mobile home construction and safety standards gave HUD the responsibility for regulation. They're presently assuring the manufacturer of quality mobile homes under a uniform code and enforcement system that is designed around quality control from the first stage of production.

The increased costs of compliance with the FTC rule will not only force many small manufacturers out of business, but will also raise the cost of the homes beyond the income range of many of the present purchasers.

This rule, if implemented, is a clear illustration of the Federal Government, by regulation, forcing an entire industry to restructure along anticompetitive lines because of the preconceived notion that this is what a purchaser would prefer. The drastic result of this increased concentration of this industry and the costs of compliance is the squeeze out of the small business.

Thank you very much.

Senator FORD. Thank you, Mr. Smith.

[The statement follows:]

STATEMENT OF C. O. SMITH, JR., PRESIDENT, C. O. SMITH INDUSTRIES, INC.

I am C. O. Smith, Jr., President of C. O. Smith Industries, Inc., a mobile home manufacturing company with our corporate headquarters in Atlanta, Georgia. I want to express my appreciation to you Chairman Ford and the rest of the distinguished Senators on your Committee for convening this hearing and extending me an invitation to testify on behalf of my company and the mobile home industry. I have been in the industry since 1969 when I set up my first mobile home plant in Moultrie, Georgia. Presently, C. O. Smith Industries operates three plants, the original is in Moultrie, a second in Henrietta, Texas, and a third in Ruston, Louisiana. C. O. Smith Industries is a small manufacturer of high quality mobile homes. Our company ships these homes to dealers for sale throughout the South and Southwest United States. I am also presently serving as Chairman of the Board of Directors of the Manufactured Housing Institute, Inc. (MHI).

I welcome this opportunity to present to you the mobile home manufacturers' grave concern over the rulemaking activities since 1972 of the FTC in its proceedings regarding its proposed Trade Regulation Rule on Mobile Home Sales and Services. As a small manufacturer, C. O. Smith Industries has spent a considerable amount of time, money, and effort in its attempts to convey these concerns to the FTC to no avail. As a small mobile home manufacturer I strongly oppose the FTC going forward in its plans to impose this trade regulation rule on the mobile home industry. I would like to explain to you today from my company's perspective the principal reasons for our opposition. The principal points which I will address are as follows: (1) The mobile home industry is pervasively and adequately regulated by the HUD Mobile Home Regulatory System; (2) consumers are already adequately protected by the HUD Mobile Home Act and the Magnuson-Moss Warranty Act; (3) the mobile home manufacturer and dealer relationships assure adequate warranty service without requiring vertical integration of the industry; (4) the mobile home industry is also extensively regulated by the states; and, finally (5) the FTC rule will have severe cost impact on the small manufacturer.

I. HUD INPLANT INSPECTION SYSTEM ASSURES QUALITY HOMES

The advent and implementation of the HUD Code and Enforcement System under the National Mobile Home Construction and Safety Standards Act of 1974 (the HUD Act) eliminated any justification for the FTC Rule on Mobile Home Sales and Services. The HUD enforcement system has imposed strict quality control procedures at the plant level which has proven to be a most effective means of guaranteeing a product free from defects. For our plants, pursuant to the HUD regulations, we have developed a detailed quality assurance manual based on production of homes to meet the HUD Mobile Home Construction and Safety Standards. Our Design Approval Primary Inspection Agency (DAPIA), Underwriters Laboratories, Inc. (UL), which has been approved by HUD, has reviewed and approved the use of the quality assurance program detailed in this manual.

A. Company quality control

This system is based on several tiers of inplant checks to assure that each home which we produce meets the Federal Mobile Home Standards. The mobile homes in each of our factories are built on an assembly line with several departments composed of several stations within each department. There is a leadman per department who is responsible for the quality control in that department. Supervising this employee is a foreman who is responsible for signing off on the quality control checklist before the home can be moved on to the next station. There are about three foremen per plant—one for the initial production departments, one for the mid-departments, and one in charge of finishing. At the top of this system is the quality control inspector at each plant who is in charge of the quality control for that plant. He has the authority to stop the line if the quality control procedures are not being met. He inspects at each station to assure that they are meeting these procedures and reports directly to the Plant General Manager. He also has an inspector working under him who checks for cosmetic problems. After the home is released by the Plant Quality Control Inspector, there is frequently a sales inspection of each home which is usually done either by the salesperson who sold the home or by a Vice President of the company. This inspection comes after the installation of carpets, draperies, and appliances. Any problems found with these items or others are corrected prior to shipment. This assures that the home meets the customer's order specifications.

As part of our quality control program, there are many tests which must be performed and checked off as satisfactory on the checklist. For example, some of these are the drainline test, the dielectric test, and the pressure test. We must also periodically calibrate our test equipment to make sure it is performing accurately. Under this program, we are required to keep records of all these tests which the HUD approved IPIA inspector checks.

B. Inspection agencies

Our quality control program is constantly inspected by HUD pursuant to its enforcement system. Under the HUD regulations, C. O. Smith Industries, as a mobile home manufacturer, is required to contract with two inspection agencies which have been approved by HUD. One is the Design Approval Primary Inspection Agency (DAPIA) and the other is the Production Inspection Primary Inspection Agency (IPIA).

We have contracted with UL for design review services for all three of our plants. This agency has a national reputation for performing top quality engineering services. Before a manufacturer can build a single mobile home, the DAPIA must

review all the designs and specifications of the mobile homes which he will build to assure that they conform to the HUD Mobile Home Construction and Safety Standards. The DAPIA must also evaluate our quality assurance program to determine whether we, by following the specified program, can assure that each home we manufacture will conform to the HUD Standard. In addition, any proposed changes to our drawings or related specifications, or to our quality assurance program, must be reviewed and concurred in by our DAPIA before we can implement the change.

The other inspection agency, the IPIA, is the inplant inspection agency which assures that in each of our plants we strictly adhere to our quality control program so that each home meets the certification label required by the HUD Act. This label can only be obtained by our IPIA through HUD's agent, the National Conference of States on Building Codes and Standards (NCSBCS). It states: "As evidenced by this label No. —, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture." See data plate. 24 CFR 3282.362(c)(2)(C).

We, as a company, take this certification seriously and believe it constitutes an affirmation that the home is built in conformance with the HUD Code. We do not see the need for any further warranty protections which the FTC is attempting to impose by its proposed rule. Under the HUD Act, C. O. Smith Industries, Inc. is subject to severe civil penalties of \$1,000 per violation up to \$1,000,000 for a related series of violations if our mobile homes do not carry this certification of conformance to the HUD Standards or if they fail to conform to these standards.

In all three of the states where we have plants, Georgia, Louisiana, and Texas, the states have been approved by HUD to act as the exclusive IPIA in that state, pursuant to the HUD regulations at 24 CFR 3282.352. Each of these states had mobile home standards and inspection systems prior to the HUD Act, so they are experienced in regulating this industry. The IPIA's responsibilities can be explained under two basic functions—plant approval and production surveillance.

Before any home that is manufactured in a plant can receive a HUD label, the IPIA has to certify that the plant is capable of producing mobile homes in conformance with the HUD Standards. As part of the initial factory evaluation, the IPIA must make a complete inspection of the manufacture of at least one mobile home through all the operations in the manufacturer's plant as required by the HUD regulations at 24 CFR 3282.362(b).

The IPIA is also responsible for ongoing production surveillance. This is done by recurring inspections at each plant so that every home is inspected in at least one stage of production. The IPIA makes a complete investigation of every phase of construction and of every visible part of every mobile home at each stage of production. The IPIA also monitors the performance of our quality assurance program and periodically inspects our raw materials and test equipment. The IPIA assures that no HUD label is put on a mobile home which doesn't conform to the approved DAPIA package, and we cannot sell a home in the U.S. without this label. In each of our three plants, the IPIA inspector comes to inspect at least two times a week. This means the inspection agency alone performs over 300 inspections per year in our plants. This does not account for our inhouse inspection system and inspections of HUD's agent, NCSBCS, and HUD's own inspectors.

C. HUD inspection monitoring

HUD supervises the monitoring of the overall inplant inspection and enforcement program performed by its contract agent NCSBCS and joint monitoring teams composed of inspectors from NCSBCS staff and State Administrative Agencies (SAAs). Pursuant to the HUD regulations, the actions of all primary inspection agencies (PIAs) approved by HUD are to be monitored by HUD or its agent to determine whether the PIAs are fulfilling their responsibilities under the HUD regulations. 24 CFR 3282.451. If an IPIA or DAPIA's performance of its responsibilities is not found to be satisfactory by HUD, HUD can disqualify the particular agency from participation in the HUD program.

Monitoring teams supervised by NCSBCS visit each of our plants at least four times a year and each of the IPIA headquarters at least once a year. Each monitoring team follows the uniform inspection procedures established by the manuals developed by HUD and NCSBCS. The reports of these teams are forwarded to NCSBCS headquarters and then reported to HUD with recommendations as to the IPIA's ability to continue in the HUD program.

When these teams come to our plants, they are usually composed of three inspectors from the states and NCSBCS' staff. They have inspection sheets which they each complete citing any failures to conform to the HUD Standard and our quality

assurance manual. They follow the IPIA through his inspection routine. When they finish, they evaluate the IPIA by comparing each monitoring team inspector's inspection sheet with the IPIA's inspection. They also spend time with our Quality Control Inspector and our Plant General Manager to discuss our quality control procedures or any questions we may have on HUD Standard interpretations.

Similar procedures are followed by NCSBCS and the monitoring teams for reviewing the performance of all DAPIAs. Monitoring teams review on a random basis at least 10 percent of the design and quality assurance manual approvals made by each DAPIA, including UL, each year. 24 CFR 3282.452(e). In addition, at least annually, NCSBCS performs a comprehensive review of each DAPIA's performance. Whenever a DAPIA's performance is found to be unacceptable, NCSBCS recommends to HUD disqualification of this DAPIA.

HUD is ultimately responsible for overseeing the performance of the PIAs and the monitoring teams to assure that each mobile home is manufactured in conformance with the HUD Standards as certified by the manufacturer on each HUD label. In doing this, HUD reviews monitoring team reports, reviews IPIA inspection reports, and sends inspectors from HUD's Office of Mobile Home Standards to make unannounced random visits to manufacturers' plants. As you can see, C. O. Smith Industries, as a mobile home manufacturer, undergoes constant Federal surveillance to assure that its homes are built in conformance with the HUD Standards.

D. Recordkeeping

Under the HUD enforcement system, a mobile home manufacturer is required to keep detailed records on each home which it builds. Under 24 CFR 3282.551 of the HUD regulations, we are required to submit to the IPIA in each of our manufacturing plants a report that includes the serial number of each mobile home manufactured at that plant during the preceding month, and the state of first location, after leaving the plant. C. O. Smith Industries, Inc., at each plant, keeps a file on each mobile home which is filed by the serial number of the home. In this file, we keep a copy of the sales order on the home, any repair service performed, the quality control checklist, the transportation papers, the dealer's name and address, a xerox of the HUD label, a copy of the HUD required data plate information, and the returned consumer card provided to the purchaser as required by the HUD regulations at 24 CFR 3282.211.

Under the HUD enforcement system, we are also required to maintain records of any consumer complaints which are received and the actions taken to respond to this complaint. We have a consumer complaint form which is completed by the employee handling the complaint. This information is maintained at each plant under our serial number filing system. The HUD approved SAAs in each state where we have plants have the authority to enter the plants and inspect these records to assure our response to any complaint and to check for classes of problems.

E. Costs

This entire system of Federal enforcement is already very expensive for the small mobile home manufacturer. In fact, since it was first implemented in June of 1976, many small companies have been forced to either sell out to larger companies or go out of business because of the costs that it imposes.

Using my company as an example, I will explain some of the costs which we have incurred to meet the requirements of the HUD regulations. For each IPIA, we pay approximately \$21.00 per mobile home floor (doublewides have two floors). The initial plant certification by the IPIA costs approximately \$2400 to \$5000. Any additional inspections or services are charged in addition to the above costs. For our DAPIA, we had to pay an initial amount for approval of our design package. This was an initial outlay of approximately \$2000. Then for each new set of five floor plans, we pay approximately \$650 to the DAPIA for their review and approval. We submit floor plan sets to UL about ten times each year amounting to approximately \$6,500. We then pay extra for any other design revisions, which under the HUD regulations must be submitted to UL for review and approval prior to their implementation. Since we are constantly changing and improving our homes to meet consumer demands, we must submit design revisions to UL on a regular basis. Besides the above costs, pursuant to the HUD regulations at 24 CFR 3282.454, C. O. Smith Industries must pay to HUD a monitoring inspection fee of \$19.00 for each mobile home it manufactures. This fee is divided into two parts of which a \$10 part pays for the monitoring team inspections and a \$9 part goes to the SAAs for consumer complaint handling activities. This means that the mobile home manufacturer is already financing not only an inplant inspection system but also a consumer complaint handling system for any problems encountered after the home leaves the factory. It can be seen that any further cost imposed on a small mobile home

manufacturer to carry out the manufacturer's responsibilities under the FTC proposed trade regulation rule is clearly overburdensome and only contributes to the demise of small companies.

In summary, the HUD Code and pervasive enforcement system require a manufacturer to adhere to a strict quality control program which is inspected by the manufacturer, inspection agencies, joint monitoring teams, SAAs, and HUD. I firmly believe that a uniform Federal regulatory system designed around quality control substantially eliminates problems prior to a home's leaving the factory. I am committed to complying with this system and incurring the costs it requires. However, I oppose the imposition of another layer of Federal regulation which results in additional costs that are totally unnecessary.

II. THE HUD ACT AND THE MAGNUSON-MOSS ACT PRESENTLY ASSURE MOBILE HOME PURCHASERS ADEQUATE PROTECTION

Not only does the HUD Mobile Home Act and regulations provide front end quality assurance and conformity to a Federally mandated housing code but they also assure protection to purchasers of mobile homes if these defects are found after the home leaves the factory. The HUD regulatory scheme is further complemented by the Magnuson-Moss Federal Trade Commission Improvement Act (the Magnuson-Moss Warranty Act). Both of these acts have been implemented subsequent to the FTC's initial investigation of the mobile home industry and issuance of the proposed trade regulation rule.

Under the HUD Act and Regulations, HUD and 35 HUD approved state agencies (SAAs) participate in a joint consumer complaint handling system. The SAAs are initially responsible for contacting the manufacturer concerning any complaint on a mobile home which they have received. They often make onsite inspections to determine the basis for the complaint. When they contact a manufacturer, he must investigate this complaint and make a determination of the nature of the problem and whether any other home has the same problem. The manufacturer is required to maintain complete records of the information he has received and his investigation for a period of five years.

If the manufacturer determines that the problem constitutes a defect which would have occurred in at least one other home, he is responsible for providing notification as set forth in the HUD regulations. A defect is defined under the Act and regulations using familiar warranty language. Defect means: "a failure to comply with an applicable Federal mobile home safety and construction standard that renders the mobile home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected mobile home." 24 CFR 3282.7(j).

Since the HUD Mobile Home Construction and Safety Standards constitute a comprehensive code, this definition of defect covers all items which would typically be covered by a warranty.

The FTC has argued that even though many of the same problems it is addressing in the proposed rule would also constitute a defect under HUD's jurisdiction, HUD's enforcement system would not require correction of problems classified as defects. The FTC, in persisting with this view, is as unrealistic as the Queen of Heart's shouting "off with their heads" in its efforts to needlessly decapitate the mobile home industry. First, the HUD notification requirements are onerous in themselves and can be waived if the manufacturer chooses to correct. Second, a manufacturer who sends out notification of a defective condition in the consumer's home is sending out an open invitation for products liability suits unless he voluntarily corrects the problem. Finally, and foremost, the mobile home industry is a highly competitive industry where a small manufacturer, such as my company, can only survive by maintaining its reputation of good quality homes and good service performance. We cannot afford expensive nationwide advertising campaigns to sell our homes. Therefore, we must rely upon "word or mouth" advertising from one mobile home owner in a park to his neighbor or friend. As matter of corporate policy, we attempt to satisfy each consumer complaint that we receive, even though many relate to purely cosmetic problems or component problems which would not be covered by either the proposed FTC rule or HUD Act.

The FTC already administers the Magnuson-Moss Warranty Act which prescribes terms and enforcement procedures for written warranties and service contracts on all consumer products manufactured on or after July 4, 1975. Since mobile homes are specifically included under the Act as a consumer product, any mobile home manufacturer who provides a warranty must comply with its requirements. Neither modular manufactured housing nor conventional site-built housing falls under the jurisdiction of this Act as a consumer product.

Even though the Magnuson-Moss Warranty Act does not require a manufacturer to give a warranty, C. O. Smith Industries provides a limited one year warranty with each home it sells. Since we provide this written warranty, under the Magnuson-Moss Warranty Act and implementing FTC regulations, we must include the following information:

(1) The identity of the party of parties to whom the written warranty is extended, if the enforceability of the written warranty is limited to the original consumer purchaser or is otherwise limited to persons other than every consumer owner during the term of the warranty;

(2) A clear description and identification of products, or parts, or characteristics, or components or properties covered by and where necessary for clarification, excluded from the warranty;

(3) A statement of what the warrantor will do in the event of a defect, malfunction or failure to conform with the written warranty, including the items or services the warrantor will pay for or provide and, where necessary for clarification, those which the warrantor will not pay for or provide;

(4) The point in time or event on which the warranty term commences, if different from the purchase date, and the time period or other measurement of warranty duration;

(5) A step by step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warrant obligation(s). This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or name or title and the address of any employee or department of the warrantor responsible for the performance of warrantor obligations, and/or telephone number which consumers may use without charge to obtain information on warranty performance;

(6) Information respecting the availability of any informal dispute settlement mechanism elected by the warrantor in compliance with Part 703 of the FTC regulations;

(7) Any limitation on the duration of implied warranties, disclosed on the face of the warranty as provided in Section 108 of the Act, accompanied by the following statement: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."

(8) Any exclusions of our limitations on relief such as incidental or consequential damages, accompanied by the following statement, which may be combined with the statement required relating to duration of implied warranties. "Some states do not allow the exclusion of limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

(9) A statement in the following language: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."

The FTC proposes to require all mobile home manufacturers to include set-up in their warranties. Such a requirement unjustifiably singles out the mobile home portion of the housing industry which is already Federally regulated as contrasted with the site build housing industry. Manufactured housing is the only segment of the housing industry warranting its product on a universal basis subject as well to the Federal warranty law. The FTC proposes to require all mobile home manufacturers which voluntarily provide warranties to warrant set-up, a function which they do not perform and over which they have no control. This requirement, in fact, makes the mobile home manufacturer the watchdog over the services performed by independent dealers and will cause a restructuring of the entire industry which will reduce the competitive marketplace and stymie Free Enterprise.

Under Section 617 of the HUD Act, a manufacturer must provide a consumer's manual to each mobile home purchaser. This section of the Act also requires HUD to establish guidelines for what is to be included in these manuals, which it has done in its regulations at 24 CFR 3283 "Mobile Home Consumer Manual Requirements." Under this regulation, a manufacturer must provide information on its written warranty. 24 CFR Part 3283.103(a) requires the manufacturer to either provide a copy of its written warranty that meets the requirements of the Magnuson-Moss Warranty Act or supply certain specified information about this warranty. The manual must also "state what appliances, components or other aspects of the mobile home are not covered by the manufacturer's written warranty and identify any warranty certificates which have been provided for any of these items." 24 CFR 3283.103(b). This demonstrates the effective interlocking of the HUD Act and the Magnuson-Moss Warranty Act without any need for the proposed FTC rule. If the industry is going to make available to the mobile home purchaser a wide range of selection in terms of floor plans, price range, and overall design from small manufacturers, as well as large ones, this rule must not become effective.

III. THE MOBILE HOME MANUFACTURER AND DEALER RELATIONSHIPS ASSURE ADEQUATE WARRANTY SERVICE WITHOUT REQUIRING VERTICAL INTEGRATION OF THE INDUSTRY

The proposed FTC Trade Regulation Rule would cause a vertical integration of the entire industry which would seriously impact upon the small mobile home manufacturer. Presently, all our relationships with dealers are on a completely arms-length bargaining basis and we have a written security agreement preserving, in case of default, our lien on mobile homes sold to a dealer.

With respect to warranty service, the dealers handle set-up, set-up related defects and small warranty problems. C. O. Smith Industries repairs all other warranty-related problems. Our procedures for handling this warranty service are set forth in our Standard Operating Policy. There is a Service Manager in each of our three plants who is in charge of a full time service team. The salesmen also assist this team concerning any complaints of a home sold by a dealer in their sales territory. These teams cover a vast dealer network within a 300- to 500-mile radius of each plant. These crews will batch repair orders geographically and will go out on a two-week repair run. For example, from the Moultrie, Georgia plant they will go on a two-week run to Kentucky and back. This repair crew will generally repair any problem it finds.

To comply with this rule would cause considerable hardship on my company. This rule would force us to use fewer dealers because it would require us to either inspect a home after set up or supervise the dealers' performance of this inspection and then warrant set-up. To undertake these responsibilities, we would have to sell homes in close proximity to our three plants, and thus lose our ability to sell only one or two homes over a wide range of states. Many dealers selling only one or two homes a month would not even want to do business with us because of the amount of paperwork required for the post set-up inspections. In our case 75 percent of our client dealers sell only one or two of our units a month. This would severely impact on our sales and have an anti-competitive impact on the industry. Many small mobile home manufacturers would be forced out of business.

Further, the proposed FTC rule imposes impossible time limits on repair service which will prohibit the geographic "batching" of repair orders as I described. This means that a manufacturer would be forced to send a repair team on a 600-mile roundtrip journey to repair a single noncritical problem within the strict time limits proposed. Finally, a small mobile home manufacturer can apply little pressure to a large supplier company, such as Weyerhaeuser or Georgia Pacific to assure timely receipt of materials for warranty service. This would either cause us to use only dealers in close proximity to the plant, severely limiting our sales volume, or hiring more servicemen and equipment at considerable needless cost.

For the above reasons, the proposed rule would have the effect of causing a vertical integration of the industry leading to exclusive franchising. This would occur because a manufacturer, who the FTC requires to make inspections after set-up, warrant set-up, and have close ongoing contact with consumers by being required to correct a complaint regardless of who may be responsible, will be forced to own his own dealerships. If the manufacturer is going to be made responsible for activities currently the responsibility of an independent dealer, he will want to obtain reimbursement for these services. Exclusive franchising would adversely affect the small mobile home manufacturers who do not have the capital to acquire dealerships. This, of course, also means that the small, independent dealer will cease to exist.

IV. THE MOBILE HOME INDUSTRY IS ALSO EXTENSIVELY REGULATED BY THE STATES

A majority of the states where we ship our homes have imposed substantive warranty requirements upon the mobile home manufacturer, the dealer, and the installer. These states and other states where we ship also often have strict licensing and bonding requirements and installation laws. Many of these laws have been enacted since the FTC issued its proposed trade regulation rule in 1975. These laws in many cases may be inconsistent with the requirements of the FTC rule, but address the same issues. They further demonstrate the extensive regulation of this industry and the lack of any need for the implementation of the FTC rule as well as the dilemma the industry will confront in terms of its compliance responsibilities.

For example, we ship to Florida, Texas, Mississippi, Louisiana, Arkansas, Kentucky, and New Mexico, all having substantive warranty requirements. Texas enacted its warranty requirements in 1979. The Texas Act requires the manufacture of the home to provide a written warranty which covers installation. Texas law also requires manufacturers and dealers to file a performance bond. Consumers can then file claims against this bond. Then the Texas Department of Labor and Standards has the authority to determine the validity of these claims.

As another example of this pervasive regulation, the Arkansas law enacted in 1977 contains provisions requiring a mobile home manufacturer shipping into the state to provide a written warranty and specifying at a minimum what is to be warranted. The Arkansas Act and Regulations also require licensing and bonding of manufacturers, dealers and installers of mobile homes. The Arkansas Mobile Home Commission and the Arkansas Department of Health Regulations require a manufacturer, dealer and installer to set up a depository trust account at a financial institution. The funds required to be maintained in this account can be disbursed by order of the Commission to correct any defect or deficiency in a mobile home unit which is found to have resulted in its failure to comply with the Arkansas Mobile Home Act and Regulations. Sections X, XVI, XVIII of the Rules and Regulations of the Arkansas Mobile Home Commission and Department of Health. These rules also establish set up and anchoring standards and require a dealer inspection to assure compliance with these standards. Id. at Sections XX, XXI, XXII. Under the FTC rule, since the manufacturer must warrant set-up, C.O. Smith Industries may be forced to perform the post set-up inspection which the rule requires. This means that in Arkansas both the dealer and the manufacturer will have to expend the time and money to perform the same inspection.

New Mexico is another state where we sell homes which also has extensive mobile home regulations concerning warranty service and installation. The regulations of the New Mexico Mobile Home Housing Commission require manufacturers, dealers, and installers to maintain consumer protection bonds. These bonds are to be indemnity for any loss sustained to any consumer as a result of a violation of the Mobile Home Act or New Mexico regulations and a violation of the manufacturer's, dealer's or installer's written warranties. The New Mexico Act and regulations require that the manufacturer, dealer and installer provide written warranties and specify what they are to include. The dealer must warrant that the set-up and tiedown operations which he performs comply with the New Mexico regulations. This is just another example of not only the redundancy of the FTC rule but the confusion which it will cause.

To illustrate the rapid expansion of state regulation over the mobile home industry covering the areas of substantive warranty requirements and installation standards, I will use the State of Louisiana where C.O. Smith Industries both manufactures and sells homes. In the 1980 session of the Louisiana Legislature, a bill was introduced which would amend the Louisiana Code Sections on mobile homes. The amendment requires the fire marshal to issue rules for the manufacture and installation of tiedown systems. It then establishes licensing and bonding requirements for manufacturers and installers of tiedown systems. Mobile home manufacturers and dealers would fall into these categories. Further, Louisiana currently has substantive warranty requirements.

The staff recommended rule states that the FTC rule: "does not preempt state or local laws except to the extent that compliance with both this regulation and such state or local laws would be impossible."

This vague statement leaves it up to a mobile home manufacturer to decide whether he must comply only with the FTC rule or both it and the state law. If he decides to comply with only the FTC rule, he may face suspension and revocation of his license and bond in the state or heavy fines. If he complies with both the FTC rule and the state rules, additional costs will be incurred which will ultimately raise the price of mobile homes. Such pervasive regulation becomes both duplicative and overlapping.

V. THE FTC RULE WILL HAVE SEVERE COST IMPACT ON THE SMALL MANUFACTURER

Today the mobile home industry, as it is presently structured, is highly competitive with a low level of concentration. Even the FTC agrees that concentration in the industry is not a problem. Many mobile home manufacturers, such as ours, produce less than 5,000 homes per year. Most dealers in the industry represent at least three or more manufacturers and many represent five or more. This is entirely different than the automobile industry where a retailer represents only one large manufacturer pursuant to an exclusive franchise. Since the mobile home retailers do not operate under an exclusive franchising system, they display mobile homes of several manufacturers and offer a consumer a wide range of choices.

As a small manufacturer, the costs of compliance with the proposed FTC trade regulation rule will have a severe impact on my company. This is particularly true since a small manufacturer cannot spread the costs of compliance over a large volume of homes produced and sold.

The proposed FTC rule will require us to perform many additional activities for compliance and thus incur substantial costs for their performance. I will discuss below some of the rule provisions and explain the reason for their severe cost

impact on my company. The proposed rule requires a manufacturer to either inspect a home after set-up or authorize the dealer to perform this inspection. In 1977 we estimated that the cost of this inspection alone would cost at least \$100 more per unit in direct costs. At retail, this increased direct cost would result after markup and financing in a \$270 per unit retail price increase. The recommended staff rule would even cost us more for compliance since it requires the manufacturer to warrant both set-up and transportation. We estimate that increased supervision of dealers in their recordkeeping and inspection and set-up performance would cost at least \$750 more per unit.

The rule will also impose more recordkeeping requirements. The rule requires a manufacturer to provide a buyer questionnaire and to maintain a recordkeeping system to monitor warranty service. This would mean that we would have to hire at least one more person for the office at each plant to keep the records which would result in a \$6.00 per unit direct cost increase. This system is in addition to the HUD requirements. So far, the total of the costs of all these additional activities alone will increase our direct costs by \$856.00 per unit.

Besides the increased costs described above, the rule will impose a high cost to my company in additional legal fees. One of the reasons for this is because we would have to incur high legal expenses to conform to the FTC rule's requirements on contracting with dealers. We must also make a decision as to when state law is or is not preempted. Further, we must have legal assistance on how our company must operate in order to comply with this rule's requirements to avoid a civil penalty of \$10,000 per violation.

As I discussed earlier, meeting the strict time requirements of the FTC proposed rule will be impossible for our company as it is presently structured. To meet these time requirements, if possible at all, will result in considerable cost. These time requirements would eliminate our practice of geographically batching our repair orders. Instead, we would have to send a service crew several hundred miles to respond to one warranty claim within the required time frame. To put on another service crew would cost us about \$600 more a week for each plant which would increase the direct cost of each unit \$24.

Further, the recommended rule would require us to make the repair within the specified time frames even though we have concluded that it is not covered by our warranty. The rule then states that if we establish that the consumer or someone else is responsible for the repair, we can bill the customer after the repair has been performed. This would mean that we would be required to go to the legal expense to sue the customer to be reimbursed for a small sum of money. This type of requirement only harms the responsible consumer and places an impossible burden on the small manufacturer. These are only a few examples of the unreasonable costs which will be imposed on a manufacturer if this rule is implemented.

The more drastic result of the FTC rule becoming effective will be increased concentration in the industry. Small mobile home manufacturers will be squeezed out of business by the increased costs of compliance and by the FTC requirements causing a vertical integration of the industry. C. O. Smith Industries presently sells high-quality mobile homes over several states to many independent dealers. Seventy-five percent of these dealers sell only one or two of our homes a month. If this rule becomes effective, these dealers will not want to incur the costs of compliance with the rule for only selling one or two units a month. Instead they will establish the required formal agreements with their higher volume manufacturers. Because of the distance between our three plants and many of our dealers, we will incur even higher costs than larger manufacturers with many plants in monitoring the dealers' performance of the inspections, set-up, and warranty service. The only alternative to this is to only sell to dealers within close proximity to our plants which will squeeze us out of business because of lack of sales. This will encourage the exit from the industry of many high-quality small companies who typically ship their homes considerable distances.

The mobile home industry is one of the last truly nonintegrated, competitive industries where a small manufacturer can still survive. The implementation of the FTC rule would foster a change in this structure resulting in fewer choices for consumers at the lower- and middle-income levels.

VI. CONCLUSION

In summary, on behalf of the small company, I strongly urge you to put a stop to the implementation of the FTC proposed Trade Regulation Rule on Mobile Home Sales and Services. The National Mobile Home Construction and Safety Standards Act of 1974 gave HUD the responsibility for regulation of the mobile home industry. HUD is presently assuring the manufacture of quality mobile homes under a uniform code and enforcement system that is designed around quality control from

the first stage of production. However, the costs of this regulatory system can be supported by the small manufacturer and yet still offer quality housing at a low cost. The increased costs of compliance with the FTC rule will not only force many small manufacturers out of business but will also raise the cost of the homes beyond the income range of many of the present purchasers.

Not only the HUD Act but also the Magnuson-Moss Warranty Act assure the consumer of adequate protection. The HUD regulations provide an entire mechanism for obtaining consumer remedies. In fact, the mobile home industry is the only segment of the housing industry that provides warranties on a universal basis.

Finally, this rule, if implemented, is a clear illustration of the Federal government by regulation forcing an entire industry to restructure along anti-competitive lines because of the preconceived notion that this is what a purchaser would prefer. The drastic result of this increased concentration of this industry and the costs of compliance is the "squeeze out" of the small business.

Senator FORD. Mr. Hussey.

Mr. HUSSEY. My name is Ed Hussey. I will try to summarize.

Senator FORD. All right. Your total statement will be included in the record.

Mr. HUSSEY. Thank you.

I am president of Liberty Homes, a publicly held company based in Indiana. Liberty Homes was founded in 1941 and is one of the oldest mobile home manufacturers in the industry. I have been directly involved in the industry for over 20 years.

I would like to thank you for this opportunity to present my views on an issue which vitally affects the mobile home industry and a large segment of the U.S. population who rely on our industry for the only remaining affordable housing.

Although Liberty Homes was a small, one plant operation in 1960, today Liberty operates eight manufacturing plants located in Indiana, Georgia, Kansas, Wisconsin, Pennsylvania, Oregon, and Florida. Corporate offices, including engineering and design facilities, are located in Goshen, Ind.

In 1979, Liberty's revenues were just under \$110 million and we employ approximately 1,000 people. Based on single-section unit volume, Liberty was one of the largest mobile home manufacturers in an industry comprised of over 200 manufacturers.

Because Liberty produces homes tailored to the needs of low and middle income buyers, my remarks today reflect my personal concern about the impact of the proposed rule on their ability to purchase homes.

Based on the current Federal and State mobile home regulatory scheme and on the practices prevalent in our industry today, I do not believe that there is any conceivable rationale justifying the imposition of additional FTC regulation of mobile homes.

The real question is what manufacturers are doing when confronted with complaints today, not 5 or 8 or 10 years ago, when the industry was significantly different.

In order to fully understand why the proposed rule is unnecessary, I think it would be helpful to the committee for me to describe Liberty's production and quality control systems under the regulation of the Department of Housing and Urban Development and their impact on the quality and cost of the homes we manufacture. In addition, I would like to describe briefly our warranty servicing policy in conjunction with the requirements of State and Federal regulations which must be complied with in regard to construction, sale and servicing of our homes. This comprehensive system provides Liberty homeowners with a high degree of con-

sumer protection not available to buyers of site-built homes. The construction of the homes in Liberty's plants enables us to use techniques and machinery markedly different from those used in site-built homes.

The construction indoors permits finer tolerances and better quality control, as well as the fullest utilization of the structural strength of the materials used in the home. To help understand the scope and nature of the mobile home production process, I have attached pictures of Liberty's Leola, Pa., production area, which you have.

Liberty's mobile homes are designed to meet the requirements of assembly line production to maximize assembly efficiency. The components of the home are standardized and interchangeable to permit efficient assembly and mass purchasing. Liberty's materials are purchased from nationally known suppliers by purchase orders negotiated primarily at the corporate level.

Liberty's suppliers stand by their respective products and, if material is received damaged or defective, it is returned for credit. The more sophisticated components such as furnaces, appliances, and water heaters are, for the most part, purchased from large supplier companies who provide their own warranties and have nationwide service capabilities.

The controlled working environment in our plant also permits close quality control monitoring via our own internal quality assurance program, as well as the HUD-mandated construction standards and procedural and enforcement regulations. Liberty's internal quality control system was implemented many years ago prior to the adoption of the HUD program in 1976.

Above all, mobile homes are designed to simplify construction and repair with home tools and readily available materials at local building supply yards.

HUD's involvement in Liberty's quality control system goes far beyond the detailed approval of our design and specifications package. A HUD approved Inplant Primary Inspection Agency called an IPIA must inspect each of our factories to determine whether they are physically capable of producing homes that conform to the design package.

Underwriters Laboratories, which is our engineering design approval agency, called DAPIA, is also our IPIA in some plants. In others, a HUD-approved branch of the State government is the exclusive IPIA.

The IPIA is also responsible for ongoing production surveillance, performed via recurring inspections at each plant. The inspection is timed to insure that every home is inspected in at least one stage of production.

The HUD mobile home procedural and enforcement regulations provide for a system of notification and correction of problems occurring in a mobile home after the home leaves the factory. Manufacturers are required by HUD to correct at their own expense serious defects related to the design of the home and imminent safety hazards.

Because of the comprehensive nature of the HUD standards it is difficult to conceive of a serious defect which would not be related to the design and assembly of the home. Therefore, the HUD

system catches most of the problem before they become warranty defects.

Liberty Homes offers a limited warranty to the first retail purchaser of its homes, which provides warranty coverage for a time period of 1 year from the date of retail sale. This warranty complies with the extensive disclosure requirements of the Magnuson-Moss Warranty Act. Moreover, a detailed explanation of how a consumer can most effectively exercise warranty rights and a detailed explanation of the effective coverage of the warranty is also required to be included in the consumer manual, which under the HUD act, must be placed in each of Liberty's homes. I have submitted a copy of that consumer manual with the documentation I previously submitted.¹

Liberty uses the same performance system to correct problems related either to the HUD standards or problems covered under our warranty. When we receive a warranty service request, we enter it on a log and prepare a form for each request. Our goal is to have no uncompleted service requests of any type more than 3 weeks old, although more serious problems, if any, may have to be resolved in a matter of hours.

Under the HUD system, Liberty is required to maintain an extensive recordkeeping system to insure that consumer complaints are addressed promptly and to facilitate determinations as to whether a defect has occurred in a class of homes.

These recordkeeping requirements represent an efficient and effective system for Liberty to monitor its warranty service and obviate the need for further costly and unnecessary recordkeeping requirements as set forth under the FTC's proposed trade regulation rule.

Each of Liberty's factories has a dealer relations manager and, depending on the size of the plants marketing area and production volume, from three to five full-time factory servicemen.

The FTC's proposed trade regulation rule, if adopted, will dramatically alter the present structure of the industry, forcing many small manufacturers and dealers out of business and encouraging either vertical integration or franchise arrangements between manufacturers and dealers. The proposed rule requires Liberty to assume responsibility for functions such as setup, which we do not perform and which we consequently do not warrant. The recommended rule goes even further and would require Liberty to warrant problems resulting from improper setup and transportation.

Liberty also must comply with extensive State regulations designed to assure a maximum degree of protection for purchasers of Liberty homes.

Liberty's chief financial officer estimated during the FTC hearings that the cost of the rule to our customers will be as much as \$500 to \$1,000 per home. These estimates did not, however, take into account the cost impact of new provisions in the recommended rule, such as required warranty of setup and transportation.

The costs which Liberty's customers will incur if the recommended rule is adopted can be expected to range anywhere from \$1,500 to \$2,000 per home. These costs include additional staff and corporate expenses, additional costs in the field, dealer markup, sales

¹ The submission is in the subcommittee files.

tax, insurance premiums, and financing costs. Financing costs in our industry are about 120 percent of the amount financed. They do not include the potential enormous cost of completely reworking our distribution system.

As a large manufacturer, these costs may not put Liberty out of business. They will, however, force a large number of smaller manufacturers, for whom the costs of the rule per home will be even greater, out of business. The impact on the consumer is that the purchaser's ability to shop and compare for a range of homes in terms of style and cost and a range of services presently included in the price of the home will be further limited. More importantly, the costs imposed on manufacturers who remain in business will be directly passed on to consumers in the form of higher priced homes, thus forcing many of them out of the housing market. At \$2,000 per home and an industry production of 270,000 homes per year, the rule will result in over one half billion dollars of useless costs to our consumers each year. Ask our consumers if they are willing to pay \$10 or \$15 more per month for 12 years for this waste.

In summary, as a large manufacturer, I deplore this rule because it will change this industry without any benefit to the consumer. My company as one of the largest will survive, but growth of the industry and its production of housing will slow to the detriment of the American public. We already have HUD and the States. We do not need another layer of regulators.

A realistic view of the HUD act proves that it is itself a kind of gigantic warranty with all the necessary elements. These include a defined product standard, which is the HUD code, a certification by manufacturers that they will perform to that standard, which is the HUD label, definitions which use warranty language, for instance, a defect according to HUD involves fitness for the use for which it was intended, certainly warranty language, and a serious penalty for violation. The HUD code is enforced by hundreds of regulators in the field appointed by HUD for the world's largest quality control system.

Can anyone seriously advance the argument that we need another HUD-type enforcement system on top of the one that we have?

Thank you for your consideration of this, to me, very important matter.

[The statement follows:]

STATEMENT OF EDWARD J. HUSSEY, PRESIDENT, LIBERTY HOMES, INC.

My name is Edward J. Hussey. I am President of Liberty Homes, Inc., a publicly held company based in Indiana. Liberty Homes, which was founded in 1941 is one of the oldest mobile home manufacturers in the industry. I would like to thank you for this opportunity to present my views on an issue which is critical to the mobile home industry and to the large segment of the United States population who rely on our industry to provide affordable housing.

I assumed ownership control of Liberty in 1960 and have since that time been directly involved in the management of all phases of the manufacture and sale of mobile homes. Prior to 1960, I practiced as a certified public accountant and was a partner with a national public accounting firm in Detroit, where several of my clients were mobile home manufacturing companies.

I have served as an officer, director or chairman and been active in the affairs of the National Trade Association, the Manufactured Housing Institute, and many of the state associations for mobile homes almost from the beginning of my involve-

ment in the industry as a manufacturer. Although Liberty homes was a small, one-plant operation in 1960, today Liberty operates eight manufacturing plants located in Indiana, Georgia, Kansas, Wisconsin, Pennsylvania, Oregon and Florida. Corporate offices, including engineering and design facilities, are located in Goshen, Indiana.

As is common in the industry, Liberty sells its product to numerous independent dealers who choose to handle Liberty homes rather than homes built by our many competitors because of our quality and price. Liberty is exclusively a manufacturer of mobile homes and is not vertically integrated, i.e., we neither own nor operate supplier companies, dealerships or park developments.

In 1979 Liberty's revenues were just under \$110,000,000 and we employed approximately 1,000 people. Based on single section unit volume, Liberty was one of the largest mobile home manufacturers in an industry comprised of over 200 manufacturers. Because the 10 largest companies account for over 80 percent of the total annual mobile home production, I feel that my testimony today will provide relevant insights into the necessity and impact of the proposed FTC mobile home trade regulation rule from the perspective of a large manufacturer. Because we produce a product tailored to the needs of low and middle income buyers, my remarks today reflect Liberty's special concerns as to the impact of the proposed rule on their ability to purchase homes.

Based on the current Federal and state mobile home regulatory scheme and on the practices prevalent in our industry today, I do not believe there is any conceivable rationale justifying the imposition of additional FTC regulation of mobile homes. I have a strong faith in the effectiveness of the free enterprise system as a mechanism to ensure that consumers, in a competitive market place, will be offered the best possible product at the least possible cost. This system is particularly effective in the mobile home industry, where 200 manufacturers offer their products to thousands of dealers, and where dealers usually carry homes built by several manufacturers. Although only eight years ago there were approximately 330 manufacturers, competition has reduced this number to 200 today.

The proposed rule reflects the FTC's naivete as to business practices in the real world as well as its unshakeable decision to adopt its own predetermined standard of consumers' needs and preferences.

In order to fully understand why the proposed rule is unnecessary, I think it would be helpful to the Committee for me to explain Liberty's production and quality control systems and their impact on the quality and cost of the homes we manufacture. In addition, I would like to describe our warranty servicing policy in conjunction with the requirements of state and Federal regulations which must be complied with in regard to construction, sale, and servicing of our homes. This comprehensive system provides Liberty homeowners with a high degree of consumer protection not available to buyers of site-built homes.

PRODUCTION AND QUALITY CONTROL

Liberty's mobile home plants have an average production capacity of approximately twelve units per eight-hour day. The plants in which these homes are produced are single-story, slab foundation, block and steel or preengineered metal buildings with an average floor area of about 100,000 square feet. An essential requirement for a mobile home facility is ample floor area for the production system and overhead clearance to accommodate crane ways and monorails. Large expenditures are also necessary for the machinery and equipment used in the manufacturing process. Consequently, a mobile home plant producing ten units or more per day requires a large initial capital investment of approximately two million dollars.

The construction of the homes in Liberty's plants enables us to use techniques and machinery markedly different from those used in site-built homes. Construction indoors permits finer tolerances and better quality control as well as the fullest utilization of the structural strength of the materials used in the home. The actual construction of the home involves the integration of four major subassemblies, the chassis, floor system, wall system and roof system. Homes are constructed from the bottom up and the inside out, starting with the frame and moving to the floor assembly, wall system and finally, the roof. These systems are firmly bonded together to act as an integrated structural unit to which nonstructural sub-assemblies such as cabinets, windows and doors are added. To help understand the scope and nature of the mobile home production process, I have attached pictures of Liberty's Leola, Pennsylvania plant's production area.

When incoming orders are received from dealers at Liberty's plants, a production schedule is prepared. Each home is built to detailed production drawings and specifications which have been approved by the plant's Design Approval Primary Inspection Agency ("DAPIA") hired by Liberty and approved by HUD. The DAPIA,

which is an engineering firm approved by HUD, must review all designs and specifications to assure that the homes are being built in conformance to HUD Construction and Safety Standards. In addition, the DAPIA must evaluate our quality assurance program to determine whether Liberty, by following the specified program, can assure that each home will conform to the HUD standards. These documents, referred to as the DAPIA package, are extremely detailed and complete. Any proposed changes to our drawings or related specifications or to our quality control program, must be reviewed and concurred in by the DAPIA before the changes can be implemented. Liberty's DAPIA is Underwriters Laboratories ("U.L."), which is regarded by many as the foremost independent testing agency in the world, and is used by many industries as well as Federal, state and local government agencies.

Liberty's mobile homes are designed to meet the requirements of assembly-line production to maximize assembly efficiency. The components of the home are standardized and interchangeable to permit efficient assembly and mass purchasing. Liberty's materials are purchased from nationally known suppliers by purchase orders negotiated primarily at the corporate level. These same suppliers serve the rest of the housing industry, e.g., G.E., Armstrong, Owens-Corning, Westinghouse, Weyerhaeuser, Georgia-Pacific, and hundreds of others.

Our plant purchasing personnel, consisting of a materials manager, head receiver, and material handlers inspect all incoming materials and supplies to ensure that they conform to order specifications and have not been damaged during shipment. Liberty's suppliers stand by their respective products and, if material is received damaged or defective, it is returned for credit. The more sophisticated components such as furnaces, appliances and water heaters are for the most part purchased from large supplier companies who provide their own warranties and have nationwide service capabilities.

Since June 15, 1976, Liberty has manufactured its homes to meet Federal Construction and Safety Standards which were promulgated by HUD pursuant to the National Mobile Home Construction and Safety Standards Act of 1974. These standards were based largely on the American National Standards Institute A119.1 mobile home code, with further emphasis on energy conservation and fire safety features. The standard covers six basic areas: structural, plumbing, heating, electrical, fire safety, and energy conservation. HUD also makes provision for standardizing testing procedures. Each section attempts to cover all significant design and construction issues. Although there are occasional explicit specification, the code is primarily a performance code, permitting flexibility and innovation within the performance standards. Thus, generally the code provides guidelines, referring in some instances to accepted engineering practices of already established codes.

The controlled working environment in our plant also permits close quality control monitoring via our own internal quality assurance program, as well as the HUD-mandated construction standards and procedural and enforcement regulations. Liberty's internal quality control system was implemented many years ago prior to the adoption of the HUD Program in 1976. Each of our plants is divided into ten (10) production departments to which individual employees are assigned. Each department has specific job descriptions and is supervised by a foreman, who reports directly to the production manager.

Liberty plant foremen are responsible for supervising and inspecting the production process and for training production employees. Their major responsibility is to constantly monitor the quality of the work in their area. Before a home can be released from one department to be moved down the assembly line to the next department, it must be "handed off" from one foreman to the next. The first foreman, who inspects his department's work, consistent with the job description, uses a checklist to acknowledge to the second foreman that all work has been done properly. The second foreman reviews the checklist and will accept the home if he is satisfied it is in accord with the checklist. If there are any discrepancies, the department which is responsible must correct them before the home can be moved to the next position on the assembly line. This "hand off" procedure is used throughout the entire length of the assembly line.

In addition, each plant has a quality assurance manager and an assistant who report directly to the division manager. The quality assurance manager is responsible for maintaining the file of HUD approved construction specifications and drawings and for monitoring the homes compliance with these documents. He also verifies that the important electrical, gas lines and plumbing checks have been satisfactorily completed.

Before a home is released from the plant for shipment, the final finish department foreman must ascertain that all discrepancies have been corrected. This must also be confirmed by the quality assurance manager. The home is inspected to

ensure that the home is complete and cosmetically satisfactory. A file is maintained at the plant for each home that leaves the factory, which includes production data, completed quality assurance checklist and the brand, model and serial number identification of the major components purchased for inclusion in the home.

Finally, representatives from our corporate engineering, purchasing and cost departments visit each plant about once every three months, to closely inspect the production and the utilization of material. These representatives also closely inspect for compliance with our approved product plans and specifications.

HUD INSPECTION SYSTEM

HUD's involvement in Liberty's quality control system goes far beyond the DAPIA's approval of our design and specifications package. A HUD approved In-plant Primary Inspection Agency called an "IPIA" must inspect each of our factories to determine whether they are physically capable of producing homes that conform to the DAPIA package. Our IPIA is also Underwriters Laboratories, except at our factories in Georgia, Florida, Wisconsin and Oregon. In these states, a HUD approved branch of the state government has elected to be the exclusive IPIA in that state. This election, under the HUD regulations, precludes the manufacturer's use of any other IPIA in the state.

The IPIA is also responsible for ongoing production surveillance, performed via recurring inspections at each plant. The inspection is timed to ensure that every home is inspected in at least on stage of production. Thus, during the course of each visit, the IPIA makes a complete investigation of every phase of construction and of every visible part of every mobile home which is at each stage of production. The IPIA also monitors the actual performance of our quality assurance program and periodically inspects our raw materials and test equipment.

The IPIA assures that the required HUD label is not placed on a home which does not conform to the approved DAPIA package. In addition to the DAPIA and IPIA involvement in our quality control program, the overall program is monitored by HUD itself, the National Conference of States on Building Codes and Standards (NCSBCS), a HUD contractor, and the State Administrative Agencies (SAA's) of the state where each plant is located.

CORRECTION OF PROBLEMS

The HUD mobile home procedural and enforcement regulations provide for a system of notification and correction of problems occurring in a mobile home after the home leaves the factory. Manufacturers are required by HUD to correct at their own expense serious defects related to the design of the home and imminent safety hazards. The FTC has argued that because the HUD Act does not require correction of serious defects not related to the design or assembly of the home or defects and noncompliances, additional Federal regulation is necessary.

Because of the comprehensive nature of the HUD standards, it is difficult to conceive of a serious defect which would not be related to the design and assembly of the home. Although Liberty is not required to correct all defects and noncompliances at its own expense, we are required to determine whether similar defects or noncompliances occurred in an identifiable class of homes when the cause of the defect is such that the same defect would probably have been systematically introduced into other mobile homes. Because of the highly specialized repetitive nature of an assembly line, production process, contrary to FTC arguments, it is very likely that a defect introduced in one home will be subsequently introduced into others. Moreover, as interpreted by HUD, a class of homes may consist of as few as two mobile homes.

To make a determination as to the existence of a class of homes, Liberty must review various information, including but not limited to: (1) inspection of mobile homes produced before and after the mobile homes known to be affected; (2) inspection of manufacturer quality control records to determine whether quality control procedures were followed; (3) inspection of IPIA records to determine whether the imminent safety hazard or failure to conform was either detected or specifically found not to exist in some mobile homes; (4) inspection of the design of the mobile home in question to determine whether the imminent safety hazard or failure to conform resulted from the design itself; (5) identification of the cause as relating to a particular employee or process that was employed for a known period of time or in producing the mobile homes manufactured during that time; and (6) inspection of records relating to components supplied by other parties and known to contain or suspected of containing imminent safety hazards or failures to conform.

If it is determined that a class of defects or noncompliances exist at any time during the life of the home, Liberty is required to provide notification to all consumers who may conceivably have purchased a defective unit.

The notice, which must be sent by certified mail to dealers and distributors to whom the home was delivered, to the first purchaser and to any subsequent owner to whom a warranty may apply, must include the following:

(a) An opening statement: "This notice is sent to you in accordance with the requirements of the National Mobile Home Construction and Safety Standards Act of 1974."

(b) Except where the manufacturer is acting under § 328.404, the following statement, as appropriate: "(Manufacturer's name or the Secretary, or the appropriate SAA)" has determined that: (1) An imminent safety hazard may exist in (identifying criteria of mobile home); (2) a serious defect may exist in (identifying criteria of mobile home); (3) a defect may exist in (identifying criteria of mobile home); and (4) (Identifying criteria of mobile home) may not comply with an applicable "Federal Home Construction or Safety Standard."

(c) A clear description of the imminent safety hazard, serious defect, defect, or noncompliance which shall include: (1) The location of the imminent safety hazard, serious defect, defect or noncompliance in the mobile home; (2) a description of any hazards, malfunctions, deterioration or other consequences which may result from the imminent safety hazard, serious defect, defect, or noncompliance; (3) a statement of the conditions which may cause such consequences to arise; and (4) precautions, if any, that the owner should take to reduce the chance that the consequences will arise before the mobile home is repaired.

(d) An evaluation of the risk to the mobile home occupants' safety and the durability of the mobile home reasonably related to such imminent safety hazard, serious defect, defect, or noncompliance, including: (1) The type of injury which may occur to occupants of the mobile home; and (2) whether there will be any warning that a dangerous occurrence may take place and what that warning would be, and any signs which the owner might see, hear, smell, or feel which might indicate danger or deterioration of the mobile home as a result of the imminent safety hazard, serious defect, defect, or noncompliance.

This extensive notification requirement is costly and extremely time consuming particularly for any manufacturer where notification may literally involve thousands of units. This requirement also has tremendous product liability implications when notice of a defect and its potential hazards is given to a consumer. Under the Act, if the manufacturer voluntarily corrects a defect or noncompliance these notification requirements are waived. Thus, from a practical standpoint and as a matter of good business, the manufacturer has a strong incentive to correct individual defects and noncompliances, even though we may not be specifically required to do so by HUD. It is my belief that in actual practice most defects of this type have been corrected by the manufacturers rather than their going through the notification procedure.

WARRANTY PERFORMANCE

Liberty Homes offers a limited warranty to the first retail purchaser of its homes, which provides warranty coverage for a time period of one year from the date of retail sale. This warranty complies with the extensive disclosure requirements of the Magnuson-Moss Warranty Act. Moreover, a detailed explanation of how a consumer can most effectively exercise warranty rights and a detailed explanation of the effective coverage of the warranty is also required to be included in the Consumer Manual (Attachment I) which under the HUD Act must be placed in each of Liberty's homes.

Liberty uses the same performance system to correct problems related either to the HUD standards or problems covered under our warranty. When we receive a warranty service request, we enter it on a log and prepare a form for each request. Depending on the type of service requested, the time of year, distances involved, availability of parts and other considerations, we will either schedule the work to be done by our own factory service people or we will authorize the dealer or another third party to perform the work on our behalf. Our goal is to have no uncompleted service requests of any type more than three weeks old, although more serious problems may have to be resolved in a matter of hours.

Under the HUD system, Liberty is required to maintain an extensive recordkeeping system to ensure that consumer complaints are addressed promptly and to facilitate determinations as to whether a defect has occurred in a class of homes. Liberty must furnish an information card with each home, to be completed and returned by the dealer for the original sale or by subsequent purchasers, if the home is resold by the original purchaser. This card, which must be maintained by Liberty, includes detailed information to ensure that Liberty has a readily accessi-

ble record of the name and address of the current purchaser or owner of all mobile homes manufactured on which a card has been received.

If Liberty receives a complaint and determines after an investigation that no imminent safety hazard or failure to conform exists, we must keep a permanent record of the determination and the action taken. If we determine that a problem exists and that it is unique to a single mobile home and agree to correct it, we must keep complete records of the determination and corrections, including the date the complaint was received, the action taken and the date the action was completed. We are also required to maintain in our files for four years from the date the correction is completed one of the following: (1) A statement signed by the owner that the problem appears to have been corrected and that the owner is satisfied with the correction; (2) if the owner refuses to sign such a statement, a certification by the manufacturer that the home has been repaired to conform to the standards in effect at the time the mobile home was manufactured and that any imminent safety hazards have been eliminated and that the owner has refused to sign the statement; or, (3) where the owner refuses to allow the manufacturer to repair the home, a certification from Liberty that it has informed the owner of the problem which may exist in the mobile home, that it has informed the owner of any risk to the safety or durability of the home that may result, and that Liberty has attempted to repair the problem.

Where Liberty is required to provide notification, when it has determined that an imminent safety hazard or failure to conform exists in one of our homes, we must maintain in our files for five years from the date the notification campaign is completed, a copy of the notice sent and a complete list of the people and their addresses to whom it was sent.

These recordkeeping requirements represent an efficient and effective system for Liberty to monitor its warranty service and obviate the need for further costly and unnecessary recordkeeping requirements as set forth under the FTC's proposed Trade Regulation Rule.

Each of Liberty's factories has a dealer relations manager, and depending on the size of the plants marketing area and production volume, from three to five full time factory servicemen. The dealer relations manager's primary responsibility is to receive and log all incoming service requests, maintain the service records, schedule and follow up on the warranty service work, supervise the factor service people and to see that all service work is completed within prescribed time limits. Monthly reports, categorizing service requests by the nature of the request and the age of pending requests, are reviewed at our corporate headquarters.

Liberty's warranty system, which has evolved and been refined over the past forty years, has resulted in efficient warranty performance, which is accomplished within reasonable time frames consistent with the special needs of each individual Liberty customer. In this regard, I feel that it would be of interest to the Committee to give an example of good Liberty warranty service practices and how this performance was distorted by the Federal Trade Commission during the hearings on this rule to demonstrate, not our performance, but a purported need for the proposed rule.

During the first set of hearings held in Washington, D.C., FTC procured consumer witnesses testified about the problems they had experienced in obtaining warranty service for their mobile homes and the subsequent need for the proposed rule. One of these witnesses, Mr. Powell Justis, the owner of a Liberty home, recited a series of problems he had experienced with his mobile home, stating in summary that:

"Throughout the entire final year of trailer ownership, we were never comfortable calling our dealer. We were made to feel that service was a doled out privilege rather than a paid-for right. We consistently felt that we were being strung along with problems until the warranty expiration date.

"I did not hope for any help on our problems, as a result of this hearing. We recently sold our mobile home at what we feel is a sizeable loss. Because of our recent experience, we don't plan on ever purchasing another trailer. This is not so much because of the trailer as it is the shoddy way in which our problems were handled by our dealer and the factory reps."¹

Upon cross examination of Mr. Justis, the following facts were elicited:

(1) His Liberty mobile home was purchased in 1976 and lived in by him and his wife for one-and-a-half years, at which time it was sold. (TR. 1493.)

(2) Mr. Justis first notified Liberty of his problems by copy of a letter sent to his dealer on January 26, 1977, less than 30 days before the expiration of the warranty. (TR. 1495, 1511.)

¹ Trade Regulation Rule Transcript, pp. 1497-1498.

(3) On February 15, 1977, Mr. Justis signed a statement that 14 repairs were done to his satisfaction, noting that some items in his letter of January 26, 1977, still needed further work. (TR. 1513.)

(4) On February 18, 1977, Mr. Justis signed a statement acknowledging repair and replacement of the problems listed in his January 26th letter. (TR. 1518.)

(5) Mr. Justis stated during his testimony that by February 18, all of the problems except for a noisy furnace had been resolved. (TR. 1517.)

(6) Liberty representatives visited Mr. Justis' home on several occasions and could hear no noise. (TR. 1515.)

(7) Mr. Justis did not contact the furnace manufacturer, although Liberty's warranty expressly advised him to do so in the event of problems with the furnace, which was separately warranted by the furnace manufacturer. (TR. 1525-1526.)

(8) On February 28th, Mr. Justis wrote a lengthy letter complaining to Liberty, the Federal Trade Commission, the Center for Auto Safety, copying approximately six other persons. (TR. 1517.)

(9) Liberty representatives interviewed the purchaser of Mr. Justis' home, who indicated that he had experienced no problems with the home, and that he was very satisfied with the home. (TR. 1500.)

Liberty Homes resolved all Mr. Justis' problems, except for the alleged noisy furnace, within twenty-six days of receipt of the original complaint. Mr. Justis was one of six consumer witnesses appearing during the FTC hearings, two of whom lived on the same street as Mr. Justis in a mobile home park. Each of these three witnesses had had contacts with the Center for Auto Safety prior to their appearing as Federal Trade Commission witnesses.

I feel that Mr. Justis' blatant mischaracterization of his warranty experiences with Liberty is typical of the record which the FTC has attempted to build throughout the rulemaking proceeding to support the proposed rule. More importantly, it reflects the adversarial attitude of the FTC staff, that a rule must be implemented regardless of whether or not the problems cited exist to any significant degree in the mobile home industry, or whether the problems cited are even valid warranty complaints. Contrary to Mr. Justis' allegations, Liberty provided timely and responsible warranty services to him when he made his problems known to Liberty. Mr. Justis, moreover, is not an example of an illiterate, helpless consumer. As an educated man who is a teacher by profession, Mr. Justis was quite capable of communicating any problems he may have had in obtaining service on his home to Liberty Homes.

DEALER RESPONSIBILITIES RELATING TO WARRANTY SERVICE AND SET UP

Liberty's dealers, in addition to selling homes, are responsible primarily for assisting Liberty in performing warranty service and in arranging or performing set up and installation of the home. Due to the distance between Liberty's plants and the ultimate home site, which may be hundreds of miles, the most efficient and economical manner of performing many warranty repairs is through the original selling dealer. The dealer who knows the customer and the location of the home, and has explained the homeowners manual and the warranty to the customer, is the best communication link between the manufacturer and the customer. The dealer is also best equipped to handle set up because he is familiar with local soil conditions and installation requirements which have a critical impact on the proper set up of the home.

As stated earlier, Liberty's dealers, as are almost all dealers, are independent of the manufacturer. The typical dealer displays 10 to 20 new homes in various price ranges and styles. These homes are purchased from three or more manufacturers because no single manufacturer is competitive in all price ranges, styles and floor plans. Moreover, as a prudent businessman, dealers do not want to be dependent on only one supplier for homes.

Liberty does not have franchise agreements with its dealers. Because Liberty homes are manufactured to fill specific orders from each dealer, on either a "COD" or a "confirmed floor plan in advance" basis, we do not extend terms to our dealers. Consequently, we do not have substantial receivables from or a direct financial interest in our dealers. Our dealers rely heavily on outside sources to finance the bulk of their inventory as well as most of their retail sales. In summary, mobile home dealers epitomize the independent, energetic, competitive, profit-minded, American small businessman.

The FTC's proposed trade regulation rule, if adopted, will dramatically alter the present structure of the industry, forcing many small manufacturers and dealers out of business and encouraging either vertical integration or franchise arrangements between manufacturers and dealers. The proposed rule requires Liberty to assume responsibility for functions such as set up, which we do not perform and

which we consequently do not warrant. The recommended rule goes even further and would require Liberty to warrant problems resulting from improper set up and transportation.

Liberty does not warrant set up because this function is strictly a function of the dealer who either performs set up directly or contracts out to third-party installers. Because the site selected by the owner for his home may be located a great distance from Liberty's factories, Liberty does not have ready access, as does the dealer, to information which is critical to proper set up such as varying soil conditions, climatic conditions and local regulations relating to utility requirements, drainage, inspections and permits. Liberty does, however, provide the consumer with a detailed set up instruction manual, required by HUD to be included in every mobile home. This manual (Attachment 2) includes an explanation of the procedures recommended to be followed in the set up of a Liberty home such as site preparations procedures, the types of foundations for which the home was designed, procedures for leveling the home, procedures for connecting the utilities, and suggested anchoring procedures. The manual also advises the consumer of the importance of having qualified firms perform the set up and of the problems which may occur if the home is not properly set up.

In addition to set up, dealers are also responsible for transporting the home from the dealer's lot to the homesite and for repairing minor or cosmetic defects or performing warranty repairs which do not require special servicing by factory personnel. Under the recommended rule, Liberty is required to: (1) Assume warranty responsibility for performance of set up and transportation; (2) monitor the adequacy of the warranty service of its dealers; (3) assume responsibility for inspecting the home and its installation after set up; and (4) assume responsibility for dealer performance of warranty service within the specified time periods provided in the rule, regardless of the availability of replacement parts or service personnel and be subject to a fine of up to \$10,000 for a violation of any of these requirements.

Under these circumstances, if the proposed rule is adopted, Liberty's present system of utilizing independent dealers to perform warranty service and set up would be difficult to justify in terms of cost benefit. These functions would be more efficiently performed via a network of Liberty-owned and operated retail outlets.

If Liberty were to decide to continue its use of independent dealers, the monitoring and supervision requirements of the rule would necessitate terminating a large number of our smaller low volume dealers who are located furthest from our plants. By using only large dealers who are capable of selling a larger number of Liberty homes, costs of monitoring warranty performances and supervising dealer activities and capabilities would be decreased on a unit basis. Written service agreements would also be more easily administered and economically feasible by using a few larger dealers instead of numerous small dealers.

The written service agreements required under the rule may be construed as franchise agreements under state franchise laws as well as possibly under the FTC Franchise Disclosure Rule. Because of the extremely onerous requirements relating to disclosure under these laws, Liberty would be unable to enter into such agreements with a large number of small dealers. Again, the requirements of the recommended FTC rule would force Liberty to consider carefully the many smaller, although competent dealers, in favor of larger dealer operations.

STATE REGULATIONS AFFECTING MOBILE HOME SALES AND SERVICE

In addition to the HUD regulatory scheme, Liberty's inplant quality control system and our warranty service procedures, Liberty must comply with extensive state regulations designed to assure a maximum degree of protection for purchasers of Liberty homes. Liberty ships its homes into most of the states, many of which have comprehensive regulations relating to licensing and bonding of manufacturers and dealers, warranty requirements, and installation and set up of mobile homes. As an example of the type of state laws which Liberty and its dealers must comply with, I think that it would be useful to describe mobile home laws which have been enacted in various states where Liberty plants are located.

FLORIDA

In the state of Florida, both Liberty and its dealers are required to be licensed and bonded. License applications must include a copy of the warranty and a complete statement of any service agreement or policy to be utilized by the applicant. Licenses may be denied, revoked, or suspended if the applicant or licensee had failed either himself or through his dealer to provide warranty service or for violation of any law, rule or regulation relating to the manufacture or sale of a mobile home.

Liberty is required to maintain a surety bond in the amount of \$50,000. This bond is in favor of any retail customer who suffers loss arising out of noncompliance or failure to honor or to provide warranty service. A bond of \$25,000 for dealers with four or less supplemental licenses and of \$50,000 for dealers with over four supplemental licenses is required for Liberty dealers with over four supplemental licenses is required for Liberty dealers doing business in Florida. This bond is in favor of any retail customer who suffers loss as a result of failure of the dealer to comply with the conditions of any written contract made by him in connection with the sale of the mobile home.

Florida law also requires that each mobile home manufacture, dealer and supplier warrant the sale of any new mobile home sold in the state, including the set up of such home, for a period of twelve months from the date of delivery to the buyer. The manufacturer is required to warrant that all structural elements; plumbing systems; heating, cooling, and fuel-burning systems; electrical systems; and fire prevention systems are free from substantial defect.

The dealer must warrant that any modification or alternations made to the mobile home by the dealer or authorized by the dealer shall be free from substantial defect. The dealer must further warrant that the set up operations performed on the mobile home are performed in compliance with state and local requirements; and that substantial defects do not occur to the mobile home during set up or during transport to the occupancy site.

The supplier must warrant that all warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of mobile homes. When no warranty is extended by suppliers, the manufacturer must assume warranty responsibility for that component.

The Florida warranty law further requires that a defect shall be remedied within thirty days of receipt of the written notification of the warranty claim unless the claim is unreasonable or bona fide reasons exist for not remedying the defect. When sufficient reasons exist for not remedying the defect or the claim is unreasonable, the responsible party must respond to the claim in writing with the reasons for not promptly remedying the defect and must explain what further action is contemplated by the responsible party. If the defect is remedied by a party who is not responsible for warranty service, he is entitled to reasonable compensation to be paid by the responsible party. Warranty service must be performed at the site of the mobile home except for components which can be removed for service without substantial expense or inconvenience to the buyer.

The Attorney General's Office of the State of Florida has also published a Layman's Guide to Rules of the Department of Legal Affairs as adopted by the Florida Cabinet under the Deceptive and Unfair Trade Practices Act ("Little FTC" Act). This publication includes a chapter on mobile home sales and service and provides extensive information for consumers relating to mobile home warranties. It advises consumers of what a warranty must include and the responsibilities required of manufacturers and dealers offering warranties on mobile homes sold in the State of Florida.

The State of Florida also has adopted detailed regulations relating to mobile home tiedown and minimum installation standards. Moreover, each county in the State is required to provide for onsite inspection of mobile homes located within the county. This onsite inspection is intended to ensure compliance with State and local building codes, ordinances, and regulations regarding such functions as blocking and leveling, tiedowns, utility connections, conversions of appliances and external improvements on the mobile home.

KANSAS

The State of Kansas has recently enacted legislation setting forth licensing and bonding requirements for manufacturers and dealers doing business in the state of Kansas. Under the new Act, manufacturers and dealers in Kansas are required to be licensed. Licenses may be suspended or revoked for knowingly defrauding any retail buyer to the buyer's damage, negligently failing to perform any written agreement with the buyer or failure or refusal to furnish and keep in force any required bond. If there is reasonable cause to doubt the financial responsibility or compliance capabilities of the applicant or licensee with the provisions of this Act, the mobile home manufacturer or dealer may be required to furnish and maintain a bond of not less than \$5,000 and not more than \$15,000. The Act requires Liberty to pay reasonable compensation to dealers for all warranty work, based on existing rates of other manufacturers and prevailing wage rates in the area. It also prohibits manufacturers from requiring unreasonable proof to establish compensation or to unreasonably delay payments.

Kansas requires the manufacturer to provide a one-year express warranty that the mobile home was manufactured free from substantial defects, and is required to

make corrective action at the site of the mobile home. Kansas also regulates the tiedown and installation of mobile homes which have not been placed on a permanent foundation.

OTHER STATES' REGULATIONS

Of the remaining states in which Liberty either has plants or ships homes into, a significant number have requirements relating to licensing and bonding, warranty and installation. There are presently over 40 states which require licensing and/or bonding of manufacturers, dealers and/or installers; 21 states have requirements relating to mobile home warranties and approximately 20 states have regulations relating to tiedown and installation. In many other states, legislation relating to each of these areas has been introduced and is pending. In addition, most states have adopted the Uniform Commercial Code, which applies to mobile home sales and provides further protection to mobile home owners.

As a manufacturer, Liberty must comply with the various regulations addressing mobile home sales and service in the states in which Liberty does business. I think that it is important to note that the degree of state involvement in regulating the mobile home industry has increased dramatically during the last several years. Although many of the state requirements appear to be similar to various requirements in the FTC rule, the states, unlike the FTC, have more appropriately directed their requirements to the segments of the industry individually responsible for the manufacture, sale and installation of mobile homes. These state regulations, which serve as an effective supplement to the HUD Act, in my opinion, have further obviated the need for the FTC's proposed rule.

COST IMPACT OF THE FTC'S RULE

Liberty's chief financial officer estimated during the FTC hearings that the cost of the rule to our customers will be as much as \$500 to \$1,000 per home. These estimates did not, however, take into account the cost impact of new provisions in the recommended rule.

The provision in the recommended rule requiring that the manufacturer warrant set up and transportation will result in far greater costs than those incurred under the proposed rule for the 90-day reinspection, a provision which has subsequently been deleted. While the purpose of the reinspection requirement was to discover defects resulting from improper set up, direct warranty responsibility for set up as well as transportation will necessitate far greater monitoring and supervision costs for the manufacturer after the home has been shipped to and installed at the homeowner's site.

The recommended rule also requires that Liberty must, at the consumer's request, repair all defects and bill the customer for the costs of the repairs, if Liberty can establish that they are not responsible for the repair. This provision will be particularly costly for two reasons: (1) There are no guidelines as to how Liberty is to establish consumer responsibility for repair; and, (2) if Liberty is able to establish that the consumer is responsible, there is no practical method of forcing a consumer to reimburse Liberty for repairs, i.e., it is unlikely that Liberty would initiate legal action for failure to reimburse Liberty for repairs costing less than several hundred dollars.

A requirement that a company pay for all repairs, regardless of whether they are valid warranty claims, relying on later reimbursement from the consumer, demonstrates the FTC's concept of how industry in America is expected to operate their business under the close scrutiny of a Federal Agency.

The costs which Liberty will incur if the recommended rule is adopted can be expected to range anywhere from \$1,500 to \$2,000 per home. As a large manufacturer, these costs may not put Liberty out of business. They will however, force a large number of smaller manufacturers, for whom the costs of the rule per home will be even greater, out of business. The impact on the consumer is that the purchaser's ability to shop and compare for a range of homes in terms of style and cost and a range of services presently included in the price of the home, will be further limited. More importantly the costs imposed on manufacturers who remain in business will be directly passed on to consumers in the form of higher priced homes, thus forcing many of them out of the housing market. At \$2,000 per home and industry production of 270,000 homes per year, the rule will result in \$540 million worth of useless costs to our customers each year.

It is particularly important that any of the costs resulting from the FTC's proposed Trade Regulation Rule be viewed in the context of the price elasticity of demand for mobile homes. The results of a study performed for the manufacturer Housing Institute, indicate that the price elasticity of demand for mobile homes is -2.4 . Based on 1977 mobile homes shipments and average unit prices, the study

found that a one percent, or \$140.00 increase in average unit price, would be expected to reduce demand by 2.4 percent or 6,279 units if other factors remained constant.

Thus, the impact of even a small retail price increase for a home costing 10,000 will literally mean the difference between a decent family home or no home at all to thousands of Americans who rely on low-cost housing. These price increases impact on the monthly payment, thus precluding thousands of American families from obtaining financing.

MODULAR VERSUS MOBILE HOMES

One of the mysteries in Federal Regulation to me is the attitude of the Federal Agencies and the FTC in particular to regulation of modular homes.

Modular homes are usually made in a factory on a production line similar to that for mobile homes. They are made of the same materials and the basic cost difference, due to conforming to slightly different building codes, is not substantial.

Nevertheless, the FTC has ruled that modular homes, not built to the HUD code, are not subject to the Rule, but that mobile homes subject to the HUD Act and Code are within the trade rule.

Nothing could illustrate a blind desire to regulate for regulations' sake than this determination to ignore a basic fact of housing—modular and mobile homes vary so little as to be indistinguishable to the buyer.

In summary, as a large manufacturer, I deplore this Rule because it will change this industry without any benefit to the consumer. In fact, it is anti-consumer. The inflexible and detailed warranty performance system that would be imposed under the rule will be costly without resulting benefits. These costs will be passed on to the consumer. In addition, I believe the proposed rule will force many of the smaller companies out of the industry, resulting in a narrowing of choices for the consumer. My company, as one of the largest, will survive, but the growth of the industry and its production of housing will slow to the detriment of the American public.

We already have HUD and the States. We do not need another layer of regulators.

A realistic view of the HUD Act proves that it is itself a kind of gigantic warranty with all the necessary elements—including a defined product standard—the HUD Code, a certification by manufacturers that they will perform to that standard—the HUD label, definitions which use warranty language, e.g., a defect according to HUD involves fitness for the use for which it was intended—warranty language to be sure, and a serious penalty for violation enforced by hundreds of regulators in the field appointed by HUD for the world's largest quality control system.

Can anyone seriously advance the argument that we need another HUD-type enforcement system on top of the one we have?

Thank you for your consideration of this important matter.

Senator FORD. Thank you very much, Mr. Hussey.

Senator Bayh will have to leave shortly to conduct another hearing. I'll give him an opportunity to question this panel first. If you have any questions, Birch, just proceed.

Senator BAYH. Thank you, Mr. Chairman. I appreciate your courtesy. Unfortunately, I do have this other obligation that I can't get out of, so I will not have the opportunity to ask any extensive questions.

I would just like to ask our witnesses, there have been assertions that there are complaints out there by consumers. In your testimony, you have given us a pretty good understanding, I think, of the different kinds of distribution systems that are available before one of your homes reaches a consumer.

Can you give the committee any thoughts about how you, who are on the other end of us, would suggest a legitimate warranty complaint be dealt with?

Mr. DECIO. Fix it.

Mr. HUSSEY. I think our approach has been to take—we feel that we are taking care of our product as far as warranty is concerned. We feel strongly about that.

If you look to the evidence that the FTC has had in connection with their hearings, they talk about these 2,300 complaints. If they're talking about the same figures that I'm talking about, there were originally 1,200 complaints. Those complaints went back to 1967 and 1968, up until about 1974 or 1975, around in there. Then they went out, subsequently, and did a lot of advertising around the country and ended up with another 400 or 500 complaints. I think there's 400 that got into HEW, which you can't retrieve from the files. They got lost in the data processing over there somehow.

In those 1,200, we analyzed those in detail. A fellow who used to work for us—he's now retired—had a lot of experience, he went in to analyze those. Great numbers of them are RV's. Some of them are complimentary letters in there. There's no way that there's even 2,300 complaints that are legitimate out there.

Now as to present status, from my knowledge of this industry and from what I see and what I see in our own company and what I hear about other companies, we are performing. You know, there's going to be glitches in any system. I don't think a great new massive amount of regulation is going to fix that.

Mr. SMITH. The HUD regulations are doing a fine job, an adequate job. There's no earthly need of another tier of warranty regulations or any regulations governing the industry. We do make sales by word of mouth. That's the way the capitalistic system works, especially in the case of the mobile home industry, and especially in the case of a small manufacturer. That's adequate to see that they do a good job. The competitive nature of the business makes it so.

Senator BAYH. A good customer sells other homes for other customers, and I would assume that you, as good businessmen, are sensitive to what complaints do. Let's take those 7,000 complaints that the Assistant Secretary of HUD talked about that are received by State agencies.

How do we come to grips with that?

Mr. BENNING. They're being fixed. HUD's admitting they're being fixed. The SAA's received 6,800 complaints in a 2-year period and HUD received 400 complaints. HUD worked to resolve these complaints, as did the SAA's within those 35 States that are in the program. They assured that consumers were satisfied.

It should be noted that the complaints that were tabulated by the FTC, in their staff memo dated October 27, 1976, it listed the defect categories—roof problems, other structural, plumbing problems, electrical problems, heating and air conditioning problems, appointments and setup problems. Of those 2,000 letters, 652 came from the Center for Auto Safety which was paid by the FTC to advertise and solicit. When we investigated these letters, we found many of them were not related to mobile homes at all, but addressed recreation vehicles. The FTC still doesn't understand today what a mobile home is.

Mr. SMITH. Senator Bayh and Senator Ford, this industry, the mobile home industry, is regulated more than any industry that ever existed on the face of the Earth. That's the literal truth. We are regulated more than the automobile industry, more than those industries under the Food and Drug Act, the nuclear energy industry, any you can think of.

Any further regulation is unneeded and utterly ridiculous.

Senator FORD. I have a few questions that I'd like to ask. We'd like you to respond in writing to some of them, which would be helpful to us to include in the record.

Senator BAYH. Mr. Chairman, again I want to express my deep appreciation to you for having these hearings and these witnesses. I want to apologize for my departure, as well as to the witnesses who will be on this afternoon.

I'll look at that testimony very carefully and I appreciate the opportunity to participate and for your courtesy.

Mr. BENNING. Thank you, Senator.

Senator FORD. I found this an interesting area.

Mr. Benning, let me quote to you from a story appearing in the Louisville, Kentucky Courier Journal, June 11, 1980. It says, and I quote:

For the past 10 months, Johnny Moline has known that something is terribly wrong with his body. First, he felt a shortness of breath. Then he began coughing, vomiting, feeling a burning sensation in his mouth and spitting up blood. In April, his knees, legs, and rib cage "swole up double", according to him. His doctors found swollen lymph nodes in his lungs, an enlarged heart, liver damage, and the symptoms of pulmonary emphysema. Tests showed formaldehyde vapors present in his mobile home leaking from the panels and particle boards in his kitchen, bedroom, and bathrooms. Formaldehyde is a toxic chemical, widely used as an adhesive, preservatives and pesticides.

It all came apparently from his mobile home.

Now you brought that up a few moments ago. What are the manufacturers of mobile homes doing as it relates to this problem? I have some other documents here that indicate that Kentucky may call for a ban. I didn't realize it was there until I started researching for this hearing this morning and looking into some of these things and found this information.

Do you wish to comment on this?

Mr. BENNING. Yes, Mr. Chairman. The problem is not one of formaldehyde. The problem is one of air pollution. In building tighter, more energy efficient homes today, and building to the HUD code, we have created, as Mr. McElroy stated before, a thermal envelope. What happens in a thermal envelope is that, according to the Lawrence Berkeley Laboratory studies, office buildings and conventional or site-built homes experienced five to six air changes per hour. We are experiencing these air changes in this building today.

A mobile home, however, due to its tightness of construction, only has 0.3 to 0.4 air changes per hour. Therefore, it is not getting the proper ventilation. When ventilation is present, there are no obnoxious fumes.

In checking the levels of formaldehyde in some of the mobile homes where owners have complained, we find that in investigating these homes, you may find levels of 0.2 or 0.3 parts per million.

Mr. Chairman, the cigarette you're smoking, every puff you take, you're imparting 33 parts per million—33 parts per million. These same people who claim—

Senator FORD. And I get 6,000 ingredients every time I stick a match to it. You can't tell me anything about cigarettes.

Mr. BENNING. Exactly right, sir.

Senator FORD. There's 1,500 before I put the match to it.

Mr. BENNING. Exactly right, sir.

Senator FORD. I'm going to smoke it, too.

That's about all us poor folks got left is a cigarette and a rocking chair and they've been trying to take the cigarette away from us.

Mr. BENNING. The industry, over the past 2 years, has expended close to \$2½ million in research looking at this so-called formaldehyde problem. Many other agencies have looked at it—the National Academy of Sciences, other foreign governments have looked at it.

Formaldehyde is produced at the rate of over 6 billion tons a year. It's present in the room we're sitting in today, probably at 0.2 or 0.3 parts per million.

We have found through research that the low levels of formaldehyde that exist in housing today cannot cause the problems that people are alluding to. And we find that many attorneys, rather than being ambulance chasers today, are now mobile home chasers. But I can assure you, Senator, when the final studies and reports come out—and they have been worked on now and we are expecting more and more because we are working in the animal studies with monkeys, guinea pigs, rabbits, hamsters, et cetera—that the American public will find out that a mobile home is just as safe as any other form of dwelling.

Senator FORD. You'd probably tell me that we ought to build a faulty mobile home so it'll have some air leaks in it.

You said 0.2 or 0.3. You mean 0.02 or 0.03, don't you?

Mr. BENNING. No, I mean 0.2 or 0.3. When you start with 1 part per million or 2 parts per million, the testing that's been done by independent laboratories has shown an area of 0.2 to 0.3. In some cases, they're getting 0.02, 0.03, and I don't even know how they measure it that low with the instrumentation that's available today.

Senator FORD. We have to rely on something, and apparently, it's 0.03, the level which they prefer not to be beyond. According to the information I have when you get 1.0 plus, that gets pretty high and some have been found as high as 1.77 in our State in their measuring.

Mr. BENNING. I haven't heard of your 1.77, Mr. Chairman.

Senator FORD. The information is available from the Department of Human Resources.

Mr. BENNING. That has not been imparted to us as yet.

Senator FORD. I'll be glad to see that you get it.

Mr. BENNING. We would like to submit the medical testimony of the research that has gone on to date so that you and your committee could assure yourselves that this industry is not standing idly by looking at a perceived problem.

Senator FORD. I think that that would be a very important document to have, and if you would submit that, I would be glad to look at it.

Mr. BENNING. Thank you, sir. We will.

Senator FORD. I'll stay with you just a moment, Mr. Benning. In your opinion, where is the overlap or inconsistency between the HUD regulations and the FTC's recommended rule?

Mr. BENNING. As I stated before about the voluminous staff report that came out about a week ago—I have just skimmed it. I

haven't had a real chance to look at it—but basically, I find about 5 or 6 areas of overlap or inconsistency. There are probably more.

The setup and transportation, the time constraints, the record-keeping, the monitoring of dealers, the monitoring of service people. And you know, there's one thing that really disturbs me, which was stated during the hearings and confirmed by the Center for Auto Safety, is that a manufacturer such as Mr. Smith, who's a small manufacturer, would have to assure that the General Electric Corp. or the Whirlpool Corp. or Magic Chef or Coleman was producing a quality product. He would have to go to their factories and review their quality control procedures to assure that he was getting a good refrigerator for his mobile home. And that's what's in the rules, Senator.

Senator FORD. Well, we're also going to require to put on the amount of electricity, the units that are burned. We're getting ready to put a standard on so that you can have a selection. That will be a standard that will be available to the consumer. I suspect, knowing Mr. Smith, what little I've known him, that he would probably check those products out before he ever put them in his mobile home. He would want the right kind of product, so I don't know that we're putting too much of a burden on Mr. Smith.

I don't think he'd put a faulty product knowingly into his mobile home.

Mr. BENNING. I don't think so. But I would hate to have Mr. Smith or one of his staff people have to make a trip to the General Electric factory in Louisville, Ky.—

Senator FORD. Oh, it's beautiful up there.

Mr. BENNING. I know it is, sir. We're there every year.

Mr. SMITH. Well, as a matter of fact, though, I would have very little influence with General Electric, even though we buy refrigerators and appliances by the truckload from them.

Senator FORD. Are you saying that the FTC rule would make him responsible for that product?

Mr. BENNING. Yes, sir.

Senator FORD. If a product is found faulty, would he remove it and replace it with a new unit which would be identical? Not all of the products are perfect, you know, because they're manufactured and assembled by humans. Wouldn't he have some kind of agreement with General Electric to say that they would replace a faulty unit?

Mr. BENNING. It's our feeling, Mr. Chairman, that General Electric provides refrigerators that they have in my home and other homes, and they come with a General Electric warranty. If the refrigerator conks out inside of 2 months, the FTC is asking the manufacturer to replace that refrigerator. They have a General Electric warranty in the kitchen drawer advising them to call General Electric.

Senator FORD. Now, Mr. Benning, let's look at it realistically. I wouldn't seek out a General Electric dealer and say, I bought my mobile home from Mr. Smith and it had a General Electric refrigerator in it, now I want you to replace it. There must be some kind of arrangement.

I'd go back to Mr. Smith's dealer and say, you sold me a mobile home and the refrigerator doesn't work.

Now Mr. Decio says fix it. All right, Mr. Smith's going to fix it and he fixes it by replacing it. Somewhere along the way there ought to be some kind of agreement between—Mr. Smith and GE. I don't know how many mobile homes he buys, but he'd have to buy several hundred refrigerators a year. Surely, if he's that kind of a customer, I would want to take care of him.

Mr. BENNING. You're right, Senator.

Senator FORD. OK. So why doesn't Mr. Smith just take it out, put in a new one and make the arrangements without causing the consumer to bounce around all over the country?

Mr. BENNING. You're correct, Senator. But when I buy a conventional home, I can't go to my homebuilder to give me the refrigerator.

Senator FORD. No, but the consumer doesn't expect that because, normally, the deal is made between you and the conventional home dealer on what kind of products you want. He may not be furnishing those products. You might buy them yourself. Lots of times homes are not furnished by the contractor.

Mr. BENNING. We notice that in the kitchens, the stoves and refrigerators are normally supplied.

Senator FORD. Well, you can. You can take them or turn them down. If you buy a mobile home, it's there already, isn't it? And a conventional home, you can put it in your own way—just take my stove, for instance. I bought one that has a grill on it. Well, it doesn't automatically come with the home. You don't get one. I had to specify that. I had to go buy it and put it in. And it is not a General Electric product.

Mr. BENNING. We won't tell GE that.

Senator FORD. The rest of them are.

They just didn't make that kind. Do you want to see my TV?

They're all assembled in Kentucky and I try to be good to my constituents.

It's called Appliance Park, 20,000 employees. Yes, Mr. Hussey.

Mr. HUSSEY. One brief comment on that. I think what we're doing is taking advantage of an extensive warranty service that are provided by all of these appliance suppliers. They're all very large companies. They all have very extensive warranty service, and we give our customers the opportunity to contact them.

Now occasionally, we do get a direct contact and we call that service facility to go out there and get it taken care of. But mostly, they have the warranties contained in the home when they get it, and they either refer directly to the service or they may call the dealer and he will refer them to the service center. These are extensive service facilities and I can guarantee you that all those appliance manufacturers on major items like that do a great job of taking care of their warranties.

Senator FORD. Of course that requirement doesn't disturb me too much unless Mr. Smith is totally responsible for GE's product. Now if that's true, somewhere along the way he has to have a backup. I may be nit-picking here, but this is part of the consumer complaints that you're going to get and we might as well get down to those kind of complaints. And a refrigerator is a major item, it's a major item within that mobile home.

The nature of it is to go back to the fellow that sold it to you. That would be the normal thing to do. Then the consumer may get kicked from place to place.

So if the dealer that sold it said, no, you'll have to go to a GE dealer, and the GE dealer may say, I don't have anything to do with that, you'll have to write the company, or write a service center.

You go up into some areas of various States that are remote, they're rural, there has to be a problem. And the closest person, probably, is the dealer that sold him that mobile home. And he's going back to that fellow. He's going back to that dealer and say, it doesn't work. Then is he going to say, I don't have anything to do with it? The consumer will answer, you sold it to me.

What I'm trying to say is there is a consumer problem here that the dealer, if he's the right kind of dealer, will take care of.

Mr. BENNING. That's right, Senator. That's the philosophy of the industry, is take care of the consumer problem first, and then work it out as to whose problem it is—the manufacturer or GE's or whoever.

Senator FORD. So, basically, if the FTC rule is making him take care of it, I'm not sure that that is absolutely right. But if you're going to sell and you're a good salesman, you take care of your customers. Service is the most important thing you do after you sell.

Mr. BENNING. One-hundred percent.

Senator FORD. Do the manufacturers have any process for evaluating their dealers?

Mr. BENNING. You'll have to ask the manufacturers.

Senator FORD. All right, Mr. Smith.

Mr. SMITH. Yes, sir, we certainly do. As a practical matter, in a small company such as ours, we know the dealer before we ever go to see him and we know what kind of performance he does on service, in particular. That's the first thing, really, we have to consider. And we have fired dealers because they didn't perform satisfactorily. We have to because that reflects badly against us. That's just the way the marketplace works.

As far as having a form filled out as to exactly how many people he has and what equipment he has, we as a small company don't do that. But as a practical matter, we know exactly what kind of service work he does or we wouldn't go to see him.

Senator FORD. Mr. Hussey, what procedure does your company go through?

Mr. HUSSEY. We have what we call district sales managers who are on the road most of the time. They're required to call on their dealers at least once a month, and some of them more often than that. We're in constant contact with our dealers through what we call our dealer relations manager. He's the man that handles service. And they are constantly evaluating the problem.

Now if we get a dealer that isn't performing on service, we know it fairly rapidly because we feel it through our dealer relations and through our man that's on the road constantly. We know if he's not performing. We talk to him, and if he doesn't perform properly, we get rid of him.

Senator FORD. Your district representative would be in the position to assist the dealer with correcting some problems that might develop as it relates to an individual sale?

Mr. HUSSEY. Right, through reference back to the factory. We have three to five servicemen on the road from each plant and he refers back. If there are problems with a particular dealer on products he sold to a customer, we get that serviceman in there as rapidly as possible. We try to keep it within 3 weeks on those service requests.

Senator FORD. Let me ask you, in the 15 States that are excluded, HUD indicated that they didn't have the State agency to work with. How do you operate in those 15 States? Is it different from the other 35?

Mr. HUSSEY. Not at all. We take care of them exactly the same.

Senator FORD. Well, what kind of scrutiny do you find in the 35 that you don't find in the 15? You may not change your business any, but who do you run into and what kind of paperwork is more or less as it relates to the 35 and 15?

Mr. HUSSEY. I don't think that there's any difference. I don't see any difference. We take care of all our service requests. We get very few from those SAA's. Basically, we get our requests from the dealer or sometimes directly from the consumer and go out and take care of them. Our recordkeeping is the same in those States. All the areas that is, the States in which we operate, I believe have SAA's where we manufacture them.

Senator FORD. FTC made two surveys: One in Ohio and one in California. As I understood in the testimony earlier, recreational vehicles were included in a number of complaints. There were modular homes that were included in those complaints.

But has industry made any surveys?

Mr. HUSSEY. We submitted analyses of the Ohio survey, which— it's completely faulty. The figures they quoted, for instance, in their press release the other day, I guess were based on that. They talk about us not performing on 40 to 50 percent of our service requests. That's ridiculous. That's an insult to everybody's intelligence. How could we stay in business with that kind of performance. There's just absolutely no way that we could stay in business.

The problems that get to the SAA's and a few of those, there are blips. In any operation you're going to have some blips. But they're very minor.

Senator FORD. Yes; some people think I make mistakes.

Mr. HUSSEY. Well, we all make mistakes. There's just not any volume of problems with our warranty performance. It's incomprehensible to me how they can make such an issue out of nothing. They're punching at clouds.

Senator FORD. Let me ask you something. Do you conduct a setup inspection? What is the requirement? Assume I buy a mobile home. I've got the lot. I think our State has an anchoring requirement of a 75 mile an hour wind.

Is there any requirement by the States that that setup be inspected? Or in those States that there is not, do you require your dealers to make some kind of inspection? Does HUD have that responsibility?

Mr. HUSSEY. In some States it is regulated. Not too many of them, I don't believe. But we provide to each of our dealers with each home a setup manual for setting up. The dealer does the setup. He's familiar with all the local conditions, the zoning, the soil conditions, who hooks it up, who's going to hook up the electricity, what utilities are available, and so forth.

So he's obviously the man to do the job. He does a good job. If he doesn't do a good job on setup, he can't stay in business. If we get complaints from our customers about his setup, we know he's not doing the job.

I've got to say, by and large, the dealers today are doing an excellent job of setup.

Senator FORD. Is that basically the same procedure of the other two gentlemen here?

Mr. DECIO. Yes, I would say so. Mr. Chairman, I would sum up that the dealer today is a small, hardworking, honest businessman. He has an expertise, a local expertise. Like Mr. Hussey said, he understands the soil. This sounds like a large, complicated problem to set up a mobile home. It does take time. It is expensive. But he knows how to do these things. He's done them for years, in most cases. And again, he has all the manufacturers' setup instructions, which relatively are very, very simple.

But, again, this seems complicated to someone else who doesn't do these things, but it isn't.

Mr. HUSSEY. I might add that there are 20 States that regulate setup and regulation and these comprise most of the major States. For instance, Florida and some of the bigger States.

Mr. DECIO. California.

Mr. HUSSEY. California, Texas, all have those setup regulations.

Senator FORD. There's a requirement that when it's set up, they have a checkoff list and it's reported, or does the State come out and inspect it?

Mr. HUSSEY. There is inspection, I believe, yes. And they're bonded. The dealers are bonded.

Mr. BENNING. Bonded and licensed.

Mr. DECIO. That's the most elaborate system.

Senator FORD. Let me ask you something, Mr. Decio.

Mr. DECIO. Yes, sir.

Senator FORD. You talked about your compliance with the consent order that you signed. Has this changed your relationship with any of your dealers?

Mr. DECIO. In the beginning, there were a percentage of dealers that did not want to sign our service agreement. They didn't want to sign anything with anybody. They had done business with a handshake for years and years and years.

Senator FORD. That's the reason we've got bonding requirements now. Times have changed.

Mr. DECIO. Right. That wasn't the case. You asked the question. I want to give you the exact answer.

By and large, the vast majority of dealers signed the agreement because, just like us, they were doing these things, anyway. They live in their local community. They live in a glass house. They belong to the Rotary, they belong to the Lion's Club. They're good, hardworking American people.

Senator FORD. Have you received any complaints about formaldehyde vapors?

Mr. DECIO. Yes. Roughly 40 to 50. I don't know the exact number, of maybe a couple hundred thousand homes.

Senator FORD. In what form were these complaints? Did they come directly from the consumer or from a State agency?

Mr. DECIO. I don't know. I know of one specific one that came directly from a newspaper clipping.

Senator FORD. Well, that indicates that you're reading that particular newspaper.

Mr. DECIO. Well, a friend of ours sent us the clipping. We were concerned to see that the unit was serviced, and it was. It was inspected. We inspected it, all according to the rules.

Senator FORD. How many dealers have you dropped in the last 24 months because of inadequate warranty repairs?

Mr. DECIO. We have the record. We can submit that to you. I don't know by numbers, but I know we've had them.

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

Our files show that we terminated 23 dealers due to service problems in the two year period immediately preceding August 20, 1980—approximately one dealership per month. Please note, however, that this tally represents only dealers terminated exclusively on primarily because of unsatisfactory service. In most cases when the dealer-manufacturer relationship is terminated, there is more than a single cause. The relative quality of a dealer's service is often considered by Skyline when the question of terminating a dealer arises. Therefore, these 23 terminations represent the most conservative possible count.

Mr. SMITH. We dropped the largest one we had in this past year for that reason, and that hurt. We just had to do it.

Senator FORD. You dropped the largest dealer you had because of inefficient warranty repairs?

Mr. SMITH. Yes, that's correct.

Senator FORD. That was a tough decision.

Mr. SMITH. That was a tough one, yes, sir.

Senator FORD. Did you pick up anybody in the local community? How did you offset it? You must have lost some sales.

Mr. SMITH. We've had to do business with another dealer down the street.

Mr. DECIO. As you probably know, Mr. Ford, we have 1,800 dealers. Eighty percent of our production is sold by 20 percent of our dealers.

Mr. SMITH. Senator Ford, let me return, if I may, to that setup situation. That's really a crucial thing with us. We sell largely double-wide mobile homes, two sections of 12' by 60' sections that are brought together. The sections weigh about 5 or 6 tons apiece and it's no small job to get it done exactly right.

We do business with dealers that specialize in double-wides, primarily. We seek them out. They do a good job of putting them together.

However, if we've got to be financially responsible for that dealer, what he does there on that setup, that is a serious problem. If we remove the duty and the onus of seeing that that inspection, that that setup, is done exactly right from him and put it on us, it's going to affect the level of his performance. And inevitably, we'll have to move toward a situation where we own our own dealership.

We can't afford that. There's no way that a company of my size can finance dealerships.

Senator FORD. Now in the licensing and bonding of that individual, would the setups be covered under the licensing and bonding procedure?

Mr. SMITH. You mean the State licensing?

Senator FORD. Yes.

Mr. SMITH. Yes, sir.

Senator FORD. I have a lot of questions. I'm sorry to keep you all so long.

Mr. SMITH. That's all right. We'll stay all day.

Senator FORD. When you talk about vertical integration, you're talking about—

Mr. SMITH. Owning the dealership.

Senator FORD. Like the major oil companies, from the oil well to—

Mr. SMITH. Yes, sir.

Senator FORD. And the small dealer could probably not accommodate that additional cost.

Mr. SMITH. Or the manufacturer.

Senator FORD. The manufacturer could not accommodate that extra cost.

Mr. SMITH. No way. No way.

Senator FORD. Let me ask you something, Mr. Smith. Now I see a mobile home, and I see a trailer-type, 60 feet long or whatever it might be, and you crank out and you get the living room. But when you get a doublewide, I see more of a house than a mobile home. If you bring them in and put them together, basically they're set down on a different-type foundation, aren't they?

Mr. SMITH. Yes; that's 1,200 to 1,500 feet of living space there.

Senator FORD. Yes, sir. So I look at that somewhat different from one that you would roll in and set it down. Do all of you manufacture the doublewides?

Mr. SMITH. Yes, sir.

Mr. DECIO. Chairman Ford, that is rolled in, too, and set down.

Senator FORD. I understand that. But when I look at a mobile park, a subdivision type, where you've got it all worked out very nicely with shrubs and sewers and water, I see the wheels still on those. And then when I see something like this, it gives me a different impression.

Maybe I'm different, but I think maybe I'm the general public. This looks more like a prefab home.

Mr. DECIO. You're right.

Mr. SMITH. It's a different animal.

Senator FORD. Different animal. So you've got a different problem with the doublewide than with a regular mobile home as we've known it as such all these years.

Mr. SMITH. That's right.

Senator FORD. And under the FTC rule, then this setup would be the responsibility of the manufacturer and not of the dealer.

Mr. SMITH. That's correct.

Senator FORD. What if the contractor that builds the foundation made it 6 inches short, or 6 inches too long? Then that makes you responsible for the measurement of the concrete foundation.

Mr. SMITH. And we can't stand that.

Mr. DECIO. It's impossible.

Senator FORD. I've had some experience with that. It's not too good.

Mr. SMITH. See, what they're trying to do, in effect—

Senator FORD. I'm not talking about with homes; I'm talking about the measurements and pouring the foundation. It would be 6 inches too wide. You'd have to tear our a wall and do it all over again. It gets pretty expensive.

Mr. SMITH. What's proposed here, what's envisioned, that we would be made responsible for everything. We're going to be responsible for that dealer in that setup. We're going to be responsible for what GE produces, by law. That's not fair, that's not reasonable, and it shouldn't be done.

In my case, it would put me out of business.

Senator FORD. I've got two or three things that bother me here, one is the overlapping of HUD and FTC. Second, I've got the problem of what the manufacturer should be responsible for and what he should not be responsible for. I can't see how you can be responsible for it all because it's so widespread. Mr. Hussey, how many States do you service?

Mr. HUSSEY. We're in most of the States. There are a few that we don't serve. Most of the States.

Senator FORD. Mr. Decio, it seems like to me there are several States in which you manufacture?

Mr. DECIO. Yes, Mr. Ford. We serve in 48 out of the 50 States. We choose not to serve in Alaska because we cannot service our units. It's too far away. Or Hawaii. From 1972 on, we would not ship any units to Alaska. Our inside the company policy is to do the service within 7 days and there's no way that we can do that, to follow that policy—

Senator FORD. I'd like to be your serviceman for Hawaii.

Mr. DECIO. So would I.

Senator FORD. We might just strike up a deal.

Mr. SMITH. We sell in about a dozen States.

Senator FORD. I'd like for you all to agree that, within the next week or so, I might send you some questions in writing, that you will respond to in writing because this is whetting my appetite. I'm not sure just how to pose those questions today. And I did try to brief myself as it related to the total industry.

You'd be surprised that we've been out working with the dealers to see how they're operating and to ask them some questions. And unbeknownst to them, they were our staff.

Mr. DECIO. Mr. Ford, could I say something? Most of the dealers are not large dealers. Most of the dealers are independent owners who live in towns, like I say, belong to the Rotary or the Lion's Club and they run small businesses. They have an expertise of their own. They're hardworking people.

I don't want you to get the impression that the vast majority of the dealers are large dealers. They are not.

In our case, we choose to find a small dealer. We want a fellow who belongs to his community, is involved with his community, is 100-percent community.

Senator FORD. Let me ask you this. As I understand it now, none of your warranties include setup and transportation.

Mr. SMITH. That's right.

Mr. DECIO. Yes.

Senator FORD. Under the FTC rule, it would, including all the products and contents.

Mr. SMITH. Yes.

Senator FORD. Would that mean you would furnish?

Mr. BENNING. Oh, we do.

Mr. DECIO. Yes, we do.

Senator FORD. You do all of that?

Mr. DECIO. Not all of it, but most.

Senator FORD. But they have a choice if they want some things or not.

Mr. DECIO. Yes.

Senator FORD. Would that make you responsible, then, for the furnishings?

Mr. DECIO. Our company, yes, the complete thing.

Mr. HUSSEY. We do, too.

Mr. SMITH. So do we.

Senator FORD. And the FTC rule, then, the warranty would be all-inclusive, including the transportation and the setup?

Mr. SMITH. That's right.

Senator FORD. All right, gentlemen, I thank you for your patience with me.

Mr. BENNING. Thank you, sir.

Mr. DECIO. Mr. Ford, we welcome your staff or any of your members to come to our factories to see the real homes and the real factories and the real systems and the real systems of warranty.

Senator FORD. Well, I've been through some plants. I understand a little bit about the manufacturing of mobile homes.

Mr. SMITH. We'd be glad to have you in our case. You can come down south.

Senator FORD. Well, I'll tell you, I'll go down south when the weather gets cooler.

Thank you very much, gentlemen. We're going to see if we can set up a dealership in Hawaii. That's what I'm going to do. Thank you all very, very much.

The next witness is Mr. Gulick, James Gulick, assistant attorney general, Consumer Protection Division, Department of Justice, Raleigh, N.C.

Senator FORD. How are you, sir?

STATEMENT OF JAMES GULICK, ASSISTANT ATTORNEY GENERAL, CONSUMER PROTECTION DIVISION, DEPARTMENT OF JUSTICE, RALEIGH, N.C.

Mr. GULICK. Senator Ford, can you hear me?

Senator FORD. Yes, sir, I can hear you. Can you hear me?

Mr. GULICK. It's a big room. We're sort of alone at this end of the room. I must say I was glad to come up here. It's a little cooler than it was in Raleigh when I left yesterday.

Senator FORD. Well, I can't understand it with all the hot air going on in this town.

Mr. GULICK. Well, I'm not an expert on Washington.

Senator FORD. Well, I hope you're an expert on consumer affairs.

Mr. GULICK. I try to be.

Senator FORD. Were you there when Senator Morgan was attorney general?

Mr. GULICK. No; I wasn't.

Senator FORD. He has a great interest in consumer affairs. Your statement will be included in the record, so if you could summarize that, Jim, I'd appreciate it.

Mr. GULICK. Well, Senator I'm an assistant attorney general in the consumer protection division of the State of North Carolina. One of our principal duties is enforcing the State's little FTC act, which now reads exactly the same as section 5 of the Federal Trade Commission Act.

In doing that, we take a wide number of complaints on all sorts of matters as one way of finding out about the serious problems.

Let me preface my comments by saying that the attorney general's office of North Carolina does not take a view one way or another as to whether this specific rule should be promulgated or not promulgated. I have some personal views about that. But what is in the prepared text is the statement of the attorney general's office as to the current state of the law and the problem, as we see it, based on our experience.

We have received a substantial number of complaints from North Carolinians about the warranty service that they are obtaining or not obtaining in the last year and a half, right up to this month. We get approximately 30 complaints a month on warranty service.

Senator FORD. How many mobile homes are sold per month?

Mr. GULICK. I don't know per month, Senator. The last information that I have is that about 13,000—this figure is from the Manufactured Housing Institute in the State—were sold last year. And as I understand it, there has been a slowdown in the first 6 months of this year.

Senator FORD. And then you get 360 claims in the last 2 or 3 months on the average.

Mr. GULICK. About 30 a month.

Senator FORD. Well, that's 12 months.

Mr. GULICK. I'm not terribly good at math, so I can't multiply too fast.

Senator FORD. I believe that's 360.

Mr. GULICK. Yes. We've had, as I say, about 500 in the last year and a half.

Senator FORD. You've had 500 complaints in the last 18 months.

Mr. GULICK. Our general view when we get complaints is that we are not seeing anywhere near the number of complaints that are actually out there, especially with this sort of thing. But we have no way of knowing exactly how many are out there. Our usual experience is we don't get—a lot of people just don't know about us.

I might say that, to really summarize what our experience has been, is that we see a large number of complaints from people who are complaining about warranty service, and usually, the complaints have to do with just not getting any service.

These are complaints about new homes. They bought these new. Most of the defects appear in the first year.

As I indicate, 90 percent of the complaints involve delays of several months, 2, 3, 4, or more, in getting warranty service. It involves all sorts of different things. I have a list in the prepared text that I won't go through. There are any number of things that could be wrong.

There are mobile home dealers and manufacturers who do a good job with warranty service, and some of them we hardly get any complaints about. It's a really rare occasion, and when we do, they take care of it.

The problem, as we see it, is that there is really, in our experience, no legal accountability that is really effective to deal with the warranty service problems. I've gone into detail in describing why that is the case. We have, for example, to address one question that was discussed earlier at some length, the State department of insurance, which is the State administrative agency for HUD in enforcing their standards. We quite frequently confer with them when we get complaints and there's some dispute about whether or not there is some sort of defect. Although I have gone out on quite a number of occasions with our specialist in our office to take a look at them. We have minimal resources to do that, I might add.

Frequently, we ask the department of insurance to go out and take a look and see what's going on.

Very frequently, they are unable to do anything because, if there is a problem, the defect is something that does not occur in a class of homes, may be individual to that particular home, or is not health-related. I'd say that most defects that I have seen, or that we have heard complaints about, are not safety related. And I include things like leaks in roofs and that sort of thing.

I can remember one example, where water was leaking down onto a stove, which was electrical, and they viewed that as a safety defect. But a substantial number of these are not safety related.

Senator FORD. It's like your statement says, the door latches, doors won't close, roofs leak. That would be a normal complaint as it relates to mobile homes?

Mr. GULICK. Yes; that would be quite common. I had a paragraph there that just sort of listed a lot of things that we see very frequently.

Another thing that was discussed at some length was the holder-in-due-course rule. I might say that I was interested in that discussion because it is very complicated. The holder-in-due-course rule frequently doesn't apply. If you go and borrow, for example, the money yourself from a bank and the mobile home dealer does not arrange that financing, then you cannot hold that bank—you have no legal right to withhold payment from that bank—because the dealer is not meeting his obligations, or the manufacturer is not.

I might also point out that, as we understand, as I understand the holder-in-due-course rule, it applies when you have defenses against the seller. The dealer, as people frequently point out, is the seller and the dealer is usually not—in fact, he's almost always not—the warrantor of the home.

That gets us into an area, I think, that is probably the most significant problem, in the mobile home industry, as it relates to

warranty repair. That is that the manufacturer is the person or business that offers the warranty on the home, while the dealer, who is the seller, usually disclaims, or attempts to disclaim, warranties, any warranty, including implied warranties. In North Carolina, there are no implied warranties from someone who is not a seller, who is not in privity and didn't deal directly.

The problem is that the manufacturers, and what makes it special, I think, in the case of mobile homes, is that there is a substantial number of things—much more, I think, than in a car, for example, that can go wrong with that product as a result of something that happens after the thing has been manufactured. That includes setup.

As I indicate, and as has been correctly pointed out by others, and the setup of new homes is usually performed by the dealer. Dealers usually don't disclaim warranties on setup, although I've had a case where someone once argued that his disclaimer as to the product related to his setup. I remember that occurring on one occasion.

But very frequently, I'd say there is a dispute that develops between the manufacturer and the dealer as to whether a particular defect in a given case is the result of setup or some manufacturing problem. That's happens, I'd say, in 10 percent of the cases we get, and delay results and we do not see a situation where the manufacturer and the dealer get together and solve the problem. Then the customer's left saying, well, I don't know what's wrong—why this happened.

Senator FORD. And then they come to you?

Mr. GULICK. Yes. Usually, they do what you pointed out. They go to the dealer and they say, I bought this from you. Why don't you fix it? That's what usually happens. They don't understand. In fact, they're instructed, usually, in most warranties in compliance with Magnuson-Moss—because the manufacturer and the dealer have this relationship, that the dealer is going to do the initial minor repairs, warranty service—that the proper person for them to go to, in order to complain to the manufacturer, is frequently the dealer.

So they're just hopelessly lost, as a rule. They don't understand who is supposed to do what. And if both the manufacturer and dealer are saying, it's not us, it's the other guy, they're mostly stuck and we're frequently stuck.

I'd be happy to answer any questions you have, Senator. I've heard quite a number of questions that I could answer and be helpful on.

Senator FORD. Well, maybe I'll ask them again. North Carolina has a dealer and manufacturer licensing and bonding law?

Mr. GULICK. Yes, sir.

Senator FORD. Do these laws have any effect on the ability of consumers to get repairs?

Mr. GULICK. No, sir.

Senator FORD. Why not?

Mr. GULICK. Well, I would say this. In order to take a license to do business, which is the biggest thing that you could do to somebody other than—these aren't criminal cases, obviously. That's the

biggest thing that you could do to them, really, is take their license away, their right to do business.

The agency which is responsible, for example, in North Carolina, is the Department of Motor Vehicles, which is not the Department of Insurance, not the Department of Justice.

To do it, for example, we have to show that there had been a fraud or a deceptive practice. There are a variety of other things that would go on.

Arguably, we could do that. In certain cases, I think maybe we could. We sued one manufacturer earlier this year, deceptive warranty. They weren't honoring the warranty as promised. And arguably, if you continue to sell, you should know—

Senator FORD. Was that a manufacturer of the product within your State?

Mr. GULICK. Yes. Well, actually, it was an Indiana corporation that was doing business in North Carolina and its parent Texas corporation. We sued both of them because the Texas corporation had lent its name and financial position in obtaining credit in the state.

Senator FORD. But you say these laws, in effect, don't have any effect on the ability of the consumer to get repairs.

Mr. GULICK. That's right. We have to go in and prove everything that we need to prove in order just to show for our own purposes that they were failing to honor their warranties in a systematic fashion to take their license.

Senator FORD. The consumer controversies law that was passed this year, which funds small claims courts where the consumer doesn't have to have an attorney—

Mr. GULICK. Dispute resolution mechanisms?

Senator FORD. Yes.

Mr. GULICK. There hasn't been a great deal of experience. I think it would be a good thing to see.

Senator FORD. That might be a vehicle on which to settle these claims.

Mr. GULICK. It could certainly be helpful. Let me say, by the way—if I'm off base and you don't want to hear this, let me know—let me say I think the tools currently are inadequate. There are a variety of different approaches that could be tried at once.

We're not in favor of lots of regulations. But frequently, you need several different tools in order to get at the problems. And you just reminded me, in this context, of overlap. If there is a gray area as to whether or not somebody has jurisdiction, you need a little overlap in order to take care of those areas. There may be a very serious problem that falls through the gap.

And if we had a good working dispute mechanism, which we don't have in North Carolina, that would be a big help. I don't know that it would solve all the problems, however. I would tend to think not. But it could be quite helpful.

Senator FORD. I don't think that we've ever developed a solution in these halls that ever answered everything, anyhow.

Mr. GULICK. No.

Senator FORD. Sometimes we create more problems than we do answers. The auto dealers, I understand, have some sort of a group

that they put together to arbitrate the problems between the manufacturer and the consumer.

Is this something that could be encouraged?

Mr. GULICK. Some of that has happened. We certainly would encourage them in doing it. I'm not sure, again, that those are things that solved everything. I would say that the auto repair industry, for example, is an industry that is rife with problems.

Senator FORD. In your judgment, do most of the problems that occur with a home occur as a result of transportation and setup?

Mr. GULICK. I would say probably not, based on my experience. But a substantial number probably do. I would say definitely do. And very frequently, you can't tell. We've had some cases where no one could tell, people who were certainly more expert than we in telling whether they were.

For example, I went down on one case to look at a home. We took the HUD department of insurance person who is supposed to do that.

Senator FORD. Well, you're about as diversified as the Federal Government, aren't you? You've got the department of transportation, the insurance department, the consumer protection agency, and the attorney general's office.

Mr. GULICK. I try to cooperate with our other agencies.

Senator FORD. I know. I understand. What I'm saying is that your consumers are kicked from pillar to post. I think it's one of the things that we're trying to eliminate. Find one agency where they can go and get an answer.

Mr. GULICK. That would be helpful. That's good if you've got something where the agency has all the tools to do it. In my understanding of the law that relates to Housing and Urban Development, they don't have it.

Senator FORD. And FTC doesn't have it all, either.

Mr. GULICK. True. That's right. They don't set the standards. What I was going to describe, I went around with them because I wanted to see what he was doing. And they measured all over the place. The dealer was saying that it was set up—I mean the manufacturing problem—that the studs weren't all high enough and the doors wouldn't open on the inside.

The manufacturer said it was set up. They were taking all sorts of measurements and levels and the whole thing. They never could tell what the problem was.

Senator FORD. Well, if they have supports and they're not the same size then it's tilted.

Mr. GULICK. That's exactly right.

Senator FORD. And I can see the bindings on the door and a few other little things.

Mr. GULICK. That's right.

Senator FORD. As we say down home, it wasn't plumb.

Mr. GULICK. That's right. That's exactly what was happening.

Senator FORD. You North Carolinians understand that lingo. Do you think a written agreement between dealers and manufacturers would solve any consumer warranty problems?

Mr. GULICK. You mean as to service?

Senator FORD. Yes.

Mr. GULICK. It would certainly resolve some. Most of those service agreements, by the way, are oral. They are still doing the handshake. As far as we can tell, most of them are no more specific or detailed than the example of the handwritten agreement that appeared in one case, which I quoted in my testimony.

In that case, the question was who is responsible for major construction.

Senator FORD. Responsible for what?

Mr. GULICK. Who's responsible for major construction problems. In that particular case, the dealer said this is major and the manufacturer said, no, it's not. So neither one of them did it. Well, the dealer would have done it, but he wasn't going to pay for it and he wasn't going to do it unless the manufacturer said, we will pay for it.

Senator FORD. Has your office received any formaldehyde complaints?

Mr. GULICK. Yes, sir.

Senator FORD. How many?

Mr. GULICK. I would say not very many. Relatively few.

Senator FORD. Have you gone out to check it out?

Mr. GULICK. Yes, sir. The first time that I had it done, I went with them.

Senator FORD. What kind of results did you have?

Mr. GULICK. That case, in particular, was the first of the examples that I quote in my testimony. They took three readings and we stayed there half an hour. They pumped air through a liquid. I don't remember what it was. I got the OSHA people in our State to go down and do it for me. It was 0.78, point something or other, and a little less. It was about 0.5 in 1. The three readings averaged out to about 0.6 part per million.

This was a case where, when it finally came to us, the home was about 6 months old. The owners were complaining that they couldn't live in the house. The wife complained that when they stayed in it, she would vomit in the mornings. The husband had headaches.

Senator FORD. That probably scared the husband to death.

Mr. GULICK. I don't know, they already had several children.

Senator FORD. If they had seven children, I know it would scare him.

Mr. GULICK. No, several, several children. It was disturbing to me for this reason, Senator. There are no standards whatsoever for concentrations. The gentleman is correct—I can't remember which one it was who just testified before—

Senator FORD. Mr. Benning.

Mr. GULICK. Mr. Benning. He's correct. It's the concentration that can be the problem. But that is a problem. In this case, the concentration was severe.

Senator FORD. What is your level of danger?

Mr. GULICK. We don't have a level.

Senator FORD. What did you understand from OSHA, then?

Mr. GULICK. Well, they gave us quite a bit of information which I'm quite willing to send to you. I did not bring it with me.

Senator FORD. We can get it from OSHA.

Mr. GULICK. You can get it from the Consumer Product Safety Commission now because I sent it to them. The only standards that now exist are related to employment. But there is now a recommendation, apparently, that 0.5 part per million is of sufficient concentration in a work setting that it requires medical supervision. That's what we were informed by our OSHA people. That's a recommendation for a new rule in the occupational setting. This is what I quoted to the manufacturer.

What distressed me particularly in this case was that the manufacturer essentially took the position, we didn't manufacture it. It was not insulation, because ureaformaldehyde insulation is what is used in retrofitting houses. That's a problem, too, but that's not why we're here. It's used as a resin or glue to hold together particle board, paneling, that sort of thing. As I understand it, it's also used in rugs and some synthetics.

The manufacturer said, we don't manufacture the constituents that make up this house or mobile home. We didn't manufacture the particle board. We didn't manufacture the rugs. We didn't manufacture the paneling and we're not responsible.

As a matter of fact, this is the only complaint that we had—we could have conducted an investigation. In fact, I was considering doing it, asking about all the complaints that they had. We could do that. But we couldn't file suit to force them to take this home back or to make some arrangement. But they relented and gave in and took it back, although they never admitted that they were responsible for that. And their warranty definitely said that they warranted the home against any defects in material or workmanship.

Senator FORD. Can you give me a guesstimate of the percentage of homeowners that actually complain to your office as opposed to all the consumer problems you receive?

Mr. GULICK. Not with accuracy, Senator, but I will tell you what the usual estimate is.

Senator FORD. What is your monthly average of complaints?

Mr. GULICK. About anything?

Senator FORD. Yes.

Mr. GULICK. About 1,800 complaints.

Senator FORD. About 1,800. And you get about 30 a month on mobile homes.

Mr. GULICK. Yes. It's in the top 10 categories. We get complaints about everything, anything that's sold, anything that's advertised.

Our usual estimate is that we get—and this is rough. I certainly wouldn't want to say that it is accurate, except in a general sense—we estimate that we don't get more than 10 percent of complaints on any particular subject.

Senator FORD. So, basically, you think there's 300 claims or complaints a month out there, and you only get 10 percent of them, which is 30, as it relates to mobile homes.

Mr. GULICK. Using our usual rule of thumb, yes, that would be correct.

Senator FORD. But your complaints, then, basically, concern roofing, doors that don't close properly, things of that nature. How many complaints do you get from major problems such as heating elements, air-conditioning, stoves, refrigerators?

Mr. GULICK. Those things are quite frequent, too. I might say that I don't understand this rule to require manufacturers of mobile homes to warrant appliances. I don't understand it to do that. I've read the rule, although we didn't get it a long time ago, either.

Senator FORD. Apparently, the manufacturers don't understand it, either.

Mr. GULICK. My understanding of it is that it does not require that. I might say, though, that some manufacturers do it, anyway. They go ahead and warrant them. On the other hand quite a number of manufacturers exclude appliances.

Usually, when they exclude them, they say that the warranty from the appliance maker is included in the home and very frequently, it is not included in the home.

I might also say that customers don't understand that, anyway.

Senator FORD. That's false or deceptive advertising, isn't it?

Mr. GULICK. Yes, sir, I would say so. But, of course, who knows when it was taken out or who knows if it was ever there? It's difficult to pin down what happened.

Senator FORD. Apparently, you've read the rule. Now is the service deadline set for this rule reasonable?

Mr. GULICK. The 7 days?

Senator FORD. The 5 days for serious repairs and then 30 days for minor repairs.

Mr. GULICK. In my opinion, yes, sir.

Senator FORD. Will the FTC rule address the mobile home problems in North Carolina?

Mr. GULICK. If this rule were passed, we would certainly use it.

Senator FORD. I asked would it address the problems?

Mr. GULICK. Yes, it would.

Senator FORD. Most of them?

Mr. GULICK. I would say, yes.

Senator FORD. Do you have any problems with overlapping of HUD requirements and FTC requirements?

Mr. GULICK. No. We cooperate closely with the State administrative agency. If they can take care of it, that's fine. Frequently, they do not. Right now, under the authority that they have, they do not have jurisdiction to handle a large number of the problems, most of the problems that we get complaints about.

Senator FORD. OK, Jim. There may be some things that we'll think about as it relates to the consumer agency within the attorney general's office we might want to ask you about. And I'll submit those to you in writing and hope that you can respond in a reasonably short period of time.

Mr. GULICK. Thank you very much, Senator.

I'll be glad to answer any questions you may wish to submit.

Senator FORD. Thank you very much. I appreciate your courtesy and your patience with me today because it's been a long hearing.

[The statement follows:]

STATEMENT OF JAMES C. GULICK, ASSISTANT ATTORNEY GENERAL IN THE CONSUMER PROTECTION DIVISION, NORTH CAROLINA ATTORNEY GENERAL'S OFFICE

Chairman Ford, Senators, ladies and gentlemen: My name is James Gulick. I am an Assistant Attorney General in the Consumer Protection Division of the North Carolina Attorney General's Office. The principal duty of the Consumer Protection

Division is to enforce North Carolina's "little FTC Act", which declares unfair or deceptive commercial acts or practices to be unlawful. This the first occasion that our office has participated in any phase of the FTC's rulemaking proceedings concerning mobile homes. We appreciate the opportunity.

As a means of learning about unfair or deceptive commercial practices, and as a public service, our office receives and seeks to mediate consumer complaints. If unfair or deceptive commercial practices are suspected, we are empowered to investigate further and, if necessary, to seek injunctive and restitutionary relief in the Courts, together with civil penalties for willful violations of the law.

From January 1, 1979 until this month, our office received about 500 complaints concerning unsatisfactory mobile home warranty service or repair. This ranks in the top ten categories of consumer complaints by number, and is the number one area of warranty service complaints. Unsatisfactory automobile service and repair is by far the largest complaint category, but generally these complaints involve problems of unnecessary, shoddy or unauthorized repairs.

What are these complaints about? Here is a list of typical problems drawn from about twenty recent complaints: Water leaks in the ceilings, windows, doors, and plumbing; stains in carpets, Celotex or elsewhere due to leaks; knobs pulling off cabinets; unlevel shelves; drawers falling apart; windows and doors not opening or closing, or missing; windows and door frames cracked; siding, molding, doors and screens falling off; carpets or tile torn or coming up; floors or ceiling sagging; two halves of "double-wides" separating; electrical outlets not working or "receding into wall"; tub set at wrong angle and not draining; furniture fabric or drapes torn. A typical complaint lists more than two but less than ten problems.

More than 90 percent of the complaints received by us involving delays exceeding 30 days in completing, or even beginning, warranty work. Delays of several months are most common and we too often see delays up to a year. In many cases, this happens even after a complaint has come through our office.

About 50 percent of our complaints mention unsatisfactory performance of work. About 50 percent (this group overlaps with that just mentioned) complain that some needed repairs are left incomplete. Again and again we have heard that repairmen leave, promising to return, but do not.

What are the reasons for these problems? There appear to us to be several reasons.

While the manufacturers generally warrant directly to purchasers that their homes are free from defects in workmanship and materials, dealers generally in their sales contracts disclaim or attempt to disclaim such liability, which would normally arise by implied warranty. I must add, however, that salesmen regularly promise orally that any problem arising in the first year will be fixed. However, the manufacturers normally delegated to dealers the duty to do some or all warranty work. These delegation "agreements" are usually oral, but the following (handwritten) agreement, which came to surface in one case, will give you an idea of how inadequate such agreements currently are: "Any future problems that may occur will be fixed by dealer with all parts furnished by [the manufacturer] excepting major construction problems."

In that case, the dealer and the manufacturer could not agree on the liability to perform repairs, so they were not performed. I cannot tell you how confusing it is to consumers that while the dealers usually disclaim liability for such problems, they are, generally speaking, the people to whom complaints must be directed in the first instance. Added to that source of confusion and delay is the fact that many problems in mobile homes are, or could be, caused by improper set up, which is usually done by the dealers. Manufacturers usually disclaim liability for defects caused by improper setup. Problems, which may be caused by set-up, as leaking and sagging floors, or poorly operating doors or windows, appear in more than 50 percent of complaints. In about 10 percent of the complaints, delays result when the dealers and manufacturers dispute the source of the problem.

All too frequently, we see cases where the dealers are just not equipped to perform repairs properly.

In some cases, the dealers or manufacturers blame delays or unsatisfactory repairs on an absence of the right style or type of replacement parts.

Sometimes, they apparently view a customer's complaints as trivial. I regret to say that many customers find that manufacturers and dealers do not take their warranty service responsibilities very seriously.

This is not always true, of course. We have virtually no complaints about five of the 25 manufacturers in North Carolina. However, last year we received warranty service complaints concerning about 30 manufacturers (some of these are out-of-state). A majority of these are the subject of more than one complaint. Five or six are particularly troublesome. The problems are industry wide.

At this point, I would like to cite some typical case histories, all of which occurred within the last year. Each is an example of several different problems I have mentioned. The first was, for me, particularly troubling:

First. In this case the complainants noticed shortly after set-up that their eyes became irritated in the home. They were informed that it was caused by formaldehyde fumes released by the paneling, but that after a few weeks the home would air out. Despite their efforts to air out the home for two months, the complainants had to move out of the mobile home because the wife frequently vomited in the mornings and the husband began to suffer headaches and sinus trouble. On the advice of the dealer, they purchased an air conditioner, but it did not help. Six months after purchase the manufacturer suggested washing down the walls and heating the home to a very high temperature. When this did not resolve the problem, our office arranged testing of the concentration of formaldehyde gas in the home and ascertained that it averaged above 0.6 parts per million (ppm).

Notwithstanding recent occupational health studies and conclusions that levels of 0.5 ppm require medical supervision in occupational settings, the manufacturer took the position that it was not responsible because HUD regulations set no standards or regulations concerning formaldehyde and because it did not manufacture the paneling. Our office took the position that the formaldehyde problem was the result of defective materials covered by the manufacturer's warranty. The manufacturer relented and agreed to refund the purchase price.

Second. In another case the complainant said: "The mobile home has a warranty until October 9, 1979. The dealer or the manufacturer neither one has given us the satisfaction agreed to in the guarantee on the mobile home [sic]. The dealer has come several times and the manufacturer has come one time and attempted to patch [sic] the home but never completed the job to our satisfaction. [The dealer] has a T.V. commercial [sic] saying service doesn't stop after the sale. * * * We have wrote letters [sic] to [the dealer and manufacturer] several times. [sic] My wife has called several times. * * * I feel our warranty * * * should be extended because we have not got a years service on the home. If the dealer or manufacturer cannot agree to the terms we feel we should be reimbursed for down payment and what we have pay on the mobile home" [sic]. (This complaint ended with a list of 15 "problems" including leaking ceiling and windows, fallen molding, inoperable door, bulging carpet, water stains, and sagging ceiling. The dealer and manufacturer were disputing responsibility. The manufacturer corrected the major problems two months after contact by our office.)

Third. Excerpts from our letter to a manufacturer:

"[This complaint] was filed with this office in May, 1979. It is now October, 1979. It has now been almost six months. * * * [The complainants] advise that [the repairman] inspected the house on September 12, 1979, with a promise to return and complete the repairs. Since that date, [they] have received no further word from [him].

"I would point out to you that the [complainants] have a leakage problem which was noted in your letter of July 12, 1979. Any damages resulting from the leakage problem will be [your] responsibility * * * as you have left this problem unattended for an unnecessary length of time."

"If I do not receive notification from you within the next ten days advising that repairs have been completed to the satisfaction of [the complainants], this matter will be referred to our staff attorneys for appropriate action." (This complaint was resolved two months later.)

Fourth. Our letter to a manufacturer dated January 15, 1980;

"I have repeatedly requested that you respond to [the] complaint since October, 1979. To date, you have failed to [respond].

"I would like to take this opportunity to advise you that [your company] has been very slow in responding to complaints and in some cases has refused to respond at all. This office will not allow intentional violations to continue." (This case involved complaints of missing parts noted at set-up, a door which decayed due to no latch, an inoperable lock, a defective electrical fixture, two ceiling leaks and a damaged piece of siding. Repair of some of these occurred more than a year after notice.)

Fifth. A complaint received in June, 1979:

"[The dealer] sold me a mobile home double wide. The home was delivered to me the first week of January, 1979. My warranty is for one year and he promised to repair any problems that I had during the year. Problems in which [sic] he will not fix or have factory repair are (1) leaking sinks, (2) home leaks during rain, (3) floor squeaks where put together, (4) storm door not closing or fitting properly, (5) doors inside will not close and latch, (6) shutters on outside rattling during wind because of loose screws, (7) bolts to hold home together underneath missing, (8) light fixture in bathroom shorts out and kicks breaker at times, (9) finish work around furnace

not completed. [Dealer] says that they can't fix these things because they don't know what else to do. Factory people says [sic] it's not their responsibility because they did not set up home. Now, I have not been able to get anyone out here after many times of calling them and them [sic] promise to come. Please help!" (These repairs were apparently completed in October, 1979).

Sixth. (This complaint chiefly involved a loose and rumbling roof which began to leak after repairs were attempted.)

"I called [the manufacturer] myself at [the dealer's] request and was given more promises—no action. * * * My furnace [never worked properly even after several attempted repairs]. I am going to complain to [the] manufacturer of the furnace. I don't know if the furnace would even concern [the mobile home manufacturer] or not. I felt it needed to be mentioned. Another problem * * * when you walk on the [bathroom] floor, it actually seems to sag and [the] floor creaks. Now maybe no one thinks these aren't severe enough problems [sic], but I do! I payed [sic] a good price for this trailer (approximately \$16,000) and I didn't mind as long as what I'm getting is what I'm told I'm getting. [These problems have] me totally frustrated and at a loss at what to do next [sic]."

Seventh. "My floors in the living room are badly warped. The factory sent three men to correct the problem. They doctored the floors temporarily and I have the problems right back. I have a leak around my front door because the storm door was falling apart—they changed the door. They put a cream colored door on the home and the trim on the home is white. Imagine what that looks like. I feel I have really been taken on this. I paid \$15,000 for this home and I am very unhappy. I paid \$4,000 down so I do not feel like I can turn it down so I do not feel I can turn it back to them but I feel something should be done. We live on a fixed income and I cannot afford to pay a big fee to an attorney to fight them in Court. Can you do anything to help us?" (Complaint resolved in March).

Eighth. "This house was ordered to specifications—it was not purchased right off the lot. When the house arrived to the dealer's lot, we were not allowed to look things over. We were encouraged to wait until it was completely set up on our lot and in that way we could get a much better picture of it, et cetera. Had we been allowed to go over the house at that time, it would never have been set on our lot. It was thrown together at the factory in such a manner that the dealer himself should have rejected it as a bad reflection upon his business to be patronizing such defective quality. It should never have been passed on to us. * * *

"[The dealer] should have turned it over to the factory long ago. * * * It is their responsibility to deal with the factory in whatever way they have to; not in whatever way the can. We're talking about a \$25,000-\$30,000 investment."

"We felt somewhat protected with the year's warranty and the fact that this house was HUD approved but so much has happened we have no way of determining just how good this house is going to be after the year's warranty runs out." * * *

"Until such things can be accomplished, we have set up a special account with [a bank] to contain the monthly payments for this house. Expedient action * * * would be most appreciative [sic], as we are thoroughly disgusted and tired, I mean tired of all this. [sic] We want to be able to relax and enjoy living as best we can and have some assurance as to the roof over our heads."

(Numerous problems listed including hot and cold water reversed, shelves out of level, kitchen cabinets improperly hung and not properly stapled together, cuts in vinyl flooring, water line disconnected flooding trailer, bulging carpet).

These cases, and others received by our office, amply demonstrate that there is widespread failure to provide prompt and adequate warranty service on new mobile homes. I believe these case histories demonstrate that the harm to consumers is substantial, even if it is difficult to quantify. They also demonstrate that the legal and factual issues are too complex for most consumers to be able to handle on their own. I once spent half an hour, without success, trying to explain to a complainant of normal intelligence that while the dealer, who sold her home to her, was the person to whom she was first to complain under her warranty, only the manufacturer (who in this case was bankrupt) was liable for original defects in workmanship or materials, because the dealer had disclaimed all such warranties, although he had an agreement with the manufacturer to perform some of those services. However, I told her the dealer was nonetheless responsible for problems arising out of any failure by him to perform set up properly, because the disclaimer in context could not be read to exclude implied warranties as to that service.

While these problems are often too difficult for most laymen to handle on their own, the amounts of money at stake are frequently not large enough to justify hiring an attorney. Some complainants could not afford to hire an attorney to go to court in any event. We do know that many at least seek legal advice, however,

because we frequently find that complainants are referred to us by private attorneys.

I should point out at this juncture that the "holder in due course rule", which is both valuable and justified, is often inadequate to help in these situations for two reasons. First, the rule is frequently inapplicable because the buyer obtained his financing independently or because his complaint is not against the "seller", but against the manufacturer. Second, even when it is applicable, effective use of the rule frequently requires the assistance of an attorney to turn the finance company or bank into an ally in compelling performance.

Also, North Carolina has no rules or laws specifically designed to deal with the special problems of mobile home warranty service. Our common law of contracts and Uniform Commercial Code (which technically runs only to "sellers") already "require" proper warranty performance within a "reasonable" time. But the generality of these obligations, together with the restricted remedies for breach, the complexity of the legal and factual issues and relatively small amounts of money at stake render these legal solutions hopelessly inadequate.

What about agency assistance? The North Carolina Department of Insurance, which is the State Administrative Agency designated to enforce HUD Mobile Home Standards, frequently can take no enforcement action because the defects in question are not common to a class of homes, do not create an imminent safety hazard, or are not "serious". For the purposes of the Department of Insurance, a "serious" defect is one which materially fails to comply with HUD construction specifications. A great many complaints simply involve poor workmanship, or poor quality materials, not failure to meet HUD specifications as to the required amount of insulation, et cetera.

There are similar limitations on the ability of the Attorney General's Office to help these consumers. By mediation, we can often get some remedy, but it is almost always after long delay in the first instance. We can file suit only to protect the public generally. We did file such a lawsuit against a manufacturer early this year after it closed its local plant and ceased altogether providing warranty service, and warranty service is now being performed as part of a developing settlement. We are investigating certain other companies, with particularly poor records of warranty service and we may well file more suits. But by the time we are prepared to file suit, and by the time we are able to obtain the limited amount of relief that we can get, much injury will have already resulted. Furthermore, there will be many individuals whose cases will never be the subject of legal action by our office. In every case we are hampered by the fact that there is no standard fixing a "reasonable" amount of time for warranty performance. We can only turn the screws when delays have been manifestly unreasonable.

In short, our experience shows that there is little accountability in the area of mobile home warranty service, which results in substantial injury to the consuming public. Generally speaking, manufacturers and dealers are far more interested in making sales than performing warranty service. It is only because of the laudable integrity and hard work of some manufacturers and dealers that the entire industry does not suffer these problems. This lack of accountability results from the complexity and informality of the manufacturer-dealer relationship with respect to the performance warranty transportation and set up service. It results from a lack of any recognized warranty performance standards. Finally, it results from the lack of sophistication and market power on the part of the average purchaser. Mobile home purchasers do not understand the pitfalls of warranty disclaimers before they buy. They believe the salesman when he says that if anything goes wrong with the home in the first year, it will be fixed. Mobile home purchasers have little market power. Once they purchase a home, they will not get back into the buying market for years, if ever.

I thank you again for the opportunity to address you and your committee on this subject.

Senator FORD. The next witness will be Edward G. Kramer, director of the Housing Advocates, Inc., Cleveland Ohio.

Let me ask you something, Mr. Kramer, before we start. Are you a State agency or a private organization?

**STATEMENT OF EDWARD G. KRAMER, DIRECTOR, THE
HOUSING ADVOCATES, INC., CLEVELAND, OHIO**

Mr. E. KRAMER. A private organization, Senator Ford.
Senator FORD. All right. How are you funded?

Mr. E. KRAMER. We're funded both through voluntary contributions, private foundations, and, to a limited degree, Federal contracts.

Senator FORD. Federal contracts. Public participation funds?

Mr. E. KRAMER. Only in one instance, your Honor—Senator Ford.

Senator FORD. Thank you for the compliment.

Mr. E. KRAMER. I think we all have that problem of addressing a higher authority.

Senator FORD. I'm not sure that I'm higher authority. The reason I was asking, this "Mobile Home Living: A Guide to Consumer Rights," it was written by you?

Mr. E. KRAMER. That's correct.

Senator FORD. And the contributors were listed there and I didn't know, that was the reason I asked that question. All right, Ed, you may proceed with your statement. We'll include the total statement in the record, if you wish, and you can highlight it, however you prefer.

Mr. E. KRAMER. I would ask that the full statement be placed in the record.

Senator FORD. It will be placed in the record.

Mr. E. KRAMER. For over a decade, I've been advocating for the rights of mobile home owners and since September of 1976, this advocacy has been as director of the mobile home advocacy project of the Housing Advocates, Inc.

In this position, I work daily with mobile home consumers and in this position, I also testified before the administrative hearing held by the Federal Trade Commission on its proposed trade regulation rule. Also in this role have been given the honor of serving as a consumer representative of the National Mobile Home Advisory Council of the U.S. Department of Housing and Urban Development.

Beginning in August 1979, the Housing Advocates, Inc. has been operating a statewide toll free hotline number to answer questions about mobile homes and record consumer complaints. In its first year of operation the hotline has recorded over 1,300 calls. Given the experience of the mobile home advocacy project and my own opportunity to speak to mobile home owners, I've come here today to support the need for this proposed Federal Trade Commission regulation, and the basis for this judgment will become apparent from my testimony.

A quick examination of a profile of the mobile home industry and the consumers it serves indicates the need for this rule. We're talking about a product that is probably the most expensive consumer product that can be regulated. We're talking about a product that costs, on the average, for a single mobile home, 14 feet by 70 feet, \$12,000 to \$18,000, and for a doublewide, \$18,000 upward to \$35,000.

So we're talking about a very expensive product here.

We're also, then, talking about a consumer that has the following types of characteristics. The census reports indicate that 69 percent of these mobile home owners live in rural areas. As Senator Ford well knows, these individuals don't have the same support

systems of private consumer groups or public agencies that can assist them in resolving consumer complaints.

We have a consumer who has a median income of \$10,000, which is a low-income consumer in America. We have a group that has a relationship which is continuing with the dealer often because there is a dual role. The dealer or seller of this product often sells or rents the land to that consumer as well, which can cause tremendous problems and chilling of rights of consumers.

The chilling of those rights are through successful intimidation of mobile home consumers through threats, for example, of eviction if that person complains to the manufacturer, to government agencies, to agencies like myself, or even complains too strongly to the dealer, because he is also the landlord.

So we have a consumer here who is very vulnerable in comparison to other types of housing consumers. And what the statistics and the studies have shown is that, for all of these reasons, this consumer has not been able to find a satisfactory vehicle to repair his mobile home and to meet the warranty which the mobile home manufacturer and the dealer gives him.

The basis of his bargain is not being met in the system.

There has been a number of references to surveys that were done, one of them in Ohio. The Housing Advocates, Inc. had performed this survey and I was the project director of that survey. I found certain information. First of all, the survey that was done aimed only at mobile homes that were purchased new from September of 1975 through June of 1977. Recreational vehicles and modular homes were not included in that survey. Under our State law, a mobile home has to be titled. We obtained every title to a mobile home purchased by an Ohio citizen from that period of time. So we knew that we were only dealing with a sample of people who purchased mobile homes that were new.

Second, part of that survey indicates that some 2,472 Ohio consumers responded to us in this survey. So there's a large number of consumers who responded. Whether it's representative or not can be disputed and, of course, the Manufactured Housing Institute and others have disputed it. But the total number of consumers that have responded makes it one of the largest such surveys on mobile homes in the United States.

And what did that survey indicate? It indicated that the vast majority of mobile home consumers had defects in their homes. The range was between 69 percent and 87 percent that had some defect in their mobile home within 1 year of that warranty.

What types of defects did we find in the survey? Among the most prevalent types were problems with leaks around windows and doors. More than 50 percent of all purchasers indicated problems with plumbing, doors, and waterproofing in general. More than 1 in 5 had problems with walls, ceilings, windows, wiring, carpeting, heating and appliances.

And in my full testimony, I indicated the breakdown of those and we are talking not about several dozen. We're not talking about several hundred. But we're talking about a thousand or more. And that is documented in the survey. We're talking about large numbers of people over an 18-month period who responded to this survey.

These problems existed despite Federal regulations designed to guarantee construction standards, the HUD mobile home construction standards.

Almost all of those problems occurred within the first year, which is the typical period of time when a warranty of a manufacturer of a mobile home runs.

More important, what types of warranty services were documented in this survey of Ohio citizens? The document indicates that 73 to 82 percent attempted to get repairs made. What it showed was that out of those individuals who attempted to make repairs, at least one out of every three did not get repairs made at all. And even more than those did not get satisfactory repairs.

Other evidence was offered from many State agencies during the FTC hearings about the seriousness of this problem. It is not unique to Ohio. It is an industrywide problem. And, in fact, taking a look at the statistics that our first year of the hotline indicates, proves that it's an industrywide problem because 31 manufacturers in our statistics from the hotline were complained of by consumers for not making repairs. These are individuals who bought their homes in the last year, some 3 years after the mobile home construction standards went into effect. This is not stale evidence, not evidence from pre-HUD standards, but continuing throughout the period of time, including the survey which we showed for the 18 months. That is our experience in Ohio, that there has been no significant reduction of defects caused from the regulations of the Department of Housing and Urban Development. It is an industrywide problem.

Looking at the HUD standards themselves, one part of our survey examined exactly that issue of whether or not homes that are certified by HUD, that have a data plate, were having less defects or whether the defects, were in fact, totally eliminated, which was one of the hypotheses that the manufacturers had made.

Our basic finding was that there was some reduction, but not to any level that was acceptable. And in fact, we indicated in our testimony the types of percentages of defects occurring in mobile homes that the consumer could find a data plate—that means that it was HUD-certified—and that were purchased in 1977.

There are a number of reasons why the Federal Trade Commission regulations should be put into effect.

The most important one is, and the one that has not been mentioned yet before these hearings, is the fact that, as Senator Bayh indicated and as so many of the witnesses have indicated, this problem has been occurring or this investigation has been going on by the Federal Trade Commission since 1972. Consumers, as the statistics have shown, have not yet gotten what they bargained for, which is a warranty performance system that would assure a home that's defect-free, that they won't have to pay money to make repairs on during that first year.

Justice is being delayed and justice is being denied in this instance. To give the powers to the Department of Housing and Urban Development would mean unnecessary delay, if we accept that there is a problem. I think Congress showed the dichotomy in

1974 and 1975 in the passage of the HUD mobile home construction standards and the Magnuson-Moss FTC Improvement Act.

FTC should be handling warranty problems, they have an expertise in that area, and HUD should develop and monitor the construction safety standards. There need not be the duplication that has been mentioned.

I believe that the proposed rule, as I read it, eliminates and goes to the issue of duplication and should therefore be adopted.

One final note, and I see my time has run, and I appreciate the opportunity. We've talked about the benefit to consumers and how much it might cost and whether or not there is a need for this FTC rule.

What I see on a daily basis is a warranty performance system that is more designed to frustrate, to rip off, and to grind down consumers through passing the buck, through runarounds so that consumers continually finally have to say, I'll either make the repairs or I will simply forget about it and live in a defective house.

What is the benefit of that? I believe the benefit outweighs whatever minor costs might be incurred through the additional cost of this regulation. I think the FTC rule recognizes the undeniable fact that this product is not a product that can be used by a consumer until it is setup and transported to a lot. The manufacturer has to recognize that fact and, in fact, it recognizes it, as they've testified before this hearing, that they have detailed instructions concerning setup for their dealer. They should take the bull by the horns and say, we will also make sure that that setup is correct, because if a setup is incorrect, that mobile home will have a lot of defects.

The consumer, who has paid his money, or her money, to have a defect-free house, will not get the basis of their bargain.

Thank you.

Senator FORD. Thank you very much, Mr. Kramer. I have several questions and I hope that we can pull some things together from having read your testimony and listening to you highlight it today.

Did I take from your highlights that consumer problems have lessened with the enactment of the HUD legislation? You said not to the degree you would like. But I think that you said they had been reduced some.

Mr. E. KRAMER. The survey indicates that there was a reduction in the amount of defects being reported. So, yes, there has been a reduction through the inspection program.

Senator FORD. When did the mobile homes hit the market under the HUD inspection program?

Mr. E. KRAMER. Any mobile home that was constructed after June 16, 1976, would have had the standard and have a data plate to indicate that.

Senator FORD. Do you know how many dealers in Ohio operate the mobile home parks?

Mr. E. KRAMER. I don't know of Ohio, but I can give you a national statement, which is that—

Senator FORD. Well, I thought that you might have a personal experience with Ohio, but if you have the national figures and not Ohio, I'll accept those.

Mr. E. KRAMER. The Census Bureau indicates that 82 percent of the individuals have purchased their own homes and 76 percent of those rent land. So that gives you some indication of the extent of individuals living in a purchased home, and yet, renting the space that they have located the mobile home on.

I can give you a general impression in Ohio that it is the normal course of business to have a parkowner be also a dealer. It's very natural because you're talking about a captive audience here.

Senator FORD. My impression, as just a traveler, is that there are mobile home parks. They've now designed them as subdivisions, given them space and shrubbery and that sort of thing.

But I would also find that you see more out behind or adjacent to a rural farm, where the son marries and he wants to live alone and he has his mobile home. You go into the mountainous area and you find homes scattered everywhere.

I think there are less parks in my area than would be otherwise.

I'm not refuting your testimony. I'm just saying that my observation would be there are more homes now being scattered out in individual areas than into the mobile park situation. And I've seen the mobile home parks, and I guess you have, too, where they have become subdivisions.

Mr. E. KRAMER. Becoming cooperatives or condominiums, actually, is a new wave. I can submit for the record the annual housing survey which was done by the census that indicates that 76 percent.

Senator FORD. That would be fine. I'd love to have that, Mr. Kramer.

Your survey has already been mentioned to several times this morning. That survey conducted by your organization has become somewhat controversial, I think you will agree somewhat controversial might be mild.

Have you answered the criticism of the design and the methodology of your survey?

Mr. E. KRAMER. Yes. We have put that on the record and, in fact, there was a hearing on June 9, 1978, I believe, basically on our survey and the representativeness of it to permit both the Manufactured Housing Institute and dealers and other interested parties to provide additional information.

We also provided expert opinion on the representative sample, in fact. We stand by that, that it is representative.

Senator FORD. I'm being called to the floor to defend my position there.

What is the law? How does the law in Ohio describe a mobile home?

Mr. E. KRAMER. How does it describe the mobile home? First of all, we're maybe more backward than most States because we call them house trailers still, not even mobile homes or manufactured homes which, in reality, they should be called.

In Ohio, it is a non-self propelling vehicle. And, in fact, it is registered with the bureau of motor vehicles as a vehicle.

Senator FORD. Well, we're looking here only at mobile homes. Those were apparently licensed with the State under the department of transportation?

Mr. E. KRAMER. That's correct.

Senator FORD. Could you have included more than mobile homes? Could you have included modular homes?

Mr. E. KRAMER. Senator Ford, there is a special title, a different color for a mobile home. We received from the bureau of motor vehicles those titles to mobile homes for that period of time. We negotiated with the department.

Senator FORD. How is a modular home described in Ohio? Would it be licensed the same way under the Department of Transportation?

Mr. E. KRAMER. No, it wouldn't be licensed.

Senator FORD. You couldn't have included any of those in your survey?

Mr. E. KRAMER. That's correct, because they are actually—they're not motor vehicles. A motor vehicle is titled. A modular home is actually constructed at the site and has a deed, just like a stick-built house.

Senator FORD. All right. In your opinion, do most consumer complaints involve problems not covered under the HUD program?

Mr. E. KRAMER. Without a doubt.

Senator FORD. What laws are in effect in Ohio concerning mobile homes? We were told in the 35 States they have agencies that oversee the HUD program. Fifteen states do not.

Is Ohio 1 of the 15?

Mr. E. KRAMER. Yes, Ohio is 1 of the 15 that don't have a State administrative agency, which makes it very difficult for us in that HUD in Washington, D.C., has to try to investigate complaints or receive them, and not many consumers will write to HUD in Washington.

In regard to the regulation of warranties, I can tell you that we do not have a law which permits implied warranties. You can exclude that in a written document and most of the warranties that I know of for manufacturers doing business in Ohio have a specific reference excluding implied warranties, which has caused a great deal of problems to Ohio residents.

We have a consumer sales practice act. We don't have a warranty act, per se, which deals with deceptive practices.

Senator FORD. Let me ask you if you were a private businessman or if you were a manufacturer, and under the circumstances, you were buying refrigerators from General Electric and Hotpoint stoves and some sort of air-conditioning and heating unit by name. How would you like being saddled with the responsibility for guaranteeing those products and you, as the individual, would be responsible for the warranty of these products that are coming from reputable organizations?

Mr. E. KRAMER. My response is at two levels. First of all, you're asking me to assume that that's what the warranty trade regulation rule would do, and as an attorney, looking at that rule, I don't find that.

What I do find is that concerning electrical or air-conditioning and heating, those warranties would be required under the Federal Trade Commission, but not appliances, per se, such as refrigerators or stoves.

Senator FORD. But they're almost as costly as the heating or cooling elements, I imagine, aren't they?

Mr. E. KRAMER. I would argue that point and my opinion would be that they should be regulated. I think that if you're going to put something in a mobile home, you have, as a manufacturer of this home, much more power to make sure that General Electric comes out and services your client and you have an interest in that because that client doesn't see two different warranties; they see a single product, which is a well-built mobile home which includes certain items. They bought that from a dealer, who is your dealer. If they're not satisfied, they're probably not going to buy your mobile home.

So that it is in your best interest in the American capitalistic system to make sure your customer is satisfied.

Senator FORD. Wouldn't you want to let them do that anyhow rather than force them to do it, and you would have the good ones staying in business and the bad ones going out?

Here you're keeping an inefficient, bad dealer in business because a Federal regulation has forced him to do some things.

Mr. E. KRAMER. My point of view is that we've got a somewhat governmental quasi-monopoly going on because, in Ohio at least, mobile home parks are basically zoned out of most cities and townships, so that there are a limited number of spaces. And in that, most individuals rent the property because zoning, in Ohio at least, is very restrictive in regard to putting a single mobile home on a plot of land.

In fact, I'm representing individuals who are suing various townships to try to put a mobile home on that plot of land, where it seems the great State of Kentucky has gone far beyond what Ohio has.

Senator FORD. We've been ahead of Ohio for some time.

Except in football.

Mr. E. KRAMER. That's true. What we have here is a dealer who is also a parkowner and he can be pretty inefficient and still stay in business because he has a monopoly on the most valuable thing, which is the land that a person needs to place that mobile home on.

So I don't think we're going to be eliminating these ineffective dealers in Ohio, and from what I can understand, my experiences outside, and I also did participate as an alternate consumer representative for the Federal Trade Commission hearings and had a chance to cross-examine a number of other State administrative officials.

Senator FORD. What kind of position did you have?

Mr. E. KRAMER. The presiding officer, Mr. Ryan, for the trade regulation rule, appointed three individuals, the Center for Auto Safety as a consumer representative, which is a party who can cross-examine and direct-examine witnesses before their hearings. Two additional individuals or groups were identified as alternate, which was the Golden State Mobile Homeowners League and the Housing Advocates, Inc.

Senator FORD. Now you received public participation funds to make this survey?

Mr. E. KRAMER. That's correct.

Senator FORD. And then you were allowed to question and cross-examine the witnesses also?

Mr. E. KRAMER. That's correct.

Senator FORD. You had the best of both worlds, didn't you?

Mr. E. KRAMER. I had some knowledge from the Federal Trade Commission survey.

Senator FORD. Not only was the Federal Government paying you to substantiate their rule, but then they turned around and allowed you to question the manufacturers and the consumers to substantiate your position.

Mr. E. KRAMER. Well, from what I can understand——

Senator FORD. Well, you were there. You ought to understand it.

Mr. E. KRAMER. Yes. My understanding of the public participation program was that I was representing a point of view of certain consumers that are our clients, the Housing Advocates.

Senator FORD. Oh, they're your clients now?

Mr. E. KRAMER. The Housing Advocates represents——

Senator FORD. You're representing—it's a class action, then?

Mr. E. KRAMER. We do have class action.

Senator FORD. Was this case a class action?

Mr. E. KRAMER. We're talking about the administrative rulemaking process.

Senator FORD. We're going to have some oversight hearings on administrative law judge procedures soon. I think the former chief justice of the Supreme Court of Alabama is going to be presiding. So you may want to come back and defend your position.

But it seems a little odd to me that the Federal Government would pay you money to go out and make a survey to substantiate the rule, and then allow you to turn around and be an adversary again. It seems like to me you've had it all. Not only are you paid to do it, but they allow you to do other things beyond that.

Mr. E. KRAMER. I don't believe it's an adversary position, but we were representing an interest of certain consumers, especially those consumers in Ohio. That's part of that.

Senator FORD. That's what I get for not being a lawyer. I don't understand legalese.

Mr. E. KRAMER. Well, I don't think it's legalese. We're talking about a situation where the Housing Advocates basically was not in a conflict of interest because we're representing the same viewpoints of our clients, which was consumers who had mobile home defects which were not being repaired. And a survey was done to present to the FTC to show information on what was occurring in Ohio. And I, as an attorney, represented their interest in cross-examining certain witnesses.

Senator FORD. Well, let me ask you this. Were you paid in addition to the public participation money?

Mr. E. KRAMER. No.

Senator FORD. So the only funds that you received as an attorney for this group was public participation funds?

Mr. E. KRAMER. For the administrative rulemaking proceeding? I'm trying to clarify what your question is.

Senator FORD. What I'm trying to say is that you're not being paid twice, are you, by a foundation, by private individuals, and then public participation to do this one job.

Mr. E. KRAMER. No, no.

Senator FORD. How did you differentiate between the Federal funds and the private funds?

Mr. E. KRAMER. Well, for the administrative trade regulation rule proceedings, there were no funds from any private foundations or any other voluntary sources of contributions. That was all paid through the public participation program.

Senator FORD. But you really had some indirect payment, though?

Mr. E. KRAMER. No.

Senator FORD. You didn't have any indirect payment? How did you get to where you were to make the survey?

Mr. E. KRAMER. We had represented consumers. This is a public interest law firm, the Housing Advocates, Inc. We had represented consumers in a number of actions.

Senator FORD. Does your law firm receive any Federal funds?

Mr. E. KRAMER. No, we don't receive any funds, either Federal or private foundation money, for the legal work that we do.

Senator FORD. It's free?

Mr. E. KRAMER. It's free, or through a reasonable attorney's fee, or awards in successful litigation.

Senator FORD. If you win a case, you are compensated?

Mr. E. KRAMER. That's correct.

Senator FORD. And is that the normal practice for lawyers in Ohio or other places, that you just take on a case and if you win it, you get a piece of it? Who pays the expense of your law firm if you lose?

Mr. E. KRAMER. We do.

Senator FORD. Oh, it's an out-of-pocket loss?

Mr. E. KRAMER. That's correct.

Senator FORD. Do you have a family?

Mr. E. KRAMER. Yes, I do.

I just figured you were a single man and just dedicated your life to this.

Mr. E. KRAMER. I think my wife would say that I dedicated my life to this thing.

Senator FORD. All right. I was interested in how you were being funded because this may relate to the administrative law judges procedure.

As you know, this was a question in the FTC reauthorization bill and we placed a limit on it in the amount of money that you may get.

Over what period of time did you receive your public participation funds?

Mr. E. KRAMER. It would have been July 15, 1977, to June 9, 1978. That is in relation to work that we did. Of course that was not for a whole year that we received funds, and it was only periodic. The consumer survey continued until September. There were some hearings in December and then hearings in June for which we received funds.

Senator FORD. Were you given a flat amount or were you given so much per hour for work?

Mr. E. KRAMER. It was on an hourly basis.

Senator FORD. Up to so much?

Mr. E. KRAMER. That's correct.

Senator FORD. All right, Mr. Kramer. I appreciate you being so patient with me today and I appreciate your patience with the late hour.

Mr. E. KRAMER. Senator Ford, one matter that I'd like to bring up which you had mentioned and I would like to have the opportunity to put information on the record deals with formaldehyde, which is a new problem. I am also on a committee of the National Mobile Home Advisory Council that is dealing with the problem of formaldehyde.

Senator FORD. That sounds like a committee set up by the manufacturers.

Mr. E. KRAMER. No, that's the National Mobile Home Advisory Council of HUD, which includes manufacturers.

I would like to be able to put some information——

Senator FORD. You can submit it for the record, and we would be glad to include it as part of your testimony.

Mr. E. KRAMER. Thank you very much.

Senator FORD. Thank you, Mr. Kramer.

[The statement follows:]

STATEMENT OF EDWARD G. KRAMER, DIRECTOR, MOBILE HOME ADVOCACY PROJECT,
THE HOUSING ADVOCATES, INC.

My name is Edward G. Kramer and before beginning my testimony I would like to acknowledge my appreciation for the opportunity to testify at this oversight hearing on the proposed FTC mobile home sales and service trade regulation rule. I personally wish to thank Senator Wendell Ford for extending me this courtesy and Senator Howard Metzenbaum for his dedication and interest in protecting the rights of all consumers.

For over a decade I have been advocating for the rights of mobile homeowners. Since September of 1976, this advocacy has been as the Director of the Mobile Home Advocacy Project of The Housing Advocates, Inc. (HAI). In this position I have worked on a daily basis with mobile home consumers. It was in this position that I came to testify at the administrative hearings held by the Federal Trade Commission on its proposed trade regulation rule. Also in this role I have been given the honor of serving as a consumer representative on the National Mobile Home Advisory Council of the U.S. Department of Housing and Urban Development.

The Housing Advocates, Inc., the organization for which I work, is a not-for-profit, tax-exempt corporation which has as one of its major goals the promotion of safe, decent and reasonable cost housing. Mobile homes are one of the most important sources of low-cost housing. Considering our goal, it is not surprising that HAI has become involved in the struggle of mobile home consumers suffering financial hardships because of their inability to obtain that which they have bargained for, namely Safe and Well-constructed Housing.

Recently HAI has begun to operate a statewide toll-free Hotline to answer questions about mobile homes and record consumer complaints. Operating under a grant from the U.S. Department of Education's Office of Consumers' Education, the Hotline recorded over 1,300 calls in its first year of operation.¹ Although the funding of the Department of Education has terminated, the Hotline continues to be operated by voluntary contributions. In addition to the Hotline, the project developed a guide to mobile home living for consumers, and in the past year more than 15,000 of these guides have been distributed throughout the State of Ohio and over 20 other states. I have provided a copy of this guide to the members of this subcommittee for their information.

Given the experience of the Mobile Home Advocacy Project and my own opportunity to speak with owners of mobile homes, I have come here today to support the need for the proposed FTC trade regulation rule. The basis for this judgement will become apparent from my testimony.

¹ The Mobile Home Hotline began operation on Aug. 15, 1979.

A PROFILE OF THE MOBILE HOME INDUSTRY AND ITS CONSUMERS

Mobile homes are one of the fastest growing sectors of the housing market. It is estimated that then million Americans presently live in mobile homes.² Even more surprising is the estimate of the U.S. Department of Housing and Urban Development that the mobile home industry is now providing as much as ninety-five percent (95 percent) of the supply of new single-family dwellings for less than \$20,000.³ In 1979, 276,900 mobile homes were constructed in the United States.⁴

This valuable low cost housing alternative is still basically limited to rural areas. The U.S. Bureau of the Census notes that 69 percent of this growing market may be classed as located in "rural" areas.⁵ Even among the remaining 31 percent, many are within suburban areas which often restrictively zone mobile homes and mobile homes parks out.⁶

The consumers of mobile homes are young families with lower incomes and older Americans on fixed or retirement incomes. About one third (33 percent) of the mobile home households are headed by persons over fifty-five,⁷ while another forty percent (40 percent) are individuals under thirty-five.⁸ The median income of a mobile home family in 1976 was \$10,000 and less than one-fourth (25 percent) of all mobile homeowners made more than \$15,000.⁹

In the conventional housing market, the average price of a new single-family home is over \$60,000,¹⁰ while the average price of a new double-wide mobile home is \$18,000-\$20,000.¹¹ The rising price of conventional housing, as evidenced by these figures, is making mobile homes the only viable alternative for homeownership by low income and other consumers.¹²

Mobile homeowners are more vulnerable to arbitrary practices and abuse than other housing consumers.¹³ This vulnerability relates to the following factors: (1) limited income of this group; (2) the dual role that mobile home park owners often play by renting the land and selling the unit, and; (3) the successful use of intimidation against mobile home consumers.

The threat of eviction is so onerous and burdensome to chill a consumer from even complaining about problems with his or her mobile home for fear of it.¹⁴ This fear is justified because a mobile homeowner would be required to suffer severe

² Manufactured Housing Institute, "Quick Facts about the Manufactured Housing Industry" (June 1979), p. 10.

³ Housing Production and Mortgage Credit—Federal Housing Administration, Department of Housing and Urban Development, "Report on Used Mobile Homes," (August 1975), p. 12.

⁴ 77 BNA "Housing Development Reporter" (July 7, 1980), p. 114.

⁵ United States, Department of Commerce, Bureau of the Census, "Annual Housing Survey 1976: General Housing Characteristics" (Washington, D.C.: Census Bureau, 1977).

⁶ Strom, Current Trends in Mobile Home Zoning, 1 "Zoning and Planning Law Report 17" (January 1978); Anderson, "The Regulation and Accommodation of Mobile Homes," 1975 Institute on Planning, Zoning and Eminent Domain 151 (SW Legal Found., Matthew Bender & Co.); Moore, Mobile Home and the Law, 6 "Akron Law Rev" 1 (1973); Van Iden, Zoning Restrictions Applied to Mobile Homes, 20 "Clev St L. Rev." 196 (1971); Bartke and Gage, Mobile Homes: Zoning and Taxation, 55 "Cornell L Q" 491 (1970); Note, Regulation of Mobile Homes, 13 "Syracuse Law Rev" 122 (1961); Note, Housing—Mobile Homes—Some Legal Questions, 75 "W Va L Rev" 382 (1973).

⁷ Federal Trade Commission, "Report of the Presiding Officer, Mobile Home Sales and Service" (November 1979), p. 30.

⁸ Ibid.

⁹ Annual Housing Survey: 1976 Mobile Home Households. Income of household heads: less than \$5,000—21.8 percent; \$5,000 to \$6,999—11.1 percent; \$7,000 to \$9,999—16.9 percent; \$10,000 to \$14,999—27 percent; \$15,000 to \$24,999—17.7 percent; \$25,000 or more 5.5 percent; Median—\$10,000. Source: "Annual Housing Survey 1976: General Housing Characteristics."

¹⁰ U.S. Department of Commerce News, Bureau of the Census, table 2 (first quarter 1980).

¹¹ Manufactured Housing in Ohio (March 1979), p. 5.

¹² Vondal S. Gravelle, former president of the National Association of Home Builders, estimated that "only 4 percent of American families can afford a median priced home." 77 "BNA—Housing Development Reporter" (Mar. 31, 1980), p. 917.

¹³ As Presiding Officer, Raymond Rhine of the Federal Trade Commission observed that: " * * * Because of the various ingredients in the mobile home buyer's profile, many people believe that as a group this population is vulnerable to abuses and is unlikely to be able to afford legal assistance when problems arise. FTC Presiding Officer Report, "Mobile Home Sales and Services" (November 1979), p. 32.

¹⁴ As one consumer wrote to me: For one thing you will find anyone complaining about any of the conditions of their home or of the park will meet resistance. * * * I know in our park, the slightest provocation will stir them (the owners) into action and they can evict any home owner within 24 hours. Nice? A mobile home owner cannot even find a buyer for his home without providing the park owner with his 7 percent cut, even though the park owner did not help sell the home. Even if one would fight the park owner about the so-called cut, it would be a hardship on the new owners of the home. What a shame in this day and age such "mafia" tactics are used.

economic and financial hardship in moving his unit, assuming other park opportunities even existed.¹⁵

For all of the above reasons consumers find themselves unable to effectively obtain satisfactory and necessary repairs to their homes. Studies done for the Federal Trade Commission hearings document this stark reality.

HAI SURVEY AND THE NEED FOR THE FTC RULE

One of the surveys cited frequently in both the Federal Trade Commission Presiding Officer's and the staff reports was developed by the Housing Advocates, Inc.¹⁶ This survey was sent to Ohio consumers who had purchased a new mobile home from September 1975 through June 1977.

The consumer responses to this survey were broken down into three separate groups of figures. First, those persons who answered the survey in time for the original tabulation were considered a group. A second group who responded, but not in time for being included in the original survey results, was likewise identified. Finally, a follow up telephone survey of non-respondents to the original survey was made to test the validity and representativeness of the mailed questionnaire.

In total, some 2,472 Ohio consumers were contacted by the project to learn of their experiences with mobile home warranties and repairs. The number of consumers reached by this survey makes this one of the largest undertakings of its kind in the United States.

The vast majority of mobile home consumers reported problems with their mobile homes. These ranged from eighty-seven percent (87 percent) of the mail respondents to sixty-nine percent (69 percent) of the telephone respondents reporting one or more defects in their new mobile home.¹⁷

But the fact that people had problems with their home is no indictment of either the warranty system or the present governmental standards. So we must look deeper into the problem. What were the problems people had and how severe might they be considered?

Among the most prevalent types of problems were leaks around windows and doors.¹⁸ More than 50 percent of all purchasers indicated problems with plumbing, doors and waterproofing in general.¹⁹ More than one in five had problems with walls, ceilings, windows, wiring, carpeting, heating and appliances.²⁰

¹⁵The economic hardships of moving a mobile home were documented by the Ohio Department of Commerce in its "Mobile Home Buyer's Guide" (1973). The guide states that (due to their size, mobile homes are no longer easily movable. A modern mobile home is at least 12 feet wide, 60 feet long and weighs 6 tons. They are not designed to be moved often and most manufacturers will not guarantee a home which has been moved from its original site. The cost of hiring a trucking company to transport the home usually prohibits all but short moves, at page 3. I agree with industry officials advocating for changing the name to manufactured housing. A mobil home is just not that "mobile" any more.

¹⁶This survey was funded as part of the FTC's public participation program.

¹⁷FTC Staff Report, "Mobile Home Sales and Service" (August 1980), p. 74.

¹⁸Percentages of homes with defects:

Defect	Total number	(In percent)			
		Mail	Phone	Late	Total
Plumbing.....	2,288	54.0	20.8	65.4	49.5
Frame.....	2,121	11.5	3.4	12.7	10.2
Doors.....	2,236	57.8	18.9	60.8	51.7
Waterproofing.....	2,236	54.5	25.6	49.6	49.6
Walls.....	2,177	29.0	9.3	35.1	26.1
Ceiling.....	2,139	21.1	5.1	25.7	18.7
Air conditioning.....	1,802	5.9	1.1	2.4	4.8
Windows.....	2,235	45.4	16.6	52.1	41.2
Wiring.....	2,159	24.0	7.3	22.6	21.2
Floorcover.....	2,172	32.6	11.3	28.2	28.9
Storage.....	2,168	30.5	7.6	34.5	26.9
Furniture.....	2,002	19.6	2.8	16.5	16.4
Appliances.....	2,115	24.8	6.5	26.5	21.8
Heating.....	2,148	27.0	11.0	37.0	25.0
Siding.....	2,119	17.9	4.5	20.2	15.8
Other.....	1,440	24.4	15.8	25.7	22.4

The above table shows that when the three surveys are compared, the telephone respondents identified fewer specific problem areas. This was caused by the differences in survey approaches. When the original mailed and late mailed responses are compared, the late respondents show a higher percentage of problems overall. Even the more conservative approach of the telephone survey reveals that over 70 percent of the respondents had problems with the original condition of their mobile home.

Doors, leakage, plumbing and windows were cited most frequently as problems for all three sample groups.

¹⁹Ibid.

²⁰Ibid.

These problems existed despite federal regulations designed to guarantee construction standards. Inspections in the factory cannot account for the defects which occur because of damage or movement during transportation or set up of the home.

Almost all problems that arose occurred within the first year, or the typical warranty period of the manufacturers' warranties.²¹ Many problems arose during the first week of residence.²² Nearly half of all plumbing, wall and siding problems occurred within a week; over a third of all problems with frames, doors, ceilings, floors, appliances and furniture occurred in the same time period.²³ There is, thus, no question that the time span was not long enough for warranties to have expired on these problems.

More important to the case were the questions dealing with attempts to have problems repaired. Depending on the group, between 73 percent and 82 percent of the people who had problems attempted to have them corrected.²⁴ Of these, less than 60 percent actually had their problems corrected.²⁵ Even using the lowest of the three statistics, one in three home owners never had the repairs done on their homes by either the manufacturer or the dealer.²⁶

²¹ See exhibit 1.

²² *Ibid.*

²³ *Ibid.*

²⁴ Attempted to have repairs made:

	(In percent)			
	Mail, n=1,616	Phone, n=311	Late, n=114	Total, n=2,041
Yes.....	82.0	73.0	81.6	80.6
No.....	18.0	27.0	15.8	19.3
Other.....	0	0	0	0
Total.....	100	100	100	100

Repairs were attempted under the terms of the warranty for over eighty percent (80 percent) of the mailed survey respondents. A slightly less number of respondents, seventy-three percent (73 percent) to the telephone survey indicated they attempted to get repairs made under the warranty. Finally, late respondents had the almost identical percentage of attempts to have repairs made under the warranty as the original mailed survey respondents.

²⁵ Success in having repairs made:

	(In percent)			
	Mail, n=1,521	Phone, n=232	Late, n=111	Total, n=1,864
Yes.....	57.0	62.4	49.5	58.1
No.....	42.2	35.8	49.5	41.8
Other.....	0	0	0	0
Total.....	100	100	100	100

Over forty-one percent (41.8 percent) of all respondents were unsuccessful in having their repairs completed. In fact almost 50 percent of the late (mailed) respondents stated they were unsuccessful, while 36 percent of the telephone respondents were not successful. Thus, one of the major conclusions of The Housing Advocates, Inc. testimony, that more than one-third of mobile homeowners responding to the original survey were successful in obtaining service under their warranty, is supported by the follow-up telephone survey.

²⁶ *Ibid.*

Other evidence was offered during the FTC hearings from many state agencies about the seriousness of this problem. Ohio is not unique and this lack of an effective mobile home warranty performance system is industry wide. Surveys from California, for example, indicated similar results with a large number of consumers never having repairs done despite their warranties.

Despite the FTC hearings, and despite HUD's program, problems still exist in large numbers. For the past 12 months HAI has been receiving calls on its Ohio Mobile Home Hotline, and the largest single number of complaints has been about defects in homes and lack of repairs of those defects. Of the 1,300 callers logged in the past year, some 600 had problems. Of those with problems, 97 reported an inability to obtain warranty service for their new mobile homes. These callers purchased their mobile homes from some 31 different manufacturers. The large number of manufacturers involved in complaints about their failure to make warranty repairs emphasizes that this is an industry-wide problem and not isolated to a few companies.²⁷

The fact that these people contacted us shows that the problem is still great. First, the overwhelming majority of purchasers of new mobile homes do not know about our Hotline because of its newness. Second, many consumers are unwilling to call because of the threat of eviction or black balling. These callers are simply the tip of the iceberg as revealed by our FTC survey and the testimony received in the administrative record.

These statistics are the cold facts, but what of the people who have to live in these homes? These defects and the failure to obtain repairs robs mobile homeowners of their right to a safe and habitable home. This brings us to a second issue, that of the HUD standards and how they do not cover most of the problems mobile homeowners are faced with, because their scope is far too limited to solve many of the defects occurring in the unit.

HUD CONSTRUCTION STANDARDS AND DEFECTS IN MOBILE HOMES

One of the purposes of HAI's survey of consumers was to examine the effectiveness of the U.S. Department of Housing and Urban Development Mobile Home Construction and Safety Standards. Our basic finding was that while homes constructed under the new standards showed fewer defects than previous homes, a totally unacceptable amount of defects continued to be reported.

The following table shows mobile homes having been certified as meeting HUD standards and the extent of defects reported by consumers responding to the HAI survey.

Data plates and problems—1977

[In percent]

Set up related:	
Leveling.....	24.6
Buckling.....	19.5
Leaking.....	51.4
Water.....	13.1
Gas/Oil.....	8.0
Electric.....	20.4
Sewer.....	8.0
Other.....	24.0

²⁷ Manufacturers reported on hotline calls concerning nonrepair of home defects: Barrington, Bendix, Centurion, Commodore, Elcona, Fairmont, Fleetwood, Governor, Highland, Hillcrest, Holly Park, Horizon, Liberty, Lincoln Park, Mansion, Marlette, Midwest, Monarch, Nashua, New Yorker, Patriot, Redman, Rochester, Schult, Shamrock, Skyline, Sterling, Torch, Victorian, Village, Windsor.

Data plates and problems—1977—Continued

[In percent]

Original condition:	
Plumbing.....	48.9
Frame.....	8.3
Doors.....	47.0
Waterproofing.....	41.9
Walls.....	25.9
Ceiling.....	15.7
Air conditioning.....	3.5
Wiring.....	20.8
Floor.....	27.8
Storage.....	24.9
Furniture.....	16.0
Appliances.....	17.9
Heating.....	13.7
Siding.....	29.2
Other.....	11.8

There are at least four reasons that the present HUD construction and inspection programs are not adequate to meet this problem. A brief examination of each of these limitations is in order. While each relates to the total program, each has its own parameters and should be reviewed separately.

First, as HUD's own testimony in support of the FTC proposed rule states, "Many problems that give rise to warranty complaints may not be related to the Federal standards," a comment which reveals the fact that only in cases where the defects are of a serious nature or an "imminent safety hazard" can HUD act in attempting to solve the problem.

If a manufacturer receives a call to fix a warranty problem, the first question is whether or not the defect is covered by HUD. Under Section 615(2) of the Act (Mobile Home Construction and Safety Standards Act, hereinafter called "Act"), if a defect relates to a mobile home construction or safety standard or is an imminent safety hazard, the manufacturer must send a written notice to the purchasers of such homes. In such notice (Section 615(c) of the Act), "The notification shall also inform the owner whether the defect is a condition or safety defect which the manufacturer will have corrected at no cost to the owner * * * or which must be corrected at the expense of the owner." Only where the defect presents an unreasonable risk of injury or death to the consumer and only if the defect is related to an error in design or assembly by the manufacturer, will the manufacturer be required to correct it "at no expense to the owner." These limitations restrict most HUD actions to even less than the consumer's warranty rights. HUD's own words on this point seem to be an appropriate conclusion: "This is not a program (discussing the Construction and Safety programs) that provides the consumer protection with respect to the individual warranty defect."

Second, HUD's program relates only to the conditions existing at the point of sale. If the home is already on the lot, any defects related to transportation should be covered where they are of a serious nature. Where the purchase is made from the factory, such transportation problems may fall under the aegis of the dealer, or in the disputed area between the manufacturer and the dealer.

Nor are transportation related defects the only disputed area; both set up and utility defects are not covered at all by HUD. Thus, the consumers must rely on the manufacturers and dealers to resolve the problems arising from these processes which often does not occur.

Finally, the condition at point of inspection may not reflect the true condition at the point of sale. "Although in theory the IPIA level of inspection services to provide adequate assurances that most mobile homes meet the HUD standards in most respects, it is possible for a mobile home to be inspected under this system at an early stage of production but to contain several defects or failures to conform by the time the home is completed."²⁸ Several parts of this statement are bothersome. First, MOST homes must meet MOST standards, then even where MOST may be inspected, there is no guarantee that the inspection is of the final product. Further, the Report points out that the inspectors often do not report items considered "unimportant" in inspections, especially where the manufacturers can convince the inspectors of the lack of importance of problems.²⁹ As a result in either of these cases, homes reach consumers with defects. And HUD's program was not designed to deal with the servicing of individual mobile home warranty problems.

As can be seen in this short discussion, the HUD program cannot meet the needs of a large percentage of the consumers needing warranty service. The proposed TRR

²⁸ FTC Presiding Officer's Report, *supra*, at 229.

²⁹ *Ibid.*, p. 238.

is neither duplicative of the present regulatory scheme nor unnecessary especially in light of the number of consumers reporting defects in their mobile homes.

One final question remains—is there benefit to the consumer if this proposed rule is adopted by the Federal Trade Commission? It is my belief that substantial benefits will accrue to the consumer.

COST BENEFITS TO THE CONSUMER OF THE PROPOSED RULE

It is not possible for me to estimate the actual cost to manufacturers which would be passed on to the consumers if the proposed TRR was adopted. The FTC staff report indicates compliance with the rule "would raise the selling price of most mobile homes by a maximum of about \$120."³⁰

It has been my experience that consumers forced to make repairs because of ineffective warranty performance systems spend at least several hundred dollars out of their own pockets for services to their mobile homes. This sum not foreseen by consumers, many who are on fixed incomes, can have a devastating impact.

More important to me is the psychological damage caused to consumers by a warranty system too often designed to grind down, rip-off and frustrate their rights. I work on a daily basis with consumers who say "I'm mad as hell and I'm not going to take it any more!" from unresponsive dealers, service agents, manufacturers and government agencies. As one consumer reported to me: Well, when we bought our trailer, we was told it was guaranteed for one (1) year. After we got it, Bob (dealer) said there wasn't no guarantee. After we had already got it. * * * We have been told nothing but lies, and never have got everything fixed on our double wide that was supposed to be fixed by dealer and I wouldn't buy another double wide or any other trailer from this company. It has been a disaster for us. Money spent for nothing really.

I attach a few letters from consumers as attachments to my testimony as samples of this type of problem still existing some four years after the HUD mobile home construction and safety standards have been in effect.

CONCLUSION

I have reviewed both the FTC Presiding Officer's and staff reports on the proposed rule. It is my judgment, which I believe is supported by the evidence in the administrative record, that this proposed rule should be adopted by the Commission. I do not believe that this rule is either duplicative of the present regulatory scheme or is overly burdensome to the industry. Finally I believe it will provide consumers with an effective warranty performance system which is not available to them at the present time.

³⁰ FTC Staff Report, *supra*, at 524.

EXHIBIT 1

Total number	Less than 1 wk. ¹			Less than 1 mo. ¹			Less than 2 mo. ¹			Less than 3 mo. ¹			4-12 mo. ¹			12 mo. ¹				
	Mail	Phone	Late	Mail	Phone	Late	Mail	Phone	Late	Mail	Phone	Late	Mail	Phone	Late	Mail	Phone	Late		
	1,372	43	37	45	21	27	24	8	11	7	5	5	1	22	15	23	4
559	31	16	39	24	.....	.....	7	9	8	10	9	8	28	45	15	.....	.....	.....	9
1,343	35	34	39	22	34	23	9	8	8	7	4	10	27	16	20	.....	.....	.....	3
1,302	22	14	25	26	44	19	10	16	17	8	16	6	35	43	33	.....	.....	.....	14
852	42	45	50	23	25	11	8	9	3	5	6	8	22	18	28	0	.....	.....	6
706	36	41	48	19	17	16	10	0	0	6	12	12	29	23	24	0	.....	.....	6
437	28	14	0	24	14	0	4	0	0	5	14	50	40	0	50	.....	.....	.....	57
1,133	32	36	43	23	24	20	7	7	6	7	16	4	31	13	28	0	.....	.....	3
760	41	36	39	20	22	26	9	4	4	5	7	4	25	18	26	.....	.....	.....	4
891	37	23	50	17	20	13	11	13	7	5	8	3	31	28	27	0	.....	.....	8
870	41	29	44	23	29	19	6	4	8	5	21	6	25	11	22	0	.....	.....	7
653	37	10	33	21	20	40	9	20	7	5	30	7	29	10	13	0	.....	.....	10
759	38	23	56	23	23	16	8	14	8	5	13	4	26	5	16	10	0	0
807	29	22	38	18	17	15	9	17	3	8	13	9	36	30	35	0	.....	.....	7
631	43	53	56	15	13	17	6	0	11	7	7	0	29	20	17	0	.....	.....	7
590	40	47	50	15	16	21	5	5	0	6	13	0	34	15	28	0	.....	.....	5

¹ In percent.

ADDITIONAL STATEMENT OF EDWARD G. KRAMER

THE USE OF FORMALDEHYDE IN MOBILE HOMES

I welcome the opportunity to respond to the important questions about formaldehyde. Recently, I was appointed to the Indoor Air Ambience Quality Standards Committee of the National Mobile Home Advisory Council of the U.S. Department of Housing and Urban Development (HUD). This committee has been charged with the responsibility to examine the problem of air quality within mobile homes. A primary focus of this inquiry, by necessity, is the problem of formaldehyde poisoning.

The Housing Advocates, Inc. has received complaints about formaldehyde over our statewide Hotline. As recently as the second week of August a call was received from an attorney who is representing a couple suffering from formaldehyde poisoning. After purchasing a mobile home, the wife began to experience respiratory problems while the husband, who is a long-distance truck driver, had no problems except when he was at home. The respiratory problems of the woman worsened, she began to cough up blood, her hair began to fall out and she became tired so that she slept as much as 20 hours in a day. Doctors could find no other reason for her illness except the formaldehyde. The woman finally moved out of her home and the symptoms began to disappear.

The difficulty of this family and their doctor in diagnosing the problem is typical because of the general lack of awareness concerning formaldehyde. Most consumers will not know when they have it; they call our Hotline, HUD or the Consumer Product Safety Commission because of an odor in their homes and their getting sick from that odor. Doctors faced with the symptoms often treat the problem as a mere respiratory condition, but can not identify the agent. In most states there are no reporting requirements so the true number of cases can't be determined. As a result, no accurate count of formaldehyde poisoning cases exists. Only consumer complaints and estimates which reflect, in my opinion, the lowest possible extent of the problem have been published.

A recent study done for HUD by Technology & Economics, Inc. (T. & E.) of Cambridge, Mass.,¹ confirms both the problem of formaldehyde poisoning and the lack of awareness by consumers. In each state where studies have been done, or where reportings have been made, the study makes the same comment—there is no way of telling the actual extent of the problem because neither the consumers nor the medical profession have been made fully aware of the symptoms of the condition. By comparison, the best response was one newsletter sent to 75 percent of the state's physicians.² Unfortunately, though, only four states have even made attempts to study the problem.³

What is the problem?

In speaking of formaldehyde poisoning, we must first identify what the problem is and how it manifests itself in both the mobile home and the people who reside in the home. Formaldehyde is a basic ingredient of the particleboard that is used in the construction of mobile homes. It concentrates in the resin which makes up about 6-10 percent of the dry weight of the board, according to the study contracted by HUD.⁴ Over time the formaldehyde escapes into the air and the problem manifests itself early. It is assumed that over a substantial period of time the problem gradually diminishes.

Symptoms of the formaldehyde reaction vary with individuals, their general health, allergies, and age. The young or old and the estimated one percent of the population which are naturally allergic to formaldehyde have the worst problem.⁵ At least two infant deaths have been attributed to formaldehyde,⁶ and, while others may be related, certainly there is belief that exposure damages developing children. For adults in good health, exposure levels of .1 ppm are deemed unharmed, but higher amounts can cause irreversible injury to them.⁷ (The figure .1 ppm is given because it was chosen by the American Industrial Hygiene Association as the level at which reaction begins.)⁸

¹ Technology & Economics, Inc., "An Evaluation of Formaldehyde Problems in Residential Mobile Homes," Cambridge, Mass.: Technology & Economics, Inc., 1980.

² *Ibid.*, p. 75. Approximately 75 percent of Wisconsin's physicians received one newsletter with information about formaldehyde exposure.

³ Washington, Wisconsin, Minnesota, and Oregon.

⁴ T. & E. p. 9.

⁵ *Ibid.*, p. 41.

⁶ *Ibid.*, p. 49.

⁷ *Ibid.*, p. viii.

⁸ *Ibid.*, p. 55.

For those persons who react, a variety of symptoms occur. The T. & E. study sums it up when it gives a rather lengthy explanation of symptom appearance: Levels as low as 0.1 ppm and persisting over a period of months may not only be annoying to those persons (with hypersensitivity) but physiologically in terms of mucuous membrane irritation skin reactions and chronic generalized symptoms such as rhinitis, headache and gastric irritability. It has been shown that at concentration about 0.5 both overt and latent sensitization of skin, respiratory and digestive systems can occur, so that resultant health problems may persist from subsequent low exposures even after leaving the mobile home. It is also likely that fairly continuous exposures to levels well below 0.1 ppm over a period of time can induce chronic respiratory inflammation and aggravate existing asthmatic and bronchitic condition. Furthermore, it is likely that levels on the order of 0.3 ppm or more affect not only a small group of hypersensitive individuals, but can also produce acute symptomology in a much more substantial proportion of the general population than has been previously recognized. (Emphasis added.)⁹

At extreme concentrations, formaldehyde has been shown to be carcinogenic to laboratory animals¹⁰ although there has been no similar study on humans yet.

The most common symptoms appear to be respiratory-related as the formaldehyde escapes from the particleboard into the air of the home. Since humidity and heat conditions also relate to the speed of escape, for those homes which are not well-ventilated and are warm with high humidities, the problem is the worst. When winter comes, the homes have to be closed up, little ventilation occurs and the problems becomes more acute. Respiratory problems show up quickly and in almost all reported cases related to formaldehyde.

In Wisconsin, over 90 percent of all persons reporting formaldehyde poisoning had related problems with asthma;¹¹ over half reported headaches, difficulty in breathing, restlessness and being tired, diarrhea, nausea and vomiting. In Minnesota, which was considered the best study because of the medical examinations accompanying the complaints, over 90 percent reported being tired, being dizzy, dry, and having asthma, pneumonia, or sinus troubles.¹² Over half reported runny noses, frequent colds, shortness of breath, chest pains, diarrhea, nausea, vomiting, skin rashes, and coughing, including coughing up blood.¹³

It is clear that there are medical problems associated with formaldehyde poisoning. What remains to be determined is how much of the population of mobile home residents experience such problems.

How big is the problem?

It is clear that formaldehyde poisoning is growing as the mobile home industry grows. HUD has admitted since 1977 that there is a "problem" with formaldehyde. In HUD's fourth (1980) report, it admits that this problem has grown in the past three years. Manufacturers have also known that a problem exists with formaldehyde and studies have shown since the turn of the decade that formaldehyde is associated with medical problems.¹⁴

In the past three years, HUD has noticed an increase in the report of formaldehyde problems. They attribute it to the dissemination of information to consumers and better general public awareness. T. & E.'s study for HUD attempted to put numbers to the problem. Their study, released in 1980, gives a lower margin number and estimates that 0.1 percent of mobile homes, or a total of 4,864 homes produced each year, will result in persons developing formaldehyde problems.¹⁵ This, as mentioned, is a low margin estimate. Let us further examine why the problem is really greater than this number would otherwise indicate.

First, T. & E. asked a number of federal, state and consumer agencies, manufacturers, dealers and associations to report the number of cases they experienced each year. A total number was arrived at using these figures. However, two problems exist in the collection method. First, a number of organizations answered with such terms as "few", "several" or other general terms while others chose not to answer or merely suggested that due to litigation they could not answer.¹⁶ None of these deficiencies are considered in the total. Secondly, there is a problem even in those figures that are used. Under the Consumer Product Safety Commission an estimated 45 cases per year were reported. Yet a letter from the Consumer Product Safety

⁹ *Ibid.*, p. viii.

¹⁰ *Ibid.*

¹¹ See attachment 1.

¹² See attachment 2.

¹³ *Ibid.*

¹⁴ T. & E., p. A-1.

¹⁵ T. & E., summary.

¹⁶ *Ibid.*, pp. 90-93.

Commission to HUD mentions 850 cases.¹⁷ A Louisville Courier Journal article of June 19, 1980 reported that in a single year from June 1979 to June 1980, more than 100 cases had been turned in to the local office of the Consumer Product Safety Commission.¹⁸ After the appearance of a newspaper article on the subject, more than 200 more were turned into the office in a single week.¹⁹

Even if the T. & E. statistics were correct, the report specifically mentions that much larger numbers could be expected if people were well-informed about the problems or if the medical personnel in each state were reporting suspected cases. The Louisville experience quite adequately documents the truth of this statement.

Studies were done by three states to examine the formaldehyde problem in relation to mobile homes. In Washington, Peter Brysse examined 187 cases in 1978-79;²⁰ in Wisconsin the state examined 47 cases in that same time and did a random sample of 65 other homes;²¹ in Minnesota an extensive study involving medical personnel, examined 109 persons with suspected formaldehyde poisoning and their homes.²² From these studies it is clear that the problem goes beyond the hypersensitive person and that in such circumstances only the rare individuals would not react to formaldehyde, based on information that often more than one person in the same home displays symptoms and reacts to it. This fact suggests that people, regardless of hypersensitivity, when exposed to formaldehyde in larger concentration, react to it.²³

The Washington study showed that levels of formaldehyde in the home reached as high as 2 ppm and higher; in fact, 3.1 percent of all homes had over 2 ppm.²⁴ The safety statistic of 0.3 ppm, the point at which most persons react to formaldehyde, was surpassed by half of the mobile homes.²⁵ Wisconsin statistics show similar results, with half of the homes having more than the 0.3 ppm safety level and showing an even higher number of homes having higher levels of formaldehyde. In Wisconsin's case, 2.1 percent of the homes had formaldehyde levels of 2.5 to 3 ppm while another 2.1 percent had levels of higher than 3 ppm.²⁶ Minnesota, with the most elaborate testing system, showed even worse results, some 4.4 percent of the homes having formaldehyde concentrations above 2 ppm, including 1.7 percent above 3 ppm.²⁷

When the statistics were totalled, T & E estimated that, using these three case studies, about 0.1 percent of all mobile homes had formaldehyde problems.²⁸ In the lifetime of a mobile home, there was a 2.1 percent chance that any particular home would have a problem. Minnesota's study, on the other hand, indicated nearly twice the probability of any home having high formaldehyde levels.²⁹ And, of course, these figures fail to reflect many unreported cases that are never reported to any agency.

Wisconsin has established standards for formaldehyde concentrations in mobile homes. By May of 1980 mobile homes in that state may not have more than 0.4 ppm formaldehyde, while by 1981 the level is set at 0.2 ppm. But is this realistic in today's mobile home market?

The surveys showed that the average mobile home of less than two years of age revealed a formaldehyde content of between 0.71 and 0.83.³⁰ These statistics, of course, reflect those homes with problems. However, Wisconsin's study of 65 homes at random still revealed a formaldehyde content of 0.53 ppm for new homes, and 0.20 ppm for homes up to 7½ years old.³¹ Even homes as old as 10 years or more still reflected a formaldehyde content of 0.1 ppm, or barely within the levels fit for an industrial setting. Even this level will be reactive to hypersensitive people. All three studies show in problem homes that, after 5 years, still more than ten percent of the units in each state sampled reflected formaldehyde problems. So the problem is not going to be solved easily.

¹⁷ See attachment 3.

¹⁸ Not reproducible.

¹⁹ Not reproducible.

²⁰ T. & E., pp. 95-99.

²¹ *Ibid.*, pp. 99-105.

²² *Ibid.*, pp. 106-118.

²³ *Ibid.*, p. viii.

²⁴ See attachment 6.

²⁵ See attachment 6.

²⁶ See attachment 7.

²⁷ See attachment 8.

²⁸ T. & E. pp. 119-120.

²⁹ See attachment 8.

³⁰ See attachment 9.

³¹ *Ibid.*

What can be done?

The easiest immediate answer given to questions about formaldehyde poisoning is to use some sort of abatement technique, including more ventilation, ammonia scrubbing, heat treatments, sealants, or other solutions. Claims have been made that the formaldehyde levels can be reduced by as much as 50-60 percent. But two more problems emerge. First, in cases such as the popular ammonia treatment, one irritant is being used to replace another or to supplement it. Secondly, one method or another causes damage to the home. Heat treatment, sealants, ammonia and others may damage the particleboard, cause warping or discoloration. Increased ventilation by the consumer means cost to the consumer, whether for equipment for ventilation, energy costs related to heating, cooling or ventilating, or ventilating the air in the home. Covering the formaldehyde with paint or paper just begs the problem, because it does not cause the gas to disappear, only to remain in the particleboard for later appearance.

Degassification at the plant is a second possibility. But probably the most effective way for a manufacturer to eliminate the problem is to eliminate the product. Champion Homes has gone to a gypsum board rather than a particleboard to eliminate the problem in their home construction. Gypsum board not only provides a safer product but adds a second safety feature. While particleboard burns easily and ignores the question of flammability of the highly lacquered surface, gypsum board is slow to burn and retards flames, thus increasing the safety of the mobile home. Two problems relate to each other through their mutual solution.

The National Mobile Home Advisory Council is presently studying the possibility of amending HUD's safety and construction standards to require a substitute for particleboard. I would encourage the members of the subcommittee to encourage the adoption of this solution.

Relation to warranties

The hardest question concerning formaldehyde is why the federal government has not acted to set standards to protect the consumer. There are no safety standards concerning formaldehyde which means that Hud is powerless to give notice for manufacturers to correct the problem when it occurs. The FTC proposed trade regulation rule (TRR) would allow consumer action on such warranty problems, but no solution is possible if the FTC is prohibited from adopting the proposed TRR. Without a finding of "Imminent safety hazard" for formaldehyde poisoning, HUD cannot take action to make corrections. without the FTC rule, thousands of consumers will also be unable to take private action. And since almost all mobile homes are made with formaldehyde products, there is no way for the consumer to act with discretion in the marketplace.

Conclusions

Formaldehyde is a growing problem as the number of mobile homes increase and as the public becomes aware of the causes of undiagnosed health injuries. Abatement techniques for formaldehyde in the home are not successful in many cases and formaldehyde problems are even significant 10 years or more after manufacture, despite the tendency of levels to drop with age. Warranty provisions are needed to allow the consumer to take action to have the condition in the home corrected, whether through abatement techniques or replacement of the offending board, by the manufacturer. At the present, the federal government has not given consumers or manufacturers of mobile homes any guidance in solving this dangerous problem.

ATTACHMENT 1

TABLE 9-6.—WISCONSIN: SYMPTOMS EXPERIENCED BY MOBILE HOME OCCUPANTS

Symptom:	Percent of occupants experiencing symptoms	
	Yes	No
Eye irritation	68	32
Upper respiratory tract irritation	64	36
Headache	34	66
Respiratory difficulty	29	71
Restlessness/tiredness	29	71
Diarrhea	15	85
Nausea	14	86
Vomiting	11	89
Asthma	4	96

TABLE 9-6.—WISCONSIN: SYMPTOMS EXPERIENCED BY MOBILE HOME OCCUPANTS—Continued

	Percent of occupants with a preexisting condition	
Preexisting problem:		
Pre-existing allergies.....	24	76
Other preexisting conditions.....	8	92
Preexisting respiratory problem.....	8	92
Preexisting cardiac problem.....	7	92

ATTACHMENT 2

TABLE 9-11.—MINNESOTA: SYMPTOMS EXPERIENCED BY MOBILE HOME OCCUPANTS

[Symptoms in percent]

Symptoms:	No	Yes	Persists		
			Un-known	Yes	No
Eye irritation.....	35	65	64	2	33
Nose and throat irritation.....	47	53	83	3	13
Runny nose.....	56	44	88	4	7
Cough.....	58	42	87	5	8
Headache.....	60	40	87	2	11
Frequent colds.....	65	35	97	1	2
Diarrhea.....	66	34	93	1	6
Cough-up.....	73	27	93	2	5
Skin rash.....	74	26	96	3	2
Shortness of breath.....	75	25	92	2	5
Abdominal.....	76	24	94	2	4
Increased urination.....	82	18	94	2	5
Nausea.....	83	17	94	1	6
Vomiting.....	85	15	96	1	3
Chest pains.....	86	14	97	1	2
Tired.....	98	2	100	0	0
Dizzy.....	98	2	100	0	0
Ear infections.....	99	1	100	0	0
Asthma.....	99	1	100	0	0
Pneumonia.....	99	1	100	0	0
Sinus troubles.....	99	1	100	0	0
Dry.....	100	0	100	0	0
Passed out.....	100	0	100	0	0

ATTACHMENT 3

U.S. CONSUMER PRODUCT SAFETY COMMISSION,
Washington, D.C., July 16, 1980.

MR. JESSE MCELROY,
Director, Office of Mobile Home Standards, Department of Housing and Urban
Development, Washington, D.C.

DEAR JESSE: As a follow-up to our telephone conversation of June 25, 1980, I would like to reiterate our concern regarding adverse health effects related to formaldehyde vapor in mobile homes.

As you know, the Commission has been actively investigating formaldehyde-related complaints associated with urea-formaldehyde (U.F.) foam insulation. In

addition, we continue to receive formaldehyde complaints associated with particleboard, plywood, panelling and other products containing formaldehyde. A large number of the particleboard, plywood, and panelling complaints involve persons living in mobile homes. Also at the four public hearings which CPSC held to gather additional information concerning formaldehyde toxicity, a substantial percentage of the witnesses in Portland, Oregon and Minneapolis, Minnesota complained about adverse health effects due to formaldehyde in their mobile homes. In nearly every case, the witnesses stated that prior to purchase of the mobile home, they were not informed of the possible health effects associated with formaldehyde in these products.

As a result of information obtained during the hearings and other complaints and investigations, the Commission decided to publish a proposed rule, as an interim measure, for U.F. foam insulation. The rule would require safety information to be provided to the prospective purchaser of U.F. foam insulation. The text of the safety information is on page 39444 of the attached Federal Register Notice of June 10, 1980.

I would like to again urge you to consider some interim measure which HUD could take to inform prospective purchasers of mobile homes about the potential for formaldehyde vapors in the homes resulting in adverse health effects for occupants. I understand you have received a draft report on the T&E contract, and that HUD is considering another research contract which could result in a recommendation for a limit on formaldehyde vapor concentration in the interior of mobile homes. We would fully support the intent of such an effort, but if recommendations are not expected for some time, there is little or no protection for the consumer in the interim. Also, we are interested in the results of the work done by T&E and would appreciate receiving a copy of their report.

We continue to receive consumer complaints about formaldehyde in mobile homes through calls to the CPSC Hot Line and by letters. The Commission staff has information on more than 850 complaints about health problems in mobile homes involving formaldehyde. On March 24, 1980, I forwarded copies of many of those complaints to you. Since our last meeting in your office on March 3, 1980, with representatives of the FTC, I am aware that CPSC and FTC staff members share a continuing and increasing concern about the adverse health effects from formaldehyde in mobile homes. I hope that you will respond to this letter with an expression of the level of concern at HUD. I would appreciate hearing from you in the next few weeks regarding your response to our suggestion of HUD providing health/safety information to prospective purchasers of mobile homes.

I am sure you are aware of several states (such as Wisconsin and Minnesota) which have initiated or already implemented rulings to deal with formaldehyde in mobile homes. I am enclosing, for your information, two recent articles from Kentucky newspapers which describe the mobile home situation in that state. Also, a copy is enclosed of a report entitled "Formaldehyde in Office Trailers" by L. Z. Fanning of Lawrence Berkeley Laboratories. The report describes some of the same adverse health effects experienced by occupants of mobile homes and discusses possible solutions to the problem.

Our concern has reached the point where staffs at CPSC and FTC have been discussing a possible letter from each agency (or jointly) to the highest levels at HUD. However, I look forward to an early indication from you of HUD's intentions at the working staff level.

Thank you in advance for your prompt reply.

Sincerely,

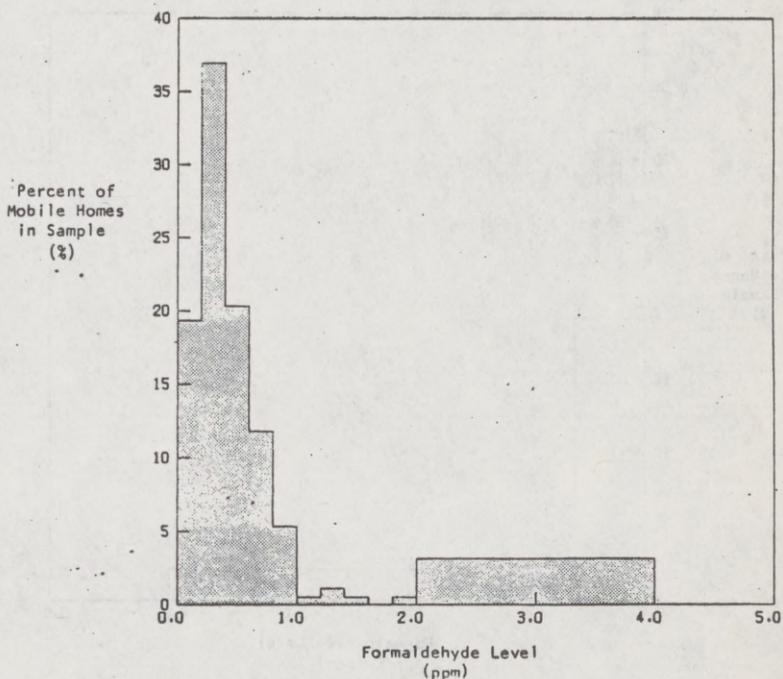
HARRY I. COHEN, *Program Manager.*

Enclosures.

Attachment 6

Table 9-3. Washington: Distribution of Formaldehyde Levels in Sampled Mobile Homes

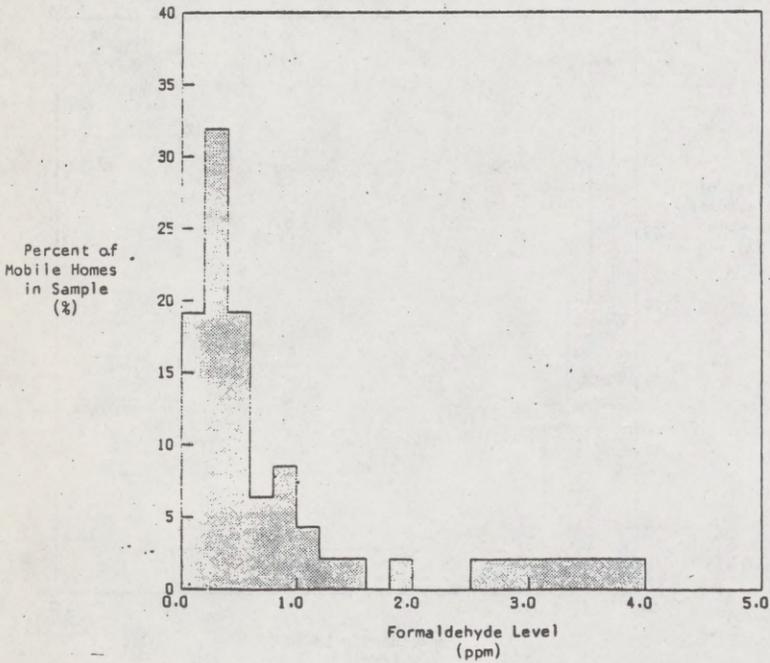
Formaldehyde Levels	Frequency	Percent	Cumulative Percent
≤ .20	36	19.4	19.4
.21- .40	69	36.9	56.3
.41- .60	38	20.3	76.6
.61- .80	22	11.8	88.4
.81-1.00	10	5.3	93.7
1.01-1.20	2	1.1	94.8
1.21-1.40	2	1.1	95.9
1.41-1.60	1	.5	96.4
1.61-1.80	0	0	96.4
1.81-2.00	1	.5	96.9
≥ 2.01	6	3.1	100.0
	<u>187</u>	<u>100.0</u>	



Attachment 7

Table 9-5. Wisconsin: Distribution of Formaldehyde Levels in Sampled Mobile Homes

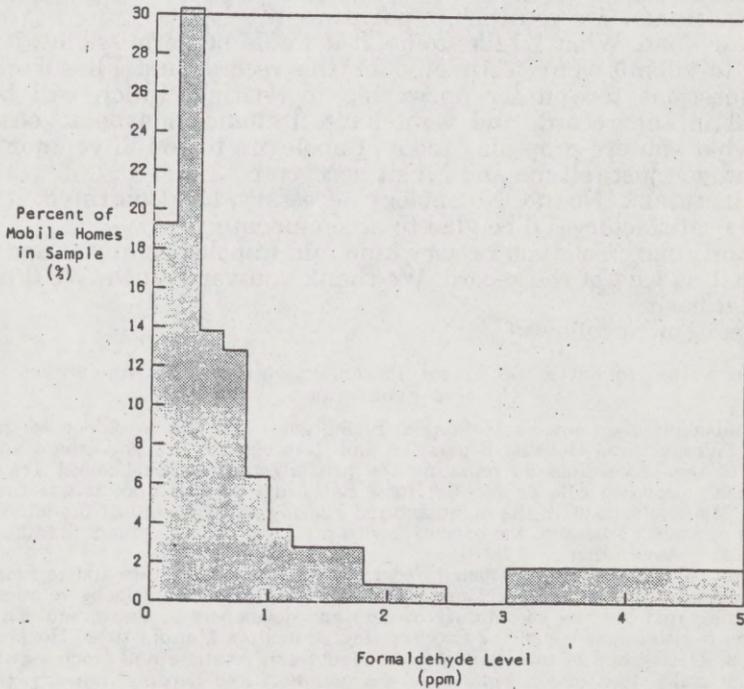
Formaldehyde Levels	Frequency	Percent	Cumulative Percent
≤ .20	9	19.1	19.1
.21- .40	15	31.9	51.0
.41- .60	9	19.2	70.2
.61- .80	3	6.4	76.6
.81-1.00	4	8.5	85.1
1.01-1.20	2	4.3	89.4
1.21-1.40	1	2.1	91.5
1.41-1.60	1	2.1	93.6
1.61-1.80	0	0	93.6
1.81-2.00	1	2.1	95.7
2.01-2.50	0	0	95.7
2.51-3.00	1	2.1	97.8
3.01-4.00	1	2.1	100.0
>4.0	0	0	100.0
	<u>47</u>	<u>100</u>	



Attachment 8

Table 9-8. Minnesota: Distribution of Formaldehyde Levels in Sampled Mobile

Formaldehyde Levels	Frequency	Percent	Cumulative Percent
≤ .20	21	19.3	19.3
.21- .40	33	30.3	49.6
.41- .60	15	13.8	63.4
.61- .80	14	12.8	76.2
.81-1.00	7	6.4	82.6
1.01-1.20	4	3.7	86.3
1.21-1.40	3	2.8	89.1
1.41-1.60	3	2.8	91.9
1.61-1.80	3	2.8	94.7
1.81-2.00	1	0.9	95.6
2.01-2.50	1	0.9	96.5
2.51-3.00	0	0.0	96.5
3.01-4.00	2	1.8	98.3
> 4.0	2	1.7	100.0
	<u>109</u>	<u>100.0</u>	



ATTACHMENT 9

TABLE 9-15.—COMPARISON OF THE MOBILE HOMES IN THE FORMALDEHYDE DATA BASE

	Washington	Wisconsin	Minnesota
Percent of mobile homes under 2 yr old.....	59	80	61
Percent of mobile homes with formaldehyde levels below 1 ppm.....	94	85	83
Percent of mobile homes with formaldehyde level below 0.4 ppm.....	56	51	50
Average formaldehyde level in sampled mobile homes (ppm).....	.64	.66	.61
Average formaldehyde level for mobile homes less than 2 yr old (ppm).....	.76	.71	.83

Senator FORD. The next witness is Mr. H. E. Blomgren, president, National Manufactured Housing Federation, Inc., of Washington, D.C.

I understand you're a good-natured fellow.

STATEMENT OF H. E. BLOMGREN, PRESIDENT, NATIONAL MANUFACTURED HOUSING FEDERATION, INC., WASHINGTON, D.C.

Mr. BLOMGREN. Would you like to postpone it, sir?

Senator FORD. Sir?

Mr. BLOMGREN. Do you wish to postpone it?

Senator FORD. What I'd like to do, if it would be permissible with you, is to submit your testimony for the record, and I'll submit some questions to you for answering in writing, which will be included in the record, and we'll have a chance maybe to chat about what you are proposing today. I apologize to you, if you don't like that, you just tell me and I'll sit here.

Mr. BLOMGREN. No, no. No apology necessary, Mr. Chairman. It's perfectly satisfactory. I'd be glad to accommodate you.

Senator FORD. Well, you're very kind and I apologize to you and I want that as part of the record. We thank you very much. We'll do it on that basis.

[The statement follows:]

STATEMENT OF HOLTON E. BLOMGREN, PRESIDENT, NATIONAL MANUFACTURED HOUSING FEDERATION

Mr. Chairman, my name is Holton E. Blomgren. I am the president of the National Manufactured Housing Federation and have been both a participant and observer of the proceedings surrounding the promulgation of the Federal Trade Commission's proposed rule on Mobile Home Sales and Service since it was first proposed. My involvement in the manufactured housing industry dates from almost ten years ago when I became the executive vice president of the Indiana Manufactured Housing Association.

The National Manufactured Housing Federation represents 22 state and regional associations who constitute a great majority of the manufactured housing retailers and manufactured housing community owners and developers of the nation. This Federation is also a member of the Coordinating Council on Manufactured Housing Finance, a select group of mobile home manufacturers, retailers and trade associations who make up a major segment of the manufactured housing industry. On behalf of the Federation, we express our appreciation to the Committee for this invitation to convey the views of mobile home retailers and mobile home community owners and developers concerning the FTC's proposed rule on Mobile Home Sales and Service.

GENERAL STATEMENT

The Congress and the Department of Housing and Urban Development are vitally concerned with the housing needs of this country—such generally is outside the purview of the Federal Trade Commission. And, for the purposes of this hearing, we must remember that we are talking about housing designed for permanent year-around occupancy. We are talking about "mobile homes" as defined by the Congress

and HUD—not about motor homes, travel trailers, recreational vehicles, nor other forms of temporary shelter.

Warranties given by homebuilders and home manufacturers should be honored to insure that warranty service be provided for the homeowners within a reasonable period of time and that any problems occurring pursuant to warranty provisions are fully and adequately corrected.

This Federation supports this objective unequivocally. Our retailer members are dedicated to these objectives and, as the link in the manufacturing-distribution chain most directly concerned with the homebuyer, know that it is not possible to remain in business if consumer complaints are not competently and expeditiously handled.

THE FEDERATION'S POSITION ON THE PROPOSED RULE

NMHF's initial position during the FTC rulemaking hearings was "neutral" on the need for such a rule. It seems to us to be less than worthwhile to prejudice unexamined issues. So, while the proposed rule alleged in its "Statement of Purpose" in explaining its reason for proposing this rule that "mobile home warranty performance *often* does not conform to the representations of the warrantors" and that "substantial numbers of mobile home purchasers in need of warranty service are subjected to unreasonable delay," we felt the wiser course was to await the presentation of evidence to determine the validity of such words as "often" and "substantial." Federation witnesses did emphasize in hearing testimony that if the rule were promulgated in its proposed form a number of changes would be needed in order to protect retailers from situations wherein the rule could impose upon them definite time-constrained responsibilities without, in our judgment, addressing a concurrent need for equitable arrangements for assuring that the retailer would be reimbursed for warranty service performed.

Now, having examined the hearing record, it is our view that the abuses characterized by the Commission as "often" and "substantial" were never documented sufficiently to trigger a combative industry-wide rule. Moreover, since this rule was drafted in 1974 and published in the Federal Register in 1975, and since the HUD Mobile Home Construction and Safety Standards became effective in June, 1976, it is our view that legitimate questions exist about the relevance of alleged problems and aging complaints. Indeed, even the Presiding Officer's Report fails, in our opinion, to make factual findings to support allegations of "prevalency" of abuses which the proposed rule was designed to correct. We, thus, are moved to conclude that the rulemaking record failed to disclose an industry-wide need for such a rule, and that such problems which do exist can better be solved within the industry and within the framework of the HUD standards and regulations.

However, since the products of our industry—quality and affordable housing—are so vital to human welfare, we in no way minimize the need for adequate warranty service. Our point is that, there is already a sufficiency of protective measures available to the homebuyer to assure warranty performance.

With the Federation's position thus identified, we now offer for this Committee's information, the following basic considerations which we believe are relevant to the basic issue of whether the proposed rule is necessary:

1. Protection afforded by Title VI, National Mobile Home Construction and Safety Standards Act of 1974 and applicable HUD Rules and Regulations
2. Assessment of the need for additional regulation
3. The probable cost of the proposed rule
4. Major deficiencies in the proposed rule
5. Other regulations now imposed on the manufactured housing industry
6. Summary and conclusion

1. Protection afforded by title VI, National Mobile Home Construction and Safety Standards Act of 1974 and applicable HUD rules and regulations

We cite as evidence of existing consumer protection, two provisions of the law passed by the Congress in 1974 which provide substantial warranty protection to homebuyers:

Section 616 requires every manufacturer to furnish a dealer a certification that the mobile home being delivered conforms to the Federal Standards. This certification must be in the form of a label or tag "permanently affixed to each mobile home."

Section 615 requires every manufacturer to furnish by mail to the first or subsequent purchaser of a mobile home a notification "of any defect" relating to the Federal Standard, and requires the manufacturer to bring the home into compliance and correct the defect "at no expense to the owner" if the defect presents an unreasonable risk of injury or death to the occupants and such defect is related to an error in design or assembly by the manufacturer. This same section, moreover,

requires that the defect be corrected within 60 days, or the mobile home be replaced without charge, or that the purchase price be refunded.

Implementation of this statute by HUD has been very broad in scope. Subparts F and I of the HUD regulations relate to the handling of defects and construction code non-compliances by both the manufacturer and the retailer. Sec. 3282.256 of Subpart F states:

"(a) When a distributor or dealer believes that a mobile home in its possession which it has not yet sold to a purchaser contains an imminent safety hazard, serious defect, defect, or non-compliance, the distributor or dealer shall refer the matter to the manufacturer for remedial action under Section 3282.415. If the distributor or dealer is not satisfied with the action taken by the manufacturer, it may refer the matter to the SAA in the state in which the mobile home is located or to the Secretary if there is no such SAA."

"(b) Where a distributor or dealer receives a consumer complaint or other information concerning a mobile home sold by the distributor or dealer, indicating the possible existence of an imminent safety hazard, serious defect, defect, or noncompliance in the mobile home, the distributor or dealer shall refer the matter to the manufacturer."

Subpart I of the HUD regulations is entitled "Consumer Complaint Handling and Remedial Actions." Sec. 3282.401 sets forth the purpose and scope of the subpart and provides:

"(a) The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay, but in which the rights of all parties are protected."

"(b) This subpart sets out the procedures to be followed by manufacturers, State Administrative Agencies, primary inspection agencies, and the Secretary to assure that manufacturers provide notification and correction with respect to their mobile homes as required by the Act. Notification and correction may be required to be provided with respect to mobile homes that have been sold or otherwise released by the manufacturer to another party when the manufacturer, an SAA or the Secretary determines that an imminent safety hazard, serious defect, defect, or noncompliance may exist in those mobile homes as set out herein."

"(c) This subpart sets out the rights of dealers under Section 613 of the Act, 42 U.S.C. 5412, to obtain remedies from manufacturers in certain circumstances."

These regulations then, rather extensively, outline the responsibility of the manufacturers for proper handling of consumer complaints and remedial repairs.

In reply to those who say that these statutory and regulatory provisions relate only to construction problems, we would ask what else is a homebuilder or home manufacturer expected to warrant other than compliance with applicable building codes and the habitability of the home. Matters relating to the installation of the mobile home at the homesite are taken care of by the retailer or the installer subject to local and state laws and regulations specifically relating to mobile homes or relating to consumer protection generally. In addition, the fiercely competitive nature of our industry, as a part of the overall shelter industry, provides additional motivation for prompt and equitable service and thus serves as another reinforcing safeguard to the homebuyer.

2. *Assessment of the need for additional regulation*

The Report of the FTC Hearing's Presiding Officer alleges that acts and practices which the rule is designed to correct "runs through all the designated issues and the findings and conclusions made with respect to those issues." However, the RPO does not disclose the required factual findings to support such conclusions. Instead, the RPO, without disclosing the findings of fact, theorizes that various "illustrative" practices represent only "the tip of the iceberg." Thus, the FTC's justification for promulgating the rule is based upon an unsupported hypothesis that there is "prevalence" of a failure by the industry to provide adequate warranty service. It is a theory, yet unsupported by findings of fact.

The federal mobile home program is over four years old. There have been over 1,000,000 homes manufactured under this program, all built under a strict monitoring system. There is yet to be produced, validated evidence that homes built to the federal standards are not safe, adequate or durable, or that there is "prevalence" of failure of manufacturers or dealers to provide warranty service.

Two valid questions which have never been satisfactorily answered, in the opinion of the National Manufactured Housing Federation, are:

(a) Of the complainants contained in the record of the FTC TRR, is there a substantial or significant number which involve mobile homes constructed under the HUD code standards and regulations or are most related to those built prior to June 15, 1976 (the effective date of the HUD standards)?

(b) Of the complaints contained in the record of the FTC TRR, how many are actually related to "mobile homes" as defined by the Congress in the National Mobile Home Construction and Safety Standards Act; is the number significant or are most related to "travel trailers," "park models," etc. which are outside the scope of the statutory definition of "mobile home"?

3. *The probable cost of the proposed rule*

The rulemaking record contains various estimates of the probable additional cost to a home, attributable to the rule as it is proposed, with the range of \$300-\$500 being mentioned. It is our view that, in terms of the typically low-income buyer of a manufactured home, a sum of this magnitude would be significant. The experience of our retailers has been that such cost increments, though a small percentage of the total retail price, as perceived by such buyers are amounts sufficiently large to, in some cases, delay or cancel the purchase.

We think, however, that the most important consideration is not the probable amount of the cost increase and its effect on the buyer, but whether, whatever the cost, the rule's added protection is necessary at all.

4. *Major deficiencies in the proposed rule*

There are numerous major deficiencies in the proposed rule. This may or may not be within the scope of this oversight hearing; however, I would like to point out just three by way of example only.

(a) *Set-ups.*—The proposed rule would purport to provide for an assurance of set-up adequacy by requiring the dissemination of a questionnaire to all buyers within 60 to 120 days of tender of possession requesting whether the purchase is fully satisfied with set-up or warranty service. We feel that this concept is discriminatory, impractical and unnecessary. First, it is discriminatory because only factory-constructed homes are singled out for this requirement. Second, it is impractical, since it is probably too much to expect that a purchaser of any product would freely certify in writing that he is completely satisfied, especially if the buyer's perception of such certification would be that any future unforeseen claim which might arise would be thus placed in jeopardy. Third, the rule's concern for set-up adequacy is unnecessary since the HUD code, in Section 3280.306(b) requires the manufacturer to provide printed instructions with each home specifying the location and required capacity of all components of anchoring and support systems to include piers, footings and ground anchors. Moreover, it must be presumed that HUD's own body and frame construction requirements provide for strength and rigidity sufficient for foreseeable terrain and environmental conditions. Finally, HUD's Procedural and Enforcement Regulations specify in Section 3282.303 that State Administrative Agencies should provide for the monitoring of the installation of manufactured homes.

If it is the judgment of this Committee that the above set-up standards are not adequate, we point additionally to the current revisions by the National Conference of States on Building Codes and Standards of the "Standard for Mobile Home Installation." The panel charged with this revision is chaired by a HUD official, and the undertaking has been financed by a HUD grant. These standards provide detailed engineering specifications for site design, set-up and stabilizing procedures, as well as standards for plumbing, fuel supply, heating and cooling, electrical systems, fire safety, and installation of accessory buildings.

(b) *Definition of defect.*—The term "defect," as defined in Section 44.1 includes any non-conformity which renders the home "not fit for ordinary use of which it was intended."

We believe that the definition is unreasonable in that there is no provision for relief to retailers or manufacturers from warranty service responsibilities whenever the defect has been caused by misuse of the home by the resident.

(c) *Basic inconsistency with the Magnuson-Moss (Federal Warranty) Act.*—We believe that although the proposed rule cites as the basis for its authority the Federal Trade Commission Act and related Rules of Procedure, that the rule goes will beyond the statutory limits of the Act.

The statute, for example, specifies in Section 102 that "Nothing in this title . . . shall be deemed to authorize the Commission to prescribe the duration of written warranties given, or to require that a consumer product or any of its components be warranted." Yet, despite this express limitation, the proposed rule in Section 441.5 states that "it is an unfair or deceptive act or practices . . . to permit mobile homes to be sold . . . without any written or implied warranty," etc. Although the tortuous language of the ensuing paragraph may have satisfied the drafter of compatibility with the Magnuson-Moss Act, we think that this passage may be fairly interpreted as being otherwise. Furthermore, the statute limits its warranty requirements solely with consumer products, while the proposed rule imposes warranty requirements

not only on the product, but also upon the services rendered in connection with its installation.

5. Other regulations now imposed on the manufactured housing industry

Earlier in my remarks, I addressed the matter of the probable additional cost to each home, should this proposed rule be promulgated. Admittedly, attempts to quantify the cost precisely in dollar terms have not produced conclusive data. However, we do not regard the absence of such data as being especially germane to the larger issue as to whether the rule is needed at all. Obviously, the cost of implementing such a rule will predictably vary depending upon the size of the firm and its volume of production.

To place the matter in better perspective, we refer to the FTC's Consent Order imposed on four manufacturers some six years ago—the actual genesis of the rule we discuss today. The point was made in the rulemaking record by those who studied this experience that there was no conclusive evidence of significant cost increases or severe problems experienced by any one of the four manufacturers involved.

This assertion becomes less meaningful in the light of the fact that these manufacturers were at that time among the largest in the industry. They were, thusly, endowed with adequate resources, especially the professional staff and management competence, to cope adequately with the Consent Order's requirements. We suggest that the transition to the rule's mode could have been far more traumatic had the target firms been of the smaller size more typical to our industry.

A parallel may be usefully drawn to our retailing segment of the industry. Gradual federal involvement in regulatory controls hurts, in similar fashion, the smaller firm far more.

Within this context, we emphasize that those favoring the rule who minimize its probable financial or administrative burdens have missed the larger issue: the cumulative effect of the proposed rule, added to all other regulatory controls now or to be imposed on this industry which, in total, discourage investment, hasten the demise of smaller firms and in the long run burden the homebuyer with additional costs.

Indeed, the matter of the adverse cumulative effect of the growing regulatory burden has also been of concern to the President. In March 1978, he signed Executive Order Number 12044, "Improving Government Regulations," stating that regulators shall not impose unnecessary burdens on the economy, on public or private organizations and mandated that the agencies "consider the need to eliminate overlapping and duplicative regulations."

It is within this more general context that we now cite a number of regulations imposed upon our industry by other than the Department of Housing and Urban Development. The list is impressive in view of the pervasive discipline of HUD's own regulations and of its regulatory primacy over our industry as the Congress intended.

We do not intend to imply that all relate solely, or even especially, to the manufactured housing industry. They all do, however, exert varying measures of control with a cumulative effect of a magnitude exceeded only by the astonishing exuberance of their able proponents.

(a) *Federal Trade Commission rule on energy usage advertising of central air conditioners.*—This rule requires that advertising of the energy usage of central air conditioners and heat pumps be based upon Department of Energy test procedures. The test procedures are so technically complex, the agency recently postponed the rule's effective date.

(b) *Federal Trade Commission rule on labeling and advertising of home insulation.*—This rule requires R-values of floors, walls and ceilings of manufactured homes to be disclosed in writing to homebuyers before the sale. This rule is an excellent example of duplication, since heating and cooling performance standards for manufactured homes have been mandated by HUD since 1976, to include the requirement that such information be disclosed to the homebuyer.

(c) *Federal Trade Commission rule on appliance energy consumption labeling.*—This rule requires that efficiency data be disclosed on refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners and furnaces.

(d) *Federal Trade Commission holder-in-due course rule.*—This rule permits homebuyers having claims against retailers also to exert these claims, in qualifying circumstances, against the lender. The protection thus afforded the manufactured homebuyer is highly significant since the rule applies whenever the financing arrangements have been made indirectly, i.e. were originated by the retailer. More than 80% of mobile home loans originate in this way. This rule thus introduced

another partner in the function of assuring production and warranty service quality—that of the lending community.

(e) *Department of Energy proposed rule on building energy performance standards (BEPS).*—This rule would set energy performance standards for structures, including manufactured homes, despite HUD's own energy performance standards.

(f) *Consumer Product Safety Commission proposed rule on home insulation disclosure.*—This rule would require manufacturers of home insulation to disclose to consumers performance and technical information concerning the possible adverse health effects following installation of specified insulation.

(g) *The Federal Home Loan Bank Board rule on consumer protection incident to loans qualifying for Federal preemption of State usury laws.*—This rule specifies a variety of financial consumer protection requirements with which retailers and lenders must comply whenever local usury ceilings are exceeded.

(h) *Occupational Safety and Health Administration proposed rule on right of entry into manufacturing plants.*—This rule would purport to insure a more rigorous OSHA enforcement program by permitting OSHA inspectors to achieve an element of surprise in making inspections by permitting the entering of facilities with an "ex parte" warrant—i.e. without the prior knowledge of the management.

(i) *State warranty laws on bonding and licensing of retailers.*—While the time constraints of the hearing do not permit an exhaustive analysis, we understand that at least 40 of our 50 states have enacted various dealer licensing and bonding laws, some with warranty service provisions. Currently, for example, the States of Alaska, California, Florida and Michigan all have pending in their legislatures bills which provide for various types of warranty and warranty service safeguards for mobile home buyers. Federal intrusion on state legislation is, thus, inherent in the proposed rule.

We do not purport the above list to be other than a representative sampling of a vast array of regulations which deal with the manufactured home either during its construction, or en route to the marketplace. Others at the local governmental level are addressed with bewildering complexity to zoning requirements, mostly with intent to prevent placement within residential and agricultural districts.

While individually these measures have been enacted in the name of consumer protection and public welfare, the cumulative effect of them all is staggering. There is special irony in the further growth of such regulations, as exemplified by the rule under consideration by this Committee, at a time when the manufactured home, for most Americans, remains the only viable option of homeownership. As we recently pointed out to Congressman Fithian's Building Sector Task Force, our industry does not request massive, budget-breaking subsidies to provide needed housing to our citizens. We ask only that the fetters of governmental regulation be relaxed, or at least that such growth be abated. At a minimum, we seek relief from the added burden of the FTC Rule on Sales and Service.

6. Summary and conclusion

(a) Pursuant to the basic requirement of rulemaking under the statutory authority of the Magnuson-Moss Act (15 U.S.C.A. 57(e)(3)(A) (West 1977)) the Federal Trade Commission should not issue a rule unless substantial evidence in the record supports the need for the rule. Examination of the record indicates that the problems addressed relate to homes constructed prior to the promulgation of HUD's Mobile Home Construction and Safety Standards of 1976 and also prior to the promulgation of the FTC's own rules under the Magnuson-Moss Warranty Act effective in 1976.

We believe that neither the rulemaking record nor the Presiding Officer's Report supports a factual finding of "substantial evidence," and conclude, therefore, the proposed rule should not be promulgated.

(b) We emphasize that the added burden of yet another federal regulation on this industry may hasten the day when the manufactured home is no longer "the affordable home." Within the last twelve months, monthly payments to our homebuyers have increased substantially, reflecting rising manufacturing and interest costs. During the past two years, the cost of our homes to consumers has risen at a rate of at least thirty percent (30%) over such period. The proposed rule, with its excessive detail, its rigidity and complexity would add unneeded consumer protection at an unacceptable price.

(c) We urge this Committee's favorable consideration of action designed to stay indefinitely this rule's promulgation.

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

QUESTIONS OF THE COMMITTEE AND THE ANSWERS THERETO

Question 1. Why do you feel that the FTC has failed to make a showing of "prevalence?"

Answer. In our view, the FTC failed to make a showing of prevalence because the evidence in the rule-making record, the Report of the Presiding Officer and the FTC Staff's 629-page report all reflect these deficiencies:

(a) The number of validated complaints of failure to perform warranty service in comparison with total shipments, is extremely small despite the best efforts of the FTC staff, the Center for Auto Safety, Consumer Advocates, Inc., and Golden State Mobile Home Owners Association to solicit them. If the number were not small, it would not be necessary for the FTC staff to rely on the "tip of the iceberg" theory, with its implication that despite the paucity of evidence there is a presumption that there are actually far more.

The FTC has supported its "tip" theory by the use of such terms as "some," "many," "significant number," which suggest a very large number without ever specifying what that number is. If prevalence had been shown, the "tip" theory would have been unnecessary.

(b) Complaints offered in evidence involved homes built prior to the effective date of the HUD Code in 1976.

(c) Complaints offered in evidence included recreational vehicles and modular homes.

(d) Complaints offered in evidence failed to distinguish "maintenance" problems and problems not covered by warranty, from the total number reported.

(e) Complaints offered in evidence failed to disclose whether the warrantor provided timely correction.

(f) The surveys on which the FTC staff has relied have been shown to be flawed in construction sampling techniques, and in terms of the pronounced bias of the sponsoring organization. A valid survey demands a skilled, experienced and impartial sponsor. Such was not the case.

Question 2. Do you think that the HUD program protects consumers against individual warranty defects?

Answer. Yes, I do. A "warranty defect" has to be a problem with something which is warranted. Manufacturers of mobile homes, like other homebuilders, have historically given warranties which cover only their construction of the home and not the appliances manufactured by others nor the set-up or installation which is exclusively done by other parties. The HUD program and construction code covers the construction of the home. HUD has specific rule relating to the handling of consumer complaints relating to such construction by retailers and manufacturers; it covers (i) imminent safety hazards, (ii) serious defects, (iii) defects, and (iv) non-compliance with code provisions. The HUD program protects consumers against individual warranty defects to the extent necessary for federal involvement leaving the handling of "cosmetic-type" complaints to State Administrative Agencies (SAA's) or to the Consumer Protection Officers within the Offices of State Attorneys General. The limits of HUD authority are reasonable in the light of the existence of warranty laws (23 states) and licensing and bonding laws (41 states, receiving 91% of shipments).

Question 3. Is it true that most dealers disclaim warranties for transportation and set-up?

Answer. No, most dealers do not disclaim warranties for transportation and set up if they perform such work and service. However, these warranties are disclaimed when others perform such work and service. Many mobile home purchasers (believing they are saving money) want to arrange for their own transportation and set-up. If, for example, the homebuyer hires an unlicensed, unregulated and unskilled transporter or installer, the retailer must not be held responsible for any resulting damage or defects.

Question 4. Who could a consumer turn to if a dealer goes out of business?

Answer. If the dealer goes out of business, the homeowner then relies upon the manufacturer. If the holder-in-due course rule applies, the lender can be held accountable. Some state manufactured housing associations have a capability for assistance—i.e. a means of securing the cooperation of the manufacturer concerned. Of course, if the problem relates to the set-up by a third party, the absence of the dealer would be irrelevant.

Question 5. Do you feel that one result of the rule will be vertical integration of dealerships by manufacturers?

Answer. One's opinion has to be in the nature of weighing probabilities. The Federation believes that some substantial number of dealerships would be taken over by manufacturers. Our reasoning is based on the very real probability that manufacturers will be unwilling to be held responsible for functions they could not

otherwise control—transportation and set-up. The rule's requirements for complaint handling and correction of "problems" within tight and inflexible deadlines will certainly encourage such vertical integration. In this sense, the rule encourages integration of the industry by forcing the manufacturer to warranty transportation, set-up, appliances, etc. which have historically not been covered by the manufacturer's limited warranty. The FTC says that the rule will only apply to those manufacturers which desire to give a warranty; however, the fact remains that over half of the mobile homes sold each year are sold in the states which have mandatory requirements. Thus, the practical effect of the rule will be to require the integration of manufacturer and retailer responsibilities. Certainly, the manufacturers believe that such integration will occur and, of course, that is where the decision will ultimately lie. The recent revisions which establish vicarious liability, consequential damages, permitting informed phone calls to provide "notice of defect," the concept of regardless of absence of verification, "fix now and pay later," and equating defects with "problems" or "dissatisfaction" would probably hasten such integration.

Question 6. In your testimony, you have criticized the idea of a consumer questionnaire—can you suggest some changes in the format of the questionnaire to make it more accurately reflect the consumer's experience with his mobile home?

Answer. A federally mandated consumer questionnaire concerning warranty service is simply not justified in the record of this proceeding. This is merely a scheme to elicit consumer complaints under the guise of a warranty performance monitoring system. There is no way to rewrite the proposed questionnaire so as to make it a necessary part of warranty service performance. There are, however, practical alternatives. One would be the use of a "warranty service complaint form" to be furnished the homebuyer by the retailer. The homeowner, except in emergency cases, would then list the problems in need of correction and then turn it in to the retailer at the end of 30 or 60 days for correction. All service could then be accomplished more economically at one time.

Question 7. There is evidence in the FTC hearing record that many problems occur during set-up. It is not difficult then to presume that HUD's construction requirements and directions for set-up provide sufficient coverage?

Answer. No, HUD's construction requirements and directions for set-up are sufficient for these reasons:

First, the standards to which manufactured homes must be constructed reflect design and engineering specifications that take into account the stresses and strains of transportation and set-up, to include the placement of footings, piers, leveling, blocking and anchoring techniques. These standards also require that "each mobile home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable load stresses or deflections" (Section 3280.305, Subpart D).

Second, in addition to the requirement that the manufacturer furnish installation instructions for each home, HUD's Procedural and Enforcement regulations urges SAA's to provide for "monitoring of the installation of mobile homes set-up in the state to assure that homes are properly installed and, where necessary, tied down" (Section 3282.303c, Subpart G).

Third, under the aegis of the National Conference of States for Building Codes and Standards (NCSBCS), a task force, funded by a HUD grant and chaired by a HUD official, is now at work developing installation standards for adoption by state governments.

It seems clear, then, that neither Congress nor HUD has seen fit as of this time to preempt state and local jurisdictions over the homesite installation of the home. If all states and local jurisdictions required that the manufacturers' installation instructions be followed the HUD coverage would be complete. Thus, if there is not sufficient coverage of the HUD requirement it is because state and local jurisdictions have not desired to implement HUD mandated engineering requirements for set-ups and anchoring systems.

Question 8. Wouldn't dealers benefit from a written agreement with manufacturers allocating the responsibility for repairs and the rate of reimbursement for repairs?

Answer. The Federation encourages the use of written agreements and favors the development of guidelines to be followed in the drafting of such agreements. We do not, however, believe it appropriate for the federal government to involve itself in the mandating of these contracts or the terms thereof. The rulemaking record does not justify any FTC requirement that manufacturers and retailers who give written warranties be jointly and severally liable as a practical matter, to the consumer. We believe that there is no statutory authority for a rule which produces this effect.

Question 9. What percentage of warranty repairs do dealers perform?

Answer. In a given instance, three types of warranties may apply: the manufacturers', the dealers', and the appliance manufacturers. Within the context of the manufacturers' warranty, the terms of his agreement with the retailer will stipulate the dealer's responsibility. In most cases, this would be close to 100 percent.

Question 10. Do dealers report all warranty repairs they make to manufacturers?

Answer. Almost all major (warranty service) repairs would be reported. Cosmetic repairs, however, may go unreported (probably less than half). The terms of the manufacturer-dealer agreement would, of course, apply.

Question 11. What percentage of dealers inspect the homes they sell?

Answer. One hundred percent (100 percent) of the dealers will inspect the homes they sell. Many retailers do a final "walk through" inspection with the homeowner following set-up. However, it may not be possible to "inspect" appliances, plumbing, electrical systems, etc. because the homeowner has not completed necessary extensions of utility services to the homesite. Utility extensions and connections are still subject to local codes and ordinances and are typically not performed by retailers today.

Question 12. To what extent does improper set-up cause problems and defects in mobile homes?

Answer. Probably less than ten percent of defects are caused by improper set-up by dealers. We feel that the rulemaking record fails to document a large percentage. (There is no "iceberg" under the alleged "tip".)

Question 13. Who is responsible for set-up of mobile homes? Who provides the instructions? Is set-up part of the purchase price?

Answer. (a) Set-up is either the responsibility of the retailer or of the consumer, depending on the negotiated sales contract.

(b) HUD requires that the manufacturer give written instructions on blocking, supporting and anchoring of the home (set-up). However, many state and local political subdivisions have varying requirements; thus, the manufacturers' instructions may be overridden by local requirements.

(c) It may be a part of the purchase price or it may be in a separate agreement. If the consumer is responsible for set-up it would, of course, not be treated in the price.

[Whereupon, at 1:40 p.m., the hearing adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. WARREN G. MAGNUSON, U.S. SENATOR FROM WASHINGTON

The Federal Trade Commission's proposed rule concerning mobile home warranties which the subcommittee is reviewing this morning would provide mobile homeowners with the assurance that their written warranty guarantees will be honored.

The information gathered by the Commission during their 5 year rulemaking, together with the evidence collected by the States, makes it abundantly clear that inadequate mobile home warranty protection is a severe problem for thousands of consumers every year.

I have been contacted countless times by mobile homeowners frustrated by inadequate warranty service. Washington is a large market for mobile home sales. In 1978, over 12,000 mobile homes were sold in the State. The Department of Licensing, which handles the largest number of mobile home problems in Washington, estimates that 99 percent of the mobile home complaints they receive involve warranty issues. I understand the experience in Washington is representative of the problem nationwide.

This is a particular problem for those who can least afford it. A majority of mobile homeowners are senior citizens and young married couples living on fixed or low-incomes. They are particularly hard-pressed to exercise their legal rights to protect their investments when inadequate warranty service on a leaking roof, malfunctioning heating system or any of the other difficulties experienced by mobile homeowners makes their home uncomfortable or, in some cases, uninhabitable.

The FTC's proposed rule appears to remedy warranty service problems with mobile homes in a fair and cost-effective manner. The proposed rule does not require manufacturers or dealers to offer warranties. It would simply set time deadlines for warranty service and require post-installation inspection for those companies which choose to offer written warranties.

Mobile homes today account for 95 percent of this Nation's new family housing available for under \$20,000. Mobile homeowners should be able to expect that their warranties will be honored in a prompt and competent manner. I commend the FTC for their initiative in addressing the adequacy of mobile home warranty services.

STATEMENT OF SUZANNE LINDAMOOD, PH. D., ASSOCIATE PROFESSOR OF HOUSING,
DEPARTMENT OF FAMILY ECONOMICS, KANSAS STATE UNIVERSITY, MANHATTAN,
KANS.

My name is Suzanne Lindamood, and I am an associate professor of housing in the Department of Family Economics at Kansas State University. I have a Ph. D. in Housing from the Department of Consumer Economics and Housing, Cornell University. My doctoral dissertation was a comparison of mobile home and conventional home residents in social, economic, and housing terms. I am a consumer member of the HUD mobile home advisory council, author of a college textbook—"Housing, Society and Consumers," (West Publishing Co., 1979), editor of the professional journal—"Housing and Society," and a reviewer for the "Journal of Consumer Affairs." I have also directed several large household surveys on housing conditions and satisfaction, and have for seven years taught graduate and undergraduate courses in housing, research methods, and research for policy analysis. I am speaking today for myself only, and not on behalf of any organization.

My primary concern and the context in which I am speaking today is the housing situation that lower income consumers face and the potential impact of the additional regulation proposed by the Federal Trade Commission on the housing choices available to them. I am not inherently opposed to the type of regulation proposed by the FTC. At this time I have not, however, seen convincing evidence that would lead me to conclude that the regulation is necessary. I feel that the FTC has not gathered solid quantitative evidence of the benefits of the proposed regulation and it has not shown that the regulation would solve the warranty problems of mobile home consumers. The FTC has provided no evidence as to whether most mobile home consumers are willing and able to pay more for the estimated increase in quality.

I will address three issues in my statement today: (1) The impact of additional regulations on lower income consumers; (2) the adequacy of existing regulations of mobile homes; and (3) the adequacy of the private market process in meeting the needs of mobile home consumers.

IMPACT ON THE LOWER INCOME CONSUMER

The main problem facing housing consumers today is cost, not quality. Many housing policies adopted at the local, state and federal levels have had the goal of increasing quality, but have had the result of imposing severe cost problems on consumers, especially on lower income consumers. We see quality problems in rural and urban areas, so we pass stricter housing and building codes at the local level. We pass zoning restrictions to keep out lower quality homes and to maintain the character of an area. We see renters paying a large portion of their incomes for rent, so we pass rent control. The end result of all of these individual regulations is a decrease in the availability of lower cost housing, and an increase in cost. The rent income ratio has been increasing rapidly, and now about half of low income renters pay 35 percent or more of their income for rent. The fundamental problem is that the higher the quality required in housing, the more it will cost. An increase in cost to consumers means either that they decrease the money available for food, clothing and medical care, or that they seek out lower cost housing that they can afford.

Many of the quality requirements have gone beyond what is reasonable in terms of health and safety, and although the intention may be for better housing, the cost burden is on the consumer, and sometimes the result is lower quality housing rather than higher quality housing. In the case of mobile home owners purchasing at the lower end of the price range, most would be renters if they could not own a mobile home. Consumer research has shown that the most important aspect of housing to the majority of people is ownership, and consumers indicate that they would react to increasing housing costs by choosing a lower quality of unit in order to remain a homeowner. Additional regulations could deny consumers the opportunity to choose the most appropriate quality-cost tradeoff.

In order to justify a mandatory increase in quality which is unrelated to health and safety, research is needed which clearly ascertains whether consumers are willing and able to pay for that increase. All other things being equal, consumers want higher quality and more warranty service, but in the real world, there is no free lunch. We need to determine whether the consumer feels that extra cost is worth it. The FTC report argues that the expected benefits of higher quality and better warranty service would be greater than the cost of regulation. Although the FTC does not present concrete evidence of this, it is plausible, yet it does not allow for the fact that consumers have different preferences and resources.

Mobile homes are virtually the only new housing being built for lower income persons by either the public or private market. Manufacturers will respond to extra regulations by passing the cost on to the consumer. Some lower income consumers will not benefit from the improved quality because they will not be able to buy mobile homes. For lower income consumers the alternatives to buying new mobile homes are buying used mobile homes and renting conventional housing which is of lower quality than new mobile homes. Research has shown that mobile homes are more desirable to consumers than other lower cost housing options due to ownership possibilities, and the mobile home type of structure is preferred to duplexes, townhouses and high rises by many consumers. If higher quality housing is an important societal goal, then we should deal with the issue of how society can help lower income consumers pay for the higher quality, not how to force them to pay for it without assistance.

It is difficult to come up with an exact cost for the proposed FTC regulations, with estimates ranging from \$125 to \$1,000. Taking \$500 as a midpoint (and likely as any other estimate to be accurate) this represents a 6.25 percent increase in the price of an \$8,000 mobile home. Using one estimate of the price elasticity of mobile home demand (Gates, 1980) we could expect a 15 percent drop in sales.

The FTC has not provided any quantitative breakdowns of the benefits we are told would come from the proposed rule. The FTC has asserted that the benefits would exceed the costs and has assumed, without substantiation, that the increased cost would be good for consumers. In order to do an adequate economic analysis of the impact, a survey needs to be done that would provide information on consumers' preferences, likely behavior, and alternatives available to them, in addition to quantifying the cost of unperformed warranty service.

ADEQUACY OF EXISTING REGULATIONS

The purchaser of a new mobile home is already one of the best protected housing consumers. The mobile home is the only class of housing that is covered by mandatory national construction codes (the HUD standards). In addition, each consumer must receive an owner's manual which states the warranty obligation of the manufacturer; to whom to write if they have a warranty problem; and the HUD address if they do not receive satisfaction. I know of no other type of housing in which the consumer receives this much information either about the home or about what to do if problems arise.

In terms of problems related to safety and durability I believe that the HUD mandate under Title 6 is proving successful. Research indicates that the mobile home being built today is a safe and durable product. If there are violations of the standards, they should be dealt with by HUD, and regulations that would essentially duplicate HUD's mandate to ensure safety and durability would be an additional unwarranted burden at this time.

As to the issue of the quality of mobile homes, the FTC report implies that the mobile home consumer is facing a worse situation than other housing consumers, and that special action needs to be taken. I have seen no studies that provide solid evidence that mobile homes have more problems than other housing. Two recent studies of conventional housing found that a majority of recent purchasers of housing (new homes were not separated from existing) encountered problems. (White 1979, Meeks, 1980.) I have seen no studies of mobile home warranty problems that would stand up to normally accepted standards for consumer research. The Ohio study the FTC chose to emphasize in a recent news release would be characterized by most survey researchers as fatally flawed, as it did not follow standard survey procedures to assure a representative sample. Also, the type of information needed was not gathered, and the type of data analysis needed was not performed.

One means by which we weigh the overall adequacy of a housing unit in meeting the criteria the occupants feel important is the reported satisfaction level of the occupants. Studies comparing the satisfaction levels of mobile home occupants to conventional home occupants have found high levels of satisfaction among both groups. (Moore, 1979; Shelton, 1979; Lindamood, 1974.) We can conclude that mobile home residents do not view their housing as being worse than or having more problems than realistic housing alternatives.

I believe that the high satisfaction levels of mobile home residents, coupled with the protection now offered by the HUD standards indicate that the proposed FTC regulation is not needed at this time, and that any new regulations must be justified by sound, conclusive evidence.

FUTURE ADJUSTMENT OF THE MOBILE HOME MARKET

In a properly functioning unregulated product market, manufacturers will attempt to offer products of various quality and price levels to meet the demands of different types of consumers. Manufacturers need to be concerned about the reputation of their products, because consumers learn from experience and by word-of-mouth. The FTC reports on the proposed mobile home regulation ignore the possibility of market adjustment, since the implicit assumption is complete consumer ignorance of product quality before purchase. The FTC analysis also suggests that there is considerable price competition, and price sensitivity on the part of consumers, so that manufacturers and dealers have incentives to cut costs without regard to quality. This is plausible in the short-run, but in the long run there would have to be no communication among consumers for the situation to persist. A more plausible scenario would have the market process leading to a situation where mobile home purchasers got the quality for which they are willing and able to pay.

Therefore, I feel that the FTC has not adequately substantiated its case. The FTC bases the case for regulation on anecdotal information and some defective surveys of mobile home consumers. The expected benefits of the regulation are stated in qualitative not quantitative terms, and no consumer input was obtained on preferences or willingness to pay for additional quality or service. The FTC assumes that the existing HUD quality standards are inadequate, despite the fact that the standards have existed a relatively short time. The FTC ignores the potential harm the regulation might inflict on lower income consumers. I cannot support the proposed FTC regulation on the basis of the evidence presented by the FTC. I might support the proposed regulation if the FTC could present a comprehensive, quantitative analysis showing that the expected benefits were greater than the expected costs for most potential mobile home consumers.

SUPPLEMENTAL STATEMENT OF SUZANNE LINDAMOOD, PH. D., IN RESPONSE TO
QUESTIONS FROM THE COMMITTEE

Question 1. In your testimony, you discuss consumer preferences as proposed to actual consumer choices—assuming that the FTC rule will increase the cost per mobile home—would that increased cost be offset by the decrease in actual costs to the consumer who may now have to pay for warranty repairs himself?

Answer. Consumer choices do not always relate to preferences due to various constraints in attaining preferred housing. People tend to choose housing that is as close to preferred housing as possible.

The FTC in essence assumes that the benefits will exceed the costs. The only quantified benefits referred to estimate that "slightly over 20 percent of new buyers would save about \$200 on repairs". (Staff Report, 524). This averages out to \$40 per home, at a cost estimated to be at least \$125 per home. Thus, as we are not given an estimate of any benefits the other 80 percent would realize, it is logical to assume they would receive little or no benefits. We are not given the source of the 20 percent estimate, although it relates closely to the 23 percent "unsatisfied" in the GSMOL survey and the 22 percent of the Housing Advocates who were "unable to obtain successful warranty repairs" (Staff, 478). Thus, the only evidence reported to us says that \$40 on the average would be saved, which does not seem to warrant the cost of \$125.

In terms of consumer savings, although it may currently cost \$40 to have the repair done by a repair service or by the manufacturer, if the consumer places a different value on his or her time than the repair person, the value to the consumer may be less than the cost of the repair. For example, it may cost \$40 to have a repairperson come to plane the edge of a door that sticks. I could, however, do the job myself. If I value my time at \$10 per hour and if it takes me one hour to do the repair, the actual value of the repair to me is \$10 not \$40. Thus, we have to consider the consumer's time value to do different repairs in order to calculate the benefits of services to the consumer. The benefits are not always equal to the cost of the serviceperson making the repair.

Regarding benefits and the calculation of benefits, the FTC's studies of consumers should have been able to provide more accurate benefit estimates. However, the telephone follow up of the Housing Advocates study found significant differences between the mail out and the phone survey for every category of defect listed. Contrary to a misleading quote in the staff report ("The findings consistently indicated that the three groups (mail, late mail, telephone) were substantially similar in almost every respect") (Staff, 72), there were great differences in the two groups, and these differences indicate that estimates of costs incurred by consumers to repair "defects" would be greatly exaggerated by the mail out survey. The table included in Edward Kramer's August 20 statement indicates that for most defect categories, the mail out respondents experienced about three times the rate of defects as did the telephone respondents.⁽¹⁸⁾ Also, without further information about the extent of the defect (was it a loose washer in the faucet or a broken pipe that caused the plumbing defect?) accurate benefit figures cannot be estimated. I assume that the lack of good data is the reason the report does not estimate benefits, with the exception of the unsubstantiated \$40 per home amount given on p. 524.

Question 2. In your opinion, how much would the cost of a mobile home have to increase before a significant number of consumers would no longer be able to afford a mobile home (for example, the FTC's projected cost per unit is \$120—is this figure an increase significant enough to cause consumers to turn elsewhere for housing?)

Answer. Based on a price elasticity of -2.4 (Howard Gates) a price increase of \$120 on an \$8,000 mobile home leads to a 3.6 percent loss in unit sales at the lower end of the price range.

Question 3. In your opinion, would better warranty service lead to less rapid depreciation of mobile homes?

Answer. It is possible. However, the primary factor to consider in this issue is whether the present value of the increase in future market value is greater or less than the extra added cost. Given the rational present oriented behavior of many lower income consumers and their fairly high discount rate, the present value of the future increase is likely less than the extra cost.

It should be also be noted that in terms of economic, not structural depreciation, many factors other than the quality of the unit enter in. Whether financing exists for used units, whether the location is in demand, whether there are other options (such as newer mobile homes in the same general locations) all influence price. In general, the strongest influence on market value is demand, and in general, mobile homes are located in rural or less populated areas where demand is not as high and

where appreciation is not as strong as in areas with limited land and limited housing options.

Question 4. Are you familiar with the formaldehyde problem, If so, would you comment on that?

Answer. HUD is studying the formaldehyde issue. At the Advisory Council meetings we have had informative presentations on the issue by HUD contracted researchers and by researchers from the Formaldehyde Institute. I would be pleased to comment at greater length at a later time when more research has been completed. At present, I will say that estimating the extent of the problem, the present information is largely anecdotal. In terms of the studies done, the two major "studies" (Wisconsin and Minnesota) are limited, as they "sampled" on the dependent variable. That is, they are made up primarily of complaint cases.

A Wisconsin follow-up found residents of homes with similar levels of gas did not have the exposure symptoms that existed in the complaint homes. Thus, it is known formaldehyde is an irritant that affects some people, not others, and the extent of the situation is not known at the present time.

Question 5. Are you aware of any surveys, studies, or research done which would accurately reflect (in your opinion) consumers' experiences with mobile home warranties?

Answer. No. Which is why it is unfortunate that the FTC's studies failed to do so.

Question 6. Is it true that warranties are often discussed with the consumer prior to purchase? If so, isn't the consumer expressing (by purchase) a willingness to pay for warranty service and a reliance on the warranty?

Answer. Studies on other products indicate that few consumers inquire about warranties, and do not use warranties in the decision-making process to any great extent. Thus, we do not know what the consumer is thinking in terms of reliance on a warranty.

If there is no choice between having a warranty and not having a warranty for a given mobile home, we only know that the consumer who purchased a home was willing to purchase that home. It may be that some consumers would prefer a lower cost and no guaranteed service. The cost added in may have deferred still others from purchasing. The decision to buy does not indicate a willingness to pay for that warranty service if other options were not available, and does not indicate a willingness to pay for additional service or quality.

Question 7. Are there any additional comments you may wish to make on this issue?

Answer. a. I am disappointed that the tone of the staff report is one of advocacy rather than investigative. Questionable statements that support the staff's position are included without comment or verification (e.g., the statement of a CAS economic consultant, p. 517, although highly questionable, no comment or rebuttal is included. It is given as if it is unquestionable fact). Statements not supporting the staff's stand received much critical comment in the report, and all possible criticisms were raised. A colleague of mine who teaches consumer-oriented courses read sections of the report and one of his comments was that the general tone was biased.

b. As mentioned, the Housing Advocates Survey was very biased, and did not follow usual survey practices. There were no routine follow-ups, considered essential in survey research. The cover letter promised the respondents that regulations would follow. This should not and could not have been stated, as the findings should have been a major indicator of whether regulations were needed. The cover letter also said the regulations would help protect the investment of the respondents. This is true only if they buy another home and if the regulations go into effect. This indicates pre-existing bias on the part of the researcher, and could bias results. The response rate was low for such a survey. This was not a survey of the "general population", the rates for which were referred to in substantiation of the low response rate, but of a specific category of people with a survey relating directly to their housing. The rate should have been at least 70 percent, and many mail out surveys of housing are even higher. The survey, as mentioned above, is not representative as the mail out respondents had much greater defect rates for each category of defect listed, and three times the defect rate in most categories.

STATEMENT OF THE CENTER FOR AUTO SAFETY

THE CENTER'S HISTORY AS A MOBILE HOME CONSUMER REPRESENTATIVE

The Center for Auto Safety is a non-profit, public interest organization, founded by Ralph Nader and Consumers Union in 1970, and now independent of both. Throughout its ten-year history the Center has advanced the health, safety and

economy interests of consumers on several fronts, including passenger cars and recreational vehicle safety, environmental quality and mobile homes.

In 1971, the Center began a major investigation of the mobile home industry and mobile home life, in response to hundreds of letters from aggrieved mobile home owners from all parts of the country who described such problems as shoddy construction, worthless warranties, flammable interiors, and intolerable formaldehyde fumes in their homes. The report was published in book form in January 1975, "Mobile Homes: The Low-Cost Housing Hoax" (N.Y.: Grossman Publishers).

The Center has been invited to testify about mobile home safety matters by several governmental bodies, including the National Commission on Fire Prevention and Control (October 1972); the Consumer Product Safety Commission (aluminum wiring, March 1974); the Senate Banking, Housing and Urban Affairs Committee (1973). Senator William Proxmire requested the Center's assistance in formulating legislation for the establishment and enforcement of mobile home construction standards, and in August 1974 many of the Center's proposals were enacted into law as the National Mobile Home Construction and Safety Standards Act, Public Law 93-383.

Since then, the Center has monitored the activities of the Department of Housing and Urban Development, the agency charged with implementation of that Act, and has petitioned and otherwise encouraged HUD to develop and upgrade Federal standards rather than to adopt those written by the industry.

The center's concern with mobile home construction and safety led us to investigate mobile home warranties since safety defects and poor warranty service are often related. based on its long-standing representation of mobile home owners' interests, in 1977 the Center was designated the Consumer Representative in the Federal Trade Commission's Mobile Home Sales and Service trade regulation rule-making.

Weaknesses in the recommended rule

In its capacity as Consumer Representative, the center will prepare extensive comments to the FTC on the reports of both the Presiding Officer and the rulemaking staff. Although the center will urge the Commission to adopt the Recommended Rule substantially as written, it is important to recognize that it retains significant omissions that will seriously compromise the warranty protection that mobile home buyers require. In our view, the Recommended Rule sets forth the very minimum necessary to mitigate, but not end, the warranty abuses to which mobile home consumers are commonly subjected.

The Rule would simply require that a mobile home manufacturer honor promptly the warranty that it chooses to give its customers. There is no requirement that a manufacturer give a warranty. Emergency repairs would be required within 7 days, all others within 30 days of notice. Any manufacturer who delegates to a dealer the set-up of its homes would be made responsible for overseeing that its units are properly set up. This is the only reasonable arrangement of ultimate responsibility, in view of the facts that a mobile home is not usable until it is set-up, and improper set-up is admitted by all parties to cause numerous problems reducing the habitability, value and durability of the product. To protect both manufacturers and dealers from the errors of the other, the rule would require manufacturers to enter into a written service agreement with dealers to whom warranty performance is delegated in the first instance.

The Center is deeply concerned, however, over the absence from the Recommended Rule of several critical provisions that were included in the proposed rule and which are well-supported by evidence in the rulemaking record. These include requirements that manufacturers:

- Determine the service capability of a dealer prior to delegating warranty service to such dealer;

- Monitor the ongoing performance of its service delegates;

- Terminate business with a dealer found to be failing in its performance of delegated warranty obligations;

- Reinspect the mobile home several months after set-up, and rectify any effects of settling of the home;

- Maintain a mechanism for the resolution of disputes between consumers, manufacturers and dealers.

The FTC is the sole agency having warranty jurisdiction

The fundamental question explored in the Subcommittee's oversight of the mobile home rule is whether the non-performance of warranty obligations undertaken by mobile home manufacturers ought now to be committed to HUD rather than the FTC. The answer to that question is an unequivocal "No." HUD has neither the jurisdiction, expertise, nor resources with which to address the wholly new and

different substantive area of warranty nonperformance. In sharp contrast, the FTC has been given express statutory authority to address this very problem, and consequently has developed substantial and unrivaled expertise on the issues presented by nonperformance of warranties. Research into the warranty practices of the mobile home industry, ongoing since 1972, have heightened the FTC's unique capability to address nonperformance by the mobile home manufacturers in particular.

To halt the FTC rulemaking now that it approaches completion, and to begin anew in a second agency which has zero information, research, expertise, staff or resources required for the task, would be more than unwise. It would rank among the most monumental wastes of resources and needless duplication of government effort ever sponsored by Congress—particularly in an era of professed cost-cutting. Not only would the result be many more years of delay for mobile home purchasers, who continue to be denied the benefits of the warranties they are given. Such a switch would be entirely counterproductive to the concerns expressed by Senator Bayh and the manufacturer witnesses to bring to a conclusion the burdens imposed by ongoing rulemaking.

A. HUD Has No Jurisdiction Over Mobile Home Warranties

The National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., is primarily a safety statute. Section 602 of the Act, 42 U.S.C. § 5401, captioned "Statement of Purpose," declares Congress' intent, first, to:

[R]educe the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from mobile home accidents and, second, to [I]mprove the quality and durability of mobile homes.

Warranty authority as part of the Mobile Home Act was in fact considered, and omitted from the legislation. Conf. Rep. No. 93-1279, 93d Cong., 2d sess., appearing at 3993 U.S. Code Cong. & Ad. News (1974). Concurrent with its enactment, Congress considered and enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., which gave the FTC authority to regulate the disclosure of warranty terms and to enforce federal warranty standards. The fact that Congress chose not to give I&UD warranty authority is consistent with the division maintained between safety and warranty jurisdiction in federal legislation regarding all other consumer products, that is the National Traffic and Motor Vehicle Safety Act of 1966, the Consumer Product Safety Act of 1972. In fact, HUD's safety and construction jurisdiction over mobile homes is analogous to the National Highway Traffic Safety Administration's expertise in motor vehicle safety and design. The FTC's authority over automobile warranties is uncontested. The identical separation of function should be retained with respect to mobile homes.

B. HUD Itself Argues Against Granting It Warranty Authority

In HUD's own testimony, both that presented during the FTC rulemaking and that offered by Undersecretary Victor Marrero before this Subcommittee, HUD recognizes that it has no statutory authority or expertise by which to address the warranty service of mobile home makers. HUD witnesses have repeatedly described the limitations of HUD's mobile home program in detail, and testified that a warranty program such as that proposed by the FTC Staff would provide additional protection to mobile home buyers that is not available under HUD's program. See, for example, Testimony of John Mason, Chief, Enforcement Branch, Office of Mobile Home Standards, HUD, in FTC Proceeding No. 215-41, at Tr. 2777; Prepared Testimony of Victor Marrero, Undersecretary, HUD, before Senate Consumer Subcommittee, 3 (August 20, 1980); HUD, Fourth Report to Congress on Mobile Homes, "Deficiencies That Cannot Be Corrected Under Title VI," VI-1, 2 (July 1980).

Mr. Marrero testified that the Recommended Rule of the FTC Staff in no way duplicates the efforts of HUD's Office of Mobile Home Standards. Correction of the problem prompting a consumer's complaint can be ordered by HUD only where it presents a serious safety risk. HUD cannot act with respect to common warranty complaints: HUD cannot help consumers who complain about problems such as malfunctioning plumbing, warped walls, minor roof leaks, inoperable light switches and problems with built-in furniture.

Testimony of Victor Marrero, *supra*, at 5. Mr. Marrero further advised the Subcommittee that any overlap between HUD's program and the FTC rule has been minimized by the provisions of the Recommended Rule. Particularly emphasized was HUD's utter lack of the funding and staff necessary to cope with any addition to its mobile home program responsibilities.

Indeed, HUD's capability to conduct the responsibilities it has under present statutory mandates is open to serious doubt. In its Fourth Report to Congress, recently released, HUD identified numerous failures and weaknesses of the program

it presently administers. HUD's own grim assessment casts a particular pall on wisdom of authorizing HUD to oversee the delivery of warranty service to mobile home purchasers.

In its Report, HUD observed that the State Administrative Agencies, on whom enforcement of the program depends in 35 states, tended to be most deficient in the function of monitoring manufacturer handling of consumer complaints: 8 were considered to be adequate, 18 to need some improvement, and 7 to be inadequate.

Very few of the SAAs had ever begun administrative action regarding any consumer complaints. HUD Report, *supra*, VII-9, 10.

HUD further reported that "the number of consumer complaints received by the SAAs increased by 500 or 7 percent [in 1979, over 1978]," and that the total number of units found with a failure also increased. In 1979, the number of units failing to conform to HUD's code climbed over 50 percent. *Id.* at IV-29, 30.

Under HUD's program, the purpose of which is to upgrade safety, construction and durability of mobile homes, 70 percent of all 1979 mobile homes produced nationwide elicited complaints to the plant. *Id.* at IV-21. It is difficult to escape the conclusion that HUD's mobile home program is a failure either in its design or in its enforcement.

The implication for consumers from the program's ineffectiveness in meeting its purpose is evident. Few categories of complaints can conceivably be addressed by HUD's correction restrictions. HUD does not even know whether the complaints it receives are of a nature requiring correction, but relies entirely on the plant managers to determine if a complaint presents a problem sufficiently health-threatening to bring it within HUD's jurisdiction to compel manufacturer action. It comes as no surprise, then, that plant managers relate that the majority of consumer complaints do not fall within HUD's program. *Id.* at IV-19.

C. The Federal Trade Commission Has Warranty Expertise

That the Federal Trade Commission is the sole federal agency with jurisdiction over warranties is beyond dispute. Beginning with the Commission's field investigation of automobile warranty performance in 1965, followed by the issuance of its report in 1970 advocating federal legislation to solve automobile warranty and service problems, the FTC has gathered an expertise in the area of warranties not possessed by any other federal agency. It was not surprising then that Congress gave "the Federal agency responsible for [consumers'] economic well-being," the authority to issue rules concerning warranty contents, as well as the authority to seek preliminary injunctions against persons violating Title I of the Warranty Act. Sen. Rep. No. 93-151, 93d Cong., 1st sess. 2 (1973).

The Warranty Act is designed to meet four fundamental needs: (1) To promote consumer understanding, or as Senator Magnuson explained, by law to require "warrantors to say what they mean and to mean what they say" 120 Cong. Rec. 40712 (1974); (2) to assure consumers certain minimum warranty protections; (3) to assure warranty performance; and (4) to promote improved product reliability. Sen. Rep. No. 93-151, 93d Cong., 1st sess. 6-7 (1973).

Most relevant to the FTC Mobile Home Proceeding is the third goal of the Act, as the rulemaking record shows that adequate warranty performance has yet to be provided by the mobile home industry. Rather, the industry's failure to meet warranty obligations in a full and timely manner constitutes an "unfair or deceptive" practice within the meaning of section 5 of the FTC Act. Authorized to promulgate trade regulation rules which "define with specificity acts or practices which are unfair or deceptive" and prevalent in an industry, 15 U.S.C. § 57a (1976), the Commission is clearly following the express intent of Congress, should it issue the Recommended Rule.

The basis for the recommended rule

A. Substantial Evidence in the Record Supports Warranty Regulation

At the oversight hearing, industry witnesses attempted to discredit the FTC's evidence supporting a warranty regulation, by suggesting that the rule rests solely upon a finite number of consumer complaint letters and two surveys of mobile home owners to which the manufacturers object. In fact, the record compiled in the FTC proceeding includes evidence from several varied sources, including the mobile home manufacturers' own service records, testimony and data on behalf of 21 state Attorneys General and additional state officials, surveys of mobile home purchasers, and illustrative consumer complaints. All of this evidence demonstrates a widespread pattern or warranty abuses that deprive consumers of the basis of their bargain, that is a functional, habitable home for which any substantial defects will be remedied within a reasonable time and at no cost, during the warranty period.

Manufacturers' service records.—During the FTC proceeding, the mobile home manufacturers repeatedly asserted that they provide promised and prompt warranty service, generally within 30 days of a request for service; that they assess the service capability of the dealers to whom initial warranty responsibility is delegated; and that the service records they maintain permit them to monitor the effectiveness of warranty service to their customers.

However, when the manufacturers' service records were actually obtained and examined, it became evident that the manufacturers' assertions are disproved rather than supported by their own records of warranty service. The records reveal that:

Three-quarters of the manufacturers received service requests for at least 50 percent of their production; most had still higher ratios.

Manufacturers' service logs understate the delay between customer service requests and delivery of service.

Delays in providing warranty service are longer than one month in most instances for most manufacturers; delays of three and four months are common; several instances of year-long delays are recorded.

Consumers' signatures on the work orders is not a reliable indicator of satisfaction with service received.

Survey evidence.—Contrary to industry intimations at the hearing that there are but two surveys on the record, there are in fact no fewer than one dozen studies, all of which generally show a serious problem of mobile home defects in the first year of ownership. These include state studies in Wisconsin, Texas, Michigan, Ohio, Minnesota, Kansas, Florida, and other state and national surveys, in addition to the studies conducted by Housing Advocates, Inc. and the Golden State Mobile Home Owners League (GSMOL).

Both the GSMOL and Housing Advocates studies examined consumer experience with new homes, during the warranty period, and distinguished homes built under the HUD code from those produced beforehand. The methodology and results of each have been examined in great detail, and all of the industry witnesses' objections and rebuttal efforts are a part of the rulemaking record, where they are included in the assessment of whether substantial evidence exists to support the rule. Moreover, the Housing Advocates survey methodology was subject to a separate, day-long hearing on June 9, 1978, in which the Manufactured Housing Institute and Indiana Manufactured Housing Association both participated to the fullest extent.

State officials.—Representatives of the Attorneys General of 21 states, accounting for about half of all mobile home production annually, participated in the FTC proceeding. Their testimony indicates that mobile home defects and warranty non-fulfillment remain a major consumer problem in their states, despite local law enforcement resources. State and local consumer protection agencies and organizations of mobile home consumers agreed: warranty service is commonly refused or delayed for several months.

State officials' experience in handling consumer complaints enabled them to testify that most of the consumer complaints they receive are valid, and that, in fact, their offices receive reports from only 10 percent of the consumers experiencing a given problem.

Consumer complaint evidence.—The FTC Staff scarcely relies on the consumer correspondence in the record to support its Recommended Rule. Instead, it makes merely illustrative reference to consumers' own descriptions of their prolonged and unsuccessful efforts to obtain warranty service. See, for example, Staff Report at 105, 128-36. In doing so, the Center believes that Staff forego additional credible and probative evidence which shows the need for regulation of warranty practices in the mobile home industry. The letters demonstrate the need for inspection of the home after setup (provided for in the Recommended Rule); the need for reinspection some months later (deleted from the Rule); the requisite that manufacturers evaluate the capability of their service agents to provide adequate warranty service (deleted); and the need for manufacturers to establish a uniform procedure for the receipt, analysis and disposition of customer complaints (deleted). Consumer letters are relevant to these fundamental questions, as they reflect recurring consumer problems with non-existent, delayed, incomplete and inadequate dealer repair and set-up.

Staff's findings as to the prevalence of warranty abuses in the mobile home industry is based primarily upon survey evidence, which quantifies specific types of warranty nonperformance, and the testimony of officials from 31 states, including 21 state Attorneys General. Staff Report at 140. The industry offered no contrary survey evidence demonstrating the truth of its assertions of adequate warranty service, nor did it otherwise rebut the testimony and experience of state consumer protection and law enforcement officials on the need and basis for the rule. "Con-

sumer letters" discussed by Staff in this context are not those illustrative letters received by the Center and the FTC, but rather, are those many thousands of consumer complaints made to state officials around the country. Id. at 146-50.

B. Warranty Nonperformance Is Equally Prevalent Today

Poor warranty service in the mobile home industry continues as a prevalent practice today, essentially unchanged from the practices documented on the rule-making record. The Subcommittee heard the testimony of the Housing Advocates Inc., whose telephone hotline receives significant numbers of reports of inadequate, delayed or denied warranty service by virtually every manufacturer, large or small, doing business in Ohio. James Gulick, Assistant Attorney General for North Carolina, similarly testified that the number and nature of mobile home warranty complaints has not changed in that state in the last several years.

The testimony of these witnesses is echoed by many who currently receive mobile home complaints from around the country. Reports of warranty abuses made to the Center's Mobile Home Task Force remain unchanged, despite the HUD construction code and the ongoing FTC proceeding. Sample letters from 1979 and 1980 are submitted as Attachment A. State officials, including Attorneys General, continue to recognize that mobile home warranty service is at least as poor today as it was in 1975 when the FTC proceeding was begun.

The Wisconsin Attorney General's Office recently reported that "warranty nonfulfillment" complaints have remained constantly high from 1974 through 1979. In 1979, complaints of "unsatisfactory repair maintenance" rose to first place among complaints against the mobile home industry, although it had ranked second from 1974 through 1978. Assistant Attorney General James D. Jeffries stated in correspondence with the Center that: [T]he number and nature of the complaints has remained fairly constant throughout [the past eight years]. This would seem to lead to the conclusion that the FTC trade regulation rule is still needed. See attachment B-1.

In Indiana, whose Attorney General has been compiling mobile home complaint data since 1971, 1979 is a typical year. One official of the Consumer Protection Division stated that "the biggest problem with warranties seems to be in determining whether specific repairs are the dealer's or the manufacturer's responsibility." Attachment B-2. And in Kentucky, which produces few mobile homes itself but whose citizens buy thousands of units made in neighboring Indiana, the Attorney General's Office is concerned about widespread warranty abuse. Attachment B-3.

The West Virginia Office of the Attorney General reports that mobile home complaints have since 1974 ranked consistently about fifth in number of consumer complaints received. See Annual Reports of the Consumer Protection Division of the Office of Attorney General, 1974 through 1979. In July 1980, that office informed us that only half of all mobile home warranty complaints are successfully mediated by the Attorney General's office. The warranty complaints made in West Virginia are primarily for major items, and although they include plumbing and electrical wiring problems, over 50 percent concern structural defects. Attachment B-4.

The Attorney General for the State of Texas has reported by telephone that that office commonly has an average of 200 mobile home complaints open on any given day. Common complaints include roof leaks, floors that buckle, plumbing, and poor service.

Federal agencies receive some complaints from mobile home consumers, although as would be expected, fewer complaints are channeled to Washington, D.C. than to local bodies. The Consumer Product Safety Commission receives numerous reports of defective mobile homes, covering warranty, durability and safety complaints. A significant portion of the CPSC complaints are recorded as part of the National Injury Information Clearinghouse, and report illnesses attributed to formaldehyde fumes from the paneling, furnishings and insulation of mobile homes.

The number of consumer complaints received at HUD headquarters is increasing, and this continuing growth parallels the increasing numbers of letters reportedly received by the State Administrative Agencies (SAA's) which act as HUD's enforcement agents in 35 states. The SAA's are receiving thousands of complaints a year: in 1979, over 7400, up from 2740 in 1977. HUD personnel explain that this is but a small fraction of the number of complaints made to manufacturers' plants.

Many of the complaints directed to HUD report breaches of manufacturer warranties despite notification and patience on the part of the mobile home owner. Letters to HUD typically identify several defects in the consumer's home, some of which may be sufficiently related to health and a code violation to be reached by HUD's notice or correction requirements, but most of which are not. However, the problems of obtaining correction by the dealer or manufacturer seem to the consumer to be the same, and of similar concern.

Mobile home owners typically complain to HUD about fairly new units, and often chronicle months or years of effort to obtain service for defects apparent upon taking possession, or stemming from improper set-up:

The home was purchased April 6, 1978, and moved into this park April 22, 1978, the employees of "Lees" started setting it up on said date—telling us they would be back the following day to level the home and finish all odd jobs. However, the next time we [saw] anyone after several calls complaining about the floors, front bathroom walls bulging severely, cabinets falling off the walls in the kitchen area, was July 1978. (Dugger to HUD, April 1980, attachment C-1.)

[The dealer] says it is your [the manufacturer's] responsibility to repair the dryer vent and your representative that was at our home once said it is the responsibility of the seller to make the necessary adjustment. *I really do not care who is responsible for getting this fixed, all I want is to get it properly installed.* (Emphasis added). (Vernon to manufacturer, copy to HUD, May 9, 1980, attachment C-2.)

Nor can consumers understand why the federal government ignores their pleas for help to make the manufacturer honor the warranty:

I can't understand why Burlington does not have to fix the other things? Don't they have to stand behind their warranty? (Frances to HUD, March 19, 1980, attachment C-3.)

Many consumers ask if these are constructed by HUD specification and inspected, how come they have so many defects. (McClellan to HUD, February 5, 1980 (emphasis in original), attachment C-4.)

C. Formaldehyde in Mobile Homes

The Center has received reports of adverse health impacts of formaldehyde since its founding in 1970. The literature reporting the harmful effects of the chemical stretches back 65 years before that. Throughout the intervening years, companies making substantial use of formaldehyde have declined to remedy or redress the consumer hazards attendant to its use, and government has been no more responsive. With every passing year of denial, equivocation and inaction on both fronts, many thousands of additional mobile home families are exposed to the toxic substance.

Formaldehyde is used extensively in the adhesives which bind particleboard and wood paneling, the two most common construction materials of mobile homes. A severe health problem arises when formaldehyde vaporizes, forming a colorless gas inside the home. There is ample evidence demonstrating that the high level of formaldehyde fumes in mobile homes causes severe burning of the eyes, nose and throat, respiratory affliction, skin rashes, headaches and nausea. Attachment D includes the most recent report from Peter Breysse of the University of Washington, who has been documenting the high incidence of formaldehyde vapors and their injurious effects in mobile homes since the late 1960's; and a study conducted by Mary Ann Woodbury, M.C.H., Wisconsin Division of Health, reporting similarly disturbing results among mobile home dwellers.

Also attached is a discussion of more than 35 incidents of serious health problems resulting from noxious formaldehyde fumes in mobile homes, with a discussion of the severe limitations on private consumer redress. Attachment E. Most alarming are the results of a two-year animal study performed for the Chemical Industry Institute for Toxicology to analyze that effects of long-term inhalation of formaldehyde gas, in which laboratory rats did develop cancer. See attachment F, a release by the Consumer Product Safety Commission dated October 18, 1979.

Despite the fact that the industry has known of the hazards of formaldehyde fumes for years, as has HUD, neither a voluntary nor federal standard has yet to be issued in the United States which limits the permissible amount of formaldehyde fumes in the mobile home. In this country, only occupational exposure, based on an eight-hour exposure, is limited, although several European nations have recognized the feasibility and necessity of limiting formaldehyde vapor in residences.

Nor is the mobile home industry under any obligation to so much as disclose this foreseeable health risk to present or future occupants of mobile homes. In fact, as discussed in Attachment E, dealers and manufacturers deliberately misinform many customers about formaldehyde in order to make a sale, and deny all responsibility for the uninhabitable condition of the home once it is delivered. It is imperative that this atrocious industry practice be terminated, and it is evident that it will take a uniform, federal regulation to do so.

Federal and State law do not assure full and timely warranty performance

The existing Federal and state laws regulating warranties and mobile home sales are woefully inadequate to address the mammoth warranty performance problems facing mobile home consumers. Despite the fact that the Magnuson-Moss Warranty

Act established a rational scheme for warranty disclosures, mobile home consumers continue to struggle with their warrantors to secure promised warranty work. Private redress under state law does not take up the slack, since 75 percent of manufacturers' warranties exclude consequential damages, and thus remedies under the Uniform Commercial Code do not usually allow consumers to be fully compensated. Furthermore, most state dealer licensing and bonding regulations do little to accomplish the adequacy of warranty service.

A. The Magnuson-Moss Act Is Insufficient Without an Industry Rule

The Magnuson-Moss Warranty Act and the implementing rules promulgated by the FTC in 1976 (16 C.F.R. §700 et seq.) establish a minimum level of federal warranty protection. Specifically, the Act and the Warranty Rules require that certain terms of written warranties for consumer products be disclosed, understandable, available prior to sale and designated as "full" or "limited".

The fact that warrantors are required to disclose warranty terms does not ensure that the warranty is an accurate representation of the warranty service that customers can expect to receive. The survey evidence and testimony of state officials on the FTC record demonstrate that at least 40 to 45 percent of those consumers who request repairs do not receive adequate warranty service, and another one-third receive incomplete repairs or none at all.

The FTC's trade regulation rulemaking is a direct response to the particular needs of consumers for additional warranty protection throughout the mobile home industry. As such, it is precisely the type of regulatory activity intended by Congress when it enacted Magnuson-Moss, authorizing the FTC to prescribe rules to prevent unfair or deceptive warranty practices in an industry.

B. State Regulations Afford Only Minimal Protection

Contrary to assertions by several mobile home manufacturers, state regulations do little to ensure that mobile home consumers receive full and timely warranty service and repairs. The states have enacted a variety of laws regulating the mobile home industry, including licensing and bonding of dealers, mandatory warranties, site inspections and repair deadlines. However, most of these regulations are ineffective because they do not penalize the manufacturer/dealer who fails to render proper warranty service.

1. *U.C.C. Remedies.*—In addition to the Magnuson-Moss remedies available under written warranties, consumers may pursue U.C.C. remedies for the breach of express or implied warranties. However, the U.C.C. all too often presents insurmountable legal and economic hurdles for mobile home owners. Since the average income of mobile home owners is \$10,000, few can afford the high costs of legal representation. Moreover, even those consumers who are able to hire counsel are prevented from recovering the total amount of their losses due to the fact that 75 percent of mobile home manufacturers' warranties exclude consequential damages and some 60 percent exclude incidental damages. (Staff Report, at 570.) This means that few consumers can recover the necessary costs of substitute housing, incurred because substantial defects render the unit uninhabitable, or reimbursement for prior correction necessitated by delayed or incompetent repairs. By precluding the exclusion of consequential and incidental damages when warranty service is not provided within the required deadlines, the Recommended Rule would make more meaningful the availability of U.C.C. remedies. Unless consumers can threaten manufacturers with the potential recovery of such damages, consumers will continue to be unable to enforce the terms of their warranties.

2. *Ineffectiveness of mandatory warranty statutes.*—Although seventeen states mandate written warranties, ensuring that about 49 percent of all mobile home purchasers receive a warranty, (See Staff Report, 570 n. 6) the mere existence of a warranty does not guarantee that manufacturers and dealers deliver prompt and effective warranty service. Several of these states fail to allocate adequately the responsibilities of the manufacturer and dealer with respect to warranty performance. Few states require specific time deadlines for warranty repairs, or supplement the warranty requirement with meaningful provisions for enforcement. And since 97 percent of the industry gives written warranties, whether or not required by state law, it is evident that mandatory state statutes are inadequate to provide warranty protection for mobile home consumers.

3. *Licensing and bonding requirements.*—With the exception of the few states which condition bonding and licensing upon warranty performance, licensing and bonding requirements are generally not an incentive for warranty performance. Of the 39 states which require dealers to be licensed, only 16 of these recognize poor warranty service as grounds for not granting or revoking a dealer's license. Only

nine states consider warranty practices in licensing mobile home manufacturers. Because states are all too often reluctant to revoke licenses as a means of warranty enforcement, these regulations do nothing to deter manufacturers from avoiding their warranty obligations. Bonding requirements, imposed by only 12 states, are intended to allow for the recovery of damages by consumers in a lawsuit, particularly in the event the manufacturer or dealer goes out of business. Not only are the amounts of most of these bonds low—dealer bonds average approximately \$10,000, while manufacturer bonds average approximately \$25,000—but only five states, accounting for about 23 percent of 1977's mobile home sales, provide for the recovery of warranty claims against the bond. (Staff Report at 586, 590-91.) Thus, the overwhelming majority of manufacturers and dealers have little to lose for failing to perform proper warranty service.

C. The Recommended Rule Will Expand Private and Government Enforcement

The Recommended Rule will expand both private and government enforcement capability. Section 110(d) of the Magnuson-Moss Act, 15 U.S.C. § 2310, gives a private right of action to a consumer "who is damaged by the failure of a * * * warrantor * * * to comply with any obligation under a written warranty, implied warranty, or service contract." Such a consumer may "bring suit for damages and other legal and equitable relief," in a state court, or in federal district court if the requirements for amount in controversy and size of the class are met. Thus, mobile home consumers who are denied warranty rights in violation of the requirements of the Mobile Home Trade Regulation Rule will have a new cause of action to enforce the warranty terms specified by the TRR. This will provide a new important remedy for individual consumers who are denied service required under the warranty; or whose service is delayed beyond the deadlines prescribed by the rule; or who are denied consequential or incidental damages.

More importantly, the Commission will no longer be forced to proceed against mobile home manufacturers on a company-by-company basis. Rather, the Recommended Rule will enable the FTC, on behalf of mobile home consumers, to commence a civil action against any person, partnership or corporation, in federal or state court, for violating any of the rule's provisions (15 U.S.C. § 57b(a)), and to obtain such relief as the court finds necessary to redress injury to consumers. This can include rescission or reformation of purchase contracts, the refund of purchase money, and the payment of damages (15 U.S.C. § 57b(b)).

The Recommended Rule will provide additional authority for state enforcement. Forty-nine states plus the District of Columbia have enacted "mini-FTC acts" giving State Attorneys General authority to issue cease and desist orders to obtain court injunctions to halt the use of unfair or deceptive acts or practices. Although the degree to which state courts accord deference to FTC rules varies in determining what is unfair or deceptive, nineteen of these states either have statutes which incorporate all FTC rules or construe their mini-FTC acts as consistent with the FTC Act. In these states a violation of a trade regulation rule may be a per se unfair or deceptive trade practice under state law, as well as under Federal law. State enforcement authorities will then have a greater range of remedies to pursue in seeking redress for mobile home consumers.

The importance of setup

The record contains substantial evidence that improper setup can contribute to structural buckling, roof and plumbing leaks, and misaligned doors and windows. The evidence further shows that defects may not only render a mobile home uninhabitable, but may severely diminish the durability of the unit and thus the consumer's investment and equity in his home.

Mobile home manufacturers are well aware of the importance of proper setup and the serious consequences of a poor one. According to Skyline Corporation's Homeowner's Manual, good blocking, an element of setup, is essential because "[i]t prevents sag in the structure which could result in unwanted repair bills." (See Skyline Corporation Homeowner Manual, p. 10 (1980), submitted to the Subcommittee on August 20, 1980.) Despite the acknowledged fact that proper setup can reduce the likelihood of such defects in mobile homes, 59 percent of warranties exclude setup and defects caused by setup. (See 1978 Staff Memo Summarizing Warranties, Staff Rebuttal Submission, R 8B-3-2 at 975.)

The industry practice of allocating setup to the dealer enables manufacturers to evade their warranty repair responsibilities to the consumer. Most manufacturers exclude setup, creating strong incentives for manufacturers to blame reported problems on dealer setup and thereby refuse warranty service. The record is replete with evidence that it is often difficult to determine whether a defect was caused by manufacturing error or by setup. In the event of a dispute, then, the effect of the

industry's practice is to shift to the consumer the burden to establish which of the two is responsible for damages. Obviously, since neither industry experts nor law enforcement officials can make that determination, the mobile home owner's task is Herculean.

Mobile home dealers presented strong evidence on the record that the manufacturer's practice of allocating all responsibility to the dealer is unfair and severely limits consumer warranty protection: *This is not a fair or effective way to allocate responsibility between manufacturers and dealers* and its continuation should not receive any sanction or acceptance by the FTC. It leaves dealers unfairly and wrongly exposed for acts or omissions over which they may not have control. * * * *It leaves manufacturers with an incentive to blame setup for problems*, and overlooks the fact that improvement of the warranty service system requires manufacturers to have incentives to engineer and build homes suitable for setup. Such incentives are undercut by vesting responsibility first and solely on the dealer. (National Manufactured Housing Federation (NMHF) Rebuttal at 35-36, emphasis added, footnotes omitted.)

The Recommended Rule would strengthen consumer warranty protection by prohibiting manufacturers who offer a written warranty from excluding setup and related defects. By shifting the responsibility to the manufacturer, the Rule would provide the manufacturer with the needed market incentive to promote effective monitoring of the capability of the service agents it selects. Ultimate setup responsibility in the Recommended Rule replaces substantial and specific procedures originally proposed by Staff for manufacturers to evaluate the service capability of dealers before and while doing business with them.

Manufacturers can readily protect themselves from incompetent dealers, through the Recommended Rule's requirement of a written service agreement with any authorized service agent. The net result will be that the consumer receives a mobile home that is usable as a home, and the manufacturer retains a contract action against any incompetent dealer.

As NMHF concluded: These setup policies, like the provision proposed for covering other elements of dealer/manufacturer relationships, would have a positive effect on the delivery of warranty service. (NMHF Rebuttal at 38.)

The Recommended Rule's prohibition against the exclusion of transportation and setup damages is fully in accord with the policies underlying the U.C.C. Under section 2-509(1)(b), where the sales contract requires or authorizes the seller to deliver the goods to a particular destination, the risk of loss does not pass to the buyer until the goods are so delivered and "duly so tendered as to enable the buyer to take delivery." Since "tender of possession" does not occur until the mobile home has been properly setup at the consumer's homesite, the risk of loss under the U.C.C. does not pass to the consumer until after the seller has delivered the mobile home to the consumer's homesite and completed the setup. Thus, defects or other damage caused by improper transportation or setup performed by the manufacturer-warrantor or his authorized service agent must not be permitted to be excluded under warranty. Moreover, the U.C.C. and case law establish that implied warranties extend to services necessary to the use of a product and that mobile homes must be tendered in a habitable condition to fulfill implied warranty obligations. Accordingly, the Rule's provision to make manufacturers accept responsibility for the setup by their agents of the units they produce is not a radical or industry-insensitive regulation. Rather, it is firmly rooted in both the traditions of contract law and the desire of the present Congress that agencies utilize market incentives as a regulatory tool.

The benefits of the rule outweigh the costs

Although the Recommended Rule would raise the selling price of most mobile homes by a maximum of \$120 (Staff Report at 517), these costs are far outweighed by the benefits to mobile home buyers of full and timely warranty service. In return for this minimal increase in purchase price, over 20 percent of new buyers would save about \$200 on repairs that previously manufacturers or dealers have refused or otherwise failed to service under warranty. (Id. at 524.)

Since the mobile home industry is highly competitive, opponents of the rule argue that the pressures of the marketplace, left unregulated, will force manufacturers to fulfill their warranty obligations. Such arguments against regulation presuppose that both parties to a mobile home sales contract have equal bargaining power. This is not true in the mobile home industry. Due to brand proliferation and the fact that mobile homes are seldom a repeat purchase item, consumers have virtually no information about what brand or which manufacturer is a better buy. Nor can consumers shop on the basis of warranties as almost all warrantors give the appearance of comparable warranty protection.

The Recommended Rule would not severely limit low-income consumers' ability to purchase a new mobile home. The FTC Staff estimate of a \$120 price impact is based on worst-case assumptions. If passed to the consumer, these costs would raise the average mobile home price from \$17,000 to \$17,120. (Id. at 517). Even assuming arguendo the highly inflated compliance cost of \$500 per unit given by the industry, the actual impact on the consumer would be to raise the down payment from \$1,700 to \$1,750 and to raise the average monthly payments by \$5.

In her written statement before the Senate Consumer Subcommittee, Suzanne Lindamood of Kansas State University concludes that "the FTC has assumed, without substantiation, that the increased cost would be good for consumers." (Page 4.) Ms. Lindamood has no experience or expertise with the FTC rulemaking for she did not participate at any stage of the FTC proceeding. Her prepared remarks reveal her unfamiliarity with the record and the Staff Report. Moreover, Ms. Lindamood admitted that her remarks were prepared prior to her receipt and review of the Staff Report, in conversation with Katherine Meyer at the oversight hearing held August 20, 1980. Under such conditions, Ms. Lindamood's testimony deserves little credence in assessing the basis for the FTC's Recommended Rule.

It is equally important to recognize that Ms. Lindamood's membership on HUD's Mobile Home Advisory Council does not establish her credentials as a functional consumer representative. Ms. Lindamood does not represent mobile home consumers in any meaningful way—they do not seek her out, relate their troubled experiences as mobile home owners, or request her assistance in remedying defects. In sharp contrast, the Center's Mobile Home Task Force is regularly contacted by mobile home consumers. It is that constituency which had pleaded and propelled the Task Force to its decade of activity on their behalf.

Mobile home owners are forced to spend hundreds of dollars to make repairs which they believed when purchasing the home would be performed by the manufacturer. If implemented, the Recommended Rule would spread the cost of warranty service equally among all consumers, rather than fall randomly upon those unlucky consumers whose warranty rights are denied. Thus, those consumers with major defects would end up paying significantly less, while those consumers without major defects would pay insignificantly more.

Finally, contrary to assertions by the industry, there is no evidence that the Recommended Rule will cause vertical integration. Although it is possible that certain manufacturers might establish dealerships on a limited basis, the experience of the consent order companies, none of which have integrated into retailing, indicates that the rule is extremely unlikely to fundamentally restructure the industry.

CONCLUSION

Under section 18 of the FTC Improvement Act, 15 U.S.C. § 57a, Congress gave the Commission the authority to issue substantive trade regulation rules to prevent unfair or deceptive acts or practices. As the record shows that unfair and deceptive warranty practices are prevalent throughout the mobile home industry, it is clearly impossible for the FTC to proceed on a company-by-company basis. Rather, the only appropriate route is for the Commission to issue an industry-wide rule pursuant to its section 18 rulemaking authority.

In accordance with a well-established, time-honored rule underlying all our administrative process, Congress should defer to the agency's expertise in the area of warranties. As the lengthy rulemaking record indicates, the manufacturers, as well as other interested persons, have had an ample opportunity to be heard. Manufacturers will still have the opportunity to challenge a final rule in the United States Court of Appeals. In that court, the test for the rule is stringent: is there "substantial evidence" in the record to justify it. The facts have to be there; if they are not, the rule will fall. Therefore, instead of listening to the policy statements on the merits of the rule, it is imperative to look at the factual record, and for the Congress to defer to the rulemaking process.

Finally, it is important to remember that Congress was careful to provide in the Magnuson-Moss Act that any manufacturer who can show good reason, can petition for exemption from any trade regulation rule. 15 U.S.C. § 57a(g.) Thus, any manufacturer who can demonstrate that it has a system for providing reasonably prompt and effective warranty service can seek an exemption from the mobile home rule once it is issued.

STATEMENT OF THE CONGRESS WATCH

Consumer Subcommittee Chairman Wendell Ford (D-Ky) has denied requests to allow testimony by key consumer witnesses in the oversight hearings held today on

the Federal Trade Commission's recommended mobile home warranty rule, even though at least 5 industry witnesses will speak. Senator Ford's refusal includes the Center for Auto Safety Mobile Home Task Force, which is a national mobile home advocate that has been the designated Consumer Representative throughout the FTC proceeding. The Attorney General for Kentucky also asked to appear on behalf of mobile homeowners, and was refused. Requests in support of the Center's appearance were made by the U.S. Office of Consumer Affairs on behalf of the White House, the Kentucky Attorney General's Office, and the FTC rulemaking staff.

Consumer Federation of America's legislative director Michael Podhorzer called the hearing: Another of the shamefully blatant anticonsumer displays orchestrated by Senator Ford to satisfy business opposition to needed regulation.

The mobile home rule successfully came through the massacre of other FTC rules earlier this year, when Senator Bayh (D-Ind.) withdrew an amendment to kill the rule in exchange for detailed oversight hearings. At that time Ford drew the line on the FTC actions to be curtailed by Congress, and pledged that any other rules would be dealt with "fairly and equitably" in oversight hearings. Center director Clarence Ditlow said: It is ludicrous to suggest that today's hearing is fair or impartial. Instead, Senator Ford has invited industry members to rewrite the factual record. It is obvious that Ford is heeling to the call of industry lobbyists, rather than hearing the other side of the story too—the need of low-income consumers to have mobile home makers honor the warranties they give.

SUMMARY FTC MOBILE HOME WARRANTY RULE

The Mobile Home Rule, if issued by the Commissioners, would require manufacturers of mobile homes to fulfill those obligations which they promise in their written warranties. In the absence of such a rule, the mobile home industry will continue to provide empty paper promises of warranty protection, rather than give full and timely service.

Nearly half of all mobile home owners who seek warranty service do not get adequate repairs. Even where repairs are made, they are often delayed, sometimes for months and even years.

If issued, the rule would require that all warranty repairs be made within 30 days after the consumer gives notice of a defect. Defects that make the home unsafe or uninhabitable would have to be repaired within 5 days.

The rule would also require the manufacturer or dealer to inspect the home after it is set-up on the consumer's lot. This is a critical requirement, because improper set-up can lead to major problems such as roof leaks and buckling of walls and floors, which greatly diminish the usefulness of the mobile home. The rule would also put an end to the "run-around" that consumers often get by requiring manufacturers and dealers to resolve their disputes about responsibility for repairs after the consumer has been provided with timely service. In addition, manufacturers would no longer be permitted to "chill" consumers' exercise of the warranty rights by telling them they must return either a defective mobile home or a warranty registration card to get repairs. A violation of any of the rule's requirements would subject the manufacturer to a \$10,000 fine.

CENTER FOR AUTO SAFETY,
Washington, D.C., August 12, 1980.

HON. WENDELL H. FORD,
Chairman, Subcommittee on Consumer Protection,
U.S. Senate, Dirksen Building, Washington, D.C.

DEAR SENATOR FORD: This is to record my request that the Center for Auto Safety be permitted to testify at the upcoming oversight hearing on the Federal Trade Commission's Recommended Mobile Home Warranty Rule. This request was made originally in a telephone conversation with Loretta Dunn of your staff, late last week.

As Ms. Dunn and I discussed, the Center is uniquely situated to present the consumer perspective on the FTC rule, since the Center has been the Designated Consumer Representative throughout the mobile home proceeding. Our inclusion in the hearing will make available to the Subcommittee both our extensive knowledge of the voluminous record, and the fruits of our continuous participation in the rulemaking, which will not be presented by the two scheduled consumer-oriented witnesses. The Center is further distinguished from Housing Advocates of Ohio and the North Carolina Attorney General's Office by the fact that it is a national consumer advocacy organization which for ten years has received mobile home complaints from all parts of the country. This constituency is represented by the

Center not only in the FTC proceeding, but also before the Department of Housing and Urban Development concerning the mobile home safety standards. Our experience with HUD enables the Center to provide insights into the capabilities of each agency to protect mobile home consumers.

For the foregoing reasons, and in view of the fact that the mobile home industry viewpoint is scheduled to be presented by four manufacturers and a dealer group each of which participated throughout the FTC proceeding, the Center respectfully requests that it be heard as well. If time is a matter of concern, I will be willing to make a brief oral summation of more extensive written comments.

Thank you for your attention to this matter.

Sincerely,

BARBARA L. BEZDEK, *Director,*
Mobile Home Task Force.

UNIVERSITY OF MIAMI,
Coral Gables, Fla., July 14, 1980.

Senator WENDELL H. FORD,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR FORD: Last summer I completed an analysis of the economic consequences of the Federal Trade Commission's Mobile Home Trade Regulation Rule. On the basis of the data available at that time, I estimated that the rule would yield annual benefits of no more than \$26 million and would impose annual costs of at least \$104 million, yielding a present-value net loss of more than \$1 billion in 1980 dollars. Other considerations, including some allowance for growth in sales over time, suggest that the present-value net loss would be substantially larger.

Mobile homes are a major source of lower-income housing. As a result of the TRR, lower-income consumers in general will be worse off. The prices of lower-quality units will increase more than those of higher-priced units, and relatively more lower-income buyers will be either squeezed out of the market or induced to spend more on mobile homes and less on other goods (e.g., food, medical care) than they would have preferred. The impact of the TRR will be strongest in Southern states, where relatively more lower-priced units are sold.

Regarding the structure of the industry, the main effect of the TRR will be to reduce the number of competitors. There will be some decrease in the number of firms, in the number of plants, in the number of dealers, and in the number of dealers represented by each firm, and there will be some increase in concentration and in vertical integration.

The analysis and the evidence presented in my paper suggest that the TRR will reduce consumer welfare, especially that of lower-income consumers, and that it will decrease the welfare of most producers, particularly small ones. On these grounds, it has little to recommend it.

I have enclosed some copies of my study,¹ "Regulating Post-Purchase Relations: Mobile Homes," for your information and use. I might add that the study will appear as Chapter 12 in Kenneth W. Clarkson and Timothy J. Muris (eds.), *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior*, Cambridge University Press, forthcoming.

Sincerely,

LOUIS DE ALESSI,
Professor of Economics, Coordinator (Economics),
John M. Olin Fellowship Program.

NATIONAL COUNCIL OF SENIOR CITIZENS, INC.,
Washington, D.C., August 15, 1980.

Hon. HOWARD W. CANNON,
Chairman, Commerce Committee, Russell Senate Office Building,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: Today, approximately ten million people live in mobile homes. Mobile homes have become a major source of low-income housing, representing fully 95 percent of the country's new family housing available under \$20,000. Yet mobile-home owners are frequently faced with shoddy workmanship, improper

¹ The study is in the subcommittee files.

installation, and a constant "passing of the buck" between manufacturers and dealers as to who is responsible for warranty service.

The record of the Federal Trade Commission's five-year mobile home rule-making proceeding is replete with complaints against manufacturers in every section of the country. It is filled with the testimony of state officials as well as evidence from manufacturers' service records and consumer surveys, showing that large numbers of mobile-home consumers are experiencing great difficulty in receiving adequate warranty service.

Yet no mathematical analysis of complaints effectively conveys the human suffering and financial hardship that inadequate warranty service produces. Leaking roofs, plumbing problems, poor heating or ventilation often require costly and time-consuming repairs and they can render a home uninhabitable. As manufacturers and dealers bicker over the responsibility for warranty repairs, the consumer is frequently left with unlivable problems.

Finally, we must not forget that mobile-home owners are generally poorer and less educated than the average homeowner. A majority of them are senior citizens or young married couples. These owners are frequently unable to exercise their legal rights to protect their investments. Surely these consumers are entitled to some assurance that their homes can be expeditiously repaired.

For these reasons, the National Council of Senior Citizens firmly supports the FTC's proposed trade regulation rule. It is a reasonable and cost-effective proposal that should provide mobile-home owners with the basic safety and warranty protection they so desperately need. The senior citizens and young people of this country should no longer have to live in defect-ridden mobile homes for lack of enforceable warranty remedies. We trust that you will urge the Commission to complete action on a final rule without delay.

Sincerely,

WILLIAM R. HUTTON,
Executive Director.

NEW HAMPSHIRE COMMITTEE FOR FAIR HOUSING,
Freedom, N.H., August 20, 1980.

RAYMOND RHINE,
*Presiding Officer, Mobile Home Rule,
Federal Trade Commission, Washington, D.C.*

DEAR MR. RHINE: The New Hampshire Committee For Fair Housing would like to testify in support of an FTC Mobile Home Warranty Rule that would require manufacturers to fulfill warranty obligations. The reason for this is outlined below.

The New Hampshire Committee For Fair Housing has been primarily concerned with the exclusion of low and moderate income families from suburban and non-metropolitan townships because of zoning and other ordinances. One of the major sources of this exclusion is the prohibition or limitation of mobile homes. Of the 72 townships and municipalities that comprise the four counties of Southeastern New Hampshire, 23 exclude mobile homes outright, 16 require them to be in parks (which are rarely allowed to be expanded), 9 allow them only by special exception (usually never given) and 4 allow only large ones (over 625 sf.). These prohibitions or severe limitations account for over 72 percent of the townships or municipalities in that area. Zoning restrictions are based on a town's police powers and must be justified by reasons of health, safety, morals or general welfare. A frequent justification for the exclusion of mobile homes is that they are unfit housing detrimental to the health and safety of the inhabitants. In fact, in New Hampshire, there exists separate ordinances in many towns classifying mobile homes with junk yards as their vehicle for exclusion. This, of course, is nonsense; but it is perpetrated by the image of mobile homes as being cheap and shoddy. Contributing to this image is the view of mobile home manufacturers and their distributors as being part of an irreputable industry similar, in image, to the salesmen of aluminum siding. While this image, both for the mobile home industry and the aluminum siding industry, has recently greatly improved because of standards set by the government and the industries themselves, a serious threat to the acceptance of mobile homes as being fit housing still lies in the fact that manufacturers won't own up to their own standards. If they don't, then manufacturers as well as the consumers will lose out in this practice of exclusion.

We feel that a FTC ruling on this matter will help turn around this image. Mobile homes constitute our only source of new low cost housing and, therefore, is of serious importance to low and moderate income households, which, in our state, is made up primarily elderly and young families.

We urge you to adopt the mobile home warranty rule.

Thank you.

Sincerely and respectfully yours,

ROBERT JAWITZ,
President, NHCFFH.

CONSUMERS UNION,
August 25, 1980.

HON. WENDELL H. FORD,
Chairman, Consumer Subcommittee, Committee on Commerce, Science and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: On August 20, 1980, the Subcommittee held oversight hearings on Federal Trade Commission's proposed mobile home warranty service rule. Consumers Union urges you to give careful consideration to the benefits of the FTC proposed rule on mobile home sales and service agreements.

The rule does not require all mobile home manufacturers to offer warranties. Rather, it requires those who do offer warranties to include certain specific terms in the warranty agreement and to observe certain practices in honoring those agreements.

Through contract terms that delineate the parties responsible for repairs and provide for monitoring their performance, through improved record keeping and a required inspection, mobile home purchasers will finally get needed protection against construction defects and installation related damage. The FTC proposed rule would provide forms of protection not currently provided by most manufacturers, the Department of Housing and Urban Development safety regulations or the Magnuson-Moss Warranty Act. We urge you to support implementation of the long-awaited, much needed FTC rule.

Problems faced by mobile home owners and the FTC's proposed solutions have been studied thoroughly. From 1972 to 1974, the FTC conducted an investigation of mobile home manufacturers and their warranty and repair relationships with dealers and purchasers. Since late 1974, the FTC staff has been soliciting comments from mobile home owners, manufacturers and dealers to develop an equitable, comprehensive and practical proposal. Over 2,000 letters from mobile home owners have been received. The transcript of the hearings is over 7,000 pages long. Interference with the traditional rulemaking process after so long and careful a study would be both inefficient and contrary to sound regulatory policy.

It is quite common, unfortunately, for mobile home owners to discover major problems soon after purchase. Of 672 owners contracted in an FTC sponsored survey in California, 638 "serious" or "very serious" defects were reported. (Presiding Officer's Report, September 14, 1979, p. 182.) Records at the Wisconsin Attorney General's office show a steady increase in complaints on mobile home repairs. In 1972, 9 percent of mobile home complaints cited unsatisfactory repairs. By 1977 the number had risen to 25 percent. (Report, p. 157.) This increase indicates that the dilemma of unsatisfied mobile home owners progressively is becoming worse.

Opponents of the rule claim that, despite these facts, mobile home purchasers are already adequately protected by the HUD National Mobile Home Construction and Safety Standards Act of 1974. Consumer advocates, the FTC and even HUD itself, however, argue this is not so. The HUD Act is designed to monitor mass production standards at mobile home manufacturing sites. It does not require inspection or repair of the final product, but rather, inspection at any one of a number of stages along the assembly process. It is possible, then, for a serious manufacturing or design defect that is incorporated in a construction stage after inspection to go unnoticed. The HUD Act also does not allow for routine inspection of mobile homes after "set-up," at which time the home is placed on a foundation and utilities are hooked up.

Under the HUD Act, if a manufacturing or design defect presents an imminent safety hazard and an unreasonable risk of injury or death, the manufacturer must repair the defect. However, the HUD Act offers no protection for an individual whose home contains serious defects that make it uncomfortable, perhaps unlivable, but not life-threatening. According to Dicken Cherry, HUD's Assistant Secretary for Legislation and Intergovernmental Relations, "a warranty performance system such as that outlined in the proposed [FTC] rule would provide consumers with protection not provided by the [HUD] Act. This is true because the correction requirements of Section 615 of the [HUD] Act are limited and only reach defects in the home which present an unreasonable risk of injury or death to occupants of the home." (Letter to Senator Birch Bayh, April 14, 1980, p. 1.)

The lack of authority under the HUD Act with respect to "set up" related damage makes the FTC proposal all the more important to mobile home owners. Careless

transportation from the dealer's lot can cause serious damage. For example, one owner explained, "upon delivery they had dislodged the plumbing to the bathroom by going over a high curb." (Report, p. 45.) Mobile homes are then placed on a cement foundation, usually poured by the dealer, and hooked up to utilities. Double wide trailers must be joined and sealed at this time as well. The set-up must be done properly, otherwise the results are fairly predictable and can be quite damaging: walls out of line settle unevenly, causing gaps and buckling. If the buckling is severe enough to cause cracks in the exterior, the roof may leak, causing a whole new set of problems from the effect of the water in the walls, rugs and furniture. (Report, p. 34.)

Opponents of the proposed rule claim it duplicates the Magnuson-Moss Warranty Act as well. The record indicates otherwise. Since passage of the act in 1975, many manufacturers have adopted the "limited warranty" provided for in 15 U.S.C.A. Section 2303(a)(2), rather than offering full warranties with repair or replace provisions. Many warranties go on to limit or disclaim responsibility, in violation of state warranty protection laws. For example, a manufacturer might require the purchaser to mail back a card to put the warranty into effect, or require the home be returned to the manufacturing site for repairs. (Report, p. 60.) And, although it is not illegal to do so, warranties often exclude set-up related damages as well. Fifty-nine percent of all warranties exclude set-up related damages according to the FTC, 65 percent according to the Center for Auto Safety. (Report, p. 209.)

Some owners find themselves with generous warranty provisions but still get no response to their service requests. In the words of an owner in upstate New York, whose mobile home heating system failed seven times the first winter, "What good are those warranties and guarantees if the companies do not stand behind them?" (Record, vol. 4, p. 30.)

Under the proposed rule, a manufacturer who chooses to give a warranty may not exclude certain consumer protections: Inspection at the time of delivery, coverage for set-up and transportation provided by the manufacturer or its authorized agent, delineation of the proper party to contact for repairs, record keeping that indicates compliance with service requests and contains information regarding inspections, monitoring by the manufacturer of the party designated to answer service calls and resolution of consumer complaints within 30 days.

Explicit delineation of the proper party to contact for repair may seem a minor point, but the general failure to formalize a repair relationship at the time of purchase leads to frustration and delay. The manufacturer and dealer each disclaim responsibility or fight among themselves. Says one owner, "I haven't come across anyone that had bought a mobile home that hasn't had some trouble with the dealer or manufacturer. They all seem to give everyone the run around." (Record, vol. 4, p. 32.) Manufacturers and dealers at times delay repairs until they resolve among themselves who is responsible for payment. (Report p. 145.) According to an owner who out of desperation fixed a heating unit on his own and then requested compensation under the warranty terms, "All I know is that we were put in the middle, and unable to collect on the [heating] element, which rightfully should have been covered by warranty." (Record, vol. 4, p. 34.) Under the proposed rule, manufacturers must have a written service agreement with their service agents that clearly sets forth the terms and conditions of the warranty service delegation. The agreement must specify, among other things, which party is responsible for service on specific parts of the mobile home and the types of warranty service for which the agent will be reimbursed. Perhaps most important, the rule requires the agreement to specify which party is responsible for the repair in the event the agent and manufacturer disagree about who is responsible for such service. This requirement will assure that the consumer is not caught in the middle of a battle between the manufacturer and the service agent.

Occasionally the delay between the request for repair and the time the repairs are actually performed will be so substantial the warranty period will run out and the service agent will refuse to repair the defect under warranty. (Record vol. 8, p. 14.) One purchaser wrote a manufacturer three times during the warranty year, concerning the same repair problem. He received no response until after the year was up, at which time he was informed the warranty had expired and the company would no longer make the necessary repairs. (Record vol. 4, p. 32.) Thus, the proposed rule's record keeping requirements would alleviate this problem by requiring maintenance of records that demonstrate whether an owner made all reasonable efforts to have a repair made within the warranty period. If such efforts were made, the warranty time remaining after the initial complaint might be tolled.

Opponents of the FTC rule argue that the warranty requirements will add tremendous cost to the homes and that the rule should not be issued because it would adversely affect low income purchasers. We are skeptical of this solicitude for low

income people. There is no question the rule will add to the cost of mobile homes; just how much it will add is in dispute. Cost estimates submitted on behalf of the Manufactured Housing Institute (MHI) suggests costs of between \$1 and \$1,224 per unit. (Mobile Home Sales and Service, Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule, August, 1980, p. 494, hereinafter Staff Report). The FTC projects a maximum of between \$115 and \$135, per home, according to the size of the manufacturer. (Staff Report, p. 511.) The FTC staff estimates are much more reliable since they are based on information obtained through surveys of mobile home owners and from manufacturers presently operating under a consent order that is more rigorous than the proposed rule. In fact, a representative of the consulting firm which compiled the data for MHI stated that "[T]he cost estimates obtained in the survey [conducted by Charles River Associates for MHI] were given with so much uncertainty and varied so much in magnitude that they did not permit any determinative analysis." Staff Report, p. 494. Raymond Rhine, Presiding Officer of the rulemaking procedure, believes "the consumer benefits from [the proposed] Rule far outweigh any projected cost increases." (Report, p. 323.) Mobile home purchasers are already spending on the average \$10,000 per home; a slight increase that significantly improves the life and use of the home could be worth the cost. From the consumer's viewpoint, an extra \$135 that could make the difference between a comfortable home that requires only routine maintenance and an unlivable shell that eventually must be abandoned represents a bargain that is well worth the cost. Maintenance as well as initial costs constitute dollars out of the consumer's pocketbook.

Consumers Union urges you to support implementation of the Mobile Home Sales and Service rule. Please let us know if we can provide you with further information regarding our views on the proposed FTC rule.

Sincerely,

SHARON L. NELSON,
Legislative Counsel.

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