By Mr. FISHER: Committee on Armed Services. S. 2945. An act to amend title 10 of the United States Code to permit the appointment by the President of certain additional persons to the service academies; with an amendment (Rept. No. 92–1163). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASPIN:

H.R. 15619. A bill to amend title 28 of the United States Code to provide for the recovery by defendants of reasonable attorneys' fees in certain civil actions brought by the United States, in the discretion of the court; to the Committee on the Judiciary.

By Mr. ASPIN (for himself and Mr. MITCHELL):

H.R. 15620. A bill to amend the Communications Act of 1934 to ban sports from closed-circuit television; to the Committee on Interstate and Foreign Commerce.

By Mr. BLACKBURN:

H.R. 15621. A bill to amend title 18 and title 28 of the United States Code with respect to the trial and review of actions involving obscenity, and for other purposes; to the Committee on the Judiciary.

By Mr. BROYHILL of Virginia:

H.R. 15622. A bill to prohibit funds appropriated to the Office of Education, for the fiscal year ending June 30, 1973, from being used by individuals at an institution of higher education or by such an institution if the playing of the national anthem at a public event is prevented or interrupted by such an individual or is not permitted by such an institution pursuant to this act; to the Committee on Education and Labor.

By Mr. BURKE of Massachusetts (for himself, Mr. NEDZI, Mr. MOLLOHAN, Mr. HAWKINS, Mr. ROYBAL, Mr. PRICE of Illinois, and Mr. BARRETT):

H.R. 15623. A bill to provide for a 6-month extension of the emergency unemployment compensation program; to the Committee on Ways and Means.

By Mr. BURKE of Massachusetts (for himself, Mr. NEDZI, Mr. MOLLOHAN, Mr. HAWKINS, Mr. PRICE of Illinois, and Mr. BARRETT):

H.R. 15624. A bill to amend section 203(e)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 to permit the States to suspend the application of the 120-percent requirement for purposes of determining whether there has been a State "off" indicator; to the Committee on Ways and Means.

By Mr. CEDERBERG:

H.R. 15625. A bill to amend the Federal Property and Administrative Services Act of 1949 to prohibit the making available of Government procurement sources to Federal grantees and contractors; to the Committee on Government Operations.

By Mr. FORSYTHE:

H.R. 15626. A bill to provide for the reduction of the amounts of Federal-aid highway funds to any State which has not made provision for free access to emergency vehicles on any toll road, tunnel, or the approaches thereto within the jurisdiction of such State; to the Committee on Public Works.

By Mr. GARMATZ (for himself and Mr. PELLY):

H.R. 15627. A bill to amend the Oil Pollution Act, 1961 (75 Stat. 402), as amended, to implement the 1969 and the 1971 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended; and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. MELCHER:

H.R. 15628. A bill to amend the Small Business Act to authorize the Small Business Administration to make loans to small business concerns which are adversely affected as a result of certain international agreements; to the Committee on Banking and Currency.

By Mr. PEPPER:

H.R. 15629. A bill to provide payments to State and localities for high-priority expenditures; to the Committee on Ways and Means.

By Mr. PURCELL:

H.R. 15630. A bill to amend the Social Security Act to provide for medical and hospital care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities; to the Committee Ways and Means.

H.R. 15631. A bill to provide a program of tax adjustment for small business and for persons engaged in small business; to the Committee on Ways and Means.

By Mr. RAILSBACK:

H.R. 15632. A bill granting the consent and approval of Congress to an agreement between the States of Illinois and Iowa relating to the establishment by certain of their political subdivisions of a regional air pollution control board; to the Committee on the Judiciary.

By Mr. THOMPSON of Georgia (for himself, Mr. FINDLEY, Mr. HOGAN, and Mr. KEITH):

H.R. 15633. A bill to amend title 10 of the United States Code, to provide that personal delivery of notification of death of servicemen to the next of kin may only be made by officers; to the Committee on Armed Services.

By Mr. CLARK:

H.R. 15634. A bill to amend section 103 of title 23, United States Code, relating to the Interstate System; to the Committee on Public Works.

By Mr. PUCINSKI (for himself, Mr. BELL, Mr. PERKINS, Mr. QUIE, Mr. WILLIAM D. FORD, Mr. MEEDS, Mr. HAWKINS, Mrs. MINK, Mr. FORSYTHE, Mrs. CHISHOLM, Mr. VEYSEY, Mr. BIAGGI, Mr. KEMP, Mrs. HICKS of Massachusetts, Mr. PEYSER, Mr. MAZZOLI, and Mr. BADILLO):

H.R. 15635. A bill to assist elementary and secondary schools, community agencies, and other public and nonprofit private agencies to prevent juvenile delinquency, and for other purposes; to the Committee on Education and Labor.

By Mr. ROE:

H.J. Res. 1231. Joint resolution authorizing the President to designate the calendar month of September 1972 as "National Voter Registration Month"; to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GREEN of Pennsylvania:

H.R. 15636. A bill for the relief of Sabatino Di Giacomo; to the Committee on the Judiciary.

By Mr. TEAGUE of California:

H.R. 15637. A bill for the relief of Melissa Catambay Gutierrez; to the Committee on the Judiciary.

H.R. 15638. A bill for the relief of Milagros Catambay Gutierrez; to the Committee on the Judiciary.

By Mr. WHITE:

H.R. 15639. A bill for the relief of Miss Modesta Juarez-Lopez; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

248. The SPEAKER presented a petition of Robert Duclos, Rockville, Md., et al., relative to including Federal employees in the social security system which was referred to the Committee on Ways and Means.

SENATE—*Wednesday, June 21, 1972*

(Legislative day of Monday, June 19, 1792)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Dear Lord and Father of Mankind, grant us the faith, we pray, to believe that more things are wrought by prayer than this world dreams of. Teach us to pray without ceasing—to pray in our hearts and in our minds and in our souls. May the time of work and the time of prayer be woven of one fabric. Guard our thoughts, control our speech, and guide our actions. We pray not for security or safety but for loyalty to the highest and best for the Nation and the world. And may we find our supreme joy in work well done; our chief reward the advancement of Thy kingdom on earth. Hear both the spoken and the unuttered prayers of our hearts and answer them according to Thy will. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. ELLENDER).

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., June 21, 1972.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. HOLLINGS thereupon took the chair as Acting President pro tempore.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Tuesday, June 20, 1972, be approved.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the calendar, beginning with Calendar No. 831 and proceeding in consecution through Calendar No. 848.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MAGNUS DAVID FORRESTER

The bill (S. 2270) for the relief of Magnus David Forrester, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2270

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of paragraph (23) of section 212(a) of the Immigration and Nationality Act, Magnus David Forrester may be admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of such Act, upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe. This Act shall apply only to the grounds for exclusion under such paragraph known to the Attorney General prior to the date of enactment of this Act.

JUDY A. CARBONELL

The bill (S. 2489) for the relief of Judy A. Carbonell, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2489

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the administration of the Immigration and Nationality Act, Judy A. Carbonell shall be classified as a child within the meaning of section 101(b)(1)(F) of such Act upon approval of a petition filed in her behalf, pursuant to section 204 of such Act, by Staff Sergeant Basil R. Deem, a citizen of the United States. The natural brothers and sisters of the said Judy Carbonell shall not by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-871), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States as an immediate relative of the alien child to be adopted by citizens of the United States.

WILLIAM JOHN WEST

The bill (S. 2575) for the relief of William John West was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 101(b)(1) of the Immigration and Nationality Act, William John West shall be deemed to be the natural-born alien child of Staff Sergeant William R. West, a citizen of the United States.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-872), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to confer immediate relative status upon the infant son of a citizen of the United States.

DR. CONSTANTE S. AVECILLA

The bill (S. 2591) for the relief of Dr. Constante S. Avecilla was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2591

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Doctor Constante S. Avecilla shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by one number, during the current fiscal year or the fiscal year next following, the total number of the immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under paragraphs (1) through (8) of section 203(a) of the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-873), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Dr. Constante S. Avecilla. The bill provides for the payment of the required visa fee and for an appropriate visa number deduction.

GIUSEPPE PAUL PINTON

The bill (S. 2625) for the relief of Giuseppe Paul Pinton was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2625

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Giuseppe Paul Pinton shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by one number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under paragraphs (1) through (8) of section 203(a) of the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-874), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Giuseppe Paul Pinton. The bill provides for the payment of the required visa fee and for an appropriate visa number deduction.

RITA ROSELLA VALLERIANI

The bill (S. 2704) for the relief of Rita Rosella Valleriani was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2704

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act, Rita Rosella Valleriani shall be held and considered to be the natural-born alien daughter of Mr. and Mrs. Vincenzo Valleriani, citizens of the United States: *Provided,* That the parents, brothers, or sisters of the beneficiary shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-875), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant first preference immigrant status to the adopted daughter of U.S. citizens, which is the status normally enjoyed by the natural-born alien sons and daughters of citizens of the United States.

ALBERTO RODRIGUEZ

The bill (S. 2822) for the relief of Alberto Rodriguez was considered, ordered

to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2822

Be it enacted by the Senate and House of Representatives of the United States of America assembled, That the periods of time Alberto Rodriguez has resided in the United States and any State since his lawful admission for permanent residence on December 12, 1961, shall be held and considered to meet the residence and physical presence requirements of section 316 of the Immigration and Nationality Act. In the case the petition for naturalization may be filed with any court having naturalization jurisdiction.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–876), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to enable the beneficiary to file a petition for naturalization.

SLOBODAN BABIC

The bill (S. 2937) for the relief of Slobodan Babic was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 2937

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of sections 203(a)(1) and 204 of the Immigration and Nationality Act, Slobodan Babic shall be held and considered to be the natural-born alien son of Petar Babic, a citizen of the United States: *Provided,* That the natural mother of the beneficiary shall not, by virtue of such parentage, be accorded any right, privilege, or status under the Immigration and Nationality Act.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–877), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to enable the beneficiary to qualify for first-preference status as the unmarried son of a citizen of the United States.

MRS. GLORIA VAZQUEZ HERRERA

The bill (H.R. 1974) for the relief of Mrs. Gloria Vazquez Herrera was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–878), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Mrs. Gloria Vazquez Herrera. The bill provides for the payment of the required visa fee, but does not provide for a quota deduction inasmuch as the beneficiary is the widow of a U.S. citizen.

LUZ MARIA CRUZ ALEMAN PHILLIPS

The bill (H.R. 2052) for the relief of Luz Maria Cruz Aleman Phillips was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–879), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Luz Maria Cruz Aleman Phillips. The bill provides for the payment of the required visa fee, but does not provide for a visa number deduction inasmuch as the beneficiary is the widow of a U.S. citizen.

VLADIMIR RODRIGUEZ LaHERA

The bill (H.R. 2076) for the relief of Vladimir Rodriguez LaHera was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–880), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to enable Vladimir Rodriguez LaHera to file a petition for naturalization, notwithstanding the fact that he was formerly a member of a proscribed organization.

MARIA MANUELA AMARAL

The bill (H.R. 4050) for the relief of Maria Manuela Amaral was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–881), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to enable the adopted daughter of lawful resident aliens of the United States to qualify for second preference status, which is the status enjoyed by the natural-born sons and daughters of alien residents.

LESLEY EARLE BRYAN

The bill (H.R. 6201) for the relief of Lesley Earle Bryan was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–882), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Lesley Earle Bryan. The bill provides for the deduction of a visa number and for payment of the required visa fee.

MATYAS HUNYADI

The bill (H.R. 6907) for the relief of Matyas Hunyadi was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–883), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The beneficiary of the bill is a 49-year-old native and citizen of Hungary, who was paroled into the United States on January 16, 1957, as a refugee. He is a medical doctor and on February 19, 1960, was convicted for forging and uttering a false prescription for narcotics for his own use. The beneficiary was given a suspended sentence and placed on probation, from which he was discharged on May 25, 1961. It is stated that the beneficiary is completely rehabilitated. The beneficiary is presently serving as a staff physician at Rogers Memorial Hospital in Washington, D.C.

CHUNG CHI LEE

The bill (H.R. 7641) for the relief of Chung Chi Lee was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–884), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provisions of existing law relating to one who has been convicted of crimes involving moral turpitude and for which the aggregate sentences were 5 or more years in behalf of the son of a citizen of the United States.

MRS. HANG KIU WAH

The Senate proceeded to consider the bill (S. 465) for the relief of Mrs. Hang Kiu Wah which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That, in the administration of the Immigration and Nationality Act, Mrs. Haug Kiu Wah, the widow of a citizen of the United States, shall be held and considered to be within the purview of section 201(b) of such Act and the provisions of section 204 of such Act shall not be applicable in this case.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President,

I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–885), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of an immediate relative to Mrs. Hang Kiu Wah which is the status she would be entitled to were it not for the death of her husband, a citizen of the United States. The bill has been amended in accordance with established precedents.

MRS. JOSEFITA ESTHER WORLEY

The Senate proceeded to consider the bill (S. 1950) for the relief of Mrs. Josefita Esther Worley which had been reported from the Commitee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That, in the administration of section 301(b) of the Immigration and Nationality Act, Mrs. Josefita Esther Worley shall be held and considered to have retained her United States citizenship: *Provided*, That she returns to the United States to reside permanently upon the termination of her husband's current employment in the Republic of the Philippines.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–886), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to enable Mrs. Josefita Esther Worley to retain her U.S. citizenship provided she returns to the United States to reside permanently upon the termination of her husband's current employment in the Philippines. The bill has been amended in accordance with established precedents.

GUIDO BELLANCA

The Senate proceeded to consider the bill (S. 2562) for the relief of Guido Bellanca which had been reported from the Committee on the Judiciary with an amendment on page 1, line 6, after the word "Act,", strike out "upon payment of the required visa fee. Upon the granting of permanent residence to such alien as provided for in this Act, the Secretary of State shall instruct the proper officer to reduce by one number, during the current fiscal year or the fiscal year next following, the total number of immigrant visas and conditional entries which are made available to natives of the country of the alien's birth under paragraphs (1) through (8) of section 203(a) of the Immigration and Nationality Act."; so as to make the bill read:

S. 2562

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of the Immigration and Nationality Act, Guido Bellanca shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–887), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant the status of permanent residence in the United States to Guido Bellanca. The purpose of the amendment is to delete reference to the payment of a visa fee and a visa number deduction, inasmuch as the beneficiary had his status adjusted to permanent residence on October 13, 1958, at which time the visa fee was paid and a visa number was deducted.

AMENDMENT OF THE CRUISE LEGISLATION OF THE MERCHANT MARINE ACT, 1936

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 850, H.R. 9552.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The legislative clerk read as follows:

H.R. 9552, to amend the cruise legislation of the Merchant Marine Act, 1936.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which was ordered to a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–889), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

Section 613 of the Merchant Marine Act, 1936, (46 U.S.C. 1183) as amended, now provides that the Secretary of Commerce may permit passenger vessels with respect to which an operating-differential subsidy contract was entered into prior to January 2, 1960, to cruise off their essential trade routes for two-thirds of each year. H.R. 9552 would amend Section 613 to authorize cruising for the entire year if the Secretary finds that the operation of the vessel on its trade route is not required.

The bill would also amend Section 613 to permit U.S.-flag passenger vessels to carry mail and cargo between ports not on their regular service if such carriage is not in direct competition with one or more carriers offering U.S.-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering U.S.-flag berth service between such ports, with the consent of the next scheduled U.S.-flag carrier. Such consent may not be unreasonably withheld in the judgment of the Maritime Administrator.

BACKGROUND

Section 613 of the Merchant Marine Act, 1936 was enacted by Public Law 87–45, approved May 27, 1961. This section authorized the Secretary of Commerce to amend the operating-differential subsidy contract of any passenger vessel of 10,000 gross tons or more with accommodations for at least 100 passengers to provide for the payment of such subsidy while the vessel is engaged on its regular route for part of the year, and engaged in cruises off its regular trade route for the balance of the year. Section 613, as amended, limited the period during which a vessel may cruise off its regular route to one-third of the year.

The enactment of this section reflected the fact that passenger ship operations in most trades have definite seasonal peaks. Prior to the adoption of Section 613, subsidized passenger vessels were required to maintain regular sailings on their essential trade routes throughout the year regardless of the fact that during certain months, the volume of passengers declined drastically. During these off-season periods, the earnings of passenger vessels naturally declined sharply. Whatever benefits may have been realized during the peak season were consistently wiped out by the requirement to maintain the service during the off season.

Public Law 90–358, approved June 22, 1968, increased the maximum period during which subsidized passenger vessels may cruise off their regular trade routes to two-thirds of each year. The maximum period was limited to seven months, however, with respect to cruises involving ports regularly served by any other U.S.-flag subsidized passenger vessel. In large measure, the legislation was a recognition of the decreased market in point-to-point transportation for passenger vessels as commercial jet aircraft became dominant.

Public Law 91–250, signed by the President on May 14, 1970, amended Section 613 to permit cruising vessels to carry one-way passengers between ports on another operator's assigned service with the consent of the operator, to permit the vessel to carry passengers between ports in the coastwise domestic trade, or in the non-contiguous domestic trade if it does not involve competition with a U.S.-flag berth service operator, or if it involves such competition with such operator's consent. The 1970 amendment also authorized passenger vessels when operating on their regular service to carry passengers between domestic ports if such carriage would not require a deviation that would adversely affect the service.

Hearings were held on H.R. 9552 by the Merchant Marine and Fisheries Committee of the House of Representatives on March 13, 1972. The bill was subsequently ordered favorably reported and passed the House by a vote of 374 to 0 on April 11, 1972. On May 5, 1972, this Committee gave public notice that it was considering H.R. 9552 and invited interested parties to submit their views by May 22, 1972. No objections to the bill were received.

NEED FOR THE LEGISLATION

The U.S.-flag passenger fleet now consists of only four vessels: *SS Mariposa, SS Monterey, SS President Cleveland*, and *SS President Wilson*. These vessels all operate from the West Coast of the United States. In order that they not go the same way as the laid-up East Coast passenger fleet, much of which is now expected to be sold for transfer to foreign registry pursuant to Public Law 92–296, it is desirable that these vessels be given the flexibility to operate as economically and efficiently as possible. While enactment of H.R. 9552 would not have been of significant assistance to the vessels which were the subject of P.L. 92–296, it will be helpful to the four remaining vessels by eliminating unnecessary operating restrictions.

COST OF THE LEGISLATION

Enactment of the legislation will not result in additional cost to the Government.

CONCLUSION

The Committee ordered the legislation favorably reported without objection. Its enactment should be of some assistance to the four remaining U.S.-flag passenger vessels without resulting in any additional cost to the Government.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the executive calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the executive calendar will be stated.

FOREIGN CLAIMS SETTLEMENT COMMISSION

The second assistant legislative clerk read the nomination of Kieran O'Doherty, of New York, to be a member of the Foreign Claims Settlement Commission of the United States for a term of 3 years from October 22, 1970.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

BOARD OF PAROLE

The second assistant legislative clerk read the nomination of Maurice H. Sigler, of Nebraska, to be a member of the Board of Parole for the term expiring September 30, 1978.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

U.S. COURT OF CUSTOMS AND PATENT APPEALS

The second assistant legislative clerk read the nomination of Howard T. Markey, of Illinois, to be chief judge of the U.S. Court of Customs and Patent Appeals.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

DEPARTMENT OF JUSTICE

The second assistant legislative clerk proceeded to read sundry nominations in the Department of Justice.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The second assistant legislative clerk proceeded to read sundry nominations in the Coast Guard, which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed the consideration of legislative business.

FOREIGN ASSISTANCE ACT OF 1972

AMENDMENT NO. 1265

Mr. SCOTT. Mr. President, I am sending an amendment to the desk today, in the hope that we can enter into an agreement to vote under a time limitation on Friday next.

This amendment would strike the $600 million for grant military assistance and insert in lieu thereof $725 million. And where the figure of $650 million appears for security supporting assistance, add in lieu thereof $770 million of which not less than $70 million shall be available solely for Israel.

Mr. President, I ask unanimous consent that my amendment be printed in the RECORD at this point.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 1265

On page 6, line 20, strike "$600,000,000" and insert in lieu thereof, "$725,000,000".

On page 8, lines 14 and 15, strike "$618,000,000" and insert in lieu thereof "$618,000,000, of which not less than $50,000,000 shall be available solely for Israel".

On page 8, lines 15 and 16, strike "$650,000,000" and insert in lieu thereof "$770,000,000, of which not less than $70,000,000 shall be available solely for Israel".

Mr. SCOTT. Mr. President, the purpose of this amendment is, broadly speaking, to restore the administration requests which were reduced by the committee. I do not believe the reductions were advisble. They will seriously hamper these programs. It is most important, in my view, that at least we restore the funds to these amounts, which has been carefully worked out. It runs in general sequence with our traditional policy in various parts of the world.

So I hope that when the amendment comes up for consideration, it will be adopted.

I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The amendment will be received and printed, and will lie on the table.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Republican leader yield?

Mr. SCOTT. I yield.

Mr. ROBERT C. BYRD. I have discussed a time agreement on this amendment with the distinguished Republican leader. It has also been discussed with the distinguished Senator from Alabama (Mr. SPARKMAN) and the equally distinguished Senator from Missouri (Mr. SYMINGTON).

It is my understanding, after having discussed the amendment with all these parties, that a time limitation of 2 hours on the amendment would be agreeable.

May I ask the distinguished Republican leader if he concurs.

Mr. SCOTT. Yes, I concur. That is my understanding also.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at no later than 11:30 a.m. on Friday next, the amendment which has just been offered by the distinguished Republican leader be made the pending question and that time thereon be limited to 2 hours, to be equally divided between the distinguished Republican leader and the distinguished Senator from Missouri (Mr. SYMINGTON); that time on any amendment thereto be limited to 30 minutes; that time on any debatable motion or appeal be also limited to 30 minutes, to be equally divided between the mover of such and, in that instance, the distinguished Republican leader.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Presiding Officer and the distinguished Republican leader.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Delaware (Mr. ROTH) is recognized for a period of not to exceed 15 minutes.

(The remarks of Mr. ROTH when he submitted an amendment he proposes to offer to H.R. 15390 are printed in the routine morning business section of the RECORD under the appropriate heading.)

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Iowa (Mr. HUGHES) is recognized for a period not to exceed 15 minutes.

COMMAND AND CONTROL IN THE LAVELLE CASE

Mr. HUGHES. Mr. President, one of the oldest questions in political theory deals with the problem of command and control over the military: Who protects us from our protectors? This question is once again urgent because of the revelations surrounding the dismissal of General Lavelle.

Last week I informed the Senate of my role in these events and raised questions which I believe must be answered before we lay this matter aside or dismiss it as "just one of those things."

We cannot and should not take it lightly when a four-star general admits violating orders from his superiors.

We cannot and should not shrug our shoulders when nearly one out of every four air missions against North Vietnam between November 8, 1971, and March 8, 1972, was not authorized.

We cannot and should not halt our investigations while there remains the possibility of widespread deception, concealment, and disobedience.

On Monday I received a briefing on this matter from two officials in the Defense Department. I am convinced that the Department recognized at once the seriousness of the charges raised against the Seventh Air Force Command and acted firmly and promptly to deal with them. But I also believe that the investigation of the circumstances in this case has not raised or answered satisfactorily all of the important questions.

What we do know now is that General Lavelle encouraged his men to bomb aggressively in North Vietnam and then to falsify reports if necessary in order to conceal violations of the standing rules of engagement.

We do not know who had knowledge of these violations or precisely what they did and said to justify or prevent them.

The orders signed by the Secretary of Defense were clear and explicit. The rules could not be bent, only broken.

The men at the top knew these rules. In several instances General Lavelle had requested authority to strike certain targets in North Vietnam, and many of these requests were specifically denied.

Even so, the targets were hit.

Mr. President, with all the fairness I can muster, I cannot interpret these facts as meaning anything other than that General Lavelle ordered air strikes on targets he had been explicitly forbidden permission to hit.

Thus, he appears to have violated not only the standing rules of engagement but also specific orders not to strike certain targets in North Vietnam.

We need to know who was aware of these orders—and why they acted as they did.

I do not know whether there was deliberate intent to deceive the President, the Congress, and the American people. But there was a conspiracy of silence which extended far beyond General Lavelle.

The general's staff had access to the orders and reports—and remained silent.

The target planners prepared their lists—and remained silent.

The wing commanders briefed their men and issued assignments—and remained silent.

The pilots made their attacks—and remained silent.

The intelligence analysts debriefed the pilots and studied the bomb damage assessments—and remained silent.

Except for one man. There at the bottom of the chain of command one brave sergeant wondered whether "this falsification of classified documents is legal and proper."

He spoke up while others remained silent, but he apparently got nowhere when questioning his superiors. In his letter to me, the sergeant wrote:

> I have been informed by my immediate officer-in-charge that authorization for this falsification of classified documents comes from secure telephone communications from the Deputy of Operations, 7th Air Force.

Conceding the truth of this statement by the sergeant, this indicates that at least two other officers—the 7th Air Force operations deputy and a lower ranking officer in charge of the intelligence section—knew of the falsification.

But General Lavelle is the only one to answer for it.

Mr. President, I have a profound respect for the members of the Armed Forces and a deep faith in their integrity and devotion to duty. I am sure that what General Lavelle and others have done in permitting unauthorized offensive strikes under the label of "protective reaction" was done with the best intentions so far as the safety of their crews and the conduct of the military operations were concerned.

Yet, if military commanders place their own authority above that of their civilian superiors, we are in very grave trouble, indeed. Moreover, strictly within the Military Establishment, the violation of orders, clear and fully understood, dishonors the proud traditions of our military service.

Such abuses of authority require a thorough investigation culminating with the removal or punishment of all who are guilty of improper activities. The violations in question are far too serious and far reaching in their implications to be adequately handled by disciplining one violator when a number were involved.

I do not believe, Mr. President, that scores or hundreds of men knowingly and willfully disobeyed the clear orders from Washington. But many men must have had suspicions and doubts. And we must find out how far this went.

What we shall probably find, Mr. President, is evidence of the gradual erosion of control from Washington. So many matters were delegated to subordinate commanders that few people knew what was happening in the field.

The war went on, Mr. President, and peace seemed farther and farther away. Most of the restraints previously imposed on military commanders were reportedly stripped away.

Initially, protective reaction strikes were said to occur on the spur of the moment and only against missile or antiaircraft artillery sites that had actually fired on one of our reconnaissance planes. Later, pilots were reportedly given permission to attack if radar had "locked on" to any U.S. plane. Ultimately, even this requirement was weakened further.

Instead of waiting to be fired upon or immediately threatened, pilots were authorized to hit targets of potential threat. Some strikes were so large and sustained that a new category—limited duration protective reaction strikes—was created. These raids involved the temporary suspension of the standing rules of engagement for air strikes into North Vietnam.

During these months, more and more strikes were reportedly conducted after the fact—and with more prior planning. Missile sites were identified as targets, and fighter bombers set out to strike them, but supply depots and truck columns were hit instead—in clear violation of the 1968 understandings under which we suspended bombing the north.

In effect, we resumed the bombing of military targets in North Vietnam long before the President announced this policy in April of this year.

Under these circumstances, it is no wonder that some target planners are reported in press interviews to have considered the "protective reaction" label a joke. The real joke, however, was on the American people—for we believed, mistakenly, that the bombing of North Vietnam had ended in 1968.

Now it is clear that this relaxation of the rules fostered a climate of permissiveness in Indochina. Since so many rules had already been changed, it was probably easy for the people involved to assume that the remaining ones were being "bent" on the basis of higher authority.

By the decisions to mine Haiphong and conduct massive bombing raids, President Nixon has now gone even further than his predecessor in allowing military commanders a free hand.

Whatever tactical benefits these decisions have had, they have also contributed to the erosion of Presidential control over the military aspects of the war.

This erosion of control led to the situation where one commander could send his pilots on unauthorized strikes against North Vietnam at the very time that secret and delicate peace talks were underway.

Have we forgotten Clausewitz's classical definition of war as "the continuation of politics by other means" and instead permitted the war machine and the peace machine to move in contrary directions?

Specifically, Mr. President, we need answers to many questions about the Lavelle case:

Why have only three of the 28 apparent violations of orders been thoroughly investigated?

Why were there no high-level suspicions of possible violations prior to March 8, 1972?

Was any followup investigation made to discover why strikes were made when no enemy action had been reported?

Can we be confident that no other violations occurred, either by the Navy or by the Air Force under previous commanders?

How does this case differ from that reported in the newspapers, in which pilots and their commander were courtmartialed for bombing Soviet ships in Haiphong Harbor?

And most important of all, Mr. President, did these unauthorized strikes affect either the secret or public peace talks?

These questions should be answered by the Defense Department and thoroughly considered by the Armed Services Committee before we proceed with the nomination of General Lavelle to retire as a lieutenant general. As you know,

Mr. President, I requested on May 8—when the extraordinary retirement of General Lavelle at a reduced rank was submitted by the President for confirmation—that the nomination be held in abeyance pending committee inquiry and hearing into the events that culminated in this nomination. The distinguished chairman of the committee, Mr. STENNIS, has assured me that this matter will receive the attention of the committee.

As a member of the committee, I understand and appreciate the heavy burden of responsibility that now rests on the chairman's shoulders at this particular time. The military implications of the SALT accord, the military procurement authorization bill, troop strength ceilings, and the military construction authorizations all require urgent action by the Armed Services Committee and the Congress.

I would not add to this agenda any item for consideration that was not of the greatest urgency to this country.

The matter I have described is of such urgency. It gets at the very roots of the integrity of our command control system in wartime. It gets to the fundamental issue of civilian control of the military in our society. What we do about this matter may have a critical bearing on our prospects for peace or continuing war in the months and years ahead.

Mr. President, I ask unanimous consent that various newspaper articles relating to this particular incident be included in the RECORD following this statement.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, June 18, 1972]

BOMBING: YOU MIGHT CALL IT "PROTECTIVE AGGRESSION"

WASHINGTON.—"Dear Senator Hughes," the letter began, "I and other members of wing intelligence . . . have been falsifying classified reports for missions into North Vietnam. That is, we have been reporting that our planes have received hostile reactions such as AAA [antiaircraft fire] and SAM [missile] firings whether they have or not."

The letter, dated Feb. 25, 1972, and mailed by an Air Force intelligence sergeant at Udorn Air Force in Thailand, was to become the cornerstone of perhaps the most potentially significant dispute of the air war, one that last week raised grave questions about the Nixon Administration's grip on command and control over the skies of Southeast Asia. Within three weeks, the following happened:

A secret Air Force investigation concluded that the Commander of the Seventh Air Force, Gen. John D. Lavelle, had ordered at least 28 unauthorized raids into North Vietnam and later reported them as "protective reaction"—a defensive action. The targets included airfields, missile sites, anti-aircraft emplacements and an array of radar equipment.

At least three classified after-action reports were said to have been falsified, largely because General Lavelle had ordered his subordinates never to file a bombing report without describing the raid as being in response to enemy action.

General Lavelle was relieved and ordered to return to Washington, where he eventually became the first four-star general or admiral in modern United States military history to be demoted upon retirement.

All of this reeked of scandal, and the Air Force chose the classic way to handle the affair. It quietly announced early in April that the officer had retired "for personal and health reasons."

There the matter rested—until mid-May, when Representative Otis G. Pike, Democrat of New York, made two short but critical speeches on the floor of the House. Mr. Pike, a former Marine pilot and usually a strong supporter of United States bombing policies, accused the Air Force of covering up.

A second Air Force statement was issued that General Lavelle had been relieved "because of irregularities in the conduct of his command responsibilities." Again, nothing happened, although the House Armed Services Investigating Subcommittee, headed by Representative F. Edward Hébert, Democrat of Louisiana, did agree—at Mr. Pike's urging—to schedule a hearing for last Monday on the firing and demotion of the general.

General Lavelle and the man who fired him, Air Force Chief of Staff Gen. John D Ryan, found themselves testifying before a packed gallery of newsmen and Congressional aides. "This is the largest contingent of press I've seen here since the Mylai situation," Representative Charles S. Gubser, Republican of California, noted at one point. "Seems like we got another chance to make America look bad."

Mr. Gubser's remark set the tone for the hearing, and most members of the hawkish House subcommittee made it clear during the testimony that they found much merit in General Lavelle's decision to bomb North Vietnam without authority.

General Lavelle acknowledged that he had ordered "in the neighborhood" of 20 raids between November and March that were later reported as "protective reaction." He did so, he said, because higher headquarters had refused his repeated requests to attack large North Vietnamese buildups of tanks, fuel and other war materials about 11 to 15 miles above the demilitarized zone (DMZ) that straddles the border between the two Vietnams. The general did insist, however, that his superior officers in the chain of command had been kept fully informed of his activities.

"Protective reaction" was first enunciated as a military concept in October, 1969, by Defense Secretary Melvin R. Laird. It authorized American bombers escorting unarmed reconnaissance flights over North Vietnam to attack enemy antiaircraft sites and SAM missile sites if the enemy initiated offensive action.

At the time, the United States was theoretically bound to the bombing restrictions negotiated with the North Vietnamese in Paris by the Johnson Administration shortly before the 1968 elections. Over the years, however, the rules gradually loosened and eventually American fighters were given permission to initiate attacks after determining that enemy radars had "locked-on" to their craft preparatory to launching missiles or firing shells.

When the North Vietnamese did attack, to begin their new offensive March 30, it came near the point where General Lavelle's pilots had reported the buildups. Yet, there were few in Washington willing to justify the general's violation of orders on the basis of intelligence—even accurate intelligence.

The Lavelle incident could have ended just as a blemish on what some experts believe has been a satisfactory record of tight command control by Air Force units. The service had even court-martialed two pilots who bombed the harbor at Haiphong in North Vietnam in the middle of the 1965–1968 air war, damaging two Russian ships in the process. The fact that General Lavelle was immediately sacked and subjected to an unprecedented demotion was an indication, as one high Government official said in an interview, that "unlike the Army, the Air Force still has a lot of pride in itself."

But within a few days, a continuing investigation by The New York Times uncovered evidence that systematic abuses of "protective reaction" have been commonplace since 1970 through all Air Force commands in Southeast Asia. More than a dozen former photo intelligence specialists and analysts for the Air Force were located and interviewed. Without exception they agreed that, as one put it, protective reaction "was a constant joke."

The former intelligence specialists, who were violating Federal codes by talking openly about their work, alleged that many so-called "protective reaction" raids had in fact been planned in advance by Air Force headquarters in Hawaii or Saigon. In addition, they said that at least three times as many such raids were actually carried out as reported by the Pentagon throughout 1970 and 1971.

Former high-ranking Government officials—all of whom worked in the Nixon Administration—subsequently acknowledged in a series of interviews that civilian command and control over the air war has indeed eroded in the past three years. President Lyndon B. Johnson "had more command and control," one former official said, "but it came at a higher cost of military irritation. The rules of engagement are more relaxed under Nixon."

Some members of Congress have criticized the seemingly slight punishment given thus far to General Lavelle whose nomination for retirement at three-star rank is now pending before the Senate Armed Service Committee. Despite his demotion, General Lavelle will receive the equivalent of a four-star general's retirement pay—about $2,250 per month—because his last active duty assignment was at that rank.

In a Senate speech last week, Senator Hughes raised some of the broader questions presented by the incident. "To what extent can the actions of a single combat commander," asked the Senator, "trigger a spiraling escalation of hostilities by both sides at a time when we are committed to winding down the intensity of the war and withdrawing?"

There were other questions, still unasked in Congress:

Did Gen. Creighton W. Adams, United States commander in Vietnam, or any of his colleagues at headquarters really know what General Lavelle was doing in North Vietnam?

Has the Air Force done all that it could in its investigation of General Lavelle to find and prosecute those officers responsible for official abuses?

Has President Nixon's day-by-day command and control over his pilots diminished?

On Thursday Senator John C. Stennis, Democrat of Mississippi, promised that his Armed Services Committee would look into the Lavelle incident more fully.

[From the Evening Star, June 26, 1972]

LAVELLE'S UNAUTHORIZED STRIKES: DID RAIDS CAUSE HANOI'S OFFENSIVE?

(By Henry S. Bradsher)

HONG KONG.—Did unauthorized air strikes on North Vietnam by Gen. John D. Lavelle's pilots cause the current North Vietnamese offensive against the South?

Analysts of North Vietnamese affairs are intrigued by what they consider the very possibility that those raids tipped the balance in Hanois' leadership toward another all-out military effort to crush South Vietnam.

The possibility was being considered today as further evidence came that Hanoi is determined to continue putting the war ahead of North Vietnamese domestic problems, despite the offensive's lack of success and the heavy price being paid in the North.

The determination was shown in the way the visit of Soviet President Nikolai V. Podgorny was handled by Hanoi.

Podgorny went to try to get the North Vietnamese to agree to a negotiated truce in the Vietnam war, if not a complete settlement. This followed President Nixon's talks in Moscow on the desire to see the war ended.

The statement by the Soviet news agency Tass on Podgorny's visit disclosed in the coded language which the Communists use for such things that there had been a failure of the Soviets and North Vietnamese to agree on basic issues.

They agreed on calling for an end to U.S. bombing of the North and mining of ports. But disagreement apparently came on having Hanoi moderate its militant attitude and negotiate a truce.

That means that the hawkish faction in Hanoi leadership which rose to ascendency about six months ago is still dominant.

Its rise was aided and maybe even made possible by unauthorized air raids on the North by the 7th Air Force under Lavelle.

Hanoi-watchers had been wondering about a missing factor in the circumstances which led to launching of the offensive. Now revelations about those raids seem to provide it.

After the lunar new year—Tet—offensive in 1968, North Vietnam had shifted to a policy of putting economic development of the North first and continuation of the war in the South second. The war was allowed to simmer along at a lower level of expenditure of men and material.

In early 1971 Hanoi began a buildup for the possibility of increased fighting in the South.

Draft calls were increased for the North Vietnamese army and movement of tanks down the Ho Chi Minh Trail must have begun.

But all available evidence suggested that no firm decision had been taken about the extent of the commitment to make a fight in the South.

Debate among the leadership apparently was going on in Hanoi last summer. The apparent lineup was Communist party First Secretary Le Duan for economic development versus the war policy of National Assembly Standing Committee Chairman Truong Shinh, Defense Minister Vo Nguyen Giap and Foreign Minister Nguyen Duy Trinh.

Severe flooding of the Red River basin in the North late last summer seemed to temporarily tip the balance toward Le Duan and his supporters, who argued that domestic improvements must come first.

At the same time Giap was publishing articles suggesting a tougher war effort was needed.

Then, Hanoi-watchers had thought some months ago, something happened which tilted the balance away from Le Duan and toward Truong Chinh.

The secret negotiations of Le Duc Tho in Paris with Dr. Henry A. Kissinger had been going on while Le Duan's policies were still officially sanctioned. But then the talks were abruptly broken off.

Revelations in Washington last week that unauthorized air raids on the North began just before the scheduled Paris meeting Nov. 20 provided a possible key to the situation.

A tentative reconstruction, based on Hanoi-watching materials which include speeches of Communist leaders and reports from visitors to Hanoi, is that the raids were what created that tilt.

They destroyed the basis for Le Duan's arguments that it was possible to negotiate seriously with the Americans and therefore not necessary to give up economic emphasis for a new military effort in the South.

[From the Evening Star, June 20, 1972]

CASE IN WHICH THE SYSTEM FAILED

(By Orr Kelly)

It became obvious, at least as early as the middle of January, that the United States was carrying on a vigorous, even though limited, campaign of air attacks against targets in North Vietnam.

There were, it seemed at that time, two possible explanations for what was happening.

One, the official version, is that the North Vietnamese, fully aware of the flight patterns followed by American planes, had massed their antiaircraft guns and, increasingly, their surface-to-air missiles to take as high a toll as possible of the planes operating along their borders. They also had begun to move increasing numbers of jet fighters into position where they could, and on several occasions did, shoot down American planes.

It was not unusual, under these circumstances, that there should be a sharp rise in the number of occasions that American pilots would feel themselves threatened and fire missiles or drop bombs in legitimate "protective reaction."

The other apparent explanation was that the administration, in an effort to blunt the expected enemy offensive, had placed an extremely broad interpretation on the concept of protective reaction and was using that, in effect, as a cover for what was really a limited resumption of the air war against the North.

For those of us without access to copies of the rules of engagement and after-action intelligence reports, there was no way to know which of these alternatives was the right one. All we could do was guess.

Now it turns out that neither was entirely right. Instead of the administration covertly turning up the air war, Gen. John D. Lavelle says it was he who did it on his own initiative. This may explain what happened—although there still are some serious questions left unanswered.

But it does not begin to explain how the leaders of the administration or, especially, the top military leaders in the chain of command above Lavelle could fail to be aware of what was going on.

They not only could see what the rest of us could see—and that would seem to be enough to justify asking Lavelle what was going on. But they also could see the intelligence reports the rest of us can't see and Pentagon sources say now that those reports did not indicate a rise in enemy activity corresponding to the rise in protective reaction strikes, especially in January, February and early March.

It was here that the system apparently broke down.

"You just don't call up a four-star general and ask if he's sending you false reports—lying to you," explained one high-ranking civilian official.

"You might wonder about a major or a lieutenant colonel," one military man explained. "But, the way the system works, you figure by the time a guy gets to be a four-star general or even a one-star general—he's learned to follow orders and tell the truth."

So Lavelle's mini-version of Rolling Thunder kept rumbling along while, over in the White House, they kept wondering why it was so hard to get negotiations on the track and keep them there.

There is an obvious tendency on Capitol Hill to consider this all academic now that a bombing campaign with official sanction is being carried out on a much larger scale. There also are those who say this was a unique aberration, caused by "this war."

Well, neither of these assumptions is very comforting. It was obvious in this case that the system failed, both in propelling into a top command post a man who would violate his orders and permit falsification of reports and in failing to detect his violation of orders and the false reports. And a general who doesn't function in a war is like a car that works okay until you drive it.

It will be a national tragedy if the Defense Department and Congress, each in its own way, don't do whatever is necessary to find out what happened in this case, not in a vindictive effort to punish someone, but in a determined effort to make sure that nothing like this can ever happen again.

[From the New York Times, June 15, 1972]

EX-AIRMEN TELL OF 20 PLANNED RAIDS A MONTH IN 1970–71

(By Seymour M. Hersh)

WASHINGTON, June 15.—Three former members of a photo-intelligence team assigned to Pacific Air Force headquarters in Hawaii said in an interview today that at least 20 to 25 planned bombing raids later described as "protective reaction" strikes were flown each month by Air Force planes over North Vietnam throughout 1970 and 1971. This number would be more than three times the total of "protective-reaction" raids officially announced by the Pentagon.

One of the former airmen, James A. Walkley of Honolulu, said that briefings on planned "protective-reaction" bombing missions were routinely provided to Adm. John S. McCain, commander of the United States Pacific Command and the officer in the chain of command between Saigon and Washington.

The controversy over protective reaction has spread since it was revealed Sunday that Gen. John D. Lavelle was dismissed as commander of all Air Force units in Southeast Asia and demoted after ordering unauthorized bombing raids into North Vietnam. Those raids were publicly described as "protective-reaction" strikes—that is, responses to direct threats to American planes.

The three airmen interviewed today, however, were discussing a period largely before General Lavelle took over his command in July, 1971.

On Monday, General Lavelle told a House of Representatives subcommittee hearing that he had ordered "in the neighborhood" of 20 such raids between Nov. 8, 1971, and March 8, 1972. A subsequent Air Force investigation concluded that he had also filed at least three falsified reports in connection with the raids.

"A CONSTANT JOKE"

All three airmen interviewed today agreed that the concept of "protective reaction" was widely considered throughout the Pacific Air Force command as simply another way of describing bombing raids. None of the three had any direct knowledge of General Lavelle's activities between November, 1971, and March, 1972.

Former Sgt. Bradley V. Ochanber of Honolulu, who was honorably discharged from the Air Force in May, said that "protective-reaction" raids had averaged at least 25 a month and added: "We were constantly hitting truck depots and storage areas and describing them as P.R. strikes."

"It was a constant joke," said Mr. Ochanber, who is 24 years old and spent four years in the Air Force in intelligence work. "After we'd bomb, we always used to go down to read the papers and see what kind of information the Air Force released on it."

The Pentagon has officially reported that Navy and Air Force planes staged a total of 20 "preventive-reaction" raids in 1971.

A Pentagon spokesman, asked to comment on the allegations concerning the number of "protective-reaction" missions, said: "We have reported all protective-reaction strikes here as given to us by MACV (Military Assistance Command, Vietnam). If those men say whatever they say, that's their problem."

FOUR SENATORS JOIN DEBATE

Meanwhile, four Senators joined the debate, including Senator George McGovern of South Dakota, the leading candidate for the Democratic nomination for President. The other Senators are John C. Stennis, Democrat of Mississippi; William Proxmire, Democrat of Wisconsin, and Clifford P. Case, Republican of New Jersey.

Yesterday, The New York Times published a series of interviews with two former Air Force photo-intelligence specialists who had been stationed in Saigon and Thailand. They indicated that abuses of the "protective-reaction" policy were widespread as early as 1970.

The interviews today with the former Hawaii-based intelligence sergeant stemmed from an investigation by The New York Times into the extent of unauthorized bombing missions. More than 10 former intelligence and present photo-intelligence specialists—officers and enlisted men—have been reached by telephone.

Some, despite the high degree of classification of all photo-reconnaissance matters, have talked freely. Others have refused to talk on grounds of security. Still others said they had no first-hand knowledge of "protective reaction." None of those contacted, however, denied that serious abuses exist and had gone uncorrected.

Mr. Ochanber's name was supplied to The New York Times by Thomas Bast of St. Louis, another former member of the intelligence unit, who himself had no direct information about the number of "protective-reaction" missions. Mr. Ochanber, in turn, supplied the name of a third former member of the unit, Miles Yoshida of Honolulu, who was interviewed.

Mr. Walkley, a former sergeant, was relatively well-known since he has been an active critic of the Vietnam war and has been mentioned in The Congressional Record.

Mr. Walkley, who said in the interview that he left the Air Force in 1971, said that units of the Seventh Air Force staged many "protective-reaction" strikes in 1969 and 1970 against North Vietnamese airfields south of the 19th Parallel and also along the Bonparal Pass between North Vietnam and Laos about 80 miles north of the demilitarized zone.

"They'd always come in later on the pilot reports as protective reaction," he said. "They just used that like an excuse to hit."

Mr. Walkley, who is now associated with an antiwar counseling service in Honolulu, said he had spent more than three years as a photo interpreter at Hickam Air Force Base.

In his job with the 548th Squadron, Mr. Walkley said, he saw all of the after-action reports filed by pilots in the Seventh Air Force, as well as much of the reconnaissance film.

In 1970, the Seventh Air Force was staging "at least one" of the "protective-reaction" raids a day, he said. He added that "just before they called limited-duration strikes, they had three to five a day."

There were eight publicly announced "limited-duration" bombing assaults—often lasting more than one day—on North Vietnam in 1970, according to Pentagon records.

Mr. Yoshida, who left the Air Force in December, 1971, said he came across at least four "protective-reaction" strikes during each working week, and he described them as "a joke."

He added that he thought that "maybe once in a while" the pilots had had a legitimate reason for staging the "protective-reaction" strikes.

Mr. Walkley said that many of the "protective-reaction" raids had been planned in advance. The process worked this way, he said:

"We'd get reconnaissance reports covering an area of North Vietnam, and if there was a large build-up of supplies, they were referred both to the target-development division and to the contingency-targeting division [at the 548th Squadron].

"Both divisions made up target folders for strikes in the area for sometime in the future," Mr. Walkley said. "Then in the next few days it was briefed to the Pacific Air Force Deputy Chief of Staff for Intelligence and then to CINCPAC Air Force and then to Admiral McCain.

"Within two or three days the target folders, which were already made up, would be pulled and the message relayed to the Seventh Air Force and they would carry out the strike, and then the strike would later be announced as protective reaction."

On Capitol Hill, Senator Case added to the debate over "protective reaction" by releasing a letter from a Navy officer who charged that reconnaissance planes had been sent over North Vietnam in order to provoke anti-aircraft action so that Navy fighter-bombers could bomb targets that were otherwise off-limits.

Senator Proxmire, entering the dispute over General Lavelle for the first time, urged the Air Force to begin a formal court-martial proceeding against the general. He said that the general had "deliberately violated the principles of civilian control over the military."

A Pentagon spokesman said that the military no longer had court-martial jurisdiction over General Lavelle since he had retired.

Senator Stennis announced that his Armed Services Committee would look into the general's retirement as a three-star officer. General Lavelle was a four-star general before he was relieved.

Senator McGovern, also discussing the incident publicly for the first time, said at a news conference in Northport, L.I., that "if the reports are true that unauthorized bombing missions were ordered by General Lavelle, it would seem to me it is a miscarriage of justice to let him off with an apparent tap on the wrist."

TERMINOLOGY IN AIR WAR

WASHINGTON, June 15.—The phrase protective reaction" was first used on Oct. 9, 1969, by Secretary of Defense Melvin R. Laird, but the practice that it represents had been carried on for almost a year before that.

Under "protective reaction," American commanders were authorized to seek out and attack enemy troops or planes or missiles that threatened them. The use of the phrase by Mr. Laird at the 1969 news conference marked a shift from previous American military orders in which United States ground forces were to put "maximum pressure" on the enemy.

In the air over North Vietnam, American planes had been following such a practice, even though it was not announced, since the suspension of the full-scale bombing of the North on Nov. 1, 1968. Reconnaissance missions, usually consisting of an unarmed reconnaissance plane and three armed jets, were authorized to fire on radars and surface-to-air missiles that had "locked on" them and were about to fire.

In addition to "protective reaction," American pilots were authorized to use what was termed "suppressive fire"—attacking whenever fired upon.

Beginning March 27, 1970, the United States began what were called "reinforced protective reaction strikes" in which large numbers of American fighters hit North Vietnamese antiaircraft and surface-to-air missiles that were judged to be a threat.

A Pentagon spokesman said today that there had been 20 "protective reaction" strikes in the last two months of 1968, and 75 during 1969, then 25 during 1970 and 121 during 1971. In the first three months of this year there were 128 such strikes, he said.

On April 4 of this year, the policy of "protective reaction" was suspended with the resumption of full-scale bombing of North Vietnam, after the start of the North Vietnamese offensive.

[From the Washington Post, June 18, 1972]

THE LAVELLE AFFAIR

(By Joseph Kraft)

A stock character in fiction is the gung-ho American military man hooked on anti-communism to the point of starting a nuclear war by private actions taken against the explicit orders of the President. So strong is the grip of art on life that all of us are tempted to cast in that role Gen. John Lavelle, the air commander who has been retired and demoted for exceeding bombing orders in Vietnam.

But the evidence, though not yet complete, points in another direction. It suggests a supreme company man who allowed himself to be made the scapegoat for a massive sophisticated and systematic streaching of presidential orders by the military commands in both Washington and Vietnam.

The official version of the case is relatively simple. In the four-month period between Nov. 8, 1971, and March 8, 1972, 147 planes carried out 28 missions over North Vietnam, and that went beyond the standing order to bomb only after being fired upon or locked by enemy radar.

On March 8, the violations were brought to the attention of the Air Force chief of staff, John Ryan, through the medium of a letter sent by a sergeant to Sen. Harold Hughes (D-Iowa) and passed on to the Air Force. Gen. Ryan ordered an investigation, Gen. Lavelle was demoted from four-star to three-star rank and retired. End of story.

Only a lot of little details kept coming to the surface which prolong the story. For one thing, Gen. Lavelle, in testimony to the investigating subcommittee of the House Armed Services Committee, said that his practice of hitting the enemy first and then calling it "protective reaction" was widely known in Vietnam. He asserted that the commanding general in Vietnam, Creighton Abrams, was aware of the practice.

Then there is a curious set of developments that took place on March 8—the day the first evidence of the bombing excess was supposedly made known to Gen. Ryan. On that very day in Vietnam, the Air Force suddenly stopped giving detailed briefing accounts of raids over North Vietnam.

Maybe that's just coincidence. But a more likely explanation is that Air Force headquarters at the Pentagon was at least dimly aware of the violations for a long time.

As soon as the sergeant's letter surfaced, the higher-ups knew without investigating what the trouble was. Accordingly they moved with unwonted speed, the kind of speed they reserve for such occasions, to cover up evidence.

On top of that, there is the treatment accorded Rep. Otis Pike, the New York congressman who has forced the issue to the surface. When Pike first began looking into the matter in April, he ran into a stone wall of silence at the Pentagon. When he raised the matter on May 15 in a speech on the House floor, the Air Force made a statement so innocent of information that Pike felt obliged to return to the issue in a second floor statement the next day.

On two occasions, very high officials in the Pentagon intervened to muzzle Pike. Once, it seems, Gen. Ryan offered to give him the true facts providing Pike kept them to himself. Pike refused.

On a second occasion, it seems, Defense Secretary Melvin Laird offered to give Pike the true story provided Pike kept it off the record. Pike again refused.

Finally and most importantly, there is the demeanor and personality of Gen. Lavelle. Nothing in his background suggests the one-man operation; everything points toward the conformist. He came up in the Air Force as a manager rather than a hot pilot. He is a non-West Pointer who has apparently always wanted to be a West Pointer.

From this evidence my own sense is that as Hanoi began preparing for its spring offensive, there was throughout the Vietnam command a growing disposition to hit the build-up in North Vietnam. Many strikes that went beyond the strict orders of "protective reaction" were probably carried out

with the tacit consent of the brass in Washington and Saigon.

When the violation of orders became known, the instinct of the system was to find a scapegoat. Gen. Lavelle, loyal to the Air Force all the way, stepped forward.

If that interpretation is correct, it suggests that the problem of controlling the military is no mere matter of enforcing discipline on a few Hotspurs. It involves the far more difficult task of bending to the cruel logic of a limited war a vast, highly organized and impenetrable bureaucracy that does not understand or, in its heart, accept the limits. It is an almost impossible task—which is one more reason why the country needs to be out of Vietnam.

[From the New York Times, June 19, 1972]

UNAUTHORIZED BOMBING IS LAID TO RELAXATION OF NIXON CONTROL

(By Seymour M. Hersh)

WASHINGTON, June 18.—A number of former Government defense specialists believe that the recent disclosure that Gen. John D. Lavelle conducted a series of unauthorized bombings of North Vietnam reflects an even larger problem—the Nixon Administration's relaxation of command and control over the air war in Southeast Asia.

In a series of interviews last week, the specialists—all of whom worked in the Pentagon or the White House for the Nixon Administration—agreed that President Nixon's decision, made early in his administration, to consolidate authority in the hands of a few men in the national security structure and to remain more remote from day-by-day military planning loosened Washington's ability to control Air Force activity in Vietnam.

More than half a dozen specialists were interviewed, including men who had direct responsibility for the over-all planning and focus of the air war. For reasons of security, the men—four of whom worked in similar positions during the Johnson Administration—did not discuss any specific incidents that occurred during their tenure with President Nixon.

"THINGS GET VERY SLOPPY"

One man who recently left the Government stressed that the command and control system, with its reliance on the forwarding of orders down the chain of command to tactical units, "is by its nature capable of incredible sloppiness."

"If you don't go and check things up," he added, "things get very sloppy."

In the current dispute, General Lavelle was relieved as commander of the Seventh Air Force in Southeast Asia and demoted after ordering—by his own admission—"in the neighborhood" of 20 unauthorized bombing attacks on military targets in North Vietnam and reporting them to higher authorities as "protective reaction." The strikes took place between November, 1971, and March, 1972.

Because of the vastness of the undertaking in Indochina, the loss of command and control of military commanders in the field is not unique to the Nixon Administration. Some of the Government specialists recalled lapses in command and control during the Johnson Administration as well.

One source mentioned the bombing of Hanoi in December, 1966, just after the United States had received indications from an envoy that the North Vietnamese were willing to open peace discussions in Warsaw. A second major incident during the Johnson Administration involved the bombing of two Soviet ships in Haiphong harbor by American Air Force jets. The pilots in that case, along with their commander, were court-martialed.

The Mylai massacre—involving the slaughter of 300 civilians by American troops—also took place during the Johnson Administration. No charges were filed in the case for 18 months after it was first reported to the Pentagon in a letter from an enlisted man—a pattern similar to that in the Lavelle incident.

BENDING THE RULES

In interviews last week, a number of former photo intelligence analysts said that at least 20 unauthorized "protective reaction" raids on such targets as oil and truck depots were planned in advance and carried out each month by the Seventh Air Force throughout 1970 and 1971. General Lavelle took over his command in July, 1971, indicating that such abuses—if the allegations are true—were carried out by his predecessors.

One former key White House aide acknowledged that he and others had "assumed" that some of what he termed "bending of the rules" of protective reaction had been going on in the last three years.

"I don't think that there was an effort made to look carefully into every single P.R. raid," he said, explaining that it would be considered "within the rules of the game" for Air Force and Navy reconnaissance aircraft operating in North Vietnam to provoke enemy missile batteries or antiaircraft guns into action.

Under the rules of "protective reaction" as enunciated in 1969, when such strikes were formally initiated, American fighter planes flying escort for the unarmed reconnaissance missions could bomb and strafe North Vietnamese missile and gun positions after enemy action.

In his appearance before a House of Representatives subcommittee last week, General Lavelle admitted that he had ordered his subordinates always to list "enemy action" in filing official after-action reports to justify the unauthorized raids.

The former White House aide, asked about the general's testimony and the reports of earlier abuses of "protective reaction," declared that such action would not be within the informal rules as the White House understood them. He added that the staging of offensive and unauthorized "protective reaction" missions without reporting all of them, as also was alleged by some former intelligence personnel last week, "would be out of bounds." Also ruled out would be the bombing of enemy supply depots and similar targets, he said.

"CONSPIRACY" REJECTED

This official categorically rejected, as did all the others interviewed, the conclusion that the Nixon White House was aware of all the "protective reaction" raids and in fact had a role in planning them in an attempt to apply maximum, but covert, pressure on North Vietnam. Such views had been expressed privately by some high-ranking former Johnson Administration officials.

"I don't see a big conspiracy," he said. "In fact, I think the White House role has often been one of restraint" on the military. Nonetheless, he said he believed that "L.B.J. had more command and control over the military—but at a higher cost of military irritation."

"Under Nixon," he said, "the rules of engagement have been more relaxed."

Another former White House official, who also was closely connected with planning for the Vietnam war, gave the following analysis to explain why he thought command and control had eroded under the Nixon Administration:

"The chain of command, particularly with McNamara, was much tighter. McNamara dealt much more frequently, in my opinion, on matters of strategy with the President than Laird does. McNamara was an intensely loyal and selfless man and he really did rule military operations with a very firm hand—that was the source of much of the military's difficulty with him. The chain of command worked much better because the communication was much better."

[From the Evening Star, June 18, 1972]

REDS SAID B–52's MADE UNAUTHORIZED RAIDS

(By Orr Kelly)

Hanoi Radio complained repeatedly during the period when authorized air raids were being made against North Vietnam that B52 bombers and naval gunfire were striking at targets in the northern half of the demilitarized zone.

The Air Force acknowledged last week that Gen. John D. Lavelle had permitted his pilots to carry out 28 unauthorized "protective reaction" missions, involving single attacks by 147 planes, against targets in North Vietnam between Nov. 8, 1971, and March 8, 1972.

Pentagon officials, asked last week about the North Vietnamese charges, insisted that B52s did not attack targets in the North between the bombing halt in 1968 and the resumption of bombing in April 1972 after the beginning of the current enemy offensive.

Big-bomber attacks like those described by the North Vietnamese would have gone beyond the concept of "protective reaction" and would have violated the "understandings" that ended the bombings in 1968.

The officials did acknowledge, however, that the rules covering "protective reaction" had been relaxed in the months preceding the current offensive to permit large-scale attacks not only on offending antiaircraft sites but also upon surrounding barracks, fuel dumps, trucks and other military installations.

But they insisted that the investigation of the Lavelle case, who was dismissed as commander of American air forces in Southeast Asia because he exceeded the rules on bombing, had uncovered no evidence of violations involving the B52 bombers or collusion by the Navy in the violations.

As commander of the 7th Air Force, Lavelle had direct command over Air Force fighter-bombers based in South Vietnam and Thailand. As deputy for air in the overall American military command in South Vietnam, he had operational control over the Strategic Air Command's B52 bomber force based on Thailand and on Guam, and coordinated Navy and Air Force operations.

DISCREPANCIES FOUND

A review of broadcasts by Hanoi Radio, published here by the government's Foreign Broadcast Information Service, showed that there was a broad correspondence between American announcements of "protective reaction" air strikes and North Vietnamese complaints about attacks on their country. There was frequent disagreement over the type of targets and the number of planes involved, but general agreement on the time and place that something had happened.

The major discrepancy involved the frequent complaint by North Vietnam that B–52's were hitting in the northern portion of the Demilitarized Zone—the area they call the "Vinh Linh Special Area."

On some occasions, the reports of raids in the northern part of the DMZ came on the same days that the American command reported raids in the Southern portion. On other days, however, there were no U.S. reports of B52 activity near the border.

A comparison of North Vietnamese and American statements at the time, and recent conversations with Pentagon officials also revealed these other aspects of the air war during that four-month period:

Major air raids were conducted in the first 11 days of March, 1972, but were reported only as 25 distinct "protective reaction" missions. The U.S. command refused to reveal the number of planes involved.

A North Vietnamese group, the Commission for Investigation of the U.S. Imperialists, War Crimes in Vietnam, issued a special communique on March 16 in which it said 300 sorties had been flown against targets in

the DMZ and three provinces between March 1 and 10.

Large raids were also apparently carried out on Nov. 7 and 8; Nov. 21 to Dec. 5; Dec. 18; Jan. 19 to 30; Jan 31, Feb. 1 and Feb. 18 to 25. In addition, there were announced limited-duration attacks from Dec. 26 to 30 and on Feb. 16 and 17.

Navy planes participated in about half of the attacks during the periods of concentrated bombing. But Pentagon officials insisted no evidence had been uncovered that the Navy had either violated the rules of engagement or falsified reports—the two violations that led to Lavelle's dismissal and retirement.

The difference between the Air Force and Navy operations, one Pentagon official explained, was that the Air Force planned and carried out attacks regardless of whether there was enemy-initiated action that would justify an America reaction. The Navy was always careful that it could justify its reaction before attacking.

As the evidence of the enemy's imminent spring offensive into South Vietnam became increasingly apparent, the rules of engagement were relaxed to permit heavy reaction raids, officials said. Pilots were permitted to attack not only the gun, missile site or radar that had threatened them, but also other installations in the area that could be said to support the gun, missile, or radar.

A liberal interpretation was also permitted of the time in which the reaction could take place. Both American and North Vietnamese accounts indicate that reinforcements from the fleet offshore were called in to help out.

On Jan. 19 and again on March 6, for example, the Navy planes staged major attacks on the Quang Lang airfield area north of Vinh. Hanoi Radio reported that "many waves" of planes were involved in the Jan. 19 battle in which the Navy claimed the destruction of a Mig 21 fighter plane.

During this period, both the Navy and the Air Force practiced a form of selective "protective reaction" according to Pentagon officials. Reconnaissance planes flying over North Vietnam were fired upon with increasing frequency, but the reaction would often be reserved for certain critical areas—such as the Quang Lang airfield—that the military commanders were eager to hit.

Reports from Lavelle's headquarters not only falsified the enemy actions but reported some attacks as having been carried out against one target when the attack was actually aimed at another target, Pentagon officials said. A report, for example, would describe the target as a missile site when in fact the primary target was a nearby fuel dump.

Congressional sources said the numbers of sorties reported by Hanoi Radio during some parts of the four-month period were much larger than the number of sorties reported in a classified document to members of Congress. The number of sorties flown against targets in the north was not publicly announced in the past but is being announced during the current bombing campaign.

Defense Secretary Melvin R. Laird ended a visit to Saigon on Nov. 6, just before Lavelle's unauthorized raids reportedly began. Hanoi Radio complained on Nov. 8 about attacks by "many planes" and blamed the increase in air activity on Laird. Pentagon officials have insisted, however, that Laird remained unaware of the unauthorized raids until a sergeant wrote to Sen. Harold Hughes, D-Iowa, and began an Air Force investigation.

Pentagon officials say they know of no explanation for the continued North Vietnamese complaints about B52 attacks on the northern portion of the DMZ.

During the period before B52 attacks on North Vietnam were authorized in April, they said the policy was to keep the big planes away from areas where the surface-to-air missiles were located.

On Feb. 8, however, the war crimes commission said in a broadcast that the big planes had carried out 47 sorties and dropped 1,410 tons of bombs in "16 carpet (heavy) bombings" in and just north of the DMZ during January. And on March 7, it said the B52 attacks were continuing "on an almost permanent basis."

[From the New York Times, June 21, 1972]

RAIDS' IMPACT OVERSTATED, EX-AIR FORCE MEN SAY

(By Seymour M. Hersh)

WASHINGTON, June 20.—A number of former Air Force photo interpreters—the men who help pick future bombing targets and assess results from previous raids—believe that the military has consistently exaggerated the effectiveness of bombing results in North Vietnam.

More than a dozen former intelligence specialists were interviewed by The New York Times in the last five days and, without exception, they contended that misleading bombing claims were routinely processed at intelligence centers in Thailand, in South Vietnam and at Pacific Air Force headquarters in Honolulu.

Bradly V. Ochanber of Honolulu, a former sergeant who left the Air Force in May after serving as a photo interpreter with the Pacific command, told of a mission in which five or six Air Force planes dropped at least 50 bombs in a futile attempt to destroy a truck, which was subsequently reported as destroyed.

"The fact is that the truck had been sitting there for six weeks and was a derelict," Mr. Ochanber said. "I went back through our reconnaisance films and saw it constantly."

Former Sgt. Michael A. Lewis, who served in photo intelligence with Seventh Air Force headquarters in Saigon, said: "We used to just inflate our statistics all the time. We knew it wasn't accurate but we really didn't care.

CHURCH WAS LISTED

Most of the enlisted men in his unit "were against the war and really didn't care" said Mr. Lewis, who is now a student at the University of Michigan at Ann Arbor.

"The supervision was very poor," he added. "The major and the colonel never bothered to check us out and make sure that we were doing a good job.

"Those who were supposed to check were the sergeant and the career enlisted men, but they were more interested in rank and organization than in the information we were putting out."

Another former intelligence specialist, in an account verified by two of his former colleagues, told of seeing a bombed-out church in the middle of a village that had been targeted by his unit at Udon Air Force Base in Thailand.

"I could see dogs, buffalo and goats around," said the youth, who has one more month of Air Force active duty remaining and asked not to be identified. "Most of the people had gone and the church was smoking. I was mad, but the captain said I couldn't report any villages as being hit. He doctored the report to make it look like it was a storage area."

Former Sgt. Alvin R. Knoblock of Birmingham, Mich., who served with the 432d Intelligence Squadron based at Udon, also told of occasions when he and other photo specialists would locate what they suspected were enemy tanks on reconnaissance film. "This was a pretty big thing," Mr. Knoblock said, "but it got stymied right there in headquarters."

Since the suspected tank sightings were not confirmed, Mr. Knoblock went on, the reports were not sent to higher headquarters. "The officers would say it'll raise too much trouble and we'd have to make extra prints," he said.

Mr. Knoblock also said that some of the bombing in North Vietnam was extremely inaccurate, often missing its primary target by 10 miles or more.

"We kept finding this one armored truck which you don't find too often," he related. "They tried a few times and said, 'Oh, the thing's destroyed.' A few days later someone got in the truck and drove it away."

SAYS KISSINGER WAS AWARE

In subsequent interviews, a number of former high-ranking Government officials—some of whom served in key White House jobs during both the Johnson and Nixon Administrations—acknowledged that they had grave doubts about the quality of bombing intelligence.

"It was all so bad," one key former official said. "We are always so skeptical of all the reports. The numbers were so bad."

"Kissinger knew it as well as anyone did." he added, referring to Henry A. Kissinger, President Nixon's national-security adviser.

Most of the airmen left the service well before the current bombing campaign and the mining of the harbor at Haiphong, which many senior Goverment officials believe are having a serious effect on North Vietnam's ability to keep sending supplies to the South.

Some of those raids have utilized the so-called "smart bombs," which are guided to their targets by laser and television technology. Most of the bombing of the North, however, has involved conventional high-explosive ordnance.

Mr. SYMINGTON. Mr. President, will the able Senator yield?

Mr. HUGHES. I am happy to yield to the Senator from Missouri.

Mr. SYMINGTON. I commend my able colleague for bringing this matter to the attention of the Senate.

The Senator sent me a letter that he had received from a serviceman, leaving the name off. I, in turn, sent the letter to the Secretary of the Air Force. Later the Chief of Staff of the Air Force told me the matter was being handled, and asked I not say anything about it at that time.

It is also my understanding from a reputable source that the general said, when he testified before the House, his actions were known to his superiors. I regret the Senate Armed Services Committee did not check the story from the Senator from Iowa that brought out this unfortunate incident about civilian control of the military, a subject with which I have had some experience.

Let me ask the able Senator from Iowa if he does not believe this question should be explored. The morning press says General Abrams is to be the new Chief of Staff of the Army. I was briefed earlier this year in Vietnam by General Abrams and General Lavelle together; and it is hard to understand how this covert bombing could have gone on so long without other people knowing about it. Naturally, I have a special feeling for the Air Force, nor do I like to see one man take the full rap for something which others may have known about. It is difficult for anybody who knows anything about the military to believe this could have gone on over a period of weeks, if not months, without the knowledge of Lavelle's superiors.

So I would ask my good friend from Iowa, who is making another contribution to the country in his talk this morn-

ing, does he not believe this matter should be explored thoroughly?

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business for not to exceed 6 minutes, with statements limited therein to 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Iowa.

Mr. HUGHES. Mr. President, in response to the question of the distinguished Senator from Missouri, I believe the facts indicate, if I am correct, that bombing missions, which were planned in advance, at least partially, were carried out by pilots bombing targets that were not within the spectrum of assigned orders, and then when the debriefing of the pilots was accomplished, reports were filed which were falsified.

Obviously, assessment of the bombing damage by aerial intelligence would have indicated that the bombing targets were different from those in the reports that were filed. Those reports must have gone all the way to the top, and the assessment of bombing damage must have gone all the way to the top. Someone at the top had to realize either that the pilots were so inaccurate in their bombing that they were not even coming close to the targets, but at the same time were hitting important targets at different positions in Southeast Asia, or that, with precision bombing for our day and our time, it was intentional.

So I think the opinion of the Senator is completely in line with what was happening. This matter, in my opinion, must be cleared up before the nomination of General Abrams, which has been forwarded by the White House to the Senate, can be considered by the Armed Services Committee without questions arising as to who on top knew what was happening in Southeast Asia during the bombing offensive that was unauthorized the Secretary of Defense himself has said the orders could not possibly have been misinterpreted, and that it was a direct violation of those orders.

I think the Senator from Missouri, as a former Secretary of the Air Force, knows full well the implications of the necessity for discipline in carrying out orders. I have appreciated the Senator's help and contributions in this matter.

Mr. SYMINGTON. I thank the distinguished Senator from Iowa. Let me emphasize I am in no way criticizing anybody additional, just do not see, based on past experience, how only one man, over a period, could have operated in this way.

In no way do I criticize General Abrams, or the Secretary of the Army or the Secretary of Defense, or anybody else, including the Chiefs, but I do think that the Senate and the people of the United States are entitled to know all the truth.

Mr. HUGHES. I think the Senator would agree that I am not criticizing anyone who has not yet publicly admitted violating, or who investigation has not yet indicated has violated, the rules and regulations not only of the Department of Defense but of the President of the United States. But the inquiry should necessarily be held in order to eliminate any questions that could arise. For that reason, again, I want to join with the Senator in saying I am not pointing the finger at or raising a question against any personality. I am only saying that both the Senate and the people of America are entitled to answers to these unanswered questions.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. SYMINGTON. Mr. President, may I have 2 minutes?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the period be extended for 3 minutes, and I yield that time to the able Senator from Missouri.

Mr. SYMINGTON. I thank the able Senator.

There is no question that General Lavelle disobeyed orders. He so admits, and he should be criticized. At the same time, however, I think we should find out how an operation of this character could have gone on over quite a period without others knowing of it.

I intend to write, and have already requested verbally, to the chairman of the Armed Services Committee, suggesting that General Lavelle be brought before the committee at the committee's convenience. Again, I am much impressed by the factual data that has been presented by the able Senator from Iowa, who is a member of that committee.

Mr. HUGHES. I thank the Senator from Missouri, and I yield back my remaining time to the acting majority leader.

REPORTS OF COMMITTEES

The following reports of committees wee submitted:

By Mr. MAGNUSON, from the Committee on Appropriations, with amendments:

H.R. 15417. An act making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending June 30, 1973, and for other purposes (Rept. No. 92-894).

By Mr. EASTLAND, from the Committee on the Judiciary, without amendment:

S. 2147. A bill for the relief of Marie M. Ridgely (Rept. No. 92-895);

H.R. 632. An act for the relief of the village of River Forest, Illinois (Rept. No. 92-898);

H.R. 3227. An act for the relief of Staff Sergeant J. C. Bell, Junior, United States Air Force (Rept. No. 92-899);

H.R. 4083. An act for the relief of Thomas William Greene and Jill A. Greene (Rept. No. 92-900);

H.R. 5318. An act for the relief of Mrs. Fernande M. Allen (Rept. No. 92-901);

H.R. 6666. An act for the relief of Major Michael M. Mills, United States Air Force (Rept. No. 92-902); and

H.R. 6820. An act for the relief of John W. Shafer, Junior (Rept. No. 92-903).

By Mr. EASTLAND, from the Committee on the Judiciary, with an amendment:

S. 910. A bill for the relief of Dennis Keith Stanley (Rept. No. 92-896);

S. 2753 A bill for the relief of John C. Mayoros (Rept. No. 92-897); and

H.R. 2118 An act for the relief of Amos E. Norby (Rept No. 92-904).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, without amendment:

S. Res. 311. A resolution authorizing supplemental expenditures by the Committee on Foreign Relations for a study of matters pertaining to the foreign policy of the United States (Rept. No. 92-907);

S. Res. 314. A resolution to print the Annual Report of the National Forest Reservation Commission as a Senate document (Rept. No. 92-908);

S. Res. 323. An original resolution authorizing the printing of a revised edition of the "Election Law Guidebook" as a Senate document (Rept. No. 92-909);

S. Res. 324. An original resolution to pay a gratuity to Lewis J. Swagger;

S. Res. 325. An original resolution to pay a gratuity to Gretchen E. Jenkins;

H.R. 10595. An act to restore to the Custis-Lee Mansion located in the Arlington National Cemetery, Arlington, Virginia, its original historical name, followed by the explanatory memorial phrase, so that it shall be known as Arlington House, the Robert E. Lee Memorial (Rept. No. 92-910); and

H.J. Res. 812. A joint resolution to authorize the Secretary of the Interior to participate in the planning and design of a national memorial to Franklin Delano Roosevelt, and for other purposes (Rept. No. 92-911).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, with an amendment:

S. Res. 313. A resolution authorizing the printing of the report entitled "The Economics of Clean Air, Summary of Analysis" as a Senate document (Rept. No. 92-912); and

S. Res. 320. A resolution making $30,000 available to the Committee on Appropriations from the contingent fund (Rept. No. 92-913).

By Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, with amendments:

S. Res. 304. A resolution authorizing expenditures by the Special Committee on the Termination of the National Emergency (Rept. No. 92-914);

S.J. Res. 204. A joint resolution to authorize the preparation of a history of public works in the United States (Rept. No. 92-915); and

S.J. Res. 221. A joint resolution to designate Benjamin Franklin Memorial Hall at the Franklin Institute, Philadelphia, Pa., as the national memorial to Benjamin Franklin (Rept. No. 92-916).

By Mr. PELL, from the Committee on Rules and Administration, with an amendment:

H.J. Res. 55. A joint resolution proposing the erection of a memorial on public grounds in the District of Columbia or its environs in honor and commemoration of the Seabees of the United States Navy (Rept. No. 92-917).

REPORT ENTITLED "CONSTITUTIONAL AMENDMENTS"—REPORT OF A COMMITTEE (S. REPT. NO. 92-905)

Mr. BAYH, from the Committee on the Judiciary, submitted a report entitled "Constitutional Amendments," which was ordered to be printed.

REPORT ENTITLED "IMMIGRATION AND NATURALIZATION"—REPORT OF A COMMITTEE (S. REPT. NO. 92-906)

Mr. EASTLAND, from the Committee on the Judiciary submitted a report entitled "Immigration and Naturalization," which was ordered to be printed.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, The following favorable reports of nominations were submitted:

By Mr. TALMADGE, from the Committee on Agriculture and Forestry:

Carroll G. Brunthaver, of Ohio, to be an Assistant Secretary of Agriculture; and

Carroll G. Brunthaver, of Ohio, to be a Member of the Board of Directors of the Commodity Credit Corporation.

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

George S. Ives, of Maryland, to be a member of the National Mediation Board.

Mr. STENNIS. Mr. President, from the Committee on Armed Services I report favorably 76 appointments and promotions of general and flag officers in the Army, Navy, Marine Corps, and Air Force. I ask that these nominations be placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, in addition I report favorably 4,371 promotions and appointments in the Army in grade of colonel and below; 639 appointments in the Navy in grade of captain and below; 194 appointments in the Marine Corps in grade of first and second lieutenants; and 1,983 promotions and appointments in the Air Force in grade of colonel and below. Since these names have already appeared in the CONGRESSIONAL RECORD, in order to save the expense of printing on the Executive Calendar, I ask unanimous consent that they be ordered to lie on the Secretary's desk for the information of any Senator.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The nominations ordered to lie on the Secretary's desk were printed at the end of the Senate proceedings of June 7, 12, and 13, 1972.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. MONDALE (for Mr. INOUYE):

S. 3730. A bill for the relief of Mr. and Mrs. Eduardo Quiroz Luber (Mrs. Engracia L. Luber); and

S. 3731. A bill for the relief of Miss Juana Gamulo. Referred to the Committee on the Judiciary.

By Mr. BROOKE:

S. 3732. A bill to amend the Federal Aviation Act of 1958 and the Interstate Commerce Act in order to authorize free or reduced rate transportation for persons who are 65 years of age or older. Referred to the Committee on Commerce.

By Mr. JACKSON (for himself and Mr. ALLOTT) (by request):

S. 3733. A bill to amend the National Environmental Policy Act of 1969 to provide a temporary partial exemption from the requirements for the issuance of environmental impact statements. Referred to the Committee on Interior and Insular Affairs.

By Mr. McGOVERN:

S. 3734. A bill to amend the Disaster Relief Act of 1970;

S. 3735. A bill entitled "Black Hills Disaster Relief Act of 1972.";

S. 3736. A bill to amend the Disaster Relief Act of 1970 to provide for public recreation facilities; and

S. 3737. A bill to amend the Disaster Relief Act of 1970. Referred to the Committee on Public Works.

S. 3738. A bill to reduce interest rates on SBA disaster loans. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BELLMON:

S.J. Res. 249. Joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States, and to the direct popular election of such officers. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BROOKE:

S. 3732. A bill to amend the Federal Aviation Act of 1958 and the Interstate Commerce Act in order to authorize free or reduced rate transportation for persons who are 65 years of age or older. Referred to the Committee on Commerce.

REDUCTION IN TRANSPORTATION FARES FOR THE ELDERLY

Mr. BROOKE. Mr. President, I have introduced today legislation that would authorize interstate airlines, trains, and buses to provide reduced fares for passengers over 65 years of age.

Many elderly citizens and members of their families have told me of their wishes for a greater opportunity to visit children and grandchildren who live throughout the United States. In addition, many of the elderly very much wish to travel for pleasure to areas that they have not previously been able to visit.

Statistics show only 5 percent of all airline passengers during the past year were over 65. Yet, 10 percent of the population is in this age bracket, and great numbers of these older citizens have the leisure time available for travel.

Last year, I suggested to the airlines and the Civil Aeronautics Board that the airlines should gladly make a greater effort to attract these potential passengers with rates that more of them could afford, especially in view of the continuing large number of empty seats on a majority of all air flights. Similarly, a majority of all seats on intercity buses and trains are unfilled.

Regrettably, none of these services have yet responded to this suggestion. Therefore, it is now time for the Congress to take the matter into its own hands and approve a proposal for reduced rates for the elderly on all public codes of transportation.

The bill I have filed today authorized the Federal Aviation Administration, and the Interstate Commerce Commission to grant reduced-rate transportation for persons aged 65 and older. As a result of legislation recently approved by Congress, ratesetting provisions pertaining to the Interstate Commerce Commission are also applicable to Amtrak, the National Rail Passenger Corporation.

This proposal is equitable for several reasons. It gives the elderly a greater opportunity to travel and to enlighten their retirement years with pleasant experiences. It provides to citizens, young and old, the opportunity to maintain greater family unity. And practically speaking, it fills seats in many vehicles that now go empty.

In the past, regulatory agencies have approved discounts by common carriers to several groups of passengers, including youth, military, religious leaders, and carrier employees and their families. As a result, it was especially disconcerting to me to learn that the Civil Aeronautics Board rejected a request from KLM, the Royal Dutch Airlines, to implement lower fares for senior citizens flying between the United States and Amsterdam.

Both the propriety and the need for legislation is clear: senior citizens should no longer be forced to remain at home because the costs for travel continue to rise. Because Congress has traditionally not set specific rates, I have not written into the bill the amount of the discount. Nonetheless, I would suggest that, should this legislation be approved, interstate airlines, trains, and buses consider providing significant discounts in the range of 30 to 50 percent.

By Mr. JACKSON (for himself and Mr. ALLOTT) (by request):

S. 3733. A bill to amend the National Environmental Policy Act of 1969 to provide a temporary partial exemption from the requirements for the issuance of environmental impact statements. Referred to the Committee on Interior and Insular Affairs.

Mr. JACKSON. Mr. President, on behalf of myself and the senior Senator from Colorado (Mr. ALLOTT) I introduce, by request, a proposed bill "to amend the National Environmental Policy Act of 1969, to provide a temporary partial exemption from the requirements for the issuance of environmental impact statements." This measure has been proposed by the administration and was transmitted to the Senate on May 24, 1972. I ask unanimous consent that the letter of transmittal by the Administrator for the Environmental Protection Agency and the proposed bill be printed in the RECORD at the conclusion of my remarks.

Mr. President, my introduction of this measure is at the request of the administration and is for the purpose of insuring that the administration's legislative program receives that formal attention of the Senate and does not necessarily indicate my concurrence in the merits of the proposed legislation.

There being no objection, the letter and bill were ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., May 24, 1972.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill, "To amend the Na-

tional Environmental Policy Act of 1969 to provide a temporary partial exemption from the requirements for the issuance of environmental impact statements."

Under Executive Order 11574, directing the establishment of a water quality permit program, EPA is responsible for advising the Corps of Engineers concerning the relation between discharges subject to permits and water quality standards and related considerations. Under the guidelines issued by the Council on Environmental Quality on Federal agency responsibilities under the National Environmental Policy Act (NEPA), we have considered that our actions under this Order were environmental regulatory actions, and that impact statements were not required by NEPA in connection with such actions.

However, in the recent case of *Kalur* v. *Resor* the District Court for the District of Columbia held that NEPA required the preparation of impact statements in connection with the issuance of Refuse Act permits. The court also enjoined the Corps of Engineers from issuing permits for discharges into navigable waters until such time as the Corps amended its regulations to require impact statements under NEPA.

The Department of Justice is appealing the *Kalur* decision. However, many months will undoubtedly elapse before these issues can be resolved in the appellate courts. We have examined the potential effect on the Refuse Act permit program of applying to that program the full requirements of section 102(2)(C) with regard to impact statements. It is difficult to estimate the cost that such a decision would entail in dollars and in time delays, since available case law provides little guidance for determining which permits would be classified as "major" actions having a "significant" impact. Our present estimate is that EPA will be called upon to make recommendations to the Corps of Engineers in connection with about 20,000 pending applications. If even a fraction of these are determined to be major Federal actions, thousands of impact statements could be required. Accordingly, we have concluded that the administrative burden of writing impact statements with respect to these pending permits would at this time be incompatible with the need to carry out an effective permit program under the Refuse Act. In our judgment, further delay in effecting such a program will jeopardize our efforts to protect the environment through vigorous enforcement of water quality standards.

The proposed bill would exempt the Refuse Act permit program administered by the Environmental Protection Agency and the Corps of Engineers from the requirements of section 102(2)(C) of the National Environmental Policy Act until December 31, 1975. However, this exemption would not apply to permits for discharges from sources on which construction commenced after April 1, 1972. In addition, any permit issued before December 31, 1975 would expire on December 31, 1977, unless the Administrator of the Environmental Protection Agency were to publish a determination that its issuance did not constitute a major Federal action significantly affecting the quality of the environment, or unless there had been compliance with section 102 of NEPA. The exemption provided by the bill would also apply to the issuance of permits by the Administrator under the permit program which would be established by the Federal Water Pollution Control Act Amendments of 1972.

This proposed legislation is identical to H.R. 14103 on which hearings have been held by the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisherise.

The Office of Management and Budget advises there is no objection from the standpoint of the Administration's program to the enactment of this proposed legislation.

Sincerely,

WILLIAM D. RUCKELSHAUS,
Administrator.

S. 3733

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Environmental Policy Act of 1969 (83 Stat. 852) is amended by adding a new section to read as follows:

"SEC. 106. The provision of section 102 (2)(C) of this Act providing for the preparation and filing of environmental impact statements shall not apply to the issuance on or before December 31, 1975, of permits under section 13 of the Act of March 3, 1899, or under section 402 of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, or to any action taken by any Federal agency in connection with such issuance: *Provided,* That unless the Administrator of the Environmental Protection Agency determines, and publishes his determination, that the issuance of any such permit does not constitute a major Federal action significantly affecting the quality of the human environment, such permit shall not remain in effect beyond December 31, 1977, unless there has been compliance with section 102 of this Act: *And provided further,* That this section shall not apply to any permit for a discharge from a facility on which construction commenced after April 1, 1972. Nothing in this section shall be construed as affecting any other requirements or procedures established by, or pursuant to, this Act."

By Mr. McGOVERN:

S. 3734. A bill to amend the Disaster Relief Act of 1970;

S. 3735. A bill entitled "Black Hills Disaster Relief Act of 1972";

S. 3736. A bill to amend the Disaster Relief Act of 1970 to provide for public recreation facilities; and

S. 3737. A bill to amend the Disaster Relief Act of 1970. Referred to the Committee on Public Works.

S. 3738. A bill to reduce interest rates on SBA disaster loans. Referred to the Committee on Banking, Housing and Urban Affairs.

THE BLACK HILLS DISASTER

Mr. McGOVERN. Mr. President, I am sure all Members of this body join me in mourning the missing and the dead after the tragic flood of June 9 and 10 in the Black Hills. The people of Rapid City and the Black Hills are gratified by the response of humanitarian persons throughout the United States and the world. Within hours of the word of the tragedy, outpourings of aid were on their way to Rapid City.

A personal visit on June 11 and reports from governmental and other leaders have convinced me that all that possibly could be done immediately after the disaster were carried out with great efficiency. I particularly commend the Office of Emergency Preparedness, the South Dakota National Guard, the officers and men of Ellsworth Air Force Base, the county commissioners of Pennington County, the Pennington County Civil Defense Officials, Pennington County State legislators, and the Rapid City Common Council, and agencies of South Dakota State government.

A special tribute is due Rapid City Mayor Don Barnett, the Pennington County Sheriff's Office, the Rapid City Police Department, the Rapid City Fire Department and the Rapid City Street Department who all worked incessantly and unflaggingly until the immediate threats to life and property were brought under control. I should add, Mr. President, that thousands of others gave their time and energy immediately after the flood and on into the aftermath. Personally, I wish to thank the many Members of the Senate for their offers of timely advice and staff assistance.

It seems to me to be appropriate at this time to present a brief account of the scope of the disaster and some of my concerns for the future. According to the Office of Emergency Preparedness, the death toll stood at 213 as of Monday. Some 63 persons are hospitalized as a result of the disaster. Another 350 to 400 persons are unaccounted for. It is my fervent hope and prayer that the many missing are alive and well. Originally, as many as 1,500 persons had been reported missing. Nonetheless, it is very likely that the number of dead may ultimately reach 300 despite our hopes and prayers.

While information is in some details still sketchy, I would like to offer this brief chronological account of the flood which inundated parts of Rapid City, Keystone, and other communities on the eastern slope of the Black Hills. The most severe damage occurred in Rapid City and Custer, Lawrence, Meade, and Pennington Counties. The National Weather Service reported that an arctic air mass over the Great Lakes region triggered a cloudburst. The weather service estimated that 7 inches of rain fell within 3 hours, beginning at about 5 p.m. mountain daylight time on June 9. The flooding, which began during the early evening hours of June 9 in the Black Hills, continued until the early morning hours in the areas below the Black Hills.

Many houses and trailer homes were washed away in Rapid City along Rapid Creek, which meanders through the city. The creek crested at 1 a.m. June 10. Discharge on the creek reached 24,000 cubic feet per second. Further adding to the floodwaters was the failure of Canyon Lake Dam on Rapid Creek at the extreme western edge of the city. When the dam broke, additional tons of water were added to the flood crests. Other creeks which flooded and caused severe damage include the Box Elder, Little Elk, Big Elk, Whitewood, Spring, Battle, and French creeks. For a few days after the flood it was uncertain if a reservoir above the city of Sturgis, S. Dak., would hold. Pumping operations and other timely actions by the Corps of Engineers, the Office of Emergency Preparedness, and State and local officials saved the dam.

In Rapid City, the floodwaters ruptured gas mains, downed power lines, and caused fires throughout the flooded area which raged uncontrolled. In addition to Rapid City the towns of Hermosa, Keystone, and Rockerville were also badly damaged by the flood. Keystone, two and a half miles north of the Mount Rushmore National Memorial, was all but obliterated. There has been no firm

estimate of property damage yet, but it is expected to range from $100 to $150 million. According to the American National Red Cross, 738 homes were destroyed by the flood. Another 1,839 homes suffered major damage and 1,979 homes were damaged to a lesser extent. In addition, 519 mobile homes were destroyed and 981 mobile homes had major damage. A total of 128 farm buildings were either destroyed or had major damage. According to the Office of Emergency Preparedness, 6,062 families suffered loss as a result of the flood.

The situation confronting Rapid City and other areas inundated by the flood is particularly acute. According to the latest report available from the Office of Emergency Preparedness, the Department of Housing and Urban Development had received 1,006 applications for temporary housing. Of these five were placed in mobile homes. By the end of last week, the American National Red Cross had provided shelter for 11,032 persons. The Red Cross provided meals for 14,000 and assisted with health and welfare problems. In addition to the Red Cross, the Mennonite Disaster Service, the Seventh-day Adventists, and the Salvation Army are also providing relief services. The Department of Labor so far has received 1,016 claims for disaster unemployment assistance and had placed 304 persons in jobs by the end of last week.

The relief and reconstruction efforts underway last week were hampered by another downpour Saturday which claimed two more lives and caused additional property damage. The extent of the property damage as a result of the second flood has not been determined.

It was gratifying to learn that Mr. Brad Patterson of the White House staff sent an official to Rapid City immediately after the disaster to assure that the civil rights provisions of the Disaster Relief Act were being followed to the letter and the spirit of the law. I have received several complaints from Indian residents of Rapid City charging discrimination in the relief operations. It is my hope that these charges will be fully investigated. The Indian population of Rapid City was particularly hard hit by the flood: Over 30 were killed in the flood and an estimated 1,000 Indian families were hit by property damage. Efforts are currently underway to resolve some of the special problems of the city's Indians. Members of the Indian community of Rapid City and State, local, and Federal officials, including the Division of Indian Health are working on those problems now.

The response of the Federal Government was, as I have indicated, timely and expertly accomplished. The Office of Emergency Preparedness fully filled its mission. So did the other Federal agencies. I was pleased to hear that Presidential Assistant Robert Finch visited the stricken area within a few days of the disaster.

The First Lady, Mrs. Richard M. Nixon, continued her outstanding tradition of compassion and concern by attending a memorial service last Saturday evening in Rapid City for the victims of the flood. Not only was her visit a genuine example of the concern of the entire Nation and the President, but her presence in Rapid City did much to bolster the area's morale, which will be sorely tested in the weeks and months ahead.

Mr. President, many Americans have been genuinely moved by this disaster. They have asked what they can do. I have been informed by the officials in the devastated area that there is no need of additional food or clothing. Mayor Barnett told me as early as June 11 that the area's greatest need is financial help. Anyone wishing to make a donation should send a check to the Mayor's Disaster Fund, Mayor Don Barnett, City Hall, Rapid City, S. Dak. 57701.

In addition to the loss of life and property in Rapid City and the Black Hills, there is another serious threat. The major industry in the Black Hills is tourism. Anyone who has ever visited the Hills will readily tell you the trip was well worth the while. There is genuine and well-founded fear that many tourists will avoid the Black Hills this year as a result of adverse publicity which naturally follows any major disaster. A bad year could cripple many of these seasonal tourist attractions and facilities. I join with South Dakota's Gov. Richard Kneip in saying that the best action an individual could take to help the economy of the devastated area would be to spend their vacation in South Dakota's Black Hills.

I have already announced my intention to spend 2 weeks in the Black Hills vacationing with my family after the Democratic National Convention. In making that announcement I pointed out that only 1 percent of the tourist facilities were in the least bit damaged by the flood. We have over 10,000 rooms and campsites and other tourist facilities available each night for tourists. Every major attraction in the area is open for business as usual, including the Mount Rushmore National Memorial. It would be a cruel blow if we were able to rebuild Rapid City, only to see our entire economy in that area collapse because vacationers altered their plans.

Rapid City and the other devastated areas are now looking to the future. Community leaders are hard at work in the difficult task of rebuilding the city. Frankly, they are not happy with the help the Federal Government is willing to provide. There are serious flaws in the Disaster Relief Act of 1970. These flaws are so serious, Mr. President, that many small businessmen and homeowners have announced their plans to file for bankruptcy unless additional financial assistance is forthcoming. The citizens of Rapid City have a very persuasive argument. They point out that our Nation is quick to rebuild a former foe and provide a greater amount of economic assistance to foreign nations struck by a major disaster than it is citizens of the United States. This is their hour of need. What we do on the Federal level may well determine the future of Rapid City and the Black Hills area.

Because of the shortcomings in existing legislation, I have asked the President to appoint by Executive order a Black Hills Rehabilitation Commission. In making that request, I cited as precedent the highly successful Federal Reconstruction and Development Planning Commission for Alaska. This Commission was formed by President Lyndon Johnson after the Alaska earthquake in March of 1964. It is my view that the emergency demands of the situation in the Black Hills require the immediate action of the President. The fact is, the homeless and the business community of the second largest city of South Dakota cannot wait for the Congress to act. Should the President agree to such a commission, it could have authority to go beyond the assistance limits provided under the Disaster Relief Act of 1970. Such a commission, funded at $75 million, would be able to compensate the homeowner and owners of small businesses for damages wraught by the flood. It is clear that a Presidential commission is the quickest and most sure way of getting the aid we need.

I have told the residents of the area affected by the flood that it is highly unlikely that the Congress would act favorably on special legislation tailored to meet the demands of the disaster. During my visit to Rapid City I said there was little precedent for such action. I have also pointed out that the rationale of the Disaster Relief Act of 1970 was to eliminate the need for special legislation.

But a review of that act does disclose that it is clearly inadequate to deal with the financial hardships facing the owners of homes and businesses. The bills I introduced today represent several ways to correct these shortcomings.

If a goal of the Disaster Relief Act of 1970 is to put victims of a disaster back on their feet financially, it is a dismal failure.

As I said earlier, many owners of homes and business concerns are considering bankruptcy as an alternative. According to the Office of Emergency Preparedness, only 76 applications for home loans and only eight business loan applications have been received by the Small Business Administration. This confirms my initial hunch as well as reports from members of my staff on the scene.

It is my view that the Disaster Relief Act should be amended to increase cancellation amount, or the forgiveness clause, from $2,500 to $15,000 for both Small Business Administration and Farmers Home Administration emergency loans.

Under the interpretation of the law "substantial damage" is construed to mean property loss of 50 percent or more. At the very least, we should spell out that a 25-percent property loss is sufficient for participation in the emergency loan program.

The law also limits the SBA or Farmers Home can refinance to the amount of the property loss. This leaves many persons paying off an old mortgage generally at much higher rates than the emergency interest rate. Again, it seems to me the very least we must do is authorize these agencies to refinance the total obligations of a damaged home, business concern or farm. The Disaster Relief Act of 1970 is also extremely re-

strictive in terms of unemployment compensation. The law provides that the benefits may not be higher than those in the State where the disaster occurred. South Dakota's benefits are relatively low. It seems to me the President should have the authority to set compensation benefits as high as those of any State.

The Disaster Relief Act of 1970 is also unduly restrictive in prohibiting assistance to recreational facilities. Rapid City, for instance, over the years built a remarkable number of parks and playgrounds. These facilities not only enhanced the quality of life for the residents of Rapid City but for thousands of tourists who visit Rapid City each year. In any case, it is my view that a public playground or swimming pool is just as much a public facility as a jail or a library. The law should be amended to reflect this reality.

Other proposals should be considered in the alternative. Strong consideration should be given to lowering the interest rate on emergency loans to 1 percent which would go a long way in helping these people as well as victims of disasters in the future. Also, the best way to approach the cancellation or forgiveness feature may be to raise it on a percentage basis, up to 90 percent of the amount of the property loss caused by the disaster.

Because of the serious deficiencies in the Disaster Relief Act and because the Congress may not want to perform a massive revision of the act at this time, special legislation for the victims of the Black Hills must be considered. Essentially, such legislation would authorize an appropriation of $75 million. These funds could be spent by a Presidential commission which would have the power to determine an equitable means of distribution of the funds to homeowners, owners of businesses, and other victims of the disaster.

Mr. President, I could comment extensively on my observations at Rapid City the day after the flood. For a time, the welfare and whereabouts of Mrs. McGovern's relatives were in doubt. The loss of life and damaged property was heartbreaking. One retired couple I visited with told me they lost three small homes to the flood. Two of the houses were rental property the couple had invested all their savings for retirement income. Unless something is done, their fate is now welfare and the dole.

Under the severe stress of the disaster, the people of Rapid City showed their mettle. If one person could be singled out for special recognition, it would have to be Mayor Don Barnett. Despite his relative youth or perhaps because of it, Mayor Barnett's prompt and decisive actions saved countless lives. He also deserves much of the credit for the close coordination of the rescue operations. Don Barnett is one of the so-called new politicians. He made a personal commitment to political life while serving as an officer in Vietnam. He chose to enter the political arena because he was not satisfied with conditions at home and our involvement abroad. It is gratifying, to say the least, that young men and women like Don Barnett throughout the Nation have chosen a career in public life. Mr. President, the New York Times of June 15 featured Mayor Don Barnett as its "Man in the News." I ask unanimous consent that the article be inserted at this point in the RECORD.

Mr. President, I also introduce, for appropriate reference, five bills to amend the Disaster Relief Act, the Small Business Act, and a bill to authorize special grant authority. I ask unanimous consent that these bills be printed in the RECORD.

There being no objection, the article and bills were ordered to be printed in the RECORD, as follows:

AN UNDAUNTED MAYOR: DONALD VERN BARNETT

RAPID CITY, S. DAK., June 14.—Among the modest trophies on the wall of Mayor Donald Vern Barnett's office is a hand-lettered, framed quotation from an article by Norman Cousins in The Saturday Review in 1971. It reads: "Optimism supplies the basic energy of civilization . . . pessimism is a waste of time." Mr. Barnett, at 29 one of the youngest Mayors in the United States, is no waster of time, no pessimist, despite what has happened to his plans and his city.

A flash flood cut through the heart of South Dakota's second-largest city last Friday, leaving more than 200 dead and damage in the tens of millions of dollars.

But as the Mayor moves about this battered city of 43,000, he says:

"Boy, I'll tell you, when people picked themselves up and started to put it together again, it made you pretty damned proud. Nobody is more proud of this city than me now."

Many put the shoe on the other foot.

"HE'S THE GREATEST"

"He's the greatest Mayor in the United States," said Mrs. Charlotte Cox, a dental assistant who went to high school with him. "Everything about him is open. He's just nice people."

The feeling is not universal, though.

One man who had kind words for the Mayor on Sunday said last night, "There's only one thing he wants—that's to be President of the United States."

Dr. William Mitchell, principal of Central High School, called Mr. Barnett a "sincere, totally committed, hard-working young man."

"Even people who voted against him when he ran have come to believe he's done a whale of a job," Dr. Mitchell said.

Mayor Barnett was elected to a two-year term in April, 1971, by a 168-vote margin. The campaign was a bitter one, centering largely on his youth. He defeated Col. John W. Barnes, retired base commander of the huge Ellsworth Air Force Base, which is just outside of town and has 14,000 residents.

After his election, Mayor Barnett drew together his opponents and his friends to plan the city's future.

One result was a convention center approved by 63 per cent of the voters and financed by a sales tax. It has not yet been built.

He also organized a citywide cleanup campaign and hauled off 1,000 truckloads of trash to the city dump.

The Mayor, born Oct. 26, 1942, in Rapid City, was shy as a boy. He stuttered in high school, something he eventually overcame. During the drive for the convention center, he made 50 or 60 speeches.

He was graduated from South Dakota State College in Brookings in 1964, having majored in political science, and studied for his Master's degree at the University of Nebraska. He taught for a time at Nebraska Wesleyan University.

NO DRAFT MOVEMENT

Mr. Barnett entered the Army with a direct commission as a Medical Service Corps officer and spent two years in Vietnam, coming home in December, 1969, as a captain. While in Vietnam, he decided to run for political office.

He ran unsuccessfully for Congress in 1970, then took a job briefly as a lobbyist for the South Dakota Consumers League.

He says he despised lobbying, and quit to return to Rapid City to run for Mayor.

"There was no 'draft Barnett' movement, I'll tell you," the Mayor recalled. "I had to go around and do it myself."

He married last February. His wife, Jo Ann, works in the trust department of the United National Bank as an assistant cashier and worries that her husband spends 80 hours a week at his $14,000-a-year job.

Mr. Barnett's father works for the local electric company and his mother at the delicatessen counter of a supermarket.

He has done his best to sell this city a positive attitude—a sense that it can grow and move ahead.

When his friend Senator George McGovern came to Rapid City to inspect the flood damage, Mayor Barnett told him:

"You take care of Nixon and I'll take care of Rapid City."

S. 3734

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 234 of the Disaster Relief Act of 1970 is amended by striking out "determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of ten to twelve years reduced by not to exceed two per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of six per centum per annum," and inserting in lieu thereof "not in excess of one per centum per annum."

SEC. 2. Section 231 of the Disaster Relief Act of 1970 (Public Law 91-606) is amended by striking out clause (1) and the language contained therein and inserting in lieu thereof "(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise, (A) shall cancel 90 per centum of the principal of the loan except that this clause (A) shall apply only to loans made to cover losses and damage and injury resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan except that any such deferred payments shall bear interest at the rate determined under section 234 of this Act."

SEC. 3. Section 232 of the Disaster Relief Act of 1970 (Public Law 91-606) is amended by striking out clause (1) and the language contained therein and inserting in lieu thereof "(1) to the extent such loss or damage or injury is not compensated for by insurance or otherwise, (A) shall cancel 90 per centum of the principal of the loan except that this clause (A) shall apply only to loans made to cover losses and damage and injury resulting from major disasters as determined by the President, and (B) may defer interest payments or principal payments, or both, in whole or in part, on any loan made under this section during the first three years of the term of the loan except that any such deferred payments shall bear interest at the rate determined under section 234 of this Act."

SEC. 4. Section 304 of the Disaster Relief Act of 1970 is amended by striking out "and 233" and inserting in lieu thereof "233, and 234."

S. 3735

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of South Dakota suffered extensive property loss and damage as a result of floods and high waters during June of 1972 (2) that much of the affected area is federally owned and administered, and (3) that the livelihood of the people in the area is dependent on prompt restoration of normal facilities, and therefore the Congress declares the need for special measures designed to aid and accelerate the State in its efforts to provide for the reconstruction of devastated areas.

SEC. 2. There is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, in addition to amounts authorized by Public Law 91–606, a sum of $75,000,000. Such sum shall be expended by any Commission created by the President which shall have determined an equitable means for distribution of funds authorized by this act to homeowners, owners of business concerns and other victims of the disaster.

SEC. 3. The Secretary of Housing and Urban Development shall undertake an immediate study of various alternative methods which could be established to help provide financial assistance to those suffering property losses from the flood, including alternative methods of Federal disaster insurance and shall report his findings to the President and the Congress and any commission the President may create, not later than two months after the enactment of this act.

SEC. 4. Any assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age or economic status prior to the disaster.

SEC. 5. The President, acting through the Office of Emergency Preparedness, shall make a survey to determine what protective works would be necessary to prevent recurrence of damage by floods in the Black Hills watershed.

SEC. 6. This may be cited as the "Black Hills Disaster Relief Act of 1972."

S. 3736

To amend the Disaster Relief Act of 1970 to provide for public recreation facilities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 252(C) of the Disaster Relief Act of 1970 (P.L. 91–606) is amended by striking out "or system, other than one used exclusively for recreation purposes." and inserting in lieu thereof "or system."

S. 3737

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 231(1) of the Disaster Relief Act of 1970 is amended by striking out "except that the total amount so canceled shall not exceed $2,500," and inserting in lieu thereof "except that the total amount so canceled shall not exceed $15,000;"

SEC. 2. Section 231(3) of the Disaster Relief Act of 1970 is amended by striking "in the case of the total or substantial property damage of a home or business concern," and inserting in lieu thereof "in the case of the total destruction or 25 per centum property damage of a home or business concern;"

SEC. 3. Section 231(3) is amended by striking "except that the amount refinanced shall not exceed the amount of the physical loss sustained;"

SEC. 4. Section 232(1) of the Disaster Relief Act of 1970 is amended by striking "except that the total amount so canceled shall not exceed $2,500," and inserting in lieu thereof "except that the total amount so canceled shall not exceed $15,000;"

SEC. 5. Section 232(3) of the Disaster Relief Act of 1970 is amended by striking "in the case of total destruction or substantial property damage of home or farm service buildings and related structures and equipment," and inserting in lieu thereof "in the case of total destruction or 25 per centum property damage of homes or farm service buildings and related structures and equipment;"

SEC. 6. Section 232(3) of the Disaster Relief Act of 1970 is amended by striking "except that the amount refinanced shall not exceed the amount of the physical loss sustained;"

SEC. 7. Section 240 of the Disaster Relief Act of 1970 is amended by striking "Such assistance as the President shall provide shall not exceed the maximum amount and the maximum duration of payment under the unemployment compensation program of the State in which the disaster occurred," and inserting in lieu thereof "Such assistance as the President shall provide shall not exceed the maximum amount and the maximum duration of payment under the unemployment compensation program of any of the several States."

S. 3738

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, The next to last sentence of section 7(b) of the Small Business Act, as amended (15 U.S.C. 636(b)), is amended by inserting before the period at the end thereof the following: "and the net interest rate on any loan made pursuant to paragraph (1) and (2) to a homeowner or small business concern to enable them to repair or replace their home or small business concern (taking into account both the Administration's share of such loan and the share of any participating bank or other lending institution) shall not exceed one per centum per annum."

SEC. 2. This Act shall take effect as of December 31, 1970.

By Mr. BELLMON:

S.J. Res. 249. A joint resolution proposing an amendment to the Constitution of the United States relating to the nomination of individuals for election to the offices of the President and Vice President of the United States, and to the direct popular election of such officers. Referred to the Committee on the Judiciary.

Mr. BELLMON. Mr. President, every 4 years the attention of the world is focused upon our country as we go through the orgy of a presidential election.

Citizens of almost every nation, friend and foe, large and small, realize that they have a stake in the outcome of our presidential contest. Our presidential election process should be a showcase of democracy in action. It should be conducted in a straightforward manner which fairly matches the finest leadership the great political parties of this Nation produce. The presidential campaign should provide an unhampered opportunity for our greatest political minds to discuss burning political views of our time in a broad national forum with the final decision coming directly and clearly from the collective intelligence and equal judgment of the citizens of this country.

Instead, Mr. President, the means by which we now elect our President, the most powerful office in the world, is both a national disgrace and an international joke. Try, if you dare, to honestly and fully describe the process to a knowledgeable citizen of any foreign nation. I assure you your listener will be left either convulsed in tears or roaring with laughter. The idea that this great and powerful Nation, leader of the world in many fields including self-government, could be guilty of creating such a disaster-prone system of choosing its most important official is almost inconceivable. The time has long since arrived for the Congress to simplify and clarify our presidential election process.

Mr. President, I am today introducing a resolution to accomplish this objective, and I ask that it be appropriately referred. The resolution is short. I ask that it be printed in full in the RECORD. I realize that many other Members have also presented legislation dealing with this extremely important question and that hearings on the subject will shortly be held. I believe this proposal contains provisions not previously presented to the Senate which deserve to be considered.

Briefly my proposal contains these provisions:

First. It recognizes the existence of political parties. In spite of their long and vital role our present Constitution ignores these fundamental forces in our system.

Second. It provides for a uniform, direct, national primary election without the confusion of crossover voting.

Third. It eliminates frivilous candidates, thus making possible meaningful national debates through the electronic media.

Fourth. It limits the presidential contest to candidates of the two political parties holding the most seats in Congress, thus eliminating the "spoiler" effect of splinter parties. The proposal does not outlaw third parties. Rather it provides that they shall develop and mature through the capture of senatorial and congressional seats.

Fifth. It creates a national runoff primary election to assure that the candidate of a political party truly represents the desire of the majority of that party.

Sixth. Selection of the vice-presidential candidate would be by each political party after the presidential candidate has been nominated.

Seventh. The election of the President and Vice President is by direct popular vote, thus eliminating that useless, dangerous, outmoded relic of the past, the Electoral College. Voters in small States are given equal importance with voters in States with large blocs of "electoral votes."

Eighth. The resolution provides for the simultaneous conduct and simultaneous public announcement of election results, thus eliminating the psychological effect upon western voters who cast their votes after already knowing voting trends on the east coast.

Ninth. Flexibility to cope with changing conditions is provided by authorizing Congress to establish necessary enabling legislation.

Mr. President, Congress must act now to eliminate the complex, confusing, disorderly, destructive, easily manipulated and excessively expensive presidential election process. The role of our Nation as a world leader, even its very existence,

depends upon our willingness and our ability to cope with this problem.

Our present system can be understood in the light of history. The early history of this vast country, when transportation and communications moved at mule speed, a simple direct method of electing our President would have faced insurmountable problems. Also, the ability of the common citizen to wisely choose his national leader was not proven. As we approach our 200th anniversary, these conditions have changed. The collective wisdom of our people has been proved. Thus the Electoral College no longer functions as designed by our Founding Fathers. The political nominating process has "just growed up." It is high time the Congress abolished the electoral and formalized the nominating process.

Mr. President, a recent editorial by David Lawrence in U.S. News & World Report points up the need for reform of our presidential elections. I ask unanimous consent that this editorial be printed in the RECORD at the conclusion of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the U.S. News & World Report, June 26, 1972]

THERE OUGHT NEVER TO BE ANOTHER PRESIDENTIAL NOMINATING CONVENTION

(Back in 1912, the Democratic National Convention which nominated Woodrow Wilson for the Presidency inserted a plank in its platform advocating a constitutional amendment which would confine presidential tenure to a single six-year term. Early in 1913, the Senate passed a resolution proposing such an amendment, and sent it to the House of Representatives. On Feb. 5, 1913, the President-elect replied to a letter from A. Mitchell Palmer, Democratic leader of the House, who had asked for his views on the subject. Excerpts from Mr. Wilson's answer are given below.—David Lawrence, Editor.)

(By Woodrow Wilson)

The question is simply this: Shall our Presidents be free, so far as the law is concerned, to seek a second term of four years, or shall they be limited by constitutional amendment to a single term of four years or to a single term extended to six years? . . .

Four years is too long a term for a President who is not the true spokesman of the people, who is imposed upon and does not lead. It is too short a term for a President who is doing, or attempting a great work of reform, and who has not had time to finish it. . . .

A fixed constitutional limitation to a single term of office is highly arbitrary and unsatisfactory from every point of view. . . .

Presidents, it is said, are effective for one-half of their term only because they devote their attention during the last two years of the term to building up the influences, and above all, the organization, by which they hope and propose to secure a second nomination and election.

It is their illicit power, not their legitimate influence with the country, that the advocates of a constitutional change profess to be afraid of, and I heartily sympathize with them. It is intolerable that any President should be permitted to determine who should succeed him—himself or another—by patronage or coercion, or by any sort of control of the machinery by which delegates to the nominating convention are chosen.

There ought never to be another presidential nominating convention; and there need never be another. Several of the States have successfully solved that difficulty with regard to the choice of their governors, and federal law can solve it in the same way with regard to the choice of Presidents. The nominations should be made directly by the people at the polls.

Conventions should determine nothing but party platforms and should be made up of the men who would be expected, if elected, to carry those platforms into effect. It is not necessary to attend to the people's business by constitutional amendment if you will only actually put the business into the people's own hands.

I think it may safely be assumed that that will be done within the next four years, for it can be done by statute. It need not wait for constitutional change. That being done, the question of the presidential term can be discussed on its merits.

It must be clear to everybody who has studied our political development at all that the character of the Presidency is passing through a transitional stage. We know what the office is now and what use must be made of it. But we do not know what it is going to work out into, and until we do know, we shall not know what constitutional change, if any is needed, it would be best to make.

I must speak with absolute freedom and candor in this matter, or not speak at all; and it seems to me that the present position of the Presidency in our actual system, as we use it, is quite abnormal and must lead eventually to something very different.

The Presidnt is expected by the Nation to be the leader of his party as well as the Chief Executive officer of the Government, and the country will take no excuses from him. He must play the part and play it successfully or lose the country's confidence. He must be prime minister, as much concerned with the guidance of legislation as with the just and orderly execution of law, and he is the spokesman of the Nation in everything, even in the most momentous and most delicate dealings of the Government with foreign nations.

Why in such circumstances should he be responsible to no one for four long years? All the people's legislative spokesmen in the House of Representatives and one-third of their representatives in the Senate are brought to book every two years—why not the President, if he is to be the leader of the party and the spokesman of policy?

Sooner or later, it would seem, he must be made answerable to opinion in a somewhat more informal and intimate fashion—answerable, it may be, to the houses (of Congress) whom he seeks to lead, either personally or through a Cabinet, as well as to the people for whom they speak. But that is a matter to be worked out—as it inevitably will be—in some natural American way which we cannot yet even predict.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 3133

At the request of Mr. EASTLAND, the Senator from Utah (Mr. MOSS), the Senator from Ohio (Mr. SAXBE), the Senator from New York (Mr. BUCKLEY), the Senator from Maine (Mrs. SMITH), the Senator from Georgia (Mr. TALMADGE), the Senator from Florida (Mr. CHILES), and the Senator from Illinois (Mr. PERCY) were added as cosponsors of S. 3133, a bill to amend the Federal Trade Commission Act (15 U.S.C. 45) to provide that under certain circumstances exclusive territorial arrangements shall not be deemed unlawful.

S. 3327

At the request of Mr. KENNEDY, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 3327, the Health Maintenance Organization and Resources Development Act of 1972.

S. 3538 AND S. 3539

At the request of Mr. BAYH, the Senator from Utah (Mr. Moss) was added as a cosponsor of S. 3538, a bill to amend the Controlled Substances Act to require identification by manufacturer of each schedule II dosage unit produced; and S. 3539, a bill to amend the Controlled Substances Act to move certain barbiturates from schedule III of such act to schedule II.

S. 3549

At the request of Mr. TOWER, the Senator from Kentucky (Mr. COOK) was added as a cosponsor of S. 3549, a bill to amend title 38, United States Code, to encourage persons to join and remain in the Reserves and National Guard by providing full-time coverage under servicemen's group life insurance for such members and certain members of the Retired Reserve up to age 60.

S. 3615

At the request of Mr. CRANSTON, the Senator from Minnesota (Mr. HUMPHREY) and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of S. 3615, a bill to authorize grants to the D–Q University in California.

S. 3616

At the request of Mr. MCINTYRE, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor of S. 3616, a bill to provide for the prompt resolution of certain disputes relating to Government contracts, and for other purposes.

S. 3650

At the request of Mr. NELSON, the Senators from New Jersey (Mr. WILLIAMS and Mr. CASE) and the Senator from Utah (Mr. Moss) were added as cosponsors of S. 3650, a bill to provide for transmittal of the Department of Defense 5-year defense program and for congressional deliberation of major mission and support functions of the 5-year defense program.

S. 3716

At the request of Mr. KENNEDY, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 3716, the Health Facilities, Manpower, and Community Mental Health Centers Act of 1972.

SENATE JOINT RESOLUTION 244

At the request of Mr. RIBICOFF, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Nevada (Mr. CANNON), the Senator from California (Mr. CRANSTON), the Senator from New Jersey (Mr. WILLIAMS), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Tennessee (Mr. BROCK) were added as cosponsors of Senate Joint Resolution 244, calling for new efforts to protect international travelers from acts of violence and aerial piracy.

SENATE RESOLUTION 323—ORIGINAL RESOLUTION REPORTED AUTHORIZING THE PRINTING OF "ELECTION LAW GUIDEBOOK" AS SENATE DOCUMENT

(Ordered to be placed on the calendar.)

Mr. JORDAN of North Carolina, from

the Committee on Rules and Administration, reported the following resolution:

SENATE RESOLUTION 323

Resolved, That a revised edition of Senate Document Numbered 91–61, entitled "Election Law Guidebook", be printed as a Senate document, and that there be printed two thousand three hundred additional copies of such document for the use of the Committee on Rules and Administration.

SENATE RESOLUTON 324—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO LEWIS J. SWAGGER

(Ordered to be placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following resolution:

SENATE RESOLUTION 324

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Lewis J. Swagger, widower of Rose A. Swagger, an employee of the Senate at the time of her death, a sum equal to one year's compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 325—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO GRETCHEN E. JENKINS

(Ordered to be placed on the calendar.)

Mr. JORDAN of North Carolina, from the Committee on Rules and Administration, reported the following resolution:

SENATE RESOLUTION 325

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Gretchen E. Jenkins, widow of Norman W. Jenkins, an employee of the Architect of the Capitol assigned to duty in the Senate Office Building at the time of his death, a sum equal to six months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

EXTENSION OF TEMPORARY INCREASE IN THE PUBLIC DEBT CEILING—AMENDMENT

AMENDMENT NO. 1266

(Ordered to be printed, and referred to the Committee on Finance.)

Mr. ROTH. Mr. President, I am submitting this morning an amendment to H.R. 15390, the latest bill to provide for an extension of the temporary increase in the public debt ceiling. My measure adds a second section to that bill—which has been reported by the Ways and Means Committee—calling for an airtight ceiling on fiscal year 1973 Federal outlays.

My distinguished colleagues here will recognize this effort as similar to the amendment I introduced last March when the debt limitation was raised from $430 to $450 billion. This spending language places all categories of Federal expenditures and net lending under a firm roof. It is the language which President Nixon urged the Congress to adopt in his budget message last January. And it uses the figure of $250 billion, which the administration has most recently recommended.

Let me recount, for a minute, the Senate's action last March. The thrust of this amendment is the same as the bill S. 3123, which I introduced last February 4, with a bipartisan list of 48 cosponsors. The Finance Committee chose to report a "clean" debt bill in March, whereupon I brought up the measure as a floor amendment. The Senate voted to modify its language by permitting the Congress to rescind any spending cuts, necessitated by the discipline of the bill, within 30 days of the President's stated course of action. And then the language carried on this floor by a decisive vote of 53 to 30. That measure was deleted in conference. I supported that action.

THE NEED FOR IMMEDIATE ACTION

Mr. President, I am certain that everyone here has had the opportunity to review the administration's latest budget revisions, presented to the Ways and Means Committee in testimony on June 5 and 6. These figures show that the Federal funds deficit will approximate $32.2 billion for fiscal year 1972—down $12.5 billion from January's estimate—but that fiscal year 1973 outlays will rise, producing an even larger deficit of $37.8 billion. Naturally the unified budget computation reflects smaller deficits—owing to trust fund surpluses—but even this analysis shows an estimated unified deficit of $27 billion in fiscal year 1973. I ask unanimous consent to have printed in the RECORD the OMB's table showing these budget revisions.

There being no objection, the tabulation was ordered to be printed in the RECORD, as follows:

TABLE I.—SUMMARY OF CHANGE IN BUDGET RECEIPTS AND OUTLAYS, BY FUND GROUP

[Fiscal years; in billions of dollars]

	1972		1973	
	January estimate	Current estimate	January estimate	Current estimate
Federal funds:				
Receipts	137.8	147.1	150.6	152.6
Outlays	182.5	179.3	186.8	190.4
Deficit (−)	−44.7	−32.2	−36.2	−37.8
Trust funds:				
Receipts	73.2	73.2	83.2	83.6
Outlays	67.2	67.0	72.5	72.8
Surplus	5.9	6.2	10.7	10.8
Unified budget:				
Receipts	197.8	207.0	220.8	223.0
Outlays	236.6	233.0	246.3	250.0
Deficit (−)	−38.8	−26.0	−25.5	−27.0

Note: Detail may not add to totals because of rounding.

Source: Office of Management and Budget.

Mr. ROTH. Mr. President, I need hardly remind my colleagues that these early predictions almost always prove too low when the actual numbers appear in the retrospective portion of each year's budget. Hence, the need for this legislation which says prospectively, the Congress and the Executive will be bound by strict limitations of Federal outlays.

THE DANGERS OF PERSISTENT INFLATION

This point in time is most certainly propitious, for we are moving into a new fiscal year in which no appropriation bills have been jointly approved by both Houses of Congress. We also face a general election in November; between now and then the urge to spend will certainly gain momentum. Yet we, in Congress, will be reluctant to enact increased tax legislation, following so closely on the reductions in the Revenue Act of 1971. That bill's major objective was to help stimulate a lagging economy, then foundering under the double stress of savage inflation and widespread unemployment.

Private and public spokesmen warn us that a swollen budget this fiscal year could set off a new surge of inflationary pressures. The President's program of economic controls has faced and, I believe, moderated some of the problems in the private economy. But we are a long way from the comforting state of a truly healthy economy. Though the inflation rate is abating and new job opportunities are opening up around the country, we must not forget how large an influence the Federal budget has on our Nation's economic development. If Federal spending runs too far ahead of a well balanced stimulus, we, in Congress, could inadvertently undo much or all of the work that has been accomplished in the last 9 months. A glut of new obligations necessary to finance a growing deficit could easily strain the credit markets and the Fed's ability to digest a manageable diet of Federal debt. The consequent pressure on interest rates and the Nation's money supply could have devastating effects on the country's economic recuperation.

A recent report by the Brookings Institution highlights our budget squeeze. Its main prediction has been that anticipated spending will continue to far outdistance anticipated full employment revenues through 1975 and barely balance out by 1977. I should stress that the report assumes generous economic growth, and an unemployment level at 4 percent. If we fail to achieve these goals, the Brookings' forecast becomes even more unsettling.

Based on their mathematical budget model, these noted economists have drawn the scenario which indicates the Federal Government must either raise substantial levels of new revenue between now and 1977, or curb existing outlays. Implicit in their analysis is the belief that current programs, growing at the present rate, will more than consume available revenues, leaving little or no room for new legislative efforts. We must therefore examine carefully our spending decisions and exercise the greatest restraint with each appropriation, mindful that an overall ceiling would force the Congress to make difficult, but necessary, budget decisions.

THE ADMINISTRATION CALLS FOR ENACTMENT

Mr. President, let me reemphasize the administration's posture on the need for these spending controls. Two weeks ago George Shultz, now Treasury Secretary, Charls Walker, his Deputy, and Herbert Stein, Chairman of the CEA, all testified before the House Ways and Means Committee. Each of these top administration

officials spoke vigorously on the need for necessary fiscal restraint, obtainable only if we curtail our spending for the coming year. A ceiling which applied to all the budget categories is the only honest way to achieve this end. Certain accounts are admittedly more difficult to forecast and control than others; we must meet all of our contractual obligations and the largest of those—interest, social insurance, and health benefits, and so forth—cannot be pinpointed 12 to 18 months in advance. Consequently we must focus more attention on discretionary spending. My amendment would impose this requirement on both the Congress and the Executive.

I would urge the Congress to heed the words of Dr. Arthur Burns who wrote me last week encouraging this amendment. His letter contained this caution:

I have felt for some time that it is absolutely essential to bring Government spending under control. The need for a rigid ceiling on expenditures is becoming more apparent with each passing month. After a sluggish start, economic recovery is accelerating. We must guard against the possibility of an overly-stimulative fiscal policy adding to inflationary pressures as we move closer to an economy in which resources will be fully utilized.

Mr. President, we must act now if the Congress is going to exercise its responsibility in helping to curb the insidious effects of inflation. Starting with the President's leadership last August, the administration and the Congress have shown their desire to break the back of this Nation's most pressing domestic problem. I am sure this amendment, if enacted, will push us farther along the road toward that goal.

I ask my colleagues here to join me in opposing the extension of the debt ceiling unless this spending discipline is attached as an ironclad amendment.

Mr. President, I ask unanimous consent that at this point in the RECORD a copy of my amendment be printed.

The ACTING PRESIDENT pro tempore. The amendment will be received and printed, and will be referred to the Committee on Finance; and without objection, the amendment will be printed in the RECORD.

The amendment (No. 1266) is as follows:

AMENDMENT No. 1266

SEC. 2. (a) Expenditures and net lending during the fiscal year ending June 30, 1973, under the budget of the United States Government shall not exceed $250,000,000,000.

(b) The President shall, notwithstanding the provisions of any other law, reserve from expenditure and net lending, from appropriations or other obligational authority heretofore or hereafter made available, such amounts as may be necessary to effectuate the provisions of subsection (a).

(c) In the administration of any program as to which—

(1) the amount of expenditures is limited pursuant to subsection (a), and

(2) the allocation, grant, apportionment, or other distribution of funds among recipients is required to be determined by application of a formula involving the amount appropriated or otherwise made available for distribution,

the amount available for expenditure (as determined by the President) shall be substituted for the amount appropriated or otherwise made available in the application of the formula.

PUBLIC BROADCASTING CORPORATION ACT OF 1972—AMENDMENT

AMENDMENT NO. 1267

(Ordered to be printed and to lie on the table.)

Mr. BAKER. Mr. President, Tuesday, the Committee on Commerce, without amendment, reported H.R. 13918 (Report No. 92–892), a bill to amend the Communications Act of 1934 to provide a 2-year authorization for the financing of the Corporation for Public Broadcasting—CPB—and for other purposes. During consideration of that bill by the Committee on Commerce, I offered an amendment which failed on a voice vote to limit the authorization for the Corporation for Public Broadcasting to 1 year.

I filed along with my colleagues, Messrs. COTTON and GRIFFIN, supplemental views to the committee report which clearly explain the reasons why Congress should agree to only a 1-year extension. In brief, there are a number of questions regarding the manner in which CPB has fulfilled its responsibilities under the 1967 Public Broadcasting Act. H.R. 13918 appears to deal with some of these questions but in fact fails to come to grips with the fundamental deficiencies of the public broadcasting system. For that reason, I intend to offer the following amendment at the time the Senate considers H.R. 13918 and ask that it now be printed in the RECORD and lie on the table.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT No. 1267

On page 4, line 6, strike all through and including line 2 on page 5, inserting in lieu thereof the following:

"(2) There are authorized to be appropriated to the Fund for the fiscal year ending June 30, 1973, the lesser of—

"(i) $65,000,000, or

"(ii) $35,000,000 plus an amount which equals one-half of the non-Federal support for educational radio and television received during the fiscal year ending June 30, 1971."

ANNOUNCEMENT OF CONTINUATION OF HEARINGS ON THE PROPERTY TAX

Mr. GURNEY. Mr. President, on behalf of Senator MUSKIE, chairman of the Subcommittee on Intergovernmental Relations, Committee on Government Operations, I should like to announce that the subcommittee will continue hearings on June 26 on the property tax system.

The hearings will be held in room 3302 of the New Senate Office Building, beginning at 10 a.m.

Anyone wishing to file a statement with respect to the property tax should contact the chief clerk of the subcommittee, Ms. L. T. Dennis, at 225–4718, area code 202.

NOTICE OF HEARING ON JUDICIAL NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Wednesday, June 28, 1972, at 10 a.m., in room 2228, New Senate Office Building, on the following nominations:

Robert L. Carter, of New York, to be U.S. district judge, southern district of New York, vice Thomas F. Croake, retired

William B. Enright, of California, to be U.S. district judge, southern district of California, vice J. Clifford Wallace

Ralph E. Erickson, of California, to be Deputy Attorney General, vice Richard G. Kleindienst, elevated

Thomas P. Griesa, of New York, to be U.S. district judge, southern district of New York, vice a new position created by Public Law 91–272, approved June 2, 1970

Whitman Knapp, of New York, to be U.S. district judge, southern district of New York, vice Walter R. Mansfield, elevated

Charles E. Stewart, Jr., of New York, to be U.S. district judge, southern district of New York, vice Sidney Sugarman, retired

At the indicated time and place persons interested in the hearing may make such representations as may be pertinent.

The subcommittee consists of the Senator from Arkansas (Mr. MCCLELLAN); the Senator from Nebraska (Mr. HRUSKA); and myself as chairman.

ANNOUNCEMENT OF HEARINGS BY THE SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

Mr. BAYH. Mr. President, I wish to announce that next Friday, June 30, 1972, at 10 a.m. in room 318, Old Senate Office Building, the Subcommittee on Constitutional Amendments will hold hearings on Senate Joint Resolution 200, proposing an amendment to the Constitution of the United States with respect to the attendance of Senators and Representatives at sessions of Congress.

Persons interested in submitting statements for the record should contact Mr. Michael Helfer, assistant counsel, room 300, Old Senate Office Building.

NOTICE OF HEARINGS ON SOFT CONTACT LENS

Mr. MCINTYRE. Mr. President, I wish to announce that the Subcommittee on Government Regulation of the Select Committee on Small Business will hold hearings on soft contact lens.

The hearings will be held on July 6 and 7, 1972, in room 318, Caucus Room, of the Old Senate Office Building at 10 a.m. each day.

ADDITIONAL STATEMENTS

SALUTE TO EDUCATION TO BE GIVEN ON JUNE 21

Mr. ELLENDER. Mr. President, it is a privilege for me to join today with my colleagues in a salute to education. Throughout the history of civilization, the ever-changing field of education has been the medium through which man's accumulated intellectual, spiritual, and social knowledge has been passed on to subsequent generations. Without the continuity and challenge which education offers, mankind would have been

unable to make its many strides forward in all areas of endeavor.

Today education faces its greatest challenge. It is my understanding that man's accumulated knowledge before 1960 has doubled in the past 10 years, and everyone concerned with education must respond to this knowledge explosion. Only through encouraging new ways of teaching, tempered by past experience, can education assume its leadership role in a new and dynamic way. I am certain, because of past experience and because of the wealth of knowledge that is held by hundreds of thousands of devoted teachers, the educators we salute today will prove more than adequate to meet this challenge.

I join men and women of all ages across America today in a salute to education, and I pledge my continued support for an educational system which can effectively form man's link with his past and offer him solutions to the perplexing problems of his future.

OPTOMETRY CONTRIBUTES TO BETTER HEALTH CARE

Mr. ROBERT C. BYRD. Mr. President, on June 6, our distinguished colleague, Senator JENNINGS RANDOLPH, the senior Senator from West Virginia, was honored by the West Virginia Optometric Association with presentation of that organization's first annual award for public service. The optometrists of the State, meeting in annual convention, cited Senator RANDOLPH for his outstanding service in the Government, with particular reference to his long-standing interest in vocational rehabilitation and his foresight in sponsoring and continually working to improve the program of vending stands in Federal buildings, which has provided so much opportunity for so many sightless persons since the Randolph-Sheppard Act became law 36 years ago.

Senator JENNINGS RANDOLPH is held in such esteem that the West Virginia Optometric Association has named its award the Jennings Randolph Annual Award for Public Service.

I feel sure I speak for all his colleagues when I offer my sincere congratulations for the signal honor this award represents, and for Senator RANDOLPH'S outstanding record of service which makes him so richly deserving of the award.

In accepting the West Virginia Optometric Association Award for Public Service, Senator RANDOLPH made some comments which I believe ought to be read by our colleagues and all who have access to the RECORD.

I ask unanimous consent, therefore, that the speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

OPTOMETRY CONTRIBUTES TO BETTER HEALTH CARE

It is a privilege to receive this honor.

It is even more meaningful to have the West Virginia Optometric Association dedicate an award to me and to allow me to be its first recipient.

I also appreciate the gift Dr. Bodie has given to me from all of you.

West Virginia optometrists have done and are doing constructive work for the visual welfare of the citizens of our State.

The honor you have bestowed carries greater significance because such fine professionals as yourselves have found me worthy to receive this award.

During the last several sessions of Congress, as a result of legislation which originated in the Senate Labor and Public Welfare Committee, of which I am the ranking majority member, I have come to know many of your colleagues.

The Subcommittee on Health and the Subcommittee on the Handicapped, which I chair, are deeply involved in legislation which will affect most of you.

Officers of the national body, the American Optometric Association, have brought your efforts to my attention and have submitted documents in support of, and demonstrating the need for adequate vision care for the American public. On each occasion these individuals have made a significant impact on the committee members and have represented optometry's interest in an extremely favorable manner.

As members of the Nation's health care team, you, the practitioners, are keenly aware of the many aspects of legislation pending in Congress intended to respond to the health crisis in America. You and I know that the art of healing is better than ever before, the technology is unsurpassed in history—but that the health delivery system has failed in part.

For this reason, one of the major programs that has directly affected your profession—and one with which the Senate Labor and Public Welfare Committee has concerned itself with—is the Health Professions Educational Assistance Act. This legislation enables the health professions listed in the act to be eligible for grant to aid in support of their educational institutions. The rationale behind this legislation is that we are faced with a critical shortage of health manpower to care for the health needs of our citizens. The act was created in an effort to alleviate this shortage.

Through the Health Professions Educational Assistance Act and a variety of other health programs, the Congress has attempted to recruit, educate and make available all those health workers whose skills are so urgently needed.

Since 1965, approximately $32 million have been appropriated for grant monies to the schools and colleges of optometry to aid them in construction costs of new facilities, costs for their institutional support, costs for innovative teaching techniques and other special projects, and support for student loans and scholarships.

We speak of $32 million as a "modest amount," relative to the billions of dollars involved each year in major programs. But this investment has reaped praiseworthy dividends. Under the concept of HPEA, your profession has lived up to its commitment by increasing the enrollment of optometry students from 1,547 in 1964 to 3,000 students in 1971.

As Don mentioned to you earlier, there are two areas of health care legislation dealing with vision care and the blind that I have been closely involved in, and they are the Blind Vending Act and the Vocational Rehabilitation Act. Both are under the jurisdiction of our Subcommittee on the Handicapped.

The 1972 amendments to the Randolph-Sheppard Vending Stand Act, which, over the past 35 years, has employed many thousands of blind persons, will enlarge and expand the scope of the program to provide blind vending facilities in all Federal installations. We expect over the next five years to more than double the 3,400 vending operations now located in public and private facilities. It is my responsibility to have a part in securing the amendment to this act that would permit a freedom of choice to an optometrist or a physician skilled in diseases of the eye in the legal determination of blindness.

As for the vocational rehabilitation program, my subcommittee is presently involved in hearings on proposed legislation. We are considering, in addition to several Senate bills, the House-passed H.R. 8395, which would permit optometrists, for the first time, to certify the eligibility of blind or visually handicapped applicants for vocational rehabilitation programs. Under the present act, optometrists were permitted to perform only restorative services to Voc-Rehab patients, who had been declared eligible through examination by a physician and medical specialist.

This amendment will bring the Voc-Rehab program in line with other Federal-State blind programs which, since their inception, have allowed full optometric participation. I am hopeful that we can report this bill to the full committee with the amendment intact. Don and his fellow workers have labored long to make eligibility requirements uniform.

There are other major areas of health legislation before the 92d Congress in which your profession has an interst.

You have a definite professional stake in the Social Security Bill, known legislatively as H.R. 1, the bill before the Senate Finance Committee. H.R. 1 is expected to be reported to the floor later this month, along with its controversial provisions on welfare. Of prime interest to you, however, is the proposed revision of several titles of the Social Security Act. There are three major parts of this measure which, if enacted, would directly affect optometry:

The first is:

Medicare: Title XVIII: Under section 1861–R, an amendment would define an optometrist as a "physician" for purposes of this program.

The second is:

Medicaid Title XIX; an amendment to section 1905—would assure the availability of optometric services to recipients where those visual services are now provided, in the States which have this care in their programs.

And the third major proposal:

Aid to the aged, blind and disabled. This will be provided by the creation of a new Title XX to the Social Security Act. Consideration is being given to the Finance Committee to the fact that patients have the freedom to choose their type of vision-care practitioner just as they are allowed under the existing blind programs to be consolidated under this program.

With the exception of Medicaid amendment, these provisions have been passed by the House of Representatives and now need only the Senate Finance Committee's approval and full Senate passage.

There is also the bill to create a position of chief optometrist within the Veterans' Administration's Department of Medicine and Surgery. Now in Conference Committee after approval of both houses, this legislation is a breakthrough which hopefully will be the first step for optometrists to become full staff members in VA health care programs. Last November, with the enactment of military special pay legislation to pay optometry officers on a par with other health professionals, you achieved another breakthrough in the military establishment.

Each year there are more than 27,000 pieces of legislation introduced in Congress, and about 6,000 of these bills have to do with health care. Optometry is involved in one way or another with many of these proposals.

In addition, there are many overriding health concepts that have been proposed in Congress that deal with some far-reaching solutions to developing new ways of relieving the health care crisis in America.

You are familiar with the proposal to create a system of national health insurance, ranging from "cradle to grave" coverage to increases in Medicaid benefits. The feasibilities and philosophies of these proposals will be cussed and discussed in and out of Congress for many months to come. In my opinion, passage of national health insurance legislation will not occur before 1974, at the earliest.

Another general health concept being debated in Congress deals with the creation of health maintenance organizations. Our Health Subcommittee is shaping this proposal to present to the Labor and Public Welfare Committee.

In spite of these major concepts being espoused to alleviate the health care crisis in America, it is my belief that we must continue to first support the basic act that will make all this possible. And that is the Health Professions Educational Assistance Act. Without relieving the health manpower shortage, we can't begin to fully implement other concepts.

Ladies and gentlemen, again—my genuine thanks.

NEA "SALUTE TO EDUCATION"

Mr. YOUNG. Mr. President, I wish to join with other Members of the Senate in support of the importance of education to our society.

I have the greatest respect for teachers and school administrators. Theirs is a difficult task, often thankless, and one which cannot be matched in importance by any other profession I know of. Every child, from the time he is able to absorb knowledge, is exposed to the care, training, and experience of members of the education profession. For most children, their teachers are nearly as much a part of their lives as their parents. The influence teachers can and do exert on their students has much to do with what becomes of these young people as they mature.

Mr. President, I know something about the problems and the difficulties the average school system is confronted with. Long before I came to the Senate, in fact, just about my first elected public office was as a member of my local school board. The requirement of board members to select teachers which was the common practice in smaller school systems, and to deal firsthand with the financial and other problems of the school system gave me good training in coping with and solving these problems. While education has advanced to something more sophisticated and complex than it was in my time, the basic challenge has remained: providing all the reliable learning tools to which every child is entitled. Our educational system is excellent and every member of this profession can be proud of his or her contributions.

I am happy to join in this "Salute to Education."

ACTION IS NEEDED NOW ON 20 PERCENT SOCIAL SECURITY RAISE

Mr. CHURCH. Mr. President, soon the Senate will vote on legislation to raise the ceiling on the public debt.

It is my present intention to offer to that bill an amendment providing for a 20-percent across-the-board increase in social security benefits.

This proposed increase is the same as that contained in my Amendment No. 999, cosponsored by 60 other Senators.

Amendment No. 999 was submitted on March 7 as an amendment to H.R. 1, then before the Senate Committee on Finance. That extraordinarily complex bill, as is widely known, is an omnibus measure incorporating provisions dealing with social security, welfare, medicare, and medicaid.

As passed by the House, H.R. 1 provided a 5-percent increase in social security. As reported by the Senate Finance Committee, H.R. 1 authorizes a 10-percent increase. The committee chairman, the distinguished Senator from Louisiana (Mr. LONG), announced his own personal leanings toward a 20-percent increase. Earlier, the distinguished chairman of the House Ways and Means Committee, Representative WILBUR MILLS, had stated that—in view of recent actuarial assumptions which would permit a significant increase in benefits with only a small rise in payroll tax—he also now favored 20 percent.

So we have a situation where an actuarially sound, long-needed upward thrust in social security commands the support of a clear majority in the Senate and the key chairmen in both Houses.

But it is no secret that an attempt is being made to hold any increase in social security benefits hostage to highly controversial changes in the welfare program.

Mr. President, I think that we must face up to hard facts about the income squeeze faced by most older Americans.

When debate opens on H.R. 1 after Congress resumes its business following the Democratic National Convention, only a few crowded weeks will remain before the Republican National Convention convenes. The Senate will be hard-put to settle the welfare controversy in that limited time.

In other words, there is every likelihood that protracted debate could extend into September or even beyond. Elderly Americans—who have watched the struggle over welfare, not for months but for years—would have to watch once more as the benefits they need today continue to be withheld from them, imprisoned within a complicated and controversial bill. And there is a strong possibility that no agreement on H.R. 1 can be reached between the two Houses in this session, if Congress runs out of time, as was the case 2 years ago.

And yet, the need for boosting social security benefits without further delay is, in my judgment, compelling.

Right now, nearly 5 million older Americans subsist below the poverty line, about one out of every four persons 65 or over. If the hidden poor are included, their numbers swell to 6.3 million.

Even more disturbing, the number of poverty-striken elderly has actually increased by almost 100,000 between 1968 and 1970—reversing a longstanding downward trend.

Social security benefits for the typical retired worker amount at present to only $1,596 a year, or about $30 per week. This amount is almost $400 below the Government's own poverty threshold of $1,980 for a single aged person.

Quite clearly, these facts demonstrate that adding a few dollars every year or two to the monthly social security checks of the elderly will not solve their deepening retirement income problems. What is needed now is a substantial boost in social security benefits to allow older Americans to escape from the economic treadmill which keeps them impoverished.

Older Americans have already waited long enough for a boost in their retirement benefits. I think the Senate should act now to insure that their social security increase will be handled as expeditiously as possible.

If there is a better vehicle for assuring rapid passage of a substantial increase in social security than the upcoming debt ceiling bill, I will be willing to consider it. But, at the moment, I see no other alternative.

SALUTE TO EDUCATION

Mr. ROTH. Mr. President, with more than 46 million students enrolled in our elementary and secondary schools for this fall, our commitment to education has never been greater; nor have the demands on that commitment, and we have met them well.

Confronting those many and varied obligations with imagination and candor has been the cornerstone of growth and flexibility in our educational institutions. From filmmaking to black studies, pottery to the Russian language, our educators have sought to broaden the traditional and exclusively academic definition of education to the constantly evolving, totally perceptive experience that we recognize today.

Special schools for the mentally retarded, vocational-technical secondary schools, preschool programs for the poor and culturally deprived—all of these have served to redefine the role of education in our country, while enriching the lives and enhancing the productive participation of more and more of our children every year.

This redefinition of education bespeaks a general redefinition of social mobility, of the right of the individual to develop and offer his own unique talents to society, of earnest and constructive debate. Without our commitment to education, we would never have reaped the benefits of the free society we now enjoy. With renewed commitment, we shall no doubt see a wider acceptance of the diversities that make humanity an endless course in discovery.

Quality education, at all grade levels, for all children, regardless of background, must remain our goal, for this is basic to the free exchange of ideas which we have come to value so highly.

THE RESISTANCE TO ORGANIZATIONAL CHANGE: LOBBIES DIG IN AGAINST CREATION OF NEW DEPARTMENT

Mr. PERCY. Mr. President, an excellent article by Arlen J. "Jim" Large published in the Wall Street Journal of June 19, describes the reasons why overhauling Government is not easy. Mr. Large tells about the interest groups that have

combined to oppose the creation of a new Department of Community Development, which is contained in a bill that is now before the House Rules Committee.

The new Department would take programs from the Departments of Agriculture, Transportation, and Housing and Urban Development, and OEO, and combine them in a department whose goal is to provide coordinated Federal services to communities.

As Mr. Large explains:

The farther along this bill gets, the more it's beset by circling bands of "special interests" anxious to preserve their old pipelines for putting influence in or getting money out.

This kind of resistance to change is to be expected, but hardly condoned. The fact is that the actual functions authorized for the various agencies that will be reorganized will not be changed. This reorganization is nothing more than a restructuring of programs already mandated by Congress. The mandates do not get changed. However, the way they are implemented and managed hopefully will be changed by the new Department of Community Development in order to provide far better Government services to this country's rural and urban communities.

An editorial in the same edition of the Wall Street Journal explains a part of the logic behind the creation of the Community Development Department:

The reasons for the transfers are sound. The great majority of the people who do business with the Farmers Home Administration are no longer farmers, but people in smaller towns whose housing and water and sewer needs aren't measurably different from those people who deal with HUD. And now that the interstate highway program is near completion, most of the Federal Highway Administration's tasks are urban-oriented. Clearly, the nation would be better served by coordinating efforts and eliminating duplication.

I join the Journal in commending Chairman CHET HOLIFIELD and Representative FRANK HORTON, the ranking Republican on the House Government Operations Committee, for their hard work and determination to secure passage of this legislation in the House. I ask unanimous consent that the article and editorial be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

OVERHAULING GOVERNMENT IS NOT EASY

(By Arlen J. Large)

WASHINGTON.—A whole year ago former HEW Secretary John Gardner warned how hard it would be to overhaul the federal bureaucracy. "Special interests" would try to block changes in the departments. He told a congressional committee with a snappy phrase: "It took them years to dig their particular tunnel into the public vault, and they don't want the vault moved."

It's all too true. Of President Nixon's plan to amalgamate seven old departments into four new ones, only one section is making any progress on Capitol Hill. The new Department of Community Development is supposed to be the easiest of the four to create, just by changing the sign on the door at the Housing and Urban Development Department and throwing in some bureaucratic tag-ends from elsewhere around town.

But the farther along this bill gets, the more it's beset by circling bands of "special interests" anxious to preserve their old pipelines for putting influence in or getting money out. Homebuilders, farmers, highway contractors, veterans, actors, preachers and—no kidding—the League of Women Voters all are unhappy with the new department's makeup.

SOME STRONG REACTIONS

It's not that every last farmer or veteran or woman voter knows or cares much about the placement of bureaucratic boxes in Washington's organizational charts. Rather, complaints about the proposed Community Development Department are coming from organizations claiming to speak for these people. The strong reaction of the lobby groups, or "special interests," is only partly explained by a natural fear of change in the status quo. And the reorganization plan certainly isn't caught, as Vice President Agnew charged last month, "in the web of partisan politics in the Congress." A key backer is Democratic Rep. Chet Holifield of California, chairman of the House Government Operations Committee. John Gardner as head of Common Cause is always getting into fights with the administration on Vietnam and other topics, but he testified strongly in favor of Mr. Nixon's bureaucratic shuffle. Among those with objections are some quite conservative Republican House members.

Instead of producing traditional Democrat-Republican or liberal-conservative divisions, the plan has split people with distinctly different perception of the government money pipeline. Reorganization supporters tend to identify with the thinking of government officials who distribute the cash and worry whether it's doing any good. Reorganization foes tend to sympathize with recipients of the government help. The receiving groups worry that the benefits of having their "own" program will be diluted if it's submerged in other activities of a new departmental conglomerate.

This partly can be just a feared loss of prestige, which is what's bugging the homebuilders. They are important constituents now of HUD, which would change its name to become the nucleus of the new Community Development Department. In testimony last March before Rep. Holifield's committee, the National Association of Home Builders endorsed the "general concept" of the new departments, but with hookers. A major one would retain "housing" in the department's name. It should be called the Department of *Housing* and Community Development, urged NAHB President Stanley Waranch. He also worried that the familiar old Federal Housing Administration mortgage-guarantee operation that's the special pet of homebuilders would vanish from public view in the new department. Mr. Waranch suggested calling one of the department's top officials the "Federal Housing Administrator," thus preserving the old initials FHA. "We believe it is important that this good will and well-known symbol not now be unceremoniously tossed away," he said.

The homebuilders struck out, Republican Rep. Frank Horton of New York, a keen backer of Mr. Nixon's plan, responded that the whole idea of reorganization "is to get away from the idea of the constituent-oriented department." Putting "housing" in the name would subvert that goal and encourage other groups to ask for mention as well.

When the Government Operations Committee approved its bill last month, the homebuilders' suggestions were nowhere to be seen. Miffed, NAHB's board of directors passed a resolution complaining that under the bill "many programs and activities pursued by private entrepreneurs in providing housing would be seriously diminished, efficiency and economy impaired and diluted and valuable expertise dissipated. . ." The resolution said NAHB is against creating the department.

While proposing to make the FHA a component of the new department, the administration didn't dare touch a companion mortgage-guarantee program run by the Veterans Administration. Logical as such a transfer might seem, nobody wanted to stir up the veterans' groups which hover so protectively over the VA. The veterans stirred anyway. Rep. Holifield got a warning shot from both the American Legion and the Veterans of Foreign Wars. A letter from a Legion official complained that the department-creating bill "could be interpreted as opening the door" for a transfer of the VA mortgage program. As approved by the House committee, the bill leaves the GI mortgage operation where it is.

On the theory that transportation routes have a lot to do with the way a community develops, the new conglomerate would get both the mass transit and highway programs now run by the Department of Transportation. Moving the subsidy spigot for bus-and-subway transit systems has roused little objection. But switching the federal roadbuilding headquarters has set alarm bells clanging among the many highway-related groups, already upset about threatened raids on their roads-only trust fund. "Why should highway transportation be subordinated to housing?" demands the Associated General Contractors of America. The Wisconsin Asphalt Pavement Association objects to "dismantling" the Transportation Department. The Indiana State Highway Commission fears "a diminution of a program which has been the backbone of this country's prosperity."

Despite these outcries, the House committee agreed to the highway switch. Approved, too, was another controversial transfer: moving to the new department a key command post of the old Great Society's War on Poverty. The Office of Economic Opportunity currently runs a $325-million-a-year community action program, organizing local groups of poor people for job training and the like. Moving community action to the new department would strike a "mortal blow" at the OEO and bury the program under layers of bureaucracy, complains a coalition of some 90 do-good organizations. They include the League of Women Voters, Actors Equity Association, National Council of Churches and even Mr. Gardner's Common Cause.

THUNDER FROM THE FARMERS

But the biggest ruckus of all comes from the farmers. The administration proposes a ripoff of two Agriculture Department subagencies, the Farmers Home Administration and the Rural Electrification Administration, both becoming the new department's instruments for developing rural communities. The complaints were thunderous last year when Mr. Nixon presented this as part of a bigger plan for abolishing the Agriculture Department entirely, a breathtaking idea that was soon dropped. But the administration still wants Farmers Home and the REA moved, and farm organizations are still upset. The American Farm Bureau Federation, usually a Nixon ally, says it "cannot support" the reorganization bill if it touches the two farm agencies. City slickers will dominate the new department, in the belief of Republican Rep. Richard Shoup of Montana, meaning the rural-oriented agencies will come out on the "short end" in bureaucratic competition for money. Democratic Rep. W. R. Poage of Texas, chairman of the House Agriculture Committee, makes the same point in barnyard terms: "You just cannot put a calf with a 1,000-pound steer and expect the calf to come out very well if you are feeding them together."

The Government Operations Committee gamely approved creation of the new department despite all the outcries against it. As a result, the bill has so many enemies it's having a hard time getting cleared by the Rules Committee for floor action. If it reaches the floor, it will be especially vulnerable to amendments restoring the farm

agencies and the highway administration to their comfortable old homes. The Senate mainly is waiting to see what happens in the House.

"Special interests" aside, the developing debate involves basic disagreement over the objectives of government itself. What's said about the agglutination of agencies into the Community Development Department thus will apply in part to later consideration of Mr. Nixon's proposals for three other jumbo agencies: the Departments of Natural Resources, Economic Affairs and Human Resources.

The government historically has been organized along "functional" lines, with bureaucrats having an assignment to do something: forecast the weather, take care of Yosemite National Park, subdue Indians, print money, dig canals, build roads. Increasingly federal management functionaries worry about overlooking the relationships between tasks, such as the impact of a new highway of future requirements for new sewers. Heads of special-interest agencies run the risk of becoming "parochial in their interests and points of view," warned Robert Weaver HUD Secretary during the Johnson administration, in testimony supporting the reorganization proposal. He added that when a federal manager's "responsibilities touch multiple problems and organized interests, they are less likely to be captive to any one of these."

GOALS VERSUS FUNCTIONS

Thus by structuring the bureaucracy toward "goals" rather than "functions," creators of the super-departments hope more conflicts can be settled at lower planning levels by officials who care little about special constituencies. That's what appeals to old Cabinet hands like Messrs. Gardner and Weaver, both of whom ran multi-function departments.

Opponents of agglutination have just the opposite view, arguing that a federal office should have a specific job and constituency. Four liberal Democrats on the House committee who voted against creation of the Community Development Department complain it's based on an "erroneous concept." In a statement of minority views, the four declare: "Functions such as 'transportation,' 'housing,' 'agriculture,' 'health,' 'education,' and 'welfare' are far more manageable goals than 'community development,' 'human resources,' or 'economic affairs,' which are too abstract to serve the concrete needs of effective government programs."

By the time the discussion reaches this level, it, too, is getting pretty abstract. The dullness of organizational theology is the main reason why Mr. Nixon's proposals haven't grabbed the general public's attention. But the "special interests" are very interested. Somebody's moving the vault.

A YEARNING FOR CHANGE

Vice President Agnew has a point. He observes that Mr. Nixon's broad set of reform proposals—revenue sharing, welfare reform, and reorganization—languish in Congress while the Democratic candidates travel about the country discovering the public's yearning for change. The candidates, he says, "tell us that the average citizen is fed up with the way things are going and has lost faith in the ability of his government to handle its problems. They say the average citizen wants change, and they promise to deliver it."

There is some mild irony here. But somehow we can't get as upset over this state of affairs as the Vice President seems to be. True enough Congress has spent most of three years sitting on the President's legislative package, but it was of such elephantine dimensions when issued that a lengthy incubation period seemed desirable from the start. And it never did seem politically realistic to expect it to hatch without Mr. Nixon first getting a fresh mandate.

As it is, both revenue sharing and the Family Assistance Plan are being systematically mangled on Capitol Hill. Conservatives and liberals, eminently aware that neither measure will survive the 92d Congress, are having sport with them. And what seemed like reasonable ideas when they were in pristine form now appear grotesque, especially the pricetags. The administration is kidding itself if it believes that if only the measures can be brought to the House and Senate floors, thence into conference committees, the reforms can be stripped of flotsam.

Yet incredibly, there is still a faint hope that the third leg of the reform triad—reorganization—can still make some headway through Congress in this election year. The opposition is formidable, as our Mr. Large indicates elsewhere on this page. But Chairman Chet Holifield of the House Government Operations Committee still sees the possibility that a new Department of Community Development will see the light of day.

While we have expressed doubts about the rest of Mr. Nixon's triad, we hope Mr. Holifield is right. DCD would pull together a dozen agencies involved in community development that are now scattered across the federal establishment. The largest are Housing and Urban Development, Farmers Home Administration, and the Federal Highway Administration.

The reasons for the transfers are sound. The great majority of the people who do business with the Farmers Home Administration are no longer farmers, but people in smaller towns whose housing and water and sewer needs aren't measurably different from those people who deal with HUD And now that the interstate highway program is near completion, most of the Federal Highway Administration's tasks are urban-oriented. Clearly, the nation would be better served by coordinating efforts and eliminating duplication.

The measure, though, will have to survive the vigorous assaults by the farm and highway lobbies, who in this case are representing the best interests of the farm and highway lobbyists, not necessarily the constituents they look after. The only people clearly hurt by consolidation, those who would have to adjust to a new environment, are the professional lobbyists.

For the most part, this is the situation that applies to each of the reorganization plans. The grouping of federal agencies into four new Cabinet departments—the DCD, a Department of Human Resources, Department of Natural Resources, and Department of Economic Affairs—is clearly preferable to the present scattered arrangement. Yet the professional lobbies, which feel threatened by loss of "visibility" upon merging into new bureaus, have been able to slow the legislation to a crawl.

Because of Mr. Holifield's determination, though, there is a chance part of the program can be pushed through this year. One added element makes this possible. The Democratic presidential hopefuls who are detecting a public yearning for change need have no fear that Mr. Nixon could capitalize politically through creation of a new Cabinet agency. If there is anything that excites the public at large as little as the international monetary system it is the domestic bureaucratic system.

INCISIVE COMMENTARY FROM THE ILLINOIS STATE JOURNAL ON AMERICAN COMPETITION IN WORLD MARKETS

Mr. PERCY. Mr. President, I commend to the attention of my Senators an excellent editorial from the Illinois State Journal, which is published in Springfield, Ill., about the U.S. trade and monetary position, and the competitive ability of American industry.

The State Journal wisely concludes that we cannot depend on panaceas, like dollar devaluation and price controls, new trade possibilities with the Soviet Union or China, or import controls like those proposed in what has frequently been referred to as the infamous Hartke-Burke bill, to solve our international trade problems. The editorial stresses the role of productivity as the key to a more stable economy. Wage demands must be kept in line with productivity increases, it argues, and deficit spending must be controlled in order to dampen underlying inflationary forces.

The only real solution, the State Journal concludes, "is for the Made-in-U.S.A. label to reflect the inherent value it did before inflation began making its inroads into the purchasing power of the dollar."

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

BOOST PRODUCTIVITY TO OVERCOME TRADE DEFICIT

The U.S. trade deficit—up significantly again in April—gives the impression of a fire burning out of control. With our exports lagging $2.2 billion behind imports for the first four months of this year, compared with a $2 billion deficit for the whole of last year, the administration's hope of seeing our trade balance back on the plus side by the end of 1972 is growing forlorn.

We can only conclude that for all the impact of last December's dollar devaluation and the continuing wage and price restraints on our economy, these measures are not yet doing enough to improve the competitive position of American products in the world marketplace.

The need to stimulate our export markets is painfully clear. There is a limit, however, to what our government can do without resorting to outright subsidies to reduce the price of our goods abroad—a violation of elementary principles of free trade.

Steps taken at the Moscow summit toward new trade agreements with the Soviet Union will be a long time in producing any significant flow of goods between our countries, if ever. Communist China is even less promising as a new American customer. It is within our existing trading sphere that the problem lies and must be solved.

Protectionist trade measures like the Burke-Hartke bill are not the answer to the competition which imports are creating for our domestic products. They trigger retaliation by other nations, and only reduce the pressure on American producers to hold their prices down. The only real solution is for the "Made in U.S.A." label to reflect the inherent value it did before inflation began making its inroads into the purchasing power of the dollar.

We have cheapened our currency by demanding services of our government which can only be met by deficit spending that sends unearned dollars flowing through the economy. We have acquiesced to labor contracts which ignore the necessity of keeping wages in step with productivity. We have surrendered to the notion that an hour's work can enjoy increased rewards even when there is no increase in the intrinsic value of the goods or services it produces. In the hard world of economics, however, there is no miracle of multiplying loaves and fishes to create wealth where it does not exist.

The United States of America has taken pride in the fact that its dollar has always

been backed by the extraordinary energy and productivity of the American people. It is our capacity for competitive production which has been allowed to falter and is leading us into trade deficits and monetary problems.

Trade agreements and currency negotiations are the business of governments, but restoring the demand for the fruits of American technology and labor is the business of the American people. They, in the end, must establish an atmosphere of realism in terms of what they demand of their government and what they demand of themselves.

ADDRESS BY JOHN A. HANNAH, ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. McGEE. Mr. President, last week the Administrator of the Agency for International Development, Mr. John A. Hannah, delivered a thought-provoking speech to the Houston, Tex., Rotary International Club.

The thrust of Mr. Hannah's remarks was directed at the obligation on the part of the developed countries, such as the United States, to provide the developing countries with economic and technical assistance.

Mr. Hannah also discussed the changing attitudes of the developing countries as they view the developed spheres of the world. He emphasized that more and more the developing nations want to control their development in an effort to fit solutions into the framework of their own needs.

And finally, Mr. Hannah warns that the entire world may have to pay a heavy price for a failure to work resolutely to aid in solving the problems of the developing countries. He pointed out that:

Problems do not stay bottled up behind national borders. Diseases ignore national boundaries. Polluted air and polluted waters flow across national boundaries.

The impact of uncontrolled human reproduction vitally affects the well being of all nations.

The sense of injustice, frustration and bitterness which accrues when people in the less developed world are unable to see progress toward a better life cannot be bottled up. It produces violence. Violence too, flows across national borders.

In short, Mr. Hannah presents an excellent and far-reaching analysis of the developed countries and their relationship to the developing countries.

I ask unanimous consent that Mr. Hannah's remarks be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS BY THE HONORABLE JOHN A. HANNAH

I

Paul Hoffman's illness has prevented him from appearing here today. No one can preempt his well deserved place of honor. No one else brings his blend of experience and wisdom to the topic of development. The U.S. Agency for International Development, over which I preside, shares Mr. Hoffman's commitment to world development. We are honored by your invitation to submit for Mr. Hoffman and address this important topic. I am sure that all of you join with me in wishing him a full and complete recovery.

Rotary International has displayed deft or fortunate timing in scheduling this morning's discussion of disarmament eighteen days after the signing of the Arms Limitation Treaty in Moscow.

This new treaty is only a first step. It may or may not yield savings which can be applied to helping solve the real needs of people.

But the importance of the Moscow Treaty cannot be measured by dollars and cents accounting. It clearly is the signal event to date in the growing detente between East and West. The cold war is winding down. Hopefully, the Vietnam war will soon end. A first step has been taken to normalize relations between the United States and the People's Republic of China.

President Nixon's announced goal of a generation of peace for all the world appears to be an attainable possibility.

Behind all these moves stands the desire of the major powers to de-emphasize wasteful national rivalry and attend more to the urgent needs of their peoples.

Russia is concerned to fill the needs of its population for a better standard of living.

The United States is concerned to fill unmet demands for social justice, to eradicate vestiges of poverty, and to attend to the new problems of pollution, urban decay, and social unrest which growth and change has thrust upon us.

It is no coincidence that the signing of the Moscow Treaty was accompanied by agreements for joint efforts in disease control, environmental protection, and scientific and technical exchange.

The Moscow Treaty opens the door of disarmament only a crack. But through that crack filters a ray of bright hope. It encourages a recognition that the confrontation between East and West has occupied the energies of our respective countries for too long. It points to a possibility *and an opportunity* to put first emphasis on the needs of people.

It is only people that are important, whether we are talking about the community where you live, or your State or Province, or your country, or the whole world. When we talk about people, we mean all kinds of people, rich and poor, all races, all religions, all colors, everywhere.

II

The confrontation between East and West is winding down. But as we meet here today another confrontation may be winding up. This is the confrontation between rich and poor; between the less than one-third of the world's people who use and consume more than 80 percent of the world's resources and the poorer two-thirds who enjoy less than 20 percent of the world's total products.

There are about thirty-seven-hundred million (3.7 billion) people alive in the world today. Thirteen-hundred-million (1.3 billion) of them live in the rich countries—the developed countries. Twenty-four-hundred-million (2.4 billion) of them live in the poor countries—the less developed countries. By the end of the century at present birth rates the numbers will grow to about fifteen-hundred-million people—up 200 million—in the developed countries, and approximately fifty-eight-hundred-million people—up thirty-four-hundred million—in the less developed countries.

My thesis today is not to downgrade the importance of winding down and deemphasizing the Arms Race, but rather to emphasize the community of interest of all the people in the world in the peoples of the poor countries who want to help themselves develop their own resources, human and material, to provide better lives for all of their people.

The developing countries today are taking a fresh look at their relations with the developed countries. They are demanding to be treated as equals. They are pressing for increasing recognition of their right to influence policies of the rich countries which affect them and their development.

A prominent present example is the developing countries pressure to participate in and influence the restructuring of the world monetary system which followed the recent devaluation of the dollar. They have asked that the so-called Group of Ten rich countries admit them to the table at which new trade and monetary arrangements will be worked out.

At Stockholm, where the UN conference on environment is now underway, the developing countries are saying to the richer ones that no scheme for dealing with the problems of the environment can work if it does not also deal with their legitimate aspirations for a better life.

The oil-producing countries have banded together to demand what they feel is a more equitable deal from the major petroleum consumers.

To date, these confrontations are quite gentlemanly. Some in the developing countries complain of the insolence and arrogance of the developed. Some in rich nations grumble about harrassment or extortion by the poor. To date, however, this is minor. But there is no doubt that the developing countries are increasingly beginning to confront the developed countries on issues which they perceive to affect their own vital interests.

Why? What's happening in the 1970s to exacerbate tensions between rich and poor?

To answer these questions let's ask four questions: (1) How have the developing countries been progressing in coping with the problems of their people? (2) What is their attitude as they view these problems? (3) How much are the developed countries doing to help or impede developing countries' efforts to solve their problems? and (4) What more should be done and why?

III

The developing countries have made significant progress in recent years. During the past decade their economies grew on an average of 5.6% a year. They have increased manufacturing output by 92 percent. Food production has increased thirty-six percent. Average life expectancy reached 57 years in 1971. In the last decade, the developing countries have progressed far faster than the developed countries did in comparable points in their history.

But this commendable growth is still the silver lining around some very large clouds.

There is a major problem of food. There are up to a billion and a half people in the less developed countries who are generally hungry. In some countries up to one-half of all children die before they reach the age of five from malnutrition and related diseases. If the burden of hunger is to be lifted, the world in the next three decades must learn to grow more than twice as much food than it now does.

Fortunately, a hopeful beginning has been made. New high-yielding varieties of wheat and rice and other cereal grains have been developed which, when used with proper amounts of fertilizer, pesticides and water, can double, triple, or quadruple yields. Plantings of these new seeds has increased from 41,000 acres in 1965–66 to more than 50 million acres last year.

As a result, India is currently self-sufficient in food grain production. The food situation in much of Asia and elsewhere is much improved. This upsurge in production has been called the Green Revolution. But much work remains to be done to sustain and expand this progress.

More work is needed to match the surge in cereal production with a similar leap forward in the production of protein foods.

The world must now seriously tackle the more difficult requirement of materially increasing food production on non-irrigated—rain fed lands. That will be much more difficult to accomplish.

There is the most difficult problem of too rapid population growth. Population growth

rates in the less developed countries are now about 2.6% per year—enough to double their populations every generation. Rapid population growth erodes many of the developing countries best efforts to provide better lives for their people.

Despite a 36 percent rise in world food production in the last decade, the per capita food production is barely higher today than it was ten years ago. The magnitude of the problem of feeding growing populations is well illustrated by the situation in India where there is a net increase of one million more mouths to feed every four weeks, thirteen million more each year.

In education, the developing countries have doubled and tripled the size of their school systems in the past ten years. But due largely to population growth, more than half of all their children—more than 300 million children—still do not go to school. There are no schools, no teachers, no books for them.

On the job front, the population explosion is sending people into the labor markets at far faster rates than ever experienced in the U.S., Western Europe or Japan. Unemployment rates in most of the developing countries are as high or higher than the U.S. experienced in the worst years of its great depression. The rate of unemployment ranges from ten to twenty percent in the urban areas of most developing countries. This is only the visible tip of the iceberg. There is another army of underemployed workers subsisting on occasional service jobs or intermittent agricultural labor.

Added to this problem is the fact that jobs must be found for 170 million more people to be added to the labor force in the LDC's in this decade of the seventies.

I could continue this litany of problems but the general picture is clear. The developing countries have built a record of progress and accomplishment. But the lives of most people hover still at the margins of subsistence.

Many of the major problems confronting the less developed countries are problems which the developed countries did not face in their earlier days of their development. The Western world never faced a population problem of the magnitude found now in the developing countries. It never had to create jobs at the rate which must be done now in the developing countries to find productive work for their people.

Most of the major problems of the developing countries require new types of public and private institutions, new policies for allocating resources, new means for delivering services, new patterns of growth which provide jobs more efficiently, and in many cases, new technologies.

For too long it has been taken for granted that the best development course for the LDC's was to follow the paths the West has traveled. But this is not necessarily so.

Twenty-five years of growth and coping with problems of development have made the developing countries increasingly confident and competent. Across the globe, cadres of bright, energetic, fully-trained technicians and managers have moved into positions of responsibility. They have confidence in their ability to plan their countries future and manage its resources for the benefit of their own people.

They still want foreign assistance. They still require specialized technical advice. But they are appropriately less and less willing to tolerate donor countries attempting to tell them what their priorities should be; how they should plan; how they should budget and expend resources. The old tutorial relationship which has marked relationships between donors and recipients has become obsolete. They realize that for every dollar of foreign aid from all sources, the developing country must invest at least eight dollars of its own resources. It is increasingly clear that the problems of the LDC must be solved in that country, by their own people. Outside help can expedite the process.

Linked to this is their increasing awareness that the new and different problems facing many of their countries may require different solutions than those used decades ago when the developed countries were in the stage of development where they are now.

It is also becoming clear to many of them that affluent, industrial societies create their own new problems: problems of population, problems of ecology, the problems of compacted or congested living with ever increasing dependence on the economic system and the state administrative apparatus and a weakening reliance on the personal values of family and community.

It is not improbable that some developing countries will find the industrial societies of the West increasingly less attractive as models for their own goals and aspirations. China, India, Chile, and Burma are other examples of countries seeking to find different patterns of development. Some may want to borrow ideas from them.

These new atitudes have resulted in a sense of distinctiveness, self-assertiveness, and feisty independence which is the root force behind the growing willingness of the developing countries to confront the major powers on issues they consider of vital interest to themselves. They are critical of some of the attitudes and patterns of the free world and equally questioning of those of the communist world.

IV

Now what about the other side of the ledger.

How is the developed world doing in responding to the growing gap between rich and poor.

Beginning with the Marshall Plan twenty-five years ago, the concept of development assistance from the developed to the less developed spread rapidly and was adopted by virtually every developed nation. The United States was alone in the beginning and the early leader. Other countries have rapidly increased their contributions. A wholly new set of international institutions—the World Bank, the Inter-American Development Bank, the Asia Development Bank, the African Development Bank—came into being and are now enduring institutions. Behind them and the central currencies of the members of the World Bank stands the International Monetary Fund, the IMF, with its concern for world money flows and stability in foreign exchange.

There are the United Nations agencies, the UNDP, FAO, ILO, UNICEF, UNESCO, UNIDO, WHO, UNFPA and all the rest.

Formal systems and institutions have been built where developed and developing nations can meet to discuss assistance requirements and negotiate agreements. Machinery for a cooperative attack by rich and poor on the problem of world poverty is in place.

But in recent years there has been less and less fuel for this machinery. Transfers of official development assistance from the developed countries to the LDC's have grown only marginally since 1967.

Since a large fraction of this audience is made up of U.S. citizens, let me briefly describe the U.S. A.I.D. program. The U.S. provides about two-fifths of the total Free World aid to the developing countries and the other 15 assisting countries provide the other three-fifths of the total.

The main thrust of U.S. foreign economic aid is to provide technical assistance and low interest loans to help poor countries help themselves with their *own* development. Our assistance is concentrated in four principal areas—agriculture and food production, education, population planning and health, and public administration. We provide resources for growth. We help poor countries build the schools, public health systems, agricultural research and extension systems and the institutions required in a modern society. Two-thirds of all U.S. A.I.D. is in loans, repaid with interest over time. The recipient countries do pay the interest and principal. Less than one-fourth of one percent of all U.S. A.I.D. loans have ever been in default.

We in A.I.D. are adjusting our programs to the changing circumstances in the developed and developing countries. The U.S. is one participant in a worldwide assistance effort encompassing 16 donor countries, half a dozen major international institutions, and many private foundations and agencies. This places a premium on coordinating our assistance with others. It means that the U.S. should concentrate on types of assistance in which we have particular expertise or interest such as agriculture and education and public health and population planning and encourage others to concentrate in other fields. It means that the U.S. should maintain the attitude that we are one of many participants, not a domineering donor country. A.I.D. is increasingly focussing its efforts on programs of direct benefit to people.

Now let us return to the world scene.

The developed countries have moved very hesitantly in responding to developing country requests for expanded trade, and for stabilizing the world markets and prices for the crops and goods, the export of which is vital to their economic well-being.

We are moving reluctantly, if at all, to open up the world monetary system so that the developing countries may have special access to the new world reserves—called SDRs—created by the International Monetary Fund.

In sum, the ingredients for a growing confrontation between rich and poor are all on the stove: new confidence and assertiveness on the part of the developing countries; a continuing legacy of very serious problems; and a slowdown in the responsiveness of the developed countries—particularly of the United States—to the legitimate aspirations of the poor countries.

Whether or not this pot begins to boil depends on many factors. The continued restraint and moderation of the poor countries is essential. Their tendency, sometimes, to treat their admittedly legitimate interests as moral imperatives while casting into darkness the interests of the developed countries is not constructive.

Yet wisdom and continued action on the part of the developed countries is also required.

It requires a small fraction of the resources of the developed world. The U.N. goal calls for less than 1 percent of the GNP for all bilateral and multilateral assistance.

Trade can be more important than aid. It requires that we open the doors to freer trade with the developing countries.

It requires continued support for the World Bank and the Regional Banks and for the UNDP and other U.N. agencies.

It requires an understanding on the part of the LDC's that the aid-giving countries are reluctant to see their contributions wasted. The governments of the Development Assistance Countries are increasingly insistent on accountability and a useful result from all funds made available for development.

It requires an international outlook on the part of many of our institutions so that universities, business, and private groups can join in collaborative efforts to find answers to the problems of world hunger, of population, of public health and of education.

It is in the interest of the whole world, developed and less developed, that we get on with this job.

In 1970, public and private flows of capital from rich to poor countries totaled about $15 billion. It is estimated that—for the developing countries to maintain a decent annual growth rate of six percent—total annual

capital flows from rich to poor should grow to more than $20 billion by 1975. This is a significant increase. But it is small in comparison with the $170 billion which the developed world spent on arms in 1970.

The root question which now faces the developed countries and particularly the United States is a question of *vision, commitment,* and *will.*

A key question of paramount interest everywhere on earth is—"What will life be like for my children or grandchildren ten, twenty, or thirty years from now?"

That question cannot be answered without first answering a prior question—"What will the world be like then?"

Look for a moment at the population problem.

It took millions of years for the human population of the whole earth to reach the one billion mark. There were 1.6 billion people on the earth at the beginning of this century. There are now about 3.7 billion people. At present growth rates, the world population will grow to 7.3 billion people by the year 2000, 28 years from now. This is an awesome strain to place on the earth's resources and on man's capacity to live at peace with his fellow man.

The world cannot ignore this worldwide problem. It is unrealistic to think that thirty years from now the people in any developed country can live comfortably while across the continents of Asia, Africa, and Latin America, some five billion people struggle to eke out an existence.

Make no mistake about it. If the poor nations of the world do not progress toward decent lives for all of their citizens, there is no way the developed world can immunize its citizens from the consequences of this failure.

We in the developed world really have no alternative but to join with the peoples of the other developed nations of the free world in a common effort to do our fair share to help those countries which want to help themselves harness their own resources, material and human, to move in the direction of an improved quality of life for all of their people.

Problems do not stay bottled up behind national borders.

Diseases ignore national boundaries.

Polluted air and polluted waters flow across national boundaries.

The impact of uncontrolled human reproduction vitally affects the well being of all nations.

The sense of injustice, frustration and bitterness which accrues when people in the less developed world are unable to see progress toward a better life cannot be bottled up. It produces violence. Violence, too, flows across national borders.

Your children and grandchildren and mine must live in the same world with the children and grandchildren of the peoples of all the rest of the world, all continents, all races, all colors, all religions. Like it or not this is one world, and the only one we know.

I will conclude these remarks by reading a quote from a speech by Adlai Stevenson when he was the U.S. Ambassador to the United Nations. He was talking about all of us who live on this earth. It is an appropriate dedication for Rotary International—for today, for tomorrow, and for the long years ahead:

"We travel together, passengers on board a little spaceship, dependent on its vulnerable reserves of air and soil, all committed for our safety to its security and peace; preserved from annihilation only by the care, the work and, I will say, the love we give our fragile craft. We cannot maintain it half fortunate, half miserable, half slave to the ancient enemies of man—half free in a liberation of resources undreamed of until this day. No craft, no crew can travel safely with such vast contradictions. On their resolution depends the survival of all. . . ."

SALUTE TO EDUCATION

Mr. BURDICK. Mr. President, the U.S. Declaration of Independence states that all men are created equal and that they are endowed with certain inalienable rights, among them, liberty and the pursuit of happiness. It further states that governments are instituted to insure these rights. It has thus become one of the fundamental goals of our Government not only to protect these rights, but to see that all citizens have an opportunity to exercise them.

This is where education has played such an important role in our society. It is both a great equalizer and a channel of upward mobility for the disadvantaged. This has been true in America from the very beginning, but it has become increasingly important in the 20th century world of automation and technology.

It is not just that education provides citizens with the tools to understand his society, it also is often the key to the economic success needed to participate in it. As the Senate Education Subcommittee pointed out in its report on the education bill, S. 659, the person with a post-high school education will earn $200,000 more in his lifetime than the person with only a high school diploma. Statistics prove that liberty and the pursuit of happiness in America has become closely tied to the ability to earn a decent living.

There are now nearly 48 million children enrolled in elementary and secondary schools and over 7 million students enrolled in colleges across our land. Although there are always good words for education, the Government's actual monetary commitment has been only a small percentage of the total budget and of the full amount needed. I would hope that, especially with the passage of S. 659, our commitment would grow, and that we will help education to play the vital and invaluable role it can in America.

SALUTE TO EDUCATION

Mr. STEVENSON. Mr. President, I am pleased to join with the National Education Association in today's Salute to Education. No group of people is more qualified to lead today's salute than the educators who face the future in their classrooms every day. And to no group are we, as a people, more indebted. We are bound to our educators by a universal belief that the education of the young is the most important business of a free, self-governing society.

We have reason to be proud of America's educational record. Thomas Jefferson set us on the course of a continuing commitment to broad educational opportunities for all our citizens when he proposed a system of free public education for the citizens of Virginia. Our Federal Government began its commitment to quality education in 1785 with the grant of land to States for the use of public schools. We have strengthened these two concepts of broad and quality public education over our 200-year history with Federal aid to education, culminating in the Elementary and Secondary Education Act of 1965. But we cannot afford to become complacent about our educational system. Complacency breeds compromise, and our tendency in the decade of the 1970's has been to deprive schools of necessary resources. I believe that it is now time to go beyond the 1965 law to provide general assistance to elementary and secondary schools.

The most valuable resource that we have as a Nation is our people. The most tragic mistake we could make would be to deprive our children of their right to develop to their fullest potential by denying them a superior education. This day is an appropriate time to rededicate ourselves to the American ideals of equal educational opportunity and an equitable distribution of resources to our educational community. I commend the National Education Association for the fine work it has done in this regard and for sponsoring this salute to education.

NATIONAL EDUCATION ASSOCIATION'S SALUTE TO EDUCATION

Mr. CASE. Mr. President, technology has brought vast material advances to the Western world. But, at the same time, it has placed vast new demands on our society.

Nowhere is this more evident than in the field of education.

There is no less, perhaps even more, need for the basics of education such as reading, writing and arithmetic.

But education today also is faced with the task of providing individual children with a wide variety of additional information and with providing different types of education for different types of individuals.

There are in our public schools today more than 48.2 million pupils receiving elementary and secondary education. That education must provide them with the means of coping with widely divergent life styles and vocations. It has to enable them to live in a world vastly more complex than even the one into which they were born a short while ago.

It would be folly to say that our system of education has met with complete success in the effort to equip all pupils with the resources they need.

But, in light of the complexity of the problems it has faced, the system has produced remarkably well. And no small part of the credit for this goes to the more than 2 million teachers who must adapt constantly to changing conditions and constantly changing individual needs.

The National Education Association today is holding a "Salute to Education," and I am happy to join in that salute to both education and the teachers throughout the country who make it possible.

SALUTE TO EDUCATION

Mr. TALMADGE. Mr. President, I am proud to join Senators today in this special "Salute to Education."

No other force is more vital to the fulfillment of our Nation than education. It is still true, as Aristotle wrote, that the fate of empires depends upon the education of youth.

Education is naturally a means for increased income and general economic growth but it is also the acquisition of knowledge which is now and will always be an end unto itself. Aside from its economic dividends, education pays returns that cannot be estimated in intellectual development, and in increasing the ability of man to get along with his fellowman to live, work, and grow together.

Many of us today take for granted the value of the services of the men and women who teach in our public schools. It is a sad commentary on our sense of value that of all our professional public servants, none are given less recognition or are more underpaid than our teachers.

Ask any successful person, and virtually without exception you will find that the inspiration of his success came from a teacher who aroused within him a sense of purpose and who channeled his talents into a capacity for accomplishment.

Speaking for myself, I know that whatever success I may have achieved or may in the future achieve, I owe to a teacher who awakened in me an interest in public affairs and who taught me to love the give-take of debate and to appreciate the satisfaction of public service and public speaking.

She was Mrs. Jerry Duggan, of Dublin, Ga. She was Miss Enda to her many friends and loved ones, and to me was the personification of all a good teacher should be. It was the Miss Enda's of the teaching profession that Goethe referred to when he wrote:

> A teacher who can arouse a feeling for one single good action, for one single good poem, accomplishes more than he who fills our memory with rows and rows of natural objects classified with a name and form.

The leaders of the world of tomorrow are being developed under the influence and guidance of our teachers today. We must all work to support these loyal instructors of our future generations in every way possible.

SALUTE TO EDUCATION

Mr. BEALL. Mr. President, today the National Education Association marks its salute to education, a day where all of us can stop and take pride in our country's education system, and its many successes.

Each day during the school year, American education serves over 45 million young people on the elementary and secondary level, preparing them to assume their necessary place in our society. Charged with this critical responsibility for our Nation's future are the over 2.3 million teachers, administrators, and staff, who through their unstinting efforts, have made the American education system.

As a member of the Subcommittee on Education, I am deeply committed to insuring high standards of education for all Americans. But while we can provide the tools for this work, it is the ultimate educator responsibility of the individual to transform these resources into quality instruction for each student in this country. I am proud to say that America's teachers are accomplishing this task in a most commendable manner. We must remember, too, that it falls to those of us in Congress to continue to support our educators in their battle against ignorance, poverty and deprivation. Thus, as we salute our system of education today, let us also reaffirm our goal of quality education for all our citizens. We face no greater challenge.

SALUTE TO EDUCATION

Mr. ALLEN. Mr. President, education is without a doubt the keystone to the progress and success of our great country. From the tiny one-room schoolhouse of a century ago to the great multiuniversities of today, we can take great pride in our educational system.

In recent years, our country has been torn apart by tensions created in a world growing in size and advancing in technology almost beyond our comprehension. We need more than ever to rely on our schools as places of instruction and understanding about what is going on around us. Schools at the neighborhood level are especially important since it is only by attending a school with neighborhood companions and in a familiar setting that a child develops a true sense of belonging so necessary to the creation of self-confidence. Neighborhood schools can instill in the child the meaning of good citizenship and the feeling that his country will offer him the kind of life he will want to lead as an adult. It is only this kind of loyalty and understanding created in the child that will preserve the internal peace and welfare of this country.

It is a credit to our Federal Government that it recognizes the value and importance of education and has attempted over the years to provide an opportunity for a high-quality education for everyone. The higher education bill which we just passed, is the most recent example of our Government's faith in education.

To salute education without mentioning the outstanding job that is being done by the thousands of school teachers and school officials and personnel throughout the country is impossible. Without their support and their desire to teach others, we would not continue to find young leaders capable of continuing the tasks of their elders in running the country.

I believe that it is certainly appropriate at the end of another school year to congratulate our school systems on the fine jobs they are doing, and I want heartily to endorse their continued efforts to provide the finest education possible for our children.

GENERATION GAP IN THE SOCIAL SECURITY SYSTEM

Mr. CURTIS. Mr. President, Mr. John A. Fibiger of Lincoln, Nebr., has assembled some figures concerning social security. Mr. Fibiger is a distinguished actuary who is well informed, both in the fields of social security and life insurance. I believe his article merits the consideration of Congress. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IF PROPOSED SOCIAL SECURITY CHANGES ARE ADOPTED—YOUNG MEN MAY BE WORTH MORE DEAD THAN ALIVE

(By John A. Fibiger, F.S.A.)

Should a young, affluent widow with two small children have more real income provided by the government than her husband brought home in take-home pay when he was alive? Should a young family be better off financially if the breadwinner is dead?

That's the way things are shaping up if Congress gives a further boost to Social Security benefits under consideration now.

How can this be?

Let's look at the situation of a young college man working in 1973 at $850 a month if some of the current Social Security proposals become law. Consider what his situation could be in 1976 if he is married with two small children, is still earning $850 a month, and suddenly dies.

Monthly Income	$850
Federal and state taxes	99
Social security tax	48
Contributory health insurance	20
Miscellaneous deductions	6
His working expenses (transportation, clothing, lunches, miscellaneous)	80
Total	253
Take-home pay available to his family before his death	597
After he dies, his widow could collect a monthly tax-free social security income of	606

He's actually providing more for his family by being dead than alive! These payments continue until his youngest child is 18, and then stop until his widow is 60.

But that's not all! What about college expenses? There could be $260 a month from Social Security for each child for a college fund. A total of $12,480 for each child, if paid over a full 48 months. Will he save $25,000 to send his two children to college if he lives? Most people don't.

In addition, life insurance provided by his employer can be used for final expenses, to pay off the mortgage, etc., again leaving his family better off than when he was alive.

This example may seem out of line considering all the publicity given poverty-ridden retirees who can't make ends meet on Social Security benefits. What many overlook, however, is that Social Scurity provides survivorship benefits as well as retirement benefits, and the benefits are calculated on *average wages* covered during the Social Security working career.

Under the present law, there is a maximum average monthly wage that can be credited for a worker *retiring* in 1972. There are some years where only $300 or $350 of monthly wages can be counted. Even if a worker has earned the maximum provided by law all during his working years, he and his wife would retire on only $335 a month maximum in 1972.

There is a generation gap in the Social Security system, since even without any changes in the present law, a similar couple retiring in the future, with credited earnings of $9,000 a year, will receive $443 a month, or $5,316 a year, tax free.

This all comes about because the easiest way to provide benefit increases for senior citizens has been to raise the covered wage base for everyone. But when the wage base and Social Security taxes are increased to pay for current old-age benefits, they have also been increased proportionately for survivors of young workers.

What Congress is doing is distorting the Social Security system, which is now providing adequate benefits for workers just entering the system, in order to make up for past years of low earnings for our senior citizens of today. And these benefit increases aren't a gift from Washington, D.C. They come out of the working man's pocket.

Congress must recognize what attempts to provide more income for senior citizens have done to today's workers.

There are answers. Congress sets the benefit formulas for Social Security. Benefit increases can very well go to current senior citizens without changing survivor benefit formulas. Or retirement benefits can be based on recent wages, instead of averages including years of low earnings.

There are solutions. But first Senators and Congressmen must be made aware of the consequences of what they are about to do, and must be aware that there are alternatives. Because if some of the current proposed Social Security changes become law, America's young workers may soon be worth more dead than alive!

TO END VIETNAM WAR IS DELICATE DIPLOMATIC TASK

Mr. ALLOTT. Mr. President, the Rocky Mountain News of June 14 contains an editorial which expresses my feelings about the latest attempts to intrude the Senate into the delicate diplomatic task of ending the war in Vietnam and securing the return of our men who are prisoners of war or missing in action.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A CASE OF BAD TIMING

The Senate is debating a new effort to legislate a quick end to the Vietnam War at a particularly bad time.

At issue is Senate Democratic Leader Mike Mansfield's latest amendment to force the withdrawal of all American troops from South Vietnam by August 31.

It's hard to believe so decent a politician as Mansfield wants his proposal to pass. He is asking the United States to pull out its remaining 62,000 men within two and a half months and right in the middle of a North Vietnamese invasion aimed at winning the war.

Such a development would undermine the morale of the South Vietnamese army and risk its collapse.

Also, Mansfield's amendment proposes to end all U.S. ground, naval and air operations in South Vietnam, Cambodia and Laos if the Communists agree to return American prisoners and not to fire on our departing forces.

In effect, Mansfield is saying to Hanoi: "Give us our prisoners and let us go in safety. As we leave, you may, of course, continue to shoot at the South Vietnamese who fought on our side for so many years."

That is far from the honorable end to America's involvement in Vietnam that President Nixon has been promising.

Nixon's latest offer to Hanoi, which is extremely fair, calls for a complete American withdrawal from Indochina within four months of a cease-fire and a release of prisoners.

Under the President's plan, the United States at least wouldn't be walking away while its allies or friends in Vietnam, Laos and Cambodia were getting shot up. And, in the context of a cease-fire, it would leave the political future of Indochina to be worked out by the people who live there.

Ironically, Mansfield's most drastic end-the-war move comes when the desperate military situation on the ground in South Vietnam seems to be improving and there are hints of useful talks in Paris.

Last week Le Duc Tho, Hanoi's chief negotiator in Paris, indicated he would be willing to resume his private meetings with presidential adviser Dr. Henry A. Kissinger if the United States returned to the semi-public peace conference.

No sooner than you could say something's afoot, U.S. Delegate William J. Porter, who had boycotted the conference table for five weeks, returned from Washington to Paris.

From all this, the Senate should see that this is no time to ban the use of U.S. airpower and the presence of American advisers, which are our highest bargaining cards. It is the time for steady nerves and quiet diplomacy, not the legislative meat ax.

SALUTE TO EDUCATION

Mr. HOLLINGS. Mr. President, today—through the efforts of the National Education Association—we salute America's system of education. I am proud to be a part of this national "Salute to Education."

The importance of education to the life of our Republic cannot be overemphasized. In the way a country goes about educating its young people, we see that nation's character, its values, its most fundamental commitments, its way of life. The Greek philosopher, Diogenes, recognized this more than 2,300 years ago when he wrote:

The foundation of every State is the education of its youth.

The first settlers who came to America's shores understood the importance of education, and they went about the task of building schools as one of their earliest projects. From those first efforts of the early 17th century, we have now developed the finest and most productive system of public and private instruction in the world's history. We have over 46 million students in our elementary and secondary schools, and 8 million more in our colleges and universities. Education is becoming not the privilege of the few, but the right of the many.

But rather than a simple celebration of the past, today should be a dedication to the future. For in spite of all its acknowledged successes, education today still faces serious problems and unmet challenges. When some are beginning to question the very value of extended education, we must reaffirm America's basic commitment to learning. When some talk about our inability to afford new advances, we must proclaim that America can afford nothing less than to go forward with the task of educating our people to the maximum. When some argue that morality and character formation have no place in public instruction, we must recognize that the school is—or should be—one of the most effective tools for transmitting a nation's values and ideals from one generation to the next.

Today's salute to education is really a challenge to us all. To those who would be statesmen, I recall the injunction of Horace Mann:

In our country and in our times no man is worthy the honored name of statesman who does not include the highest practicable education of the people in all his plans of administration.

And to Americans everywhere, I would stress that there is no investment so productive as education, We must commit ourselves anew to seeing to it that every young man and woman in this broad nation is educated up to the limits of his or her ability, regardless of the financial situation of the family involved. I would point to the need for sacrifice—the sacrifice of labor, because it is on the immediate local level where the whole enterprise either fails or succeeds. And the sacrifice of money, to provide the bricks and mortar and books and teachers to turn the promise of America into the reality of America.

Our success—or lack of it—will not be difficult to measure. It will be seen in the response of tomorrow's citizens to the stresses and strains which surely lie ahead—in the character, as well as the tempo, of their daily life—in the very survival of our most precious ideals and institutions.

Will we open further the doors of educational opportunity, or will we slam shut the door to the future? The hinge is our commitment of today.

The time for talk is past. Now it is time to move. Our children are waiting.

A SALUTE TO EDUCATION

Mr. DOLE. Mr. President, today is "A Salute to Education Day" in recognition of the accomplishments of America's educators.

The importance of the contributions made by our teachers to our society have long been recognized. President James A. Garfield wrote in 1880:

Next in importance to freedom and justice is popular education without which neither freedom nor justice can be permanently maintained.

As we move ahead into an era of increased justice and equality for all Americans and toward a goal of "a full generation of peace" we must be constantly aware of the role of education.

Today, with over 46 million students enrolled in our public elementary and secondary school systems, the challenges of education are greater than ever. I am proud to say that America's educators are meeting that challenge.

I join in saluting them. Their past accomplishments mirror the prospects of the future—a future made bright by their unselfish dedication to the goal of providing every young American with a quality education.

EDUCATION—A KEYSTONE

Mr. CHURCH. Mr. President, every generation, it is written, must decide whether it shall levy upon itself taxes to pay for the education of the child or for the ignorance of the adult.

I believe this generation of Americans has resoundingly made up its mind in favor of a strong commitment to education. This is in harmony with an original admission, contained in the Northwest Ordinance of 1787, that knowledge is necessary to good government and the happiness of mankind and, therefore, schools and the means of education should forever be encouraged.

In one sense, education has become the biggest undertaking of our time. Approximately 58 million Americans are involved in full-time education either as students, teachers, or administrators in our schools, elementary, secondary, and beyond. In 1900, 1 out of 25 men, and women of college age was enrolled in an institution of higher learning. Today this ratio has become 1 in 3—approximately 7 million men and women.

And knowledge—human knowledge—is doubling every 10 years. The number of scientists and engineers alive today is greater than the total number who have ever lived. It took our own Library of Congress 135 years to accumulate its first 10 million items. Within the last 30 years, the Library has added three times as many, 34 million.

The British philosopher, Alfred North Whitehead, once said:

> In the conditions of modern life, the rule is absolute—the race which does not value trained intelligence is doomed. Not all your heroism, not all your social charm, not all your wit, not all your victories on land or at sea can move back the finger of fate.

Those are sobering words. But events are proving them out. We need the knowledge available at our institutions of education, but, even more, we need the wisdom to know how to handle that knowledge.

On this June 21, "Salute to Education Day," sponsored by the National Education Association, I am pleased to join in this tribute to education, without which we could only curse the darkness.

QUALITY EDUCATION

Mr. COOK. Mr. President, today the National Education Association is holding a special salute to education, a day in which each of us should take the time to consider the value of education, to himself personally and to American life in general. Undeniably, education has made possible the tremendous advantages we as Americans now have over the majority of people in the world today. We have committed ourselves to a life of progress through education, the American dream in which every American is capable of seizing his opportunity to make a better life for himself and to become an active, productive member of society.

This is where education has brought us today. However, I am beginning to question where it will take us tomorrow.

Last week I received a letter from a young man in western Kentucky. I think that it points quite persuasively to the most basic problem in education today. What is it for, and where it is taking us?

Much has been said over the last several years concerning the problems currently plaguing education in general and school systems in particular and the need to give each of our young people the very best possible in quality education. There is little denying that there is a crisis in education that will require enormous amounts of money and manpower from all levels of government in order to resolve. As a member of the select committee on equal education opportunity and the father of five school-age children, I have been personally involved in much of this discussion. But beyond the often-discussed symptoms of the unhealthy state of contemporary American education lies the real question of why. Do we even know enough about what we want from this system of universal education to know why it is in trouble? Why education? Where is it that we want to go?

Surely money and resource commitment is a significant part of the problems facing education today. But even more basic is the indefiniteness of its direction: Education for the sake of education, knowledge for the sake of knowledge.

Therefore, I urge each Member of Congress and every American alike to take a closer look at our commitment to education, to ask himself just what it is that we want for our young people—and what more we can do to insure that they receive it.

I ask unanimous consent to have printed in the RECORD a letter on this subject from Ronnie E. Golden, of Paducah, Ky.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ROUTE 1, HIGHLAND CHURCH ROAD,
Paducah, Ky.

MY DEAR SENATOR COOK: I am a December graduate of Western Kentucky University. Since my graduation, I have been ungainfully unemployed. My attempts at finding employment include applications to 25 Kentucky school systems, personal interviews with 10 different school systems, visits and applications with *all* industry in western Kentucky, answering all reasonable newspaper ads, a visit to the State unemployment office in Paducah, which resulted in a 300 mile trip to Frankfort and back to take tests for a job in which I later discovered there were no vacancies. I have also been to several unemployment agencies (including Western Ky. U. placement center and the Kentucky Dept. of Education) without any satisfaction.

Senator Cook, I am no stranger to work. Prior to graduation, I was able to secure part-time work, which enabled me to get my degree. Now with degree in hand, I am faced with a dilemma: how can a college educated, single, white, 23 year old, male, U.S. citizen, find a job?

Please don't misunderstand. I am not using this letter as an application for a job. Its primary purpose is to acquaint you with the problem confronting many young college graduates today, although I know you probably realize this fact by now.

Solving the problem, I realize, will take time. But until I get a job, I must eat. The fact remains that if I had worked (full-time) these last four years and been layed off, I would receive some type of unemployment compensation, but as it now stands, I am ineligible.

I would greatly appreciate any solutions or even ideas you might present to Congress to remedy this situation.

Sincerely yours,

RONNIE E. GOLDEN.

SALUTE TO EDUCATION

Mr. McINTYRE. Mr. President, the great dream of a quality education for every American is at a critical stage now. The demand for new approaches and alternatives to the traditional educational experience is constantly increasing. And this call for change is not limited just to pressure to implement new teaching methods or learning techniques. The demand for change is reaching to the very core of our educational system: the complicated question of how best to finance this vast network. Many proposals are being circulated and debated which seek to resolve this complex problem.

In the midst of this flurry of debate, however, one thing stands foremost in my mind. We seem to be on the verge of a new era in the relationship between the Federal Government and local education systems. All the signs indicate that for the first time the Federal Government may assume a major role in financing the Nation's schools.

Of course, the Government has been supplying funds for local education over the years. Billions have been spent to build new schools and classrooms to relieve the pressure caused by the 1950's "baby boom." And there was a post-sputnik push to upgrade achievement standards in public schools—especially in the sciences.

But this effort, vast as it is, has been mostly a supplementary one, aimed at correcting imbalances and plugging holes. The money has been tied to specific goals, like helping disadvantaged students and beefing up science programs. While this, of course, is extremely important, more extensive help is needed now. Schools need general, unrestricted operating funds to keep the basic enterprise functioning.

I know that general aid to schools has been seen by some people over the years as a sinister effort to control from Washington what goes on in the classrooms. But in the face of the financial crisis affecting many school districts, many of the fears and misgivings have given way. I therefore see a much larger role by the Federal Government in the financing of education.

And I am convinced that we can increase the Federal contribution without losing the local control over education which I feel must definitely not be tampered with. Our No. 1 priority should be to insure that legislation authorizing these Federal funds does not contain language which would unduly affect the local government's primary power to set school policy. The way in which funds for education are to be spent is a problem I feel must be solved at the State and local level.

I invite the attention of Senators to a provocative article by William Stevens on this subject which appeared earlier this year in the New York Times of January 10, 1972. While I do not agree with everything the author says in his essay, entitled "Wide U.S. Aid in Prospect," Mr. Stevens traces the development and expansion of Federal aid to education and offers several interesting predictions as to what the future direction of the Federal role will be.

One big problem remains, and that is to find a way to finance this role. I am not satisfied with some of the approaches that have been suggested. Nor do I want to see Federal aid tied to Federal intrusion into local and State matters.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 10, 1972]

WIDE U.S. AID IN PROSPECT

(By William K. Stevens)

After 175 years of debate over its role in American education, the Federal Government appears ready to join the states, localities, tuition-payers and private gift-givers as a full partner in financing the nation's schools.

Since 1795—when George Washington was trying to get a national university established, and the American Philosophical Society offered a prize for the best essay on the merits of a national school system—the country has been arguing about Federal involvement in education.

Usually, the proponents of such involvement have had hard going. Americans as a whole have never shown any taste for the nationally prescribed, nationally controlled school systems of some European countries—say, for instance, France, where an official is once said to have boasted that he could look at the clock and know what every child in the land was studying at that moment.

So although the Founding Fathers often stressed the importance of education to the well-being of the Republic, schooling has remained essentially a state, local or private function, jealously guarded. In the late 19th century, Federal intervention in this function was assailed as un-American and even ungodly. As recently as a decade ago, general aid to the schools was seen by some as a sinister effort to control from Washington what went on in the classroom.

Such fears and misgivings have now been suppressed, if not abandoned, in a latter-day rush of schools and colleges to Washington for fiscal salvation.

All the signs and portents indicate that for the first time the Federal Government is on the verge of assuming a major role in financing the general operation of the nation's schools and colleges. Maybe this year, maybe next, maybe the year after. In any case, within the foreseeable future.

Washington has already placed a deep imprint on some segments of education through aid programs that now total $16-billion a year, making the Federal Government the nation's biggest single educational spender. But the money is dispensed in the form of thousands of restricted "categorical" grants for special needs and programs, from atomic research to manpower training to bilingual education to compensatory schooling for the poor.

This diffuse, largely uncoordinated Federal effort, vast as it is, has been essentially a supplementary one, aimed at correcting imbalances, seeking to intervene where leverage is greatest, attempting to plug holes in the basic structure of the nation's educational system.

The difference now—the one that lends urgency to appeals for deeper Federal involvement—is that the system itself is creaking, malnourished, in need of more sustenance than localities, states and private sources are able to provide.

COMMON CRY BY EDUCATORS

College presidents and school superintendents today raise a common cry as they flock to Washington in search of money. It adds up to this.

"Federal aid is helping us to meet special needs, but it does little to help us keep the basic enterprise running. We need general, unrestricted operating funds."

In response to this new urgency, the Senate and House have passed differing versions of a program of general aid to colleges and universities, one version authorizing up to $700 million a year, the other up to $1 billion a year. That has never happened before.

The program's fate in conference committee is threatened by unrelated riders designed to end school busing that promotes racial integration. Many fear that, the bill may not get out of its parliamentary box, and may have to be re-introduced in the 93d Congress next year.

But there seems little doubt that the basic idea of general aid to higher education, in itself, is one whose time has come.

The principle of general aid to elementary and secondary schools apparently is widely accepted, too, although many of those close to the question believe that the form in which it is proposed will generate much debate.

Some Congressional staffers and insiders at the Office of Education believe that President Nixon is preparing an "education masterstroke," a program that would provide a measure of general aid, but tie it to reform of the system of financing the schools.

The President is reported to have been impressed by the California Supreme Court ruling in Serrano v. Priest, declaring the local property tax discriminatory, and to have seized on the decision as a justification for his education program.

Mr. Nixon told the White House Conference on Aging last November that his Administration was preparing a plan to promote local tax reform. And last month, Mr. Nixon's Commissioner of Education, Sidney P. Marland, said he believed the Federal Government should pay 25 to 30 per cent of the cost of public education, using revenue-sharing as a vehicle. Washington, through categorical aid, now pays less than 8 per cent of the cost.

No specifics of the Administration plan have yet emerged, but several devices are possible. One, for example, would provide Federal grants of general aid to states that lift more of the burden of school support off the localities and that equalize school expenditures within each state.

Where the Federal funds would come from is a matter of conjecture. There has been talk in Washington of a Federal sales tax for the purpose.

Congressional sources say further that although the basic principle of general aid appears to find favor on Capitol Hill, a major political question intervenes: Who is to get the credit for providing such aid?

Whether Federal control would follow massive general aid is still an open question. The 10th Amendment assigns the operation of schools to the states, and the full Federal partnership at the outset, at least, would probably be an investing and advising partnership. But there are still those who believe that if Washington ultimately provides 25 per cent of the cost of the schools, some control is bound to follow.

Today, through its $16-billion in "categorical" aid programs (including $3.3-billion for manpower training outside the schools), the Federal Government provides 20 per cent of all money spent by colleges and universities, and 7.5 per cent of that spent by elementary and secondary schools.

Figures do not tell the whole story. Washington's influence is far greater than dollar amounts would suggest, particularly in higher education. Federal tendrils reach into every corner of the educational enterprise. Intervening at crucial points, Federal programs have transformed parts of the enterprise, and of general society as well.

For instance, the revolution in American agriculture crystallized around the federally funded Agricultural Extension Service, operating out of land-grant colleges and universities set up under the Morrill Act of 1862. Three generations later, through the G.I. Bill of Rights, Congress helped convert many colleges into mass institutions with all the problems of size, scale and resources that that involves.

By handing out billions in academic research grants, the Federal Government subsidized the nation's post-World War II burst of scientific creativity.

In the process, it also served as midwife to a new model of the elite university, one that became the standard of aspiration for most other institutions: the "research university," dominated by its graduate schools, sometimes neglecting undergraduate education. Those who criticize this "academic revolution" believe it to have been a major contributor to the student malaise of the 1960's.

Federal involvement in elementary and secondary education began essentially with the Smith-Hughes Act of 1917, providing aid for vocational education. Since then, Federal funds have helped finance school lunches; the stocking of libraries; the beefing-up of instruction in science and foreign languages (a product of the post-Sputnik scare of 1957–58); and the education of numerous special groups, from the handicapped to the gifted.

Federal aid is presently nourishing numerous attempts to reform instruction and restructure educational institutions. It is supporting, for example, a teacher-training program that is changing elementary education across the entire state of North Dakota from a formal to an informal basis.

It underwrote "Sesame Street," the educational television program that has struck the consciousness and intellect of pre-schoolers with uncommon impact.

The Federal Office of Economic Opportunity originated Project Head Start, the Job Corps and the Neighborhood Youth Corps. It is the country's chief supporter of experiments in education performance contracting and voucher systems.

The big breakthrough in aid to public schools was Title I of the Elementary and Secondary Education Act of 1965. It represents the most massive expression so far of the basic principle of many kinds of Federal aid: rectifying socially imposed inequalities.

Title I has poured $8.77-billion into the states for the specific purpose of improving the education of the poor and disadvantaged, most often through programs to improve reading.

It is widely recognized that Title I has had mixed effects. Some Title I programs have demonstrably improved the literacy of poor children. But many others have not, and countless schools have vitiated the effect of the program by using the funds for general purposes, or by spreading them so thinly that they have had no discernible effect.

After all is said and done, the crucial question remains: Would massive, general Federal aid, even when coupled with school tax reform, solve the financial crisis now upon American education, as many seem to believe?

Many fear it might not, inasmuch as school expenditures just keep going up and up, seemingly out of control. In the words of Norman Karsh, executive director of the President's Commission on School Finance, no one is able "to put his hand on the valve."

Americans have not, as a rule, questioned seriously the assumption that education should expand, or been inclined to clamp a lid on the growth of the school enterprise. And it is undeniably easier to run to Washington for money than to face the hard, often very painful task of bringing educational spending under control.

Part of the problem has to do with the difficulty—some would say the impossibility—of judging what the public is getting for its educational dollar.

Part of it stems from economic difficulties, particularly inflation, and labor costs driven upward by militant unions, that afflict many other enterprises. Those are problems to be grappled with by the society as a whole.

In short, Washington may be about to join the educational enterprise as a full partner, but not as fiscal savior.

A SALUTE TO EDUCATION

Mr. THURMOND. Mr. President, the National Education Association and the various State and local education associations are sponsoring their first annual "Salute to Education" this evening in Washington. I should like to participate in this salute by paying tribute on the Senate floor to the education profession and its great contribution to our Nation.

It has been my privilege to be a part of the education profession, having been a schoolteacher, an athletic coach, and a school superintendent. This background has made me acutely aware of both the problems and satisfactions which face our educators. I believe that today more than ever our society is conscious of the importance of education and is striving to arrive at new and more effective methods of educating America's young people in today's fast-changing world.

Mr. President, as a part of the responsibility which we as Senators face, we have sought to provide Federal assistance for education which will be effective and which will preserve and extend State and local control of the educational process. We have recognized that the Federal Government is our Nation's most efficient revenue collector, but that the State and local governments are closer to the people and thus are better able to provide the educational services so vital to the Nation.

In closing I should like to pay tribute to the millions of Americans instrumental in education—as students, as teachers, as administrators, and as interested and concerned parents. The dedication and hard work of all of these people is essential to educational progress. In addition, I am confident that Congress wants to assist in providing the support which is essential for a strong education system.

Mr. President, I ask unanimous consent that my weekly newsletter, STROM THURMOND Reports to the People, of April 3, 1972, entitled "What Is Quality Education?" be printed in the RECORD.

There being no objection, the newsletter was ordered to be printed in the RECORD, as follows:

WHAT IS QUALITY EDUCATION?

Everyone is talking about quality education these days. Somehow this elusive term has become entwined with the busing controversy. Advocates of forced busing have said this practice is essential for quality education. Many opponents of forced busing said it would prevent quality education. Most who took any position on the busing issue did so in the name of quality education.

Yet, the recent Florida presidential primary and some influential polls taken across the country indicate that people at the state and local level are beginning to view busing and quality education as two separate issues. Seventy-five percent of Florida's voters expressed opposition to forced busing while an even larger percent registered their support for quality education for all.

Whatever quality education is, it is something that is received or not received primarily in the classroom, and not during a bus ride.

I doubt if anyone would disagree with me that quality education for all is a desirable goal. Everyone agrees that we should work harder toward that goal, turning more of our intellect and resources toward its achievement.

However, it should be obvious to us now that busing children long distances does not guarantee quality education. It is also apparent that this goal will require more than merely the allocation and expenditure of funds. What we need now is a cogent concept of what we are trying to achieve.

We should begin with a sound and solid definition of the term "quality education" from which we can articulate its purpose. This need is present at all levels of education—from the college down through the lowest elementary grades.

Educators tell us that the purposes of education changes with the needs of society, but there is an unchanging basic definition. Education, they tell us, is the process by which man's culture is transmitted, enriched and preserved.

By "culture" the educators do not refer to the "establishment," as many people refer to the current social, political and economic framework. They refer to man's development from the beginning of time, his accumulated wisdom through the ages.

Transmitting this culture involves the process of teaching and learning. Enrichment of this culture occurs when each generation adds its own experience to the vast reservoir of man's historical record. Then, of course, it is each generation's responsibility to preserve that culture, complete with its own contribution, for generations which will follow. This is quality education.

Now, in practical terms, how do we achieve quality education?

I believe we begin by seeing it in its three basic fundamental elements: 1. a teacher, 2. a learner, and 3. something to teach.

I suggest that we need not worry about number two—the learner. We have a good supply of students, and projections indicate that we are not likely to run out of them any time soon.

Number three—something to teach—is, in my judgment, largely the prerogative of number one—the teacher.

This leaves the average citizen, parents and voters with the most promising area where they can contribute to the achievement of quality education in our schools—the teacher.

Quality education depends upon quality teachers. What happens in the classroom is primarily their responsibility. Citizens, especially parents, should involve themselves through such organizations as parent-teacher groups and others in an effort to help acquire quality teachers for their schools. These citizens should make every effort to see that teachers are adequately paid, that they measure up to high standards of professional competency, and that they have our full support as they transmit, enrich and preserve our culture.

Very truly,

STROM THURMOND.

SALUTE TO EDUCATION

Mr. PERCY. Mr. President, I speak today in honor of the National Education Association's Salute to Education.

In the coming school year, there will be more students, more teachers, more high school and college graduates, and more dollars spent for education in the United States than ever before. Although education continues the spectacular growth that has been its principal characteristic for the last 25 years, this is not a comfortable time for education.

We are dealing with one of the most complex institutions in our society, comprising, in the last school year, nearly 50 million children, more than 2 million classroom teachers, some 200,000 principals, supervisors, and other instructional staff members, and almost $47 billion in expenditures. Just to keep this vast machine running from day to day is a superhuman task.

Increasingly, the failures of our society are being laid at the doorsteps of our schools. The sheer challenge of obtaining enough money to repair schools and build new ones and pay teachers and staff and deal with the ever-multiplying redtape has burned away time for the primary tasks of education and left school officials to advance by force of habit and necessity from crisis to crisis.

The American people seem to be moving away from their allegiance to the good and power of education. Traditionally openhearted and openhanded in the financing of education, they have lately seen fit to defeat bond issue after bond issue, leaving school district after school district on the verge of bankruptcy.

Teachers, too, have lost their aura of unimpeachable authority, as students withdraw their consensual acceptance of authority. The students are questioning, doubting, and disputing the relevancy of the very foundations of our most sacred institutions.

Education carries a staggering weight of expectations and responsibility, for it has been the cornerstone of our American dream. Who among us can deny his debt to education—for what he knows, or what he has, or what he is. Although education has not succeeded in delivering its promises to a portion of our population, for most of our citizens the American educational system is among the most successful in the history of the world, providing the best possible education for the greatest possible number of people.

To whatever extent the American people have found their schools wanting in excellence, relevance, equality, or efficiency, I do not believe that they have ever lost faith in education as a vital determinant of their children's futures and as a prime influence on the way of life in this country. Education deserves to be applauded for its past accomplishments, but it must be challenged to justify our people's faith in it.

SAVE THE CHILDREN HAILED ON 40 YEARS OF WORLD SERVICE

Mr. WEICKER. Mr. President, it is with a very real sense of pride that I call attention today to an organization, with headquarters in Connecticut, which is observing its 40th year of service to children, their families and communities. Save the Children Federation, Inc., Norwalk, Conn., the oldest voluntary agency for child sponsorship in the United States has, in these past four decades, played a significant role in helping children rise from poverty both within the United States and in many nations overseas. Save the Children Federation came into being in 1932 in the midst of our greatest depression. Initially it sought to feed and clothe the children of Southern Appalachia who indeed were suffering

much from the economic woes of those dark days.

From this early role as a relief organization Save the Children has become a symbol throughout the U.S. and in many lands overseas for assistance, not in the usual sense of handouts, but rather in programs of self-help which recognize the inherent desire of all people to increase their well being through their own initiative.

But little of the work of this organization would have been possible without the open-handed support of millions of American contributors and sponsors, who recognized that through Save the Children Federation they could lend a hand to the less fortunate without impairing the dignity of those they helped.

It was during World War II that Save the Children took on international dimensions. Americans from all walks of life responded to the needs of British children bombed from their homes during the Nazi blitz. Entire communities, schools, and day care centers were recipients, through SCF, of American aid.

Following the war SCF created a school sponsorship program for France, Belgium, and the Netherlands. As the memory of conflict diminished SCF moved into other nations in Europe and the Near East. Sponsors were aiding children in Finland, Italy, West Germany, Austria, Greece, and Lebanon.

It was during these late postwar years that the SCF philosophy of self-help burgeoned into community development. In 1959 the Community Development Foundation, the cooperating agency of SCF, was founded.

But the world, as we all know too well, has not been at peace. Natural cataclysm and war has been the lot of all too many of us in the past quarter century. But SCF's role has not wavered.

When a 5-day blizzard struck a Navaho reservation in our Southwest, SCF was among the first agencies to offer assistance. The guns of the Korean war were hardly stilled before SCF began programs of community development and child sponsorships. The earthquake in Peru and the tidal wave in what was then called East Pakistan, now Bangladesh, brought immediate reaction from Save the Children Federation and the Community Development Foundation. Through self-help programs in these devastating areas, children, families, and communities were enabled to pick up the threads of life again. In South Vietnam, SCF and CDF have played an imposing role in helping many of these war-weary people toward a better life.

Whether in Colombia, Tanzania, Appalachia, or among the many tribes of American Indians, SCF and its staff have been ambassadors of good will. Eschewing the role of vocalizer for that of listener, SCF has pioneered a foreign aid direction which might well be emulated by our own Government.

The philosphy of self-help has been proven by SCF and CDF throughout the world. People have found within themselves an ability to quite literally move mountains. With minimal incentives provided by SCF and CDF in the form of cash and food, they are creating new vistas for their children through better education; improved nutrition is giving families an increased ability to work; community benefits spurring cultural and economic advances. And the overriding benefit to all is an increased economic well-being which reduces unemployment, and replaces apathy with a new zest for living.

I am proud of what this Connecticut-based group has offered to children and their families these past 40 years, and proud of the support Americans have given this worthy cause.

JOB ENRICHMENT IN THE AUTO INDUSTRY

Mr. PERCY. Mr. President, one of the most important aspects of contemporary American life is the new concern about the nature of work. Younger Americans are questioning as never before the desirability and the necessity of work. They are expecting more from work than just pay.

Ralph Nader has expressed this problem very well in his afterword to a book entitled "The Workers," written by Ken Lassen. Mr. Nader said that—

> The quest for meaning in work as distinguished from the quest for work is one of history's least charted courses. Man struggles to make a living. To make a living has always overshadowed the interaction of humans with their work and what it does or means for them.

The signs of dissatisfaction with traditional forms of work have become increasingly clear. At the Joint Economic Committee's hearings on productivity on April 25, 26, and 27, witnesses alluded again and again to the high rates of turnover, rework and scrap, and instances of drug abuse, all of which have contributed to increased costs and declining product quality and safety.

American industry has begun, though slowly and with great hesitation, to respond to the problem of dissatisfaction with work particularly among younger workers.

An article by Agis Salpukas was published in the New York Times of June 19. Mr. Salpukas has written several interesting articles about job dissatisfaction, particularly in the auto industry. He describes the efforts being made by the Chrysler Corp., to make jobs more worthwhile, to engage the worker more completely in his work, and to provide a greater measure of initiative, participation, and self-development in the context of the highly automated auto assembly line.

A Chrysler official is quoted as saying that his company has been through a small revolution. My own experience at a very large, very new Chrysler plant in Belvidere, Ill., confirms the need for such revolutionary changes in the way management conceives of work and the worker. At the Belvidere plant, where the average age is about 27, the work force has turned over completely every 13 months. An official of the plant has been assigned to job enrichment as his single task.

Chrysler is to be commended for its willingness to experiment and its efforts to change as described in Mr. Salpukas' article. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AUTO WORKERS GIVEN ASSEMBLY LINE VOICE

(By Agis Salpukas)

DETROIT, June 18.—Since Henry Ford and his engineers put together the first car assembly line in 1914, the auto industry has been fitting the man to the line.

Today, faced with spreading absenteeism, high turnover and even sabotage among an increasingly dissatisfied work force, the industry is experimenting to see what can be done to make the line fit the man.

The Chrysler Corporation is the most deeply involved of the Big Four auto producers in trying to make work not simply a penalty a worker feels he has to pay to survive but something that provides satisfaction in itself.

For the last year and a half, workers in many of Chrysler's 32 plants have been meeting with their foremen, engineers and production managers to exchange ideas, solve problems and make suggestions about their jobs.

Some plants are experimenting with letting workers supervise their own assembly lines, letting them control the flow of material on the lines, and allowing them a choice of working on an assembly line or at tables where they can make whole components.

The program is still in its early stages. Its problems are complex, and any judgments would be premature. So far, it has often resulted in giving more responsibility to middle managers while reaching only a small part of the rank and file.

But many of those who have participated are enthusiastic. John Rand, a black assembly line worker for three years at the Hamtramck plant, paused for a moment in his job and said: "Things were explained, now you feel like a part of things. Before it was: 'You do this. You do that.' And that's it."

During the last year he has met many times, on company time, with foremen, production supervisors and other workers who are responsible for assembling caster and camber parts, which are vital to steering and wheel alignment.

Before the meetings, he said, he did not know what the part was for and did not care. Often he would let the car body go by and grumble to himself about the pace of the line.

It was this kind of dissatisfaction and indifference that led Chrysler to begin its experiments.

Eugene A. Cafiero, group vice president of the Chrysler North American operations, said: "We've changed more in the past year and a half than in the last 12 years. This company has been through a small revolution."

EFFECTS HARD TO SEE

The effects are hard to see since almost no major changes have been made in the way workers scrape, wipe, lift, paint and assemble cars and none is expected in the near future.

What has been brought to many of the company's plants is a new atmosphere, a new team spirit. Workers are now often given a voice, for example, in deciding how to set up their assembly line.

In many plants, workers are being given a chance to look over the '75 models. The parts are explained and the workers are asked to comment on how the line will be set up.

Mr. Cafiero, the prime mover behind the program, is continuing to visit the company's plants and prod managers to experiment. He has let it be known that the program does not have to show sudden gains in productivity.

At this point, he measures results mostly through reactions of workers and supervisors. A skilled trades worker, he recalled, recently came to him and said: "This is the first time

in 16 years anyone has asked me to use my head and heart instead of my hands and feet."

OTHER COMPANIES' EFFORTS

The effort is not unique to Chrysler. Other major companies such as Bell Telephone, Corning Glass and Texas Instruments are trying to change jobs not only of blue-collar workers but of white-collar workers as well.

General Motors and Ford also have programs, although none is on the scale of Chrysler's, which is a priority effort throughout the corporation.

Those in charge concede that there are major uncertainties on how it will come out. Although workers like Mr. Rand may feel better about their jobs, there is some question how long it will last—especially as they go on working with the same parts in the same way on the same line as before.

It is hard to try to change work on assembly lines. Even for a seemingly simple change such as letting workers follow a car along and assemble a large part of it would mean a major cost increase.

Chrysler's management is also worried that frustrations may only be intensified if expectations are raised and workers are involved in decision making and then, for whatever reason, no important change results.

Only a few feet away from Mr. Rand, for example, another worker, Edward Walker, a 23-year-old Vietnam veteran, compared the plant now to when he left for the service two years ago.

"There's nothing easier and there ain't nothing harder," he said as he shoved one side of a car body to the line. "You're still under pressure. That line don't stop."

FOREIGN COMPETITION A FACTOR

There is little possibility in the near future that assembly lines will change significantly in an industry where costs are figured to the penny and foreign competition is a major threat.

Douglas Fraser, a vice president of the United Automobile Workers Union and head of the union's Chrysler department, made a recent tour of plants in Japan.

In a report to the union's executive board, he said that in some plants Japanese workers put together cars at speeds that would not be tolerated by American workers.

Still, even with those uncertainties, there is optimism at Chrysler that major gains can be made in motivating workers without making major changes in the jobs themselves.

AN AID TO SCHEDULING

At the Hamtramck plant, for example, some workers are no longer punished for taking an unexcused day off.

Instead, large calendars have been put up in one part of the plant and workers are asked to mark the day in advance when they want to take off.

Management can then juggle its schedules by knowing when a man will be absent, instead of having to scramble around at the last minute to fill in for absent workers.

For two months absenteeism dropped, but then it crept up again to near its old rate. One advantage has remained. Half of the men now notify the company ahead when they take a day off.

One foreman objected so vociferously to the program that he resigned. Older workers, who often have more skilled jobs and do them with ease, have objected to proposals such as letting men rotate in different jobs. And some supervisors fear that their jobs will be eliminated through the program.

At the Detroit Gear and Axle plant, workers are being allowed to control the flow of assembly lines. William White a 44-year-old worker, sat on a stool in front of a line where gear assemblies moved past him. There was a pedal he could hit with his foot to stop the line if he wanted to get a drink of water or take a break.

He is still expected to turn out 1,000 units a day, but now has a choice of working ahead and then shutting off the line for a while. "It's better," he said. "You've got more control now."

SENATOR SCOTT'S RECORD FOR HUMAN NEEDS

Mr. SCHWEIKER. Mr. President, we have heard much in past months about the need to reorder our priorities. There is one Senator among us whose priorities have always been clear: the distinguished Republican leader, Senator HUGH SCOTT, of Pennsylvania.

Senator SCOTT has consistently sought to serve the needs of people. He has been a leader in the fight for better housing, more jobs, and improved education. People are important in HUGH SCOTT's book and his outstanding record shows it.

I ask unanimous consent to place in the RECORD a detailed accounting of Senator SCOTT's accomplishments in the field of human needs.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

92D CONGRESS

Legislation

S. 10—To establish a national policy for metropolitan centers and rural areas relative to the revitalization of rural and other economically distressed areas.

S. 23—To create a series of regional ethnic centers for the study of ethnic history and traditions.

S. 31—Emergency Employment Act of 1971 to provide during times of high unemployment for programs of public service employment for unemployed persons.

S. 34—To establish a National Cancer Authority with the priority to discover the method by which to conquer the menace of cancer.

S. 346—To provide incentives for the establishment of new and expanded job-producing industrial and commercial establishments in rural areas.

S. 575—To authorize funds and to carry out the purposes of the Appalachian Regional Development Act of 1965.

S. 687—To authorize financial assistance for Opportunities Industrialization Centers.

S. 908—To exempt from induction and training, under the Selective Service Act, the surviving sons of a family which has lost two or more members as a result of military service.

S. 1172—To exempt citizens of the United States who are 65 years-of-age and over from paying entrance or admission fees for certain recreational areas.

S. 1182—To provide assistance and encouragement for the establishment and expansion of health maintenance organizations.

S. 1290—To provide for continuation of programs authorized under the Economic Opportunity Act.

S. 1428—To establish an Institute for Continuing Studies of Juvenile Justice.

S. 1598—To provide health care insurance for people of the United States and to improve the availability of health services.

S. 1623—To require employers to make an approved basic health care plan available to their employees, to provide a family health insurance plan for low-income families not covered by an employer's basic health care plan.

S. 1664—To authorize additional appropriations for the Commission on Civil Rights.

S. 1769—To establish a Legal Services Corporation for the purpose of providing legal services in non-criminal matters to persons financially unable to afford counsel.

S. 1871—To provide for the inclusion of child-care facilities in low-rent housing projects and to provide that the eligibility of a family to remain in such a project despite increases in its total income shall be determined solely on the income of the family.

S. 1872—A bill for the relief of Soviet Jews.

S. 2097—To establish a Special Action Office for Drug Abuse Prevention to concentrate the resources of the Nation in a crusade against drug abuse.

S. 3012—To strengthen and improve the private retirement system by establishing minimum standards for participation in and for vesting of benefits under pension and profit-sharing retirement plans, by allowing deductions to individuals for personal savings for retirement and by increasing contribution limitations for self-employed individuals and shareholder employees of electing small business corporations.

S. 3080—To amend the Lead Based Paint Poisoning Prevention Act, and for other purposes.

S. 3121—To extend the Commission on Civil Rights for five years, to expand the jurisdiction to include discrimination because of sex and to authorize appropriations for the Commission.

S.J. Res. 7—To propose an amendment to the Constitution extending the right to vote to citizens 18 years old or older.

S.J. Res. 32—To propose an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings.

S.J. Res. 34—To propose an amendment to the Constitution of the United States with respect to the offering of voluntary prayer or meditation in public schools and other public buildings.

S.J. Res. 79—To propose an amendment to the Constitution of the United States relative to equal rights for men and women.

S. Con. Res. 8—Relating to the control of international drug traffic.

S. Con. Res. 33—Regarding persecution of Jews and other minorities in Russia.

S. Con. Res. 49—A Senate Concurrent Resolution calling for the humane treatment and release of American prisoners of war held by North Vietnam and its allies in Southeast Asia.

S. Con. Res. 52—Expressing the sense of the Congress with respect to the rights of mentally or physically handicapped persons.

S. Con. Res. 57—Calling for a national day of prayer for the cause of world peace.

VOTES

Voted to provide Federal assistance for programs of public service employment during periods of high unemployment.

Voted for financial assistance to better provide local educational opportunities for all children.

Voted to provide for the identification and treatment of drug and alcohol dependent persons in the Armed Forces.

Voted to provide full Federal payment of unemployment compensation benefits for an additional 13 weeks.

Voted for amendment calling for President to take all possible means through international cooperation to reduce illegal importation of heroin and other narcotic drugs into the United States.

Voted for a 10% increase in old age, survivors, and disability insurance payments (social security).

Voted to extend the Appalachian Regional Development Act and Public Works and Economic Development Act.

Voted for the Economic Disaster Relief Act of 1971.

Voted for the Drug Abuse Office and Treatment Act of 1971 together with the conference Report thereto.

Voted for the Housing and Urban Development Act of 1972.

Voted for the proposed amendment to the Constitution assuring equal rights for men and women.

Voted to extend the Select Committee on Nutrition and Human Needs.

Voted for amendment to increase funds for facilities for school lunch programs from $16,110,000 to $33,000,000.

Recorded in favor of using certain funds to assure free and reduced price lunches for needy children.

Supported an amendemnt to allow as a business deduction (instead of a personal deduction) up to $400 per month for domestic help and child care.

Voted for the nutrition program for the elderly.

Voted for supplemental appropriations for fiscal year 1972 to provide for special programs for the aging.

THE 91ST CONGRESS

Legislation

S. 15—Rural Job Development Act—To provide income tax incentives and other benefits for employers operating certain industrial or commercial enterprises in rural job development areas.

S. 861—To provide Federal assistance to States for establishing and strengthening consumer protection programs.

S. 1072—To authorize funds to carry out purposes of Appalachian Regional Development Act of 1965.

S. 1300—To improve the health and safety conditions of persons working in U.S. coal mining industry.

S. 1362—To provide Federal financial assistance to Opportunities Industrialization Centers to assist in job training in low-income areas.

S. 1689—To protect children against dangerous toys.

S. 1788—To assist in removing financial barriers to the acquisition of a postsecondary education by all those capable of benefiting.

S. 1865—To establish programs to find causes and effects of malnutrition and to facilitate detection and treatment.

S. 1896—To include dental and eye care and hearing aids among the benefits provided by Medicare.

S. 1997—To provide for more effective prevention and treatment of alcoholism by providing grants for education and training programs and by establishing regional centers for research in alcoholism and alcohol-related problems.

S. 2037—To authorize grants for the construction or modernization of Neighborhood Health Centers.

S. 2184—To include prescribed drugs under coverage of the supplementary medical insurance program for the aged.

S. 2259—Credit Union Act amendment to assist in meeting the savings and credit needs of low-income persons.

S. 2470—To allow the elderly to trade food stamps for prepared meals.

S. 2518—To liberalize conditions governing eligibility of blind persons to receive disability insurance benefits.

S. 2579—To authorize Commissioners of Education to make Vocational Education Opportunity Grants.

S. 3025—Urban Land Improvement and Housing Assistance Act of 1969.

S. 3204—To require safety devices on household refrigerators.

S. 3316—To require the Secretary of HEW to study and to report annually to the Congress on the health hazards and other assistance to persons affected by such pollution, especially when such pollution reaches emergency levels.

S. 3388—To expedite enforcement for air pollution control standards.

S. 3418—To provide for making of grants to medical schools and hospitals to assist them in establishing special programs in the field of family practice.

S. 3560—To allow 18-year-olds to vote.

S. 3566—To establish a National Council on American Minority History and Culture.

S. 3709—Veteran's pension to the Social Security Bill to prevent a decrease in the dependency and indemnity compensation of any veteran or widow of a veteran as the result of the increase in the Social Security benefits.

S. 3941—To provide penalties for the use of lead-based paint in certain dwellings.

S. 4104.—To strengthen and improve the school breakfast program for children.

S. 4208—To lay the groundwork for providing the medical manpower needed to meet the rising health demands of the country.

S. 4396—Extension of Medicare to the Nation's disabled coal miners.

S. 4454—To make available Federal assistance to law enforcement agencies to halt attacks on policemen, firemen, and judicial officers.

S.J. Res. —— —Proposing a Constitutional amendment to permit voluntary prayer in public buildings and public schools.

S. Con. Res. 41—Concurrent Resolution urging adoption of policies to offset adverse effects of governmental monetary restrictions upon a housing industry (ceramic tile industry).

S. Amdt. 682—To provide a minimum monthly Social Security benefit of $100 and increases in larger monthly benefits.

S. Amdt. 683—To increase special age 72 Social Security benefits by 10 percent.

S. Res. 68—To authorize funding of the Senate Select Committee on Nutrition and Human Needs.

Votes

Voted to prohibit issuance of credit cards, except on request, and to limit holder's liability for loss.

Supported the Consumer Products Warranty and Guaranty Act.

Voted for the Hospital and Medical Facilities Construction and Modernization Amendments of 1968 (Hill-Burton).

Voted to create the National Insurance Development Corporation to provide reinsurance for insurance companies for losses resulting from riots and civil disorders.

Voted for the Housing and Urban Development Act of 1968.

Voted to increase appropriations for the Office of Economic Opportunity from $1,624 billion to $2,048 billion.

Voted to express the sense of the Senate that the aggregate of opportunities for job training for disadvantaged youth shall in no event be less than that for fiscal year 1969.

Voted to increase funds for the Neighborhood Youth Corps summer program under the Manpower Training and Development Act.

Voted to authorize funds to extend programs under the Economic Opportunity Act.

Voted for a 15% increase in Railroad Retirement benefits.

Voted to include under the Community Mental Health Centers Act of 1970 persons suffering with drug abuse and drug dependence problems.

Voted to strengthen laws concerning the illegal use, transportation, or possession of of explosives.

Voted for Employment and Training Opportunities Act of 1970.

Voted for Employment and Manpower Act.

Voted for an increase in funds for Neighborhood Youth Corps summer programs.

Voted to declare it the policy of the United States to apply uniformly the criteria in dealing with conditions of unconstitutional segregation in schools by race.

Voted to create a Select Committee on Equal Education Opportunity.

Voted to provide $150 million for emergency school assistance for desegregating local educational agencies.

Voted to allow voluntary nondenominational prayer in public schools and buildings.

Voted to reduce voting age to 18.

Voted to increase by $47.9 million funds for student loan programs.

Voted to provide $53,680,000 in impacted aid for children living in low-rent public housing projects.

Voted for Drug Abuse Education Act of 1970.

Voted to make public schoolchildren from households of four persons, the annual income of which is $4,000 or less, eligible for free lunches.

Voted for school lunch and nutrition amendments.

Voted to increase funds for Project Headstart to bring the appropriation to the authorized level.

Voted for amendment to provide incentive pay increases for military personnel and making recommendations contemplating establishment of an all-voluntary military service.

Voted to provide $587.5 million in urban renewal funds.

Voted to extend unemployment insurance, to permit workers to continue to receive unemployment compensation while enrolled in training programs designed to increase their employability, and for other purposes.

Voted to increase the ceiling for combined workmen's compensation and social security disability benefits.

Voted for the direct popular election of the President and Vice President.

A SALUTE TO EDUCATION

Mr. JORDAN of North Carolina. Mr. President, today the National Association is holding a Salute to Education and it is a pleasure for me to have this opportunity to express my strong support for all education programs throughout our Nation.

I have always recognized the importance of education in our lives and have sought during my 14 years in the Senate to encourage strong legislative support for our institutions of learning, for our teachers, and for our young people.

As one so long and deeply committed to the cause of education, I am immensely proud that North Carolina's school system has produced the National Teacher of the Year for 1972, James M. Rogers, Jr.

Through the selfless and unstinted use of his talents he has set an inspiring example both for those who teach and for those who aspire to learn. In doing so he has brought great credit to his school and to his State and it was a great honor for me to join with the President and with others to pay tribute to his excellence in teaching.

There are many fine teachers throughout our land who perform the invaluable service of preparing our young people for the future. I look forward to the continued enthusiastic support of these teachers and of our education programs in the days and years to come.

REDUCED AIR FARES FOR SENIOR CITIZENS

Mr. PERCY. Mr. President, many of us in the Senate would like to see the commercial airlines offer to senior citi-

zens specially reduced air fares similar to those now offered to young people. On April 20 of last year, I introduced a bill, S. 1591, specifically authorizing such fares. And last week, the Senate Commerce Committee held hearings on S. 1591 and similar proposals introduced by several of my colleagues.

Certain factors distinguish the elderly population from other segments of our population, and serve to make transportation a uniquely difficult problem for them. For example, the elderly have less than half the income of younger people, and while the incidence of poverty is decreasing among the younger population, it is increasing among those over 65. Because of their income problems, the elderly are less able than other segments of the population to purchase transportation services. Furthermore, the percentage of elderly people able to drive automobiles is much lower than that of the general population. It is estimated that substantially less than one out of four of the elderly possess drivers licenses. Many automobile insurance companies can and do cancel the policies of older people solely because of their age, regardless of their driving history or current physical condition.

Although many retired people do not have the money to travel, they most definitely have the time and the desire to do so. I have long felt that the need and desire of elderly people to travel should be considered more seriously by the commercial airlines, many of which now operate half-filled flights which could easily accommodate senior citizens.

The airlines have aggressively sought to increase their passenger loads by offering specially reduced youth fares, but they have largely ignored the senior citizens. Because few airlines have even bothered to experiment with such fares, good statistical information on the effects of such programs on revenues is hard to find.

One notable exception can be found in the experience of Hawaiian Airlines, which for 5 years now has been allowing senior citizens to travel at reduced fares. Interestingly, Hawaiian has found that the percentage growth in senior citizen passengers—since 1967 when the special offer first went into effect—has been substantially higher than the system's overall growth. Revenues derived from this special fare have increased 30 percent over what they were in 1967. On a seat availability basis this is almost all added revenue for the airline. Otherwise empty seats were simply filled.

Mr. President, I believe that many Senators would be most interested in the statement made by Hawaiian Airlines describing its experience with reduced fares for the elderly, I therefore ask unanimous consent that the statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

HAWAIIAN AIRLINES, INC., SENIOR CITIZEN STANDBY FARES

HISTORICAL BACKGROUND

The Senior Citizen Standby Fare originated from a similar philosophy of the Youth Standby Fares in the Second Quarter of 1966. The thinking behind the Youth Fare movement was to stimulate traffic, utilize empty seats at departure times, initiate youths between the ages of 12 to 21 to air travel, and limited income of this age group.

The Youth Fares were at 50% of full fares on a no reservations, standby basis with restrictions on certain holiday weekends. Youth Fare cards were sold at $3, renewable annually.

The Senior Citizen Standby Fare was made effective about a year later in the Second Quarter of 1967 under the same philosophy with the same restrictions. Permanent Senior Citizen cards were sold at $5. The same fares as Youth Fares were applied.

The differences in the cards were that the Youth Fare card expires at age 21 whereas the Senior Citizen card was permanent. Lost cards are treated as new applications in both instances.

Since the initial tariff on these two fares, the following were changed.

1. The restrictions on travel during certain days were removed.

2. Youth Fare Card renewal annually eliminated.

3. 50% discount from full fares decreased to approximately 40% (slight variations due to rounding into whole dollars after including 8% tax).

STATUS OF SENIOR CITIZEN FARES

Although not specifically mentioned by the Examiner or finalized by the Board, Hawaiian has submitted evidence and exhibits supporting its Youth and Senior Citizen fares in the Discount Fares Phase of the Domestic Passenger Fare Investigation, Docket 21866–5.

Since the Senior Citizen fares and rules are similar to the Youth Fares, it would appear that the decision on Youth Fares in this Investigation (Docket 21866–5) would be applicable in both instances.

Hawaiian alone has submitted evidence and supports the Senior Citizen fare.

HAWAIIAN'S SENIOR CITIZEN STANDBY FARES

1. Tariff.

As seen from the attached tariff pages 24–27 and 47–48 of Hawaiian's CAB No. 6, Local Passenger Tariff No. 6, the following rules apply.

a. Purchase of a Hawaiian Airlines Senior Citizens Identification Card by any person 65 years of age and over for $5.

b. Having in possession the Hawaiian Airlines Senior Citizen card when traveling.

c. Presentation of Senior Citizen card with proper identification for discount ticket purchase.

d. No reservation, standby status accommodated on space available basis.

e. Accommodated after all reservations and military passengers but before Youth Fare passengers (See page 30, CAB No. 6 attached).

f. Fares are approximately 60% of full fares.

HAWAIIAN'S PROMOTION OF SENIOR CITIZEN FARES

All of Hawaiian's discount fares are widely promoted and specifically publicized in our timetables. Additional brochures on Hawaiian's discount fares including the application forms for Senior Citizen and Youth Fare cards are widely distributed. See enclosed timetable effective February 15, 1972 and Discount Fares brochure.

HAWAIIAN'S EXPERIENCE OF SENIOR CITIZEN FARES

Since the beginning of the Senior Citizen fares in the Second Quarter of 1967, Hawaiian has contacted numerous senior citizen groups, retirement homes and community groups within the islands.

1. From 1967 to 1971, Hawaiian has sold 6,451 Senior Citizen membership cards for revenues of $32,255. Additionally, these members' travel revenues totaled $355,832 for a total of $388,087. The success of this fare may be seen from the steady growth of 1/10% to 1/2% on total transport revenues for Hawaiian (page 8).

2. In terms of growth, Hawaiian enplaned 33,715 Senior Citizen passengers in the 1967–1971 period. The percentage growth in Senior Citizen passengers has been substantially higher than the total system growth. The substantial growth in Senior Citizen Fare travel may be seen from the 4,421 enplanements in 1968 to 12,706 enplanements in 1971—three times as many in 3 years. By comparison, total system traffic grew from 1,418,076 passengers in 1968 to 1,878,921 in 1971 or a 32% increase in 3 years (page 9).

Due to the 40% discount in fares, the question of diversion from full fares is brought out. That is to say that diversion would outweigh stimulation unless the percentage growth is greater than 40%. Hawaiian would argue that the diversion factor is outweighed by stimulation since the fares are strictly standby. Positive space Senior Citizens would still pay full fares on business or commitment travel. Additionally, it stimulates traffic by the addition of accompanying members of the family.

3. Senior Citizen standby revenues have grown from $34,702 in 1968 to $151,618 in 1971 or more than a fourfold increase (page 10).

4. Youth Standby revenues have grown from $106,165 in 1967 to $541,340 in 1970 for a five-fold increase (page 11). The decline in individual youth fare travel is attributable to the Youth Group Fare made effective in December, 1970 which provided the Hawaiian carriers with a tax incentive by the State of Hawaii.

5. Since both the Senior Citizen and Youth Fares are standby, non-reservation, space available traffic, Hawaiian would argue that these traffic fill seats that would have gone empty. On this basis, these traffic contribute at least a point or more in load factor throughout Hawaiian's system (page 12).

If the 12–21 age group travel is justifiable on standby discounts, the 65 and over group is equally if not more deserving in filling seats that would have operated empty.

The limited incomes and ample time elements are clearly recognized in the case of Senior Citizens. The Senior Citizens are an important element of Hawaiian's traffic.

THE GENOCIDE CONVENTION AND THE FIRST AMENDMENT

Mr. PROXMIRE. Mr. President, some opponents of the Genocide Convention have expressed concern about article III, section (c) of the treaty, which prohibits "direct and public incitement to commit genocide."

It has been suggested that this provision could undermine the U.S. Constitution's first amendment guarantee of freedom of speech. This fear is without foundation. Two distinct and separately compelling arguments apply here.

First, whatever treaties the United States enters into are subordinate to the provisions of the Constitution. The Supreme Court's decision in Reid against Covert makes this perfectly evident, and the Court's opinion in that case cites five previous cases which held the same thing. This means that if there is a direct conflict between the Genocide Convention and the Constitution, the courts would strike down the conflicting provisions of the Genocide Convention. If there is only the possibility of a conflict, the Court would interpret the treaty in a way that would satisfy constitutional requirements. Thus if the Genocide Con-

vention's language were more restrictive of free speech than the Constitution allows, the Convention's restriction would be narrowed by the Court to comply with the Constitution.

Furthermore, the Convention's language is precisely that which the Supreme Court has used in interpreting the first amendment. In the 1969 case of Brandenburg against Ohio, the Court held that:

> . . . the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

The Court's distinction between advocacy and incitement is crucial. Advocacy is what the first amendment protects; incitement amounts to shouting fire in a crowded theater. Incitement is exactly what the Convention prohibits in the section in question. There can be no doubt that this prohibition is consonant with the U.S. Constitution's first amendment.

I urge the Senate to take up and ratify the Genocide Convention without further delay.

TO GUARANTEE JUSTICE AND OPPORTUNITY FOR INDIANS

Mr. HUMPHREY. Mr. President, throughout my period of public service, I have placed the needs and rights of Indian Americans high on my agenda of priorities. In Minnesota, originally the land of the Sioux—Dakota—and Chippewa—Ojibway—Tribes, I have made a continuing effort to address the critical problems of reservation Indians, the Indian family isolated in rural poverty, and the Indian confronting an alien culture in the city—basic problems confronting tribes and individual Indians throughout America.

The many ways in which Indians confront a denial of justice and a constant struggle against poverty must be brought clearly before public attention if effective action is to be achieved. That was why, as mayor of Minneapolis, I appointed the first Indians on the city's human rights commission. It was also why, as Vice President, I welcomed the opportunity to serve as the first chairman of the National Council on Indian Opportunity. I was honored, as Senator, to become a member of the Red Lake Chippewa Band, and I have continued to work over the years on projects and cases of immediate importance to Indians in Minnesota, to meet vital needs in the areas of health care, education, employment, housing, and the protection and development of land resources.

TO PROTECT INDIAN LAND AND WATER RESOURCES

I believe the next administration must establish a new direction and firm commitment in national policy to restore pride and promise to Indian people. Land resource rights have been of immediate and central importance in clearly demonstrating this commitment. I fully supported the return of the Blue Lake land to the New Mexico Taos Indians, not only as an important conservation measure, but also and far more importantly, because the land is sacred to the Indians. I felt the Senate Interior Subcommittee on Indian Affairs, in failing twice to vote on this vital measure, established a serious credibility gap between expressions of support and actual performance, before the Indian people.

My concern to protect the vital land resources of the First Americans and their right to long-overdue justice also explain my joint sponsorship of the original Senate legislation dealing with the settlement of Alaska Native claims.

It is for the same reason that I strongly supported recent legislation to convey trust title to the Stockbridge-Munsee Indian Community in Wisconsin of 13,077 acres of submarginal land purchased by the Federal Government some 37 years ago under a depression-era progam to provide tribes with an adequate land base on which to survive and develop. The purpose of the original act has been thwarted by the failure to pass trust title to the tribe. Passed by the Senate, this legislation carries through important precedents that can be of benefit to a number of tribes in other States, including Minnesota.

I have also expressed my full support for legislation recently introduced in the Senate to repeal the act terminating Federal supervision over the Menominee Indian Tribe of Wisconsin, to reinstate the Menominees as a federally recognized, sovereign Indian tribe, and to make the tribe eligible for the services the Federal Government furnishes to Indians. The effect of the Termination Act has been the loss of liquid assets and an unemployment rate of over 22 percent, with extensive poverty. The simple fact is that the burden of current liabilities and limited legal rights has prevented the restoration of a viable economy based on forestry management.

The termination policy adopted by the 83d Congress is morally and legally unacceptable and has produced bad practical results. It should be repealed.

I support the establishment of an Indian Trust Council Authority to assure independent legal representation of the national resource rights of Indians. But I believe the Water Resources Council immediately should adopt a firm policy that no water project should be built on Indian lands unless it can be shown that there is a clear margin of benefits over the costs, for Indians.

TO ESTABLISH ELIGIBILITY OF URBAN AND RURAL INDIANS

What are clearly required today are specific actions by the Federal Government to end its long history of broken commitments to the Indian people. I strongly believe, for example, that the concept of trust responsibility extends to all Indian people, regardless of where they reside.

Specifically, I call for the full implementation of a new eligibility study completed by the Bureau of Indian Affairs, which calls for extending eligibility for Federal services to three main groups of off-reservation Indians—urban, rural, and state reservation. The time has come to fulfill the commitment of the United States to all of the 800,000 Indians who for too long have known only the repeated violation of their civil rights, a struggle against ill health, malnutrition, and poverty, and the denial of equal opportunity in education and employment.

It is particularly important that all relevant programs and services be coordinated under the Bureau of Indian Affairs to reach those Indians who are isolated in rural poverty or condemned to an existence of despair in the city, for their migrations can be traced precisely to the encouragement provided by a federal policy or program.

I strongly supported the enactment of the Indian Education Act of 1971, subsequently incorporated in the Education Amendments of 1972 passed by Congress. This act launched the needed shift in eligibility policies in authorizing increased Federal financial assistance to meet the special education needs of Indian children. For it based this new assistance directly on the number of Indian children enrolled. The clear intent of Congress is that the discriminatory allocation of educational services for Indians under Public Law 874 shall end forthwith. A further important provision in this legislation calls for direct Indian participation in education policy determination, from the local to the national level.

I have also joined several Senators in immediately communicating to the Senate Appropriations Committee our strong support for additional funds recently passed by the House to establish additional urban Indian service centers. It is important to recognize that this appropriation will help the BIA extend its services to off-reservation Indians for the first time, enabling urban Indians to apply for critically needed social benefits and to obtain vital health, educational, and employment services.

TO PROVIDE JOBS AND ECONOMIC OPPORTUNITY

I believe the decade of the 1970's must be the decade of decisive advances in Indian economic self-development. The economic condition of the 450,000 Americans of Indian ancestry living on or near a federally recognized reservation, colony, rancheria, or pueblo is appalling, not to mention the desperate plight of Indians who have relocated into urban and rural poverty.

I have long been involved in encouraging corporations to locate on or near reservations, including the Navajo lands, to provide critically needed jobs. I am fully aware of the problems which must be met, but I strongly believe this direction must be pursued to promote economic self-sufficiency among the tribes.

I am committed to a Federal policy of Indian self-determination, without termination of the legal and historical relationship between the Indians and the Federal Government. And I have jointly sponsored, with Senator HENRY JACKSON, a bill to authorize the Secretary of the Interior to contract with tribal organizations so they may directly plan and administer Federal programs of educational, agricultural, and social welfare assistance.

Meanwhile, I believe it is essential to substantially increase appropriations for

health services and housing assistance critically needed by Indians.

But with an unemployment rate that is 10 times the national average, the Indian people are rightly demanding extensive Federal efforts to provide job opportunities and to promote economic self-development. I have called for substantial increases in economic development revolving loan funds. And the Employment Opportunities Act of 1972, which I have introduced, should be administered to assure Indians a fair measure of the more than 1 million public service jobs that can be created under this bill and related measures.

Finally, I have fully supported the establishment of an American Indian Development Bank, to assist Indians and Indian tribes in the development of industrial and agricultural facilities and enterprises, and in the development of their natural resources. I believe the initial capitalization for this bank should be set at least at $500 million.

With 80 percent of reservation Indians living in poverty, a total approach to Indian socio-economic development must be launched without delay. Urban Indians must also be enabled to undertake programs of community economic self-development. And to meet the special needs of rural Indians, I believe a Federal program of substantial assistance for Indian cooperatives is now required on a sustained basis. This can provide an essential tool for joint economic efforts by Indians and to end their exploitation as consumers.

The time has come for a totally new direction in national policy toward the Indian people. We must enable the Indian to again stand with pride and to have hope in the tomorrows of this great land. We must acknowledge the rich heritage this pluralistic Nation enjoys in the traditions and values of the Indian people, and the strength it can receive from their direct involvement in its economic, educational, social, and political life.

SALUTE TO EDUCATION

Mr. BAYH. Mr. President, I commend the National Education Association for initiating a salute to education today, June 21. Education continues to hold the key to social mobility and the self-actualization of countless individuals in our society today.

As indication of the impact of education, in 1971 estimated fall enrollment in our public schools was 46.1 million; projected figures reveal that by the fall of 1978, 6.2 million more students will have enrolled—an increase of nearly 1 million students per year. During the same 7 years, college enrollment is expected to increase by 63 percent. These young people will comprise the future leadership of our country. Education has played a vital role in preparing them to deal with the complex problems of today.

The mainstay of our education system is the dediction of teachers throughout this Nation. Approximately 2 million men and women have given their time and talents to the education not only of our children, but also of adults interested in continuing their education. During the fiscal year 1970, over 8 million adults were enrolled in education programs—an increase of 10.2 percent over 1969. Experimental programs such as English as a second language have proven highly successful for recent citizens and adult education has even reached into the home with programs designed to show parents how to make education more vital to their children. More important, librarians across the country have given their time so that many public schools library facilities can stay open at night for community use. All of these programs are possible because teachers are willing to devote their extra energy to special evening programs in addition to regular daytime classes.

Of course higher education is increasingly crucial in this technological age. This year, Congress passed a bill, S. 659, which promises to have a revolutionary impact on our system of higher education. The bill attempts to establish access to higher education as a basic Federal right by providing financial assistance to all those who need it. The bill also provides desperately needed operating subsidies to help meet the skyrocketing costs of education. Congressional passage of my amendment to prohibit sex discrimination in educational institutions gives me particular pride. I personally would like to thank those teacher organizations, administrators of education, and countless individuals who have contributed to the passage of this legislation. Women are now guaranteed equal opportunities in admissions, scholarship aid, and faculty status.

The academic community is to be commended for its continued advancements—not only in the area of improved teaching techniques, but also in the effort to expand equal educational opportunity to all.

FEDERAL RESERVE BOARD FAILS IN ITS DUTY—WHAT DO THEY HAVE TO HIDE?

Mr. PROXMIRE. Mr. President, I am sorry to report that the Federal Reserve Board ducked, misled, hid out, avoided calls, and gave us the idiot treatment in connection with my request Monday for a report to me on the name of the bank or banks involved in issuing the $100 Federal Reserve bills found on the men caught bugging the Democratic National Committee.

I think their refusal to cooperate was both a despicable act and unworthy of them as an arm of the Congress.

As the ranking Democratic member of the Senate Banking Committee and as chairman of the Financial Institutions Subcommittee, before 10 a.m. on Monday, June 19, I not only requested the names of the bank or banks which issued the notes but also the name of the person or persons receiving the funds—estimated at $6,300—the source of the check or financial instrument used to purchase the $100 bills, and other pertinent details.

FEDERAL RESERVE KNOWS WHO ISSUED $100 BILLS

I did this for several reasons. First, Federal Reserve notes were involved, they were in numerical sequence, and commercial banks keep details of transactions of this size. Those who paid for this job could be traced through the bills.

Second, in this case the executive branch is a party of interest. One of the men caught was directly connected with the Nixon campaign. I hope that higher ups may be innocent of these wrongdoings. But with the executive branch having a conflict of interest, it was essential that the Federal Reserve Board, which is an agent of the Congress, should give Congress the facts promptly, fully, and completely.

WRONG AND MISLEADING INFORMATION

Until 4 p.m. on Tuesday, the Federal Reserve gave us the run-around. For example, at the same time that the FBI told my staff on Monday they had already been in touch with the Federal Reserve to identify where the bills came from, Chairman Arthur Burns wrote me that, "We at the Board have no knowledge of the Federal Reserve bank which issues those particular notes."

Until 4 p.m. Tuesday, even after newsmen had traced the bills to the Miami and Philadelphia Federal Reserve Districts, the Federal Reserve was telling my staff they had no information and the Reserve Bank at Philadelphia refused to return our calls. Finally, at 4 p.m. Tuesday the Federal Reserve stated that the information ". . . should not be released to anyone other than the investigative authorities," namely the FBI and Justice Department.

FEDERAL RESERVE FORGETS IT IS AN AGENT OF CONGRESS

The fact that the Federal Reserve, an agent of Congress and independent of the executive branch refused to cooperate with Congress while falling all over itself to aid the executive branch suggests they have something to hide.

One would have to be extraordinarily naive not to feel the Federal Reserve may be covering up for someone high in the executive branch of our Government who is directly involved with the espionage action against the Democratic National Committee.

Chairman Arthur Burns should reread the Constitution. It provides that Conress, not the executive, has the money power. Under our Constitution the Federal Reserve Board is directly obligated to Congress and is independent of the executive branch.

Certainly with the President of the United States and his supporters a party at interest, the Federal Reserve Board should recognize their clear constitutional obligation to the Congress. In this case they have failed to do so.

SALT: SOME BASIC QUESTIONS

Mr. JACKSON. Mr. President, in connection with the scrutiny by Congress of the Moscow arms limitation agreements, I ask unanimous consent that the text of my article raising some basic questions about SALT, which was published in Newsday on Sunday, June 18, 1972, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Ideas, Newsday's Journal of Opinion, June 18, 1972]

ARE WE NO. 2?

(By Senator HENRY M. JACKSON)

With President Nixon to the Moscow summit went the hopes of all Americans for progress toward a lessening of international tensions and the instabilities that cause wars. Individual views of the results of the summit may vary, but I believe all Americans respect the President's sincerity and the scale of his efforts in Moscow.

President Nixon has now submitted the strategic arms limitation agreements signed in Moscow to the Congress for its advice and perhaps consent. The Congress, in carrying out its constitutional responsibilities, must study carefully the impact of these agreements on our deterrent posture and the future foreign policy of this country. One cannot give a responsible final judgment until all of the hearings have been held and until all the evidence is in. I will endeavor to play the role of a good lawyer in examining the witnesses and pursuing the facts.

I must say, however, that what I already know is enough to raise some very serious questions that go to the heart of the security of the United States and the future of individual liberty. All Americans want to see the strategic balance become more stable. We all desire the increased security that flows from a potential aggressor's knowledge that he simply can't execute a disarming first strike against our deterrent forces. Unfortunately, I see nothing in the present agreements that lessens the threat to the security of these deterrent forces. On the contrary, far from placing us in a condition of stable deterrence, the agreement permits the Soviet Union to continue its offensive build-up in a way and on a scale that could prove highly dangerous. Simply put, the agreement gives the Soviets more of everything: more light ICBMs (Intercontinental ballistic missile), more heavy ICBMs, more submarine-launched missiles, more submarines, more payload, even more ABM (anti-ballistic missile) radars. In no area covered by the agreement is the United States permitted to maintain parity with the Soviet Union.

Something was basically wrong with the administration's approach to such difficult and vital arms control negotiations. In May 1971, the agreements existed only in outline and many critical issues were still outstanding. Nevertheless, President Nixon publicly announced that there definitely would be a U.S.-USSR agreement on strategic arms. In effect, he said we had decided to purchase the house even before knowing the price! The administration then compounded its error by instructing our SALT delegation to see to it that President Nixon had a final agreement ready to sign at the Moscow summit. We thus put ourselves over a barrel. As in all bargaining, the side more eager for agreement at a specified date will pay more to get it. There is clear evidence that the self-imposed deadline led to major concessions by the United States that have had the result of gravely increasing the disadvantages to us of the agreements.

For example, on May 20, just six days before the signing, the U.S. caved in to the Russians and withdrew our key proposal to include in the agreement a mutual ban on the deployment of land-mobile ICBM launchers. On May 26—the very day of the Moscow signing—the President capitulated on the vital requirement to get agreement with the Russians on a common definition of the all important term "heavy missile." The administration resorted to a weak and unilateral assertion as to what we understand a "heavy missile" to be, while the Soviets have chosen even to withhold comment on our definition. The failure to resolve disagreement on this term raises doubt about the central claim that is being made for the agreement: that it will prevent the Soviets from deploying more huge SS-9 type missiles.

The pressures imposed by public relations requirements at the summit made matters even worse. We were still negotiating on the plane carrying the two SALT delegations from Helsinki to Moscow for the signing ceremonies. There existed no copies of the agreement other than the ones signed by the principals so that the press corps was left to rely on vague and partly misleading briefings about the contents of the agreements. The initial press, radio and TV reports from Moscow were full of misinformation. As a result, the false figures circulated in these early stories confused most Americans. Top administration officials are still contradicting each other about what these agreements mean. The full content of the agreements—essential to any evaluation of their import—was not given to the Congress or made available to the public until 19 days after the Moscow signing.

It was only after I made repeated demands for these additional "private understandings" that the administration admitted their existence and announced its willingness to release them.

This is no way to negotiate. If you negotiate this way you inevitably end up with unsatisfactory agreements. And as Robert A. Lovett has warned: "Do not give unilateral concessions, particularly to the Russians. They will not feel gratitude. They will feel contempt for your gullability."

The strategic arms agreements have one overriding fault: They freeze the United States at a serious numerical inferiority in both ICBMs and submarines while they authorize the Russians to continue their buildup. Not only do the Soviets get 1,618 ICBMs to our 1,054 ICBMs, but they are permitted to exercise options that would give them 62 modern nuclear ballistic missile submarines to our 44. The crucial question for the nation and for the cause of world peace is whether these numbers add up to stable parity or unstable inferiority.

Now there are some who argue that "numbers don't matter"—that both sides have "sufficiency" and that therefore the strategic balance is stable. Wishful thinking springs eternal and strong. How curious it is that the people who hold to the "numbers don't matter" doctrine are the same ones who believe that without an immediate arms control agreement the world is in danger of a greater nuclear war. Either numbers matter or arms limitation agreements don't—you can't have it both ways.

Among those who acknowledge that numbers do indeed matter there are those—and I am afraid the administration must be counted among them—who argue that because we now have more MIRV (multiple-independently-targeted reentry vehicle) warheads than the Soviets it is safe for the President to have granted the Soviets (as he has done) a license to outdistance us by 4–1 in payload capacity.

But MIRV is not frozen under this agreement. The Soviets, therefore, can—and will—proceed very rapidly under the agreement to catch up with us in the MIRV field. We know they are hard at work on it. Since the Soviets are permitted so many more missiles than we have and so many missiles many times more powerful than our own (as much as four or five times as large), the Russians could end up overwhelming us in numbers of warheads as well as numbers of missiles and missile size.

In the course of our Senate hearings on SALT—long before the Moscow summit—we warned the administration many times that the Congress, at my initiative, had turned down funds for an ABM site around Washington, D.C., on the grounds it would not be effective. The Soviets could easily overwhelm that ABM site. I was amazed, therefore, to learn that the President had signed an agreement in Moscow that called for a deployment on our part that the Congress had previously rejected while abandoning a sensible deployment that the Congress had approved—namely, additional ABM sites to protect our deterrent land-based missile forces.

I think we must also recognize that the next phase of the SALT negotiations cannot help but be influenced by the outcome of SALT I. Within the five-year life of the interim arms agreement, that is, by mid-1977, we will be in the position of having to ask the Soviets for *parity*. In other words, we will be asking them to give up in SALT II what they have gained in SALT I. Yet what possible reason is there to expect that the Soviets will be willing to do this? Or, more to the point, what political and diplomatic concessions will we be forced to make so that the Soviets will not further widen their margin of superiority? For is it reasonable to believe that the Soviets will not attempt to gain political and diplomatic benefits from the strategic arsenal in which they have invested so heavily, and which we have now licensed them to expand?

I have said on several occasions that increased Soviet strategic capabilities can embolden the Soviets, can increase their willingness to take risks, can harden their bargaining position in negotiations, and can therefore lead to new instability in international affairs. Operating from a much more favorable correlation of forces, the Soviet leaders could be expected to seek fresh advances, especially in the third world.

Nothing that has happened in recent months—whether on the Indian subcontinent, in the Mideast or with the Soviet supplied North Vietnamese offensive across the DMZ—can be cause for altering this assessment.

Summits are difficult at best and a summit in an election year before a nationwide TV audience is a very doubtful instrument of sound diplomacy. One must ask whether we would not have been much better off to continue the SALT I negotiations, do some tough bargaining, and seek secure agreements rather than insist on the hasty signing of less secure ones.

The American people will be bitterly disappointed if the many serious problems in the SALT accords have the effect of both diminishing our security and forcing increases in the defense budget. As the administration has presented its program, there will be no savings in the defense budget as a result of SALT, and already there are proposed increases.

As much as I can understand the desire to believe that the Moscow summit heralds a new era of peace and cooperation, I must say that there is no substitute for facing facts. The Moscow arms agreements, I believe, raise as many questions as they answer.

THE COUNTY ASC COMMITTEES

Mr. NELSON. Mr. President, sometimes, because of our frustrations with modern problems, we tend to overlook the great good being accomplished by many American citizens in on-going, long-term Government programs. A program of this nature which very much deserves credit is that of the county ASC committees which function throughout the Nation in cooperation with the U.S. Department of Agriculture.

Just recently I was reminded of this again when I read the testimony given before the Senate Subcommittee on Agricultural Appropriations by Mr. Boyd Frank of Clear Lake, Wis., which happens to be my hometown. Mr. Frank, as his testimony demonstrates, is the type

of selfless American who makes our Government function at its best. His thoughtful and constructive testimony epitomizes the excellent approach of a good organization to one of those persistent problems, soil erosion, that worries all thoughtful Americans. But while many of us just worry, Mr. Frank and his associates are working diligently and intelligently on our behalf. Because of the importance of his work, I ask unanimous consent that Mr. Frank's thoughtful testimony be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF BOYD FRANK

Mr. Chairman and Members of the Committee:

I am Boyd Frank of Clear Lake, Wisconsin. I am a dairy farmer and operate a 200 acre farm. I have also served for 13 years on the County ASC Committee and have had a great interest in the conservation of our soil and water of our County, State and Nation.

I certainly appreciate the opportunity to appear today in support of increased funding for the Rural Environmental Assistance Program to 500 million dollars, which was authorized by Congress in 1936. Much has been accomplished in the years past, under the program known as the Agriculture Conservation Program, more recently named the REAP (Rural Environmental Assistance Program). In our State of Wisconsin which I am familiar with and also in other States, I am sure this program has offered much in its more than 35 years of existence.

According to the latest survey of Wisconsin, 52% of our cropland, or 6.4 million acres needs conservation practices applied. Of the 6.4 million acres, 3.6 million acres need the extra protection of terraces, stripcropping, contour farming, grassed waterways and other water outlets and diversion terraces, to properly manage runoff water. 541,000 acres need annual cover of crop residues or other cover crops for protection to meet conservation needs as well as pollution abatement. 566,000 acres need a permanent type of grass or legume cover used in a long rotation so that land is under cover for a longer period of time, maybe five years at a time.

482,000 acres should be planted to trees or left in grass on a permanent basis. Also, there are 1.2 million acres that have too much water and need proper drainage. Of our 2.8 million acres of pasture land, 72% needs conservation practices applied. Nearly 1 million acres need to be re-established to grass and legumes which require lime and fertilizer.

Forest land—14 million acres—48% needs conservation treatment as follows: 3.2 million acres need planting; 3.6 million acres needs Timber Stand Improvement. With these needs and interest by farmers to carry out these practices, many farmers' requests have to be turned down, due to a shortage of funds each year. (As of this date, more than $70,000,000 in requests remain unapproved in our county).

With this great amount of our land that is not under erosion control practices, it is no wonder that the mouth of the Mississippi River is constantly being moved south. As I stood by the Mississippi River in New Orleans, I was told that the mouth of the river was originally at that point, but now it is many miles south and the Mississippi delta which covers 15,000 square miles of land had passed this point. I realized that some of it was from our county and state, and that it was the best part of our soil; the organic matter which is the easiest to move.

This is in fact the greatest loss of our nation's assets, as it is top soil that cannot be replaced by man, but only by nature. It would take 1000 years to build one inch of soil by natural decay of plant growth. With this loss of ⅓ or 3 inches of our top soil, it is causing the use of larger amounts of fertilizer to be applied to produce crops, and greater losses of fertility due to elements leaching out of the soil. There is a direct relationship between the amount of organic matter and calcium (commonly called lime) in the soil and the amount of nutrients and moisture it will absorb and hold.

As farms get larger, machinery must also get larger to operate these farms. The fields have doubled and tripled in size, causing more opportunity for erosion. There are also larger concentrations of cattle on given areas.

As I see it, our problem of soil erosion and the pollution of our lakes and streams is becoming greater because the amount of land we have to raise crops and use for recreation is less each year. Also, more and more of our land is being covered with concrete, asphalt, or buildings, which causes greater water run-off.

In my observation concerning how government money is spent to control water and prevent soil erosion, certainly that spent on small structures and practices on the land are far more important and outweigh the benefits of those for large dams.

For example—a Corps of Engineers dam in our county and an adjoining county, about 10 million dollars was spent to protect one city, but it did nothing for the protection of soil and control of water on farm land except right near the river below the dam. If this had been used in REAP practices, I am sure all the run-off water and erosion in the county could have been controlled. We also have a watershed that has done a wonderful job. It consists of 11 major dams, and several small dams in the area constructed under ACP funds. This only cost about 1.5 million dollars and covers about 36,000 acres.

I cannot emphasize enough that the duty of sharing the cost of preserving our soil and water, is the duty of each and every citizen. Therefore, the federal government should surely share in the cost with the farmers, who are caretakers of the land only for their generation. The time has come when we can no longer move on to new land, when what we have is the spoils of man's neglect.

Today we also have other problems arising. Air and water pollution from many sources. The one covered by REAP funds pertains to animal waste, which again is brought about by larger units of farming operations where large numbers of livestock are confined in smaller areas. Farmers are aware of what is happening, and are willing to try and do something about it, but they cannot stand the cost involved to correct them without cost sharing. Because of this, there is a greater need to increase REAP funds to include this part of pollution of our streams and rivers. We cannot neglect our other conservation practices on the land. There is also a need for more county SCS technicians to help with technical assistance, and early announcement of the program in July so lay-out and survey work can be done in the fall and plans drawn up during winter months. Our county had 4 and 5 county SCS technicians about 5 years ago. Now we have only 2 and 3. In many cases today, the $2500.00 limit that each farmer can earn, does not cover but 25% of the cost of large pollution control practices, and many erosion control structures, if they are large, due to the fact of increased costs in the last five years. Cost of earth moving equipment has raised from 15 to 25 dollars per hour. With this great part of the cost that must be borne by the farmer, he cannot afford to control the problems on his farm. Many young farmers today do not have over 10% net worth in their operation, and cannot borrow the additional money needed.

I urge you to consider that this cost share limit be raised to $5,000, for large pollution and erosion control practices. I also urge that Congress continues to permit ASC Committees to maintain practices of 1970 and earlier years in their county programs where they feel the need arises. Farmers should have 100% cost sharing on a stream bank fencing practice as he is giving up land on each side of the stream or river, from which he has no source of income. Keeping cattle out of streams is the greatest method I know to stop stream bank erosion.

When local, state and private individuals contribute 114 million dollars per year to help out on water shed protection and for conservation practices and soil surveying; and the farmers have and are willing to match every dollar the federal government will provide in REAP funds; let it not be said by future generations that their forefathers did not care or understand the necessity of controlling erosion and pollution.

Now man has only one choice left. To conserve what he has left of the soil and water, or face poverty and starvation as many of the older countries of the world that did not conserve their soil, have experienced.

This is God's land for today's generation to use and preserve for future generations.

Remember, man cannot survive without the fertile soil and unpolluted air and water.

Let us get closer to the problem by putting ourself in the place of a raindrop.

A RAINDROP FELL

"There's nothing unusual about that, but its environment decides whether it will cause destruction or add to the bounties of the earth.

"I fell to earth, I know not where, but the soil was hard and barren. Small as I was, I moved a small particle of soil. In no time at all, there were millions more like me, and now we formed a body of water. We started moving, taking the path of least resistance, which was easy because there was no plant cover and the soil was smooth. As we moved, we picked up particles of soil, making us more abrasive, causing other particles to move. Soon we had a small ditch started, and as we moved along at an ever increasing speed, we left much damage behind us on the field. Not many of us stayed behind to soak into the soil.

"We met many others coming from another direction, also seeking a lower level. We were no longer a trickle, we were now a stream with considerable more power. Look! There's a sharp curve ahead! It looks like some before had started to cut the bank. We are strong, fortified with good top soil. Each one of us took on a little more, making a great cut in the bank. What was that? A tree just fell behind us! We washed the dirt away from its roots. So on we go, ever increasing in size and power until the river banks will not be able to hold us within its bounds. Just as I thought, we are now beginning to spread out over lush farm land where there is something planted in rows. The dirt is loose and moves very easily. Soon the plants have become our victims and travel along with us. The plants caught on to something, probably a fence which caused us to slow down and back up and spread out over more fertile fields until we can break down the fences. As we slow down, we are losing the soil particles. They are settling back on the ground. Many of these particles we have moved hundreds of miles.

"At last we are back in the banks of the river, leaving destruction untold behind. Some buildings destroyed, roads washed out, crops destroyed, bridges washed away and huge piles of earth moved to where it is of no value, so man will have to move it in order to farm his land. Also along the way we have picked up chemicals and much unpurified sewage, we are not pure and clean like we were when we started out. Certain species of fish cannot live in our environment any longer. As we slow down, we deposit acres of new land that was not here years

ago. Now we are mixing with other water which seems salty. We must have reached the ocean! What will my destiny be?

"A few years later! Something is happening! I'm being picked up as vapor into the air and carried by wind and clouds out over the land. Suddenly some cold air is encountered and condensation takes place. Down I come as a rain drop once more. Where will I land? If it is the same area as before, great changes have taken place. This is called conservation, maybe even a watershed area. That was a soft landing. Either trees or grass has been planted here. There are millions of us here, but we aren't moving fast. Many of our number are soaking into the soil, as we move slowly down the slope, to provide moisture for the crops until more of us arrive.

"At last we are forming a body of water, but we are quite clear yet. We have very little soil with us. Maybe we can move some now. Guess not! This must be a terrace as there is not much slope and we move very slow. What's ahead? Looks like a creek, but it seems different. It must be a sod waterway or a diversion.

"There is grass on the bottom and on the sides, and we are moving toward a larger body of water. Must be a structure to hold water back, but I am clean, and not carrying much soil with me. I think there are fish in my presence. Look! On the bank there is a boy and a girl fishing. Is it a farm boy and girl, or is it a boy and girl from the city, who may never have come so close to nature before?

"Well, I must say, this journey was shorter than the last one, and not as exciting as I caused no destruction. But I am proud that someone was caring for his land and conserving the water for the benefit of all mankind."

Thank you, gentlemen, for the opportunity of sharing some of my views with you today.

A TRIBUTE TO EDUCATION

Mr. PROXMIRE. Mr. President, education has played a unique role in the history of our country. Our educators are probably best known as innovators, but let us also remember that we are the first country in the world to have provided universal education for our children. We are continuing to devote increasing resources to the education of our citizens.

The presence of not only a literate but also a knowledgeable citizenry has contributed to the rapid economic development which has characterized our past. It has also been essential to the proper operation of our political process.

If we are to continue to improve the quality of life for all of our citizens, we must place high priority on education in the future. We must be willing to provide educational opportunities which satisfy the needs of our diverse citizenry. Only when we have an equality of opportunity, allowing people to develop their talents to the limits of their abilities, will education have gained the position which it must have in our society.

BARBITURATE LEGISLATION SUPPORTED BY SENATOR FRANK E. MOSS BEFORE THE SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

Mr. BAYH. Mr. President, I commend the Senator from Utah (Mr. Moss) for his support of two bills which I have introduced relating to barbiturate drugs. S. 3538, would require all manufacturers and producers of solid oral form barbiturates to place identifying marks or symbols on their products. This would facilitate police efforts in tracing barbiturates diverted to the illicit market back to the original production and distribution sources. S. 3539, would provide for the rescheduling of four commonly abused short acting barbiturates from schedule III to schedule II of the Controlled Substances Act. This change would subject these particular barbiturates to stricter production and distribution controls as well as to more stringent import and export regulations.

These two bills attempt to deal with the most significant aspects of production, distribution, and diversion of the short-acting barbiturates. I welcome Senator Moss as a cosponsor of both of these needed pieces of legislation.

Mr. President, Senator Moss has supplied a statement for the hearing record relating to barbiturate legislation that I held on June 12 and 13, 1972. For the benefit of Senators, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR FRANK E. MOSS

Subject: S. 3538 and S. 3539, to curb Drug Abuse.

Mr. Chairman, I commend you and the Subcommittee for holding hearings on these bills (S. 3538 and S.3539), which place misused drugs under greater restrictions.

All too many of our citizens—and our young people especially—are using, and misusing, barbiturate drugs. Because they are inexpensive, they are readily available. We have all known young men and women whose wide use of "Downers" has brought tragedy into their lives.

The abuse of psychotropic drugs has been increasing at an alarming rate. On the street these sedatives are known as "Red Devils," "Red Balls," "Rainbows," "Goofers," and "Downers."

This abuse, however, is not limited exclusively to the street culture. More and more these drugs are being introduced into our American way of life. Drug abuse has been introduced into such diverse groups as college, high school, and junior high school students, industrials workers, businessmen, middle-class party-goers, and members of the Armed Forces. Even children in the fourth grade of grammar school are not immune to the dangers of these drugs.

It has been estimated that as many as four million school age youth have abused barbiturates and that this trend is gaining momentum. One concerned medical doctor noted that because of the ready availability and low prices of these drugs, 1972 may be known as the "Year of the Downer." I quote Dr. Sidney Cohen of the U.C.L.A. Center for Study of Mind-Altering Drugs:

"Downers seem to be coming on fast especially among the very young. Why is this so? For the youngster barbiturates are a more reliable 'high' and less detectable than 'pot.' They are less strenuous than LSD, less 'freaky' than amphetamines, and less expensive than heroin. A school boy can 'drop a red' and spend the day in a dreamy, floating state of awayness, untroubled by reality. It is drunkenness without the odor of alcohol. It is escape for the price of one's lunch money."

The Task Force on Drug Abuse reports the use of barbiturates is now more widespread than the use of heroin, and that overdoses of barbiturates are even more frequent. Moderate doses of these drugs tend to relax and calm one's nerves. Yet, an overdose has the opposite effect on the user. Rather than tired or drowsy, the experienced user feels high, light, euphoric, and rather divorced from reality.

The momentary euphoric illusions produced by barbiturates, however, are far exceeded by the potential dangers inherent in the drug.

Withdrawal for an experienced user will be marked with severe symptoms including tremors, insomnia, convulsions, delirium and high fever. These withdrawal effects of barbiturates are more likely to be fatal than any other drug including heroin.

Many pushers, evidently, obtain their merchandise through legitimate channels. Forged prescriptions, and duplicated prescriptions are employed by some users. Theft, employee pilferage, foreign drugs markets, and even the family medicine chest are other frequent resources relied upon. Barbiturates are easily obtained and can be purchased for a very low price. Our responsibility, in dealing with this problem, is to locate the points at which these drugs are diverted from legitimate to illegitimate channels and offset the diversion.

In an attempt to curb misuse of barbiturates, corrective legislation must be supported by the Congress. S. 3538 would require manufacturers and producers of oral form barbiturates to place identifying marks or symbols on their products. This would enable immediate identification of the original source of the drug and also facilitate the tracing down of the intermediate pushers and the point of diversion from legal to illegal channels. In addition, S. 3839 would provide a rescheduling of four commonly abused short-acting barbiturates from schedule III to schedule II of the Controlled Substances Act. Rescheduling would place the specified barbiturates under stricter production, storage, and distribution controls. This move would allow us to limit the surplus of barbiturates that are presently on the market.

I give my support to these two bills, Mr. Chairman. I realize that the Congress and the Administration have progressed a great distance since the initiation of our drug concern over three years ago. But even with the progress that has been made, no one can be oblivious to the formidable agenda which remains before us. It is evident that legislative efforts must not be relaxed until this menace which has already raged way too far out of control is caught and obliterated.

I hope these bills will soon be considered on the floor.

PROJECT SANGUINE

Mr. NELSON. Mr. President, since 1968 I have been raising questions in Congress about Project Sanguine, the Navy's proposed system for communicating with our worldwide nuclear submarine force. My specific concerns have been related to the possible serious environmental damage from the system and whether or not the system is in fact feasible.

These concerns have been shared by a large number of people in Wisconsin, one of proposed sites for Sanguine, and by many distinguished scientists from my State and throughout the Nation.

My further concern has been that the Congress would appropriate funds to deploy Project Sanguine prior to a resolution of the environmental and workability questions.

Now, however, after a series of conferences with naval personnel, including Admiral Zumwalt, Chief of Naval Operations, we have been specifically assured for the first time that the funds

requested for Sanguine for fiscal year 1973 will not be used in any manner whatsoever for deployment and are, in fact specifically earmarked for further research on the system's feasibility and environmental impact. The Navy has assured me in writing that the $12 million request on which the Congress will soon make a decision is only for the pilot project and that no decision for deployment of Project Sanguine in Wisconsin or elsewhere has been made.

Furthermore, I have been assured that the report of the Senate Armed Services Committee on this matter will also make clear that Project Sanguine will continue in the developmental stage for the next few years. Any decision to deploy the system will be dependent upon the feasibility and environmental studies.

Because of the importance of this matter, I ask unanimous consent that the correspondence I have had with the Navy on this point be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C., June 6, 1972.

HON. JOHN W. WARNER,
Secretary of the Navy,
The Pentagon.

DEAR MR. SECRETARY: Congress will soon be making the decision on the Navy's proposal that, in fiscal year 1973, Project Sanguine be advanced to the "Validation" phase and that some $12 million be appropriated for this purpose. In a continuing effort to evaluate the program, there have recently been a series of Naval briefings as well as a productive meeting between Naval scientists working on Project Sanguine and distinguished scientists who have asked probing questions concerning the technical feasibility of the system.

This letter is being written, prior to Congressional action, based upon my interpretation of the series of conference between myself, my staff, independent scientists, and Navy representatives over the past few months. It is for the purpose of reviewing the status of Project Sanguine and the FY 1973 proposals for it.

1. TECHNICAL FEASIBILITY

Scientists working on Project Sanguine are convinced that the practical feasibility of the communications system has been demonstrated. The Navy proposes, in FY 1973 to further test the practical aspects of the system during this test or development phase. Other eminent scientists, outside the program, express serious reservations concerning the technical feasibility of it.

Bearing importantly on this divergence of views is the need, raised both in the National Academy of Sciences report on Sanguine and by the distinguished scientists who have been critical of it, for a full-scale discussion in the national scientific community of the technical questions involved.

Sanguine obviously involves different theories and techniques of communication that have not had wide-spread, careful analysis by the scientific community. It is my understanding that the Navy agrees that the unclassified data respecting technical aspects of this system should be widely published in scientific journals so that it can be evaluated by experts in all of the scientific disciplines involved and the Navy agrees to make the unclassified data available.

In my opinion, the question of the practical feasibility of the system remains open until the scientific community has had ample opportunity to evaluate the data.

2. ENVIRONMENTAL IMPACT

In March, 1971, the Navy said, in its draft environmental impact statement on Sanguine, that it could build such a system compatible with the environment. Among those critical of this report were the environmental subcommittee of the Governor's Ad Hoc Committee on Sanguine in Wisconsin; the U.S. Army Corps of Engineers; and the U.S. Forest Service, which questioned the entire test procedure because of the lack of previous information on the test sites prior to their development.

In addition, preliminary results of tests, conducted by the Hazelton Laboratories of Virginia under contract with the Navy, indicated seed growth retardation, avoidance of electrical fields by aquatic life, mutagenisis of fruit flies (at a rate "too important to be neglected . . ."), and other potentially serious acute and chronic effects from Project Sanguine.

Recently, in April, 1972, the Navy filed a second environmental impact statement, which, based on pilot projects, concludes essentially that Sanguine will not have a substantial adverse effect on the environment. While their evaluation of this document is not yet completed, I am informed that the environmental subcommittee of the Governor's Ad Hoc Committee is critical of this statement for much the same reasons raised with the first statement. The subcommittee expects to issue a critique on this environmental statement on June 15, 1972.

Of course, environmental research on Project Sanguine is continuing. There are now studies being conducted at nine colleges or universities, some of which started as little as a month ago, and most of which will be completed in a year or so. Also, the Navy's FY 1973 proposed budget for Project Sanguine earmarks some $400,000 for continuing environmental study purposes.

Therefore, the question of the environmental impact remains unresolved for the time being.

I would like also to note that the Navy advises me that a final decision on the site for Project Sanguine has not been made. It is also the position of the Navy that continued testing at the existing site is essential to complete development and evaluation of Sanguine regardless of ultimate site location.

In summary, it is my understanding in my discussions with the Navy that the FY 1973 appropriations on which the Congress is asked to act involve only continuation of research and development ("Validation" phase) and do not include any funds for the Final Development and Deployment phases. I would appreciate being advised if my interpretations of these conferences do in fact represent a correct view of the status of Project Sanguine and the purpose of the funds requested for FY 1973.

Sincerely yours,

GAYLORD NELSON,
U.S. Senator.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., June 9, 1972.

HON. GAYLORD NELSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR NELSON: In your letter of June 6, 1972 you requested Navy confirmation of your interpretation of recent events affecting the status of Sanguine and the purpose of the funds requested for FY73.

I am pleased to advise you that your understanding of the efforts planned for Sanguine in FY73 are correct. I have enclosed a copy of the letter recently sent to the Chairmen of the Committees on Appropriations and Armed Services which also discussed the Navy's plans for Sanguine in FY73.

The technical feasibility of Sanguine has received considerable study and review for over ten years. This work has been supported by actual communications experiments with submerged submarines to test all aspects of the system. The recent National Academy of Sciences/National Academy of Engineering report supported the technical basis used by the Navy in developing the Sanguine concept.

As you correctly noted the Sanguine system involves concepts and theories that have not been extensively utilized in other systems. This is one of the reasons for the long and careful Navy research and development efforts since 1958. There are always some differing opinions on new scientific concepts. These can be best resolved by conducting actual experiments to test applicable theories while at the same time conducting scientific/technical discussions with all interested parties. The Navy has in the past and will continue in the future to encourage publication of unclassified technical material by the scientists working on the project. Considerable technical material was recently provided to Sanguine critics which should assist in their understanding and evaluation of Sanguine. The Navy will continue to cooperate in providing unclassified information regarding particular technical areas.

Several technical and professional societies will have sessions during the coming year specifically devoted to scientific papers on Sanguine. Several of the technical critics have indicated they will participate in these sessions which should provide a forum for meaningful technical exchange.

The Navy is not yet in a position to make a final assessment of the environmental impact of the *construction* and *operation* of an operational system. Environmental research is continuing and there has not been a decision on a final site or design. The recent Environmental Impact Statement (EIS) states there will be no adverse impact during the next four years of development. I must emphasize that this statement covers the remainder of Sanguine development only, and there is no intention that it be construed to be a statement of final impact, which as you know will be dependent upon results of this next phase as well as the exact location of the site. The present EIS does contain the current assessment of the potential impact from construction and operation of a Sanguine system. The final evaluation will be submitted in an updated EIS prior to requesting authorization for construction of an operational system.

The funds requested for Sanguine in FY73 are for continuation of research and development as part of the Validation Phase of the major defense systems development and acquisition cycle. Approval of these funds, and the conduct of the Validation phase, do not constitute a commitment to full scale development or production of a Sanguine system. Development needs to proceed in order to insure that future decisions on full scale development are based on availability of all necessary factors, including environmental issues.

The FY73 efforts for Sanguine do involve contracting with industry for competitive preliminary development tasks and continued testing at the existing Wisconsin Test Facility. The operation of the test facility will continue as in the past with only the addition of buried cable tests to provide additional data on cost, environmental considerations and antenna radiation factors.

I believe the recent discussion and reports made available including the NAS/E report will do much to provide a basis for future consideration of the Sanguine program.

Sincerely,

ROBERT A. FROSCH,
Assistant Secretary of the Navy.

DECISIVE ACTION TO HELP MINORITY ENTERPRISE

Mr. HUMPHREY. Mr. President, harsh statistics point to the continued exclusion of minority groups from the economic mainstream of America. In 1969, blacks in the United States owned and operated some 163,000 business enterprises—primarily limited to retail and service businesses—with receipts totaling $4.5 billion, or substantially less than even one percent of all business receipts in the Nation. Businesmen of Spanish ancestry owned and operated 100,212 business enterprises with receipts of $3.4 billion.

There are still only a handful of black-owned radio stations, no black-owned TV stations, and only a few black-owned newspapers of any size. Minority investment banking institutions remain extremely limited in number. And dollar receipts in 1969 for minority construction contractors totalled only $947 million—1 percent of the receipts for all firms.

The support of minority enterprise must now be viewed as an essential national policy, just as it has been deemed a national interest to provide extensive assistance to underdeveloped nations.

AN EQUAL ROLE IN THE AMERICAN DOCTRINE

We must move beyond support for minority-owned businesses at the edges of the American economy, to champion the right of minorities to expanded ownership of the instruments of that economy itself. Talk about capitalism is meaningless, unless blacks, Spanish-surname peoples, and Indians can compete, head to head, with the white businessman for the business of the white and as well as their own communities—with factories, trucking companies, banks, mortgage loan companies, and wholesale houses.

Participation—self-help — economic power—these are essential elements in any process of deprived inner-city residents becoming productive, self-sustaining, and involved members of society—and of bringing new economic vitality to inner-city neighborhoods. Being left only to do something for somebody else denies the right to equality of self-respect—of pride. Millions of Americans struggling to survive in the urban ghetto or the poverty-stricken rural county want businesses where they are, and employing the residents of their own areas, but serving the total community. They rightly demand the chance to succeed within the system.

FINANCIAL INSTITUTIONS, CAPITAL, AND TECHNICAL HELP

In 1968, as Vice President, I convened a working group of top Federal officials to make an intensive analysis of minority entrepreneurship, out of a fundamental conviction that this represented a major new direction in moving beyond the legislative victory of 1964 to establish equal rights under law, to achieve the critical objective of establishing genuine equality. I am gratified that several of the basic recommendations I made on the basis of the conclusions of these work sessions—for example, new programs to be initiated through the Department of Commerce and Small Business Administration—have been carried through in recent Federal programs of assistance to minority enterprise.

But there is much more that can and must be done now to enable minority peoples to undertake community self-help economic development and to participate directly in the American economy.

I fully support and would implement the recommendation of the Congressional Black Caucus of the establishment of an independent, publicly funded minority economic development bank with an annual appropriation of at least $1 billion, to provide the direct infusion of capital that is critically needed by minority businesses if they are ever to overcome debt-servicing costs and credit limitations that prevent them from reaching the level of business activity that can sustain their further growth.

Four years ago I presented a detailed program for the establishment of a national urban development bank, to provide and guarantee loans to inner-city businesses, to fund nonprofit neighborhood development corporations, to offer loans to business cooperatives established to strengthen purchasing power and product distribution, and to assure representation of core city residents on bank boards.

There is a critical need for minority owned and controlled financial institutions, and I would require that this be a priority agenda for such Government agencies as the Federal Home Loan Bank Board. In addition to providing adequate capitalization and enabling these institutions to make loans at a reasonable cost to minority businessmen, we must assure that minority-owned banks and investment companies have expert technical assistance—under Federal policies that emphasize help rather than surveillance.

I would propose that specific legislative authorization be given to the Federal Deposit Insurance Corporation to use a portion of its assets to provide technical assistance to minority banks. But I would go further to make extensive technical and management assistance a guaranteed addition to loans to minority small businesses. Advisory committees should be established at the Federal, State, and local levels, of competent people in the field of business management, who can work with and continuously advise a new enterpriser. And we should build upon present business executive volunteer programs connected with the Small Business Administration, by creating a permanent and expanded service that assigns a business consultant to each minority enterprise loan to provide firsthand management assistance.

But we must also greatly increase the number of black, Indian, and Spanish-speaking business managers and consultants. This must be a central part of Manpower Development and Training Act programs, and a recognized area of Federal education and on-the-job training assistance for veterans, beyond existing federally assisted higher education programs and opportunities provided through programs run by the National Alliance of Businessmen, which must also receive substantially increased support. And I would require that minority-owned technical assistance firms receive a fair share of grants under Section 406 of the Economic Opportunity Act to provide consultant services to minority entrepreneurs, in contrast to present practices.

LOANS AND CONTRACTS FOR MINORITY ENTERPRISE

The central problem confronting minority small businesses, however, is undercapitalization. Far too often, they find themselves strapped to loan commitments that go to pay immediate overhead costs, rather than provide an equity investment to move ahead and expand operations to complete effectively with larger firms.

Not only must there be a substantial increase in the lending authorization of the Small Business Administration, and basic reforms to enable minority enterprise small business investment corporations to operate with adequate capitalization, and to extend higher loans at reduced interest rates, but we must also assure that a fair share of Federal small business loans actually reach minority enterprises.

Over one-third of all SBA loans were made to minority businesses in fiscal 1971, but minority enterprises received only 19 percent of the total amount of money loaned by SBA. And the percentage of both the number of loans and the total dollars loaned to minority firms actually declined in fiscal 1971 from what it had been the previous year. I am determined that the all-too-frequent story of minorities falling further and further behind in their share of the action will not be repeated in the next administration.

Further reforms must be made in Federal contract policies to assure minority firms effective participation opportunities, to provide effective assistance for these firms to meet contract standards as in bonding, and to enable them to sustain operations upon contract completion or termination after having substantially geared up production, staff, and budget. Such reforms must accompany the substantial enlargement of SBA's section 8A program that assigns Federal Government contracts and subcontracts to businesses owned and operated by minority groups or businesses that hire the unemployed.

It should also be a policy of the Federal Government that contractors working on federally assisted and financed projects should set aside a specified percentage of their subcontract work for minority firms.

FEDERAL REORGANIZATION

Fundamentally, however, in establishing effective assistance for the promotion of minority enterprise and community development across America, there must be a reorganization of Federal agencies to implement this national priority. The President's Advisory Council on Minority Business Enterprise, in its report of June 1971, presented a detailed discussion of alternative routes toward ending the fragmentation of Federal programs and for mobilizing Federal resources for expanded ownership and participation by minority peoples in the American economy. I believe that recent centralization-

of-authority directives by the President in this area will not be adequate measures by which to accomplish these objectives.

I propose the establishment of a Cabinet-level Department of New Enterprise and Economic Development. I believe this reorganization is essential to combine authority and resources in numerous but uncoordinated Federal programs, to assist minority enterprise, small business, and poverty-stricken urban and rural areas to participate in a strong and growth-oriented American economy. And I endorse, as part of this program, the central recommendation of the Advisory Council that 100 local delivery centers be established in local urban and rural target areas to provide "one-stop-packaging" for the delivery of financial, managerial, and technical assistance. I would emphasize that these centers be staffed by public, private, and minority representatives who know the needs of the local area at firsthand and are committed to its development—they must not become another layer of bureaucracy which those seeking help must endeavor to surmount.

Finally, we must recognize that the growth of black and other minority businesses will be directly tied to the rebirth of America's towns and cities. It is to accomplish a major national investment in this rebirth that I have introduced the National Domestic Development Bank Act and am continuing to develop a legislative program focused on national growth policies for the decade of the 1970's.

In this work, I am committed to achieving the goal set by Senator Robert F. Kennedy, who called 4 years ago for building in the poverty areas of America, "a community of freedom of private initiative, a new community of self-pride and self-determination."

A VALEDICTORY ADDRESS

Mr. MATHIAS. Mr. President, on May 18, I had the honor of speaking at the commencement ceremonies of the Anne Arundel Community College in Arnold, Md. It was delightful for me to be able to speak to all the fine graduates, their families, and friends. But what I found most impressive was the thoughtful and searching valedictory address of Mrs. Carla Snuggs, an address dealing with America's transient youth. I commend it to my colleagues and request unanimous consent that it be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

VALEDICTORY DELIVERED BY CARLA SNUGGS

Senator Mathias, President Ludlum, Fellow Students, Parents, and Friends: Youths present visible problems in the community, by the way they dress, by the way they wear their hair, and so on. Transient youths move invisibly among us. They move invisibly both by choice and because we don't want to recognize them.

Much has been said in recent years about minority groups: blacks, Indians, women. Women have even been recognized as a legal minority. But what about youth? They seem to me to be a neglected minority. They are disenfranchised, and an increasing number of youths is mobile.

This large group of youth transients has been described by the Canadian Council on Social Development as being . . . between 13 and 22 years of age, temporarily or permanently living away from home and with no settled residence or occupation and no certain means of support. They may be in transit from one city to another. They may be relatively permanent visitors to the inner city of a metropolitan centre, having moved in from the surrounding suburbs or from other parts of the province. They may be young people on the move within their own city.

The most prevalently discussed group of youth transients in this country are the runaways. A few years ago, people seemed to feel that runaways were part of a fad that would diminish once youth revolts became less frequent. Violence on and off campus has slackened, but the number of runaways has increased. The problem of runaways was discussed recently in the April 24th issue of *U.S. News and World Report.* Detroit, Chicago, Atlanta—all reported an increase in the number of runaways, according to the article. The ratio of girls to boys running away has changed significantly over the last few years. The number of girls now equals or exceeds the number of boys in most American cities.

The article also states that glamour cities, such as San Francisco and Los Angeles, seem to have fewer runaways from other parts of the United States now than they did a few years ago. Why? More young people seem to be staying closer to home. But staying *near* home is not the same as staying *at* home!

In a program proposal by Caroline Martin, she recognizes the crisis of transient youth and offers some insight into the kinds of problems encountered. Three hundred fifty thousand parents reported their children missing in 1970. The Federal Bureau of Investigation estimated that three times that number of American youths were moving around with their locations unknown to their parents. The FBI theorized that many parents were too embarrassed to acknowledge the problem to the authorities and that some just did not want to help for reasons of their own. The figure has increased. Last year, over 60,000 young people left home in Maryland alone.

Briefly, for a few days, the young people have few problems. Over a longer term, Mrs. Martin says, they wind up existing below poverty level; they are unemployed—without direction—and have no relation to the community. In short, these people have nowhere to turn. As a result, they are compelled to meet strangers who offer them drugs, possibly rob them, teach them to survive in the crime circuit, sometimes injure them and so forth.

Among these youths, there is a high promiscuity rate. Veneral disease is common. The girls often become pregnant. Both for them and for their parents, this is a period of physical and mental anguish.

The reasons that young people choose to travel are innumerable. They want to see new places or wish to escape unbearable home situations. They fail or are unable to find jobs. Many are drop-outs from high school or college.

Europeans have long had a network of hostels readily available to youths to take care of the summer exodus from school or the winter vacation periods between terms. Canadians recognized the phenomenon of transient youth several years ago and established effective ways of helping them to remain safe. Canada has a national network of hostels that offer protection to the young. They are generally limited to a three-day stay, but if there is some extenuating circumstance, such as sickness, the stay can be lengthened. Nutritional food is supplied at the hostel. Both food and shelter are provided at a minimal cost to the young person, say roughly 50¢ per day. Provision has been made for the licensing of youths so that they can travel in safety, so long as parental consent is given. Medical and dental care are available. Counselling and referral services function in cooperation with the local community agencies. The young people are offered the means to communicate with their families, if they so desire.

In this country, a limited number of shelters have been established: a total of 100, and in the rest of the world, it has taken 45,000 to do the job. Marylanders are now taking a leading role in trying to establish a coordinated network of hostels. Toward the end of recognizing and dealing with the problem of transient youths, several new groups have taken action this spring. They have recognized that young persons on the move represent a poverty group. These are the poorest of the poor, because of their age and inexperience. They lack skills and are unable to find jobs. These young people are ineligible for welfare. Often they need parental consent to work. A newly found agency in Annapolis hopes to report its findings to the governor, the legislature and the mayor of Baltimore.

This past March, Delegates Allen, Menes and Hopkins presented a House Resolution related specifically to traveling and runaway youths. And finally and most importantly, the United States Congress, under the leadership of Senators Mathias and Bayh, introduced a most comprehensive bill for the protection of these youths. In it, they recognized the problem of youth transients and took a step toward the consideration of national legislation that would alleviate the problems regarding youths, particularly those moving across state lines and the laws that govern their freedom. One proposal is being drawn up as a model. According to it, a network of youth hostels would be set up throughout the state. The first one would be established in Annapolis, with a second one being introduced in Ocean City shortly thereafter. Ultimately, there would be twenty at selected points throughout the state so that these youths could travel from one hostel to another in safety.

Youth, by nature, is on the move. Youth is a time of discovery; young people lack the ties and commitments that bind others to one place. Among the people leaving now, there are probably some who will belong to the group of transient youths. I want to wish them luck, and to be sure that they are aware that something is being done by people like Senator Mathias to help them. Just as they will take their education with them, they will take another help on the road. It will be a kind of moving university.

Lastly, when your parents hear the television question, "Do you know where your children are tonight?" they can rest a little easier, knowing they *can* be safe in a youth hostel in Maryland while they continue their education in a type of dormitory that moves with them.

ANNOUNCEMENT OF POSITION ON VOTES

Mr. STEVENSON. Mr. President, I was necessarily absent from the Senate on the evening of Thursday, June 15, and on Friday, June 16. During my absence, the Senate held three record votes on which my position was not recorded. If present and voting, I would have voted "yea" on Senator TUNNEY's appeal to the floor of the Chair's ruling on a point of order, "yea" on final passage of H.R. 14989, and "no" on the Allott amendment—No. 1241—as modified.

In addition, on the Hruska amendment—No. 1236—I have been recorded, if present and voting, as though I would

have voted "no." I should be recorded, if present and voting, as though I would have voted "yea."

STATEMENT OF U.S. SENATOR ROBERT T. STAFFORD IN JOINING IN "A SALUTE TO EDUCATION"

Mr. STAFFORD. Mr. President, I think it is most appropriate as I rise to join in "A Salute to Education," that I call the attention of this body not to my own views, but to the dedication to education of the citizens of my home State of Vermont.

Although Vermont, because of its size, ranks near the bottom of the list of States in terms of total population and total financial resources, I am proud to note that my State ranks second among the 50 States in the financial effort it makes to support its public schools.

The latest figures compiled by the National Education Association show that local and State revenues for public schools represent 7.4 percent of the total personal income of Vermonters.

That effort is almost 50 percent higher than the national average, and stands as remarkable evidence of the importance Vermonters attach to the value of education. Indeed, when it comes to supporting public education, Vermonters put their money where their words are.

A SALUTE TO EDUCATION

Mr. HARTKE. Mr. President, education is the cornerstone of American democracy. To function properly, our institutions and the principles on which they are based require an informed and aware public.

I am particularly proud to join my colleagues today in saluting the American elementary and secondary education system which serves more than 40 million students. Our schools have sought to provide the highest quality of education to all of the young people of the Nation.

In these times of social change, schools are beset by many serious problems, but none of these dilemmas is without a solution. We must not forget our responsibility to assure that every American child receives a quality education to the full measure of his or her potential and interest. There has been far too much tendency in recent years to make short-term political gains at the expense of our schools and their problems. In the final analysis, we must either make the commitment to quality education for all—with everything which that commitment implies—or else we must pay a far higher price in loss of human productivity and worth—with everything which that implies.

American education has accomplished so much for the Nation, yet it is too often taken for granted. This week, the National Education Association is sponsoring a "Salute to Education." We can honor this organization and the educational system it seeks to promote and improve by supporting new and bolder legislative initiatives which seek to provide a higher standard of education for Americans.

COMMENDATION FOR KANSAS TEACHERS

Mr. PEARSON. Mr. President, today, and for decades to come, teachers face some of the greatest personal and professional challenges in our Nation. Responsible for the education of our youth, they must keep pace with increasingly complex advances in their profession and in the fields they teach.

Teachers and school administrators have the opportunity to provide innovative leadership in their profession, their communities, and the Nation as we search for new answers to age-old questions about education. I am certain that they will meet the challenge of the future.

For their dedication to excellence in education, and their continuing efforts to improve the quality of education in our Nation, I commend the teachers of Kansas and the Nation.

JUSTICE

Mr. McGOVERN. Mr. President, the recent attempt on the life of Governor Wallace is another shocking reminder of how far we Americans have still to go in achieving a society free of violence and terror. Often it must seem even to the most optimistic nature that this great Nation bears a kind of curse which condemns it to live eternally under the shadow of the gunman with no one ever safe—not the presidential candidate from the assassin, not the ordinary citizen from the mugger, not the woman from the rapist, nor even the child from the narcotics pusher. A reading of the daily newspaper with its depressing reports of crime, especially in our big cities, sometimes calls to mind the Hobbesian definition of the state of nature where human life was "nasty, brutish, and short."

Still I would urge those who are tempted to despair of our society, particularly those who would recommend a diminution of our freedom in order to gain a climate of so-called law and order, not to give up too soon.

I would urge them to keep a sense of balance in analyzing the admittedly grave problem of crime and lawlessness, and to remember that for all the problem's gravity, the vast mass of the American people are profoundly law-abiding. Only a tiny percentage of our population fails to meet Edmund Burke's qualifications for civil liberty.

Burke said:

> Men are [so] qualified in exact proportion to their disposition to put moral chains on their appetities. . . . It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions form their fetters.

Since most of us are guided by these standards and thus earn the right to be free men and women, any governmental response to the lawless minority which would reduce our freedom is patently unjust and excessive. The teacher does not discipline the entire class when one or two pupils misbehave. A government of free men does not—or should not—buy discipline and public order with the precious coin of individual liberty.

If I am elected President I will do everything in my power to reduce crime and to enhance the public tranquillity. I have no doubt but what this can be accomplished without impinging on the constitutional rights of the American citizen.

Why do people commit crimes? It is not necessarily that we are a violent society. Neither would I suggest that the deaths of John Kennedy, Robert Kennedy, Martin Luther King, Jr., and the shooting of Governor Wallace are symptomatic of a sick, beserk society. They were individual acts of violence, unrelated, in every case, to any identifiable social or political force at work within this society.

If the assassin's crime is often motiveless, street crime is not. The purse-snatcher, the mugger and the car-stripper want money. They want money because they often have no other means of getting it. When Willie Sutton was asked why he robbed banks, he said:

> Because that's where the money is.

There's no justification, of course, but the dismal fact remains that the street criminal is almost always the product of poverty and alienation.

To deplore street crime and not deplore the conditions that provoke it is senseless. And yet those who rail against such crime are the first to rail against the expenditure of public funds to alleviate poverty and frustration.

And this cynicism—a crime itself—is compounded by the corruption and the mismanagement of far too many of the funds Government does allocate to the economic ghettos and the barrios. There are too many layers of patronage between the appropriation and those it is meant to serve.

As President, I would appoint a Secretary of Health, Education, and Welfare whose first charge from me would be to slash through the bureaucratic jumble—Federal, State, and local—and see to it that the dollar earmarked for impoverished areas gets there without political deductions along the way.

But the failure and waste inherent in much of our antipoverty effort is too apparent for me to belabor the point. It is enough to say that we are doing a miserable job of combating those conditions that produce crime.

What of our courts? They are clearly the victims of a "litigation explosion," which results in unconscionably long delays in bringing offenders to trial. Never before in our history has there been greater congestion in our Federal courts. Nearly a third of all Federal criminal cases have been pending for more than a year. The case overload in most State and local courts is even more onerous. Everyone suffers—not just the accused and the accuser, but the taxpayer who must bear the cost of interminable incarceration of the offender.

WE NEED A "POLICEMAN'S BILL OF RIGHTS"

The President, of course, has jurisdiction only on the Federal level. I pledge that U.S. attorneys and Federal judges will be appointed in a McGovern administration solely on merit and without regard to political sponsorship or pressures. I frankly do not think the answer to

court congestion is more Federal judgeships. The answer is more efficient management of the courts we already have. I support the recommendation of the American Law Institute for an intensive review of the jurisdiction of the Federal courts; the application of the most modern managerial techniques in processing the case load, and the creation of extralegal occupations that would relieve judges and Federal attorneys of the paperwork they now have to contend with.

I would ask Congress to enact a strict timetable for the trial and appeal of Federal cases, to allow no more than 60 days to elapse between arrest and trial.

Complementing this, I would recommend more stringent control of defendants who are freed pending trial. For example, any defendant charged with a new offense while awaiting trial or while on probation or parole, would automatically be reincarcerated. At the same time, those who do not violate their release should be given help in finding work to sustain themselves until they come to trial.

What of the peace officer? Again, "law and order" rhetoric has done nothing to relieve the peace officer of either the danger or frustration of his work.

We expect the policeman to carry out his functions with the skill and wisdom of lawyer and judge, usually without the benefit of more than token education in law. And we continue to pay him a salary grossly out of line with the risks and responsibility of his profession.

In March of 1971, I proposed that we create a "Policeman's Bill of Rights," modeled somewhat on the GI bill of rights. It would provide the peace officer with additional education while remaining on full salary with his department. Many recent court decisions affecting evidence, search and seizure and defendants' rights are so complex that a lawyer has difficulty understanding them, yet the police officer is expected to apply them without error on a street corner and, often, in highly dangerous circumstances.

The additional police education I propose would include a study of such new complexities in the law, and it would greatly strengthen law enforcement as a profession.

We come, finally, to our system of penology. It is, generally, a failure, and the percentage of recidivism proves it. Most of our prisons are nothing more than warehouses where the offender serves out his time and walks out the gate—only to return a month or a year later.

The fact is that we do little or nothing to prepare the felon for a productive life outside the prison. There are not many jute mills or license plate fabricators in the outside world. And when we do teach the prisoner a skill, it very often is obsolete by the time he has a chance to use it or requires a union card in a trade where many union members are already out of work.

I believe we have to apply to our prisons the same guidelines we use in vocational schools; the anticipation of skills that will be in demand 5 and 10 years from now. At the moment, we are training most prisoners to be unemployable.

It is also clear that we put too many people in prison. Ohio estimates that it could free 40 percent of its prison population tomorrow without danger or violence to its citizens. Other States put the figure at 75 percent.

The nonviolent offender—the forger or bigamist, for instance—does not belong behind walls for long periods of time. He is certainly no physical risk to society, and most unlikely to commit another offense under strict parole supervision.

Steps should also be taken to provide less variance in the sentencing of convicts in different courts. It is a source of great resentment and anguish to men in prison that for similar crimes one man may be sentenced to 20 years in jail while his cellmate who has committed an almost identical offense may be sentenced to 5 years.

It might be well for every judge to begin his career on the bench by living inside a prison for 10 or 15 days so that he better understands what his sentences mean in human terms.

Our prisons are, without doubt, overcrowded. And this is responsible for much of the violence that occurs within their walls. Most of our prison population would be better served and ultimately better able to rejoin society if confinement were limited to small, community-based units, in which the inmate would have greater contact with his family and greater opportunity to obtain employment in advance of his release.

If we stop the warehousing, we have gone a long way toward eliminating confinement as the incubator of crime. Certainly this is true of the first offender. Our present policies virtually assure his return to prison at a later date—and usually for the commission of a more serious crime.

The terrible attack on Governor Wallace has once again emphasized the need for measures to control, if not ban altogether, the sale of handguns. I am a country man from South Dakota and I am aware of the jurisdiction in rural areas and among sportsmen, for the ownership of long guns. But I see no justification for the snub-nosed handgun or "Saturday night special" which—let us face it—are designed for threatening or killing people. I think this kind of handgun should be limited to the possession of law-enforcement officers in this country and I would press for the enactment of legislation to bring this about.

In 1970 handguns were responsible for the death of 500 persons in New York City while in Tokyo—strict gun control being in effect in Japan—the death toll from handguns was three. It is time that this country learned that handguns are used by the fanatic, the robber, the angry man, simply because they are available. It is time to make them unavailable.

EVERY JUDGE SUOULD SPEND 10 OR 15 DAYS IN JAIL

I think we must also examine more closely, our attitudes toward the drug offender. As a starter, the 20-year-old marihuana smoker certainly does not belong in the same institution with the rapist or kidnapper. In fact he does not belong in prison at all unless he is a supplier, for profit, to others.

In the area of hard drugs, I am impressed with the system put into effect in California under Governor Pat Brown. The California plan for the heroin-user provides for a system of civil commitment for the nonviolent addict. The addict himself, his family or a court commits him to a therapeutic institution for a period of 7 years. But the addict is eligible for release after 1 year if the institution determines that he is ready to return to his home. Naline testing and strict parole supervision have been remarkably successful in keeping such "outpatients" free of drugs. The rate of parole success has been spectacularly higher than that for addicts released from conventional prisons.

It's a cliche, obviously, to say that those who lead us set the moral tone of our society—that disrespect for the law grows in proportion to the disrespect we have for the actions and the credibility of our leaders.

But I do believe that a Government which can lie blandly to the people; which uses its influence to protect its friends from criminal prosecution and which openly announces it has no intention of enforcing a decision of the Supreme Court, is not manifesting respect for law in this country.

BICYCLING FOR HEALTH

Mr. MATHIAS. Mr. President, America today is enjoying a bicycling boom, as millions of our citizens reacquaint themselves with the enjoyment of traveling the highways and byways on personal vehicles under pedal power instead of internal combustion.

It is estimated that at least 6,000 commuters in Metropolitan Washington come to work daily by bicycle. Nationally, it is reported that more bicycles than automobiles may be sold this year if the present pace is maintained.

The National Park Service and local governments have made impressive initial efforts to accommodate and encourage bicyclists in this area, but much more remains to be done. I am pleased that the Senate last week saw fit to include in the appropriation bill for the District of Columbia for the coming fiscal year an item of $35,000 for marking new bike routes through the city, and I would hope that the conferees on the part of the Senate will insist on this amendment being included in the final bill which will be brought back for our approval.

In an age of increasingly serious concern over air pollution, traffic congestion, and lack of exercise by the general population, the encouragement of bicycling is one way of attacking all three of these problems at once.

I was pleased to note a recent editorial in the Washington Post on this subject. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD as follows:

ON TWO WHEELS

Bicycle trails are becoming an important and very pleasant part of this city's outdoor life. Every extension of the trail system strengthens the case for the next link. The

National Park Service deserves applause for the imaginative work already accomplished and encouragement for the sections still to be undertaken.

The trail that was opened this spring along the Potomac, from Columbia Island down to Alexandria, is a fine example of the benefits that this project offers. Long stretches of the riverside parkland has been, in fact, little more than a site for a heavily travelled commuter highway. The bike trail has now opened to the public those considerable distances along the river banks that were entirely cut off by the road. The heavy and constant use of this path in the past weeks is impressive evidence that the Park Service is meeting a real need. The Park Service hopes to extend the trail south from Alexandria to Mount Vernon over the next year. It is difficult to think of any other project that would bring as much pleasure to as many people for so modest a cost.

In Washington, nearly five miles of the Fort Circle trail has been completed in Anacostia. Eventually it will run more than 20 miles in a continuous loop through the city. The trails in upper and lower Rock Creek Park will in time be joined and, for an increasing number of people who work downtown, it is possible to commute by bicycle. For Virginia commuters there is access over the Memorial Bridge and at least a future possibility of a bike path across the river over the 14th Street Bridge complex.

For the rider who needs a map, the Park Service is publishing a brochure showing the trails in detail. For the rider who needs a bike, the brochure also lists rental concessions. The rider who needs a brochure can telephone the National Capital Parks public affairs office at 426-6700, or write to it at 1100 Ohio dr. sw., Washington 20242.

A SALUTE TO EDUCATION

Mr. EAGLETON. Mr. President, it is a pleasure for me to join today in the salute to education. Education is an investment in the future that pays incalculable social dividends. As the President's Commission on School Finance stated:

We cannot survive as a nation or as individuals without education.

Through the centuries, the advancement of civilization has been directly dependent upon the acquiring of knowledge. This fact has been clearly demonstrated in the last 50 years, in which more technological and social growth occurred than had occurred in the previous 5,000 years. These unparalleled developments resulted from the great wealth of knowledge provided by research and the educational system developed for communicating this knowledge.

Although there are isolated areas in our Nation's educational system which are inadequate, the system is basically sound. The educational community, by its continuing rededication to improving the quality of our schools, has served the country well.

Education will always be the single most important element in the future of America. I therefore salute our educators—their accomplishments and their goals, which I feel certain will be achieved.

THE "RIVER RATS"

Mr. SAXBE. Mr. President, recently the Red River Valley Fighter Pilots Association held its annual practice session at McConnell Air Force Base, Kans. And I want to take this opportunity to congratulate them on their continuing diligence and dedication to the return of their POW and MIA buddies.

For those not familiar with the River Rats, I would like to bring forth the history of the organization and commend those members working so hard on behalf of the POW's. The River Rats were organized to commemorate the interservice organization teamwork that resulted from the air campaign against the most heavily defended area in the history of aerial warfare, North Vietnam's route 6A and 6B. This area encompasses the Red River Valley, Hanoi, and Haiphong and runs to the Chinese border. Members of the organization included air crews from a wide range of missions; fighter, attack, rescue, and helicopter units, all part of the total operation.

Shortly after the group was organized, it was realized that the most important element was absent—the Red River Valley veterans who are still POW's and/or are missing in action. It was soon determined that the primary purpose of this group would be to create concern for the plight of those brave men unable to be present and for their families patiently waiting for them at home. All of the POW's and MIA's have been declared life members, and it is to them that the efforts of the River Rats have been dedicated. The idea for the Red River Valley Association is credited to Col. Howard "Scrappy" Johnson. He wanted combat pilots to get together and discuss the problems of the "valley" and devise new tactics to meet the challenge of the north.

The group will not have regular reunions until all the POW's have been repatriated. Until then they will continue to get together to discuss plans for regular reunions and to promote programs supporting our prisoners of war.

Not only are the River Rats working hard to accelerate repatriation of the POW's and MIA's, but they have also established a scholarship fund for the children of the prisoners of war and those missing or killed in action. Scholarship grants are given to the sons and daughters of those missing members of the association to seek a college degree in their chosen field of endeavor.

Mr. President, I know my colleagues will join me in saluting the Red River Valley Fighter Pilots Association for its good works and dedication to repatriation of the POW's and MIA's. Our hats off to the River Rats.

SALUTE TO EDUCATION

Mr. McGOVERN. Mr. President, today's Salute to Education comes at an appropriate time, just as teachers and parents, school administrators and government and judicial officers are pondering the means by which we can best furnish quality education and equality of educational opportunity to all the Nation's children.

America's schools should be complimented on the way they have performed a difficult task that involved 46 million children and $45 billion last year, each figure a substantial increase over the year before.

The task will be no easier in the future. Problems of higher enrollments, problems with school support and financing of facilities are becoming more and more complex.

We are all confident that the good work will continue and will improve just as it has for almost 200 years—since the Government first granted funds and determined that an education should be the right of every child.

American citizens, involved in a responsible partnership of local, State and Federal governments, will keep in sight the goal of ever improving education for their children.

A MONUMENT TO THE BLACK SOLDIER

Mr. MATHIAS. Mr. President, on June 12, the city of Baltimore unveiled a new sculpture in Monument Square in the heart of the city. The Memorial to the Black Soldier, sculpted and presented to the city by Prof. James E. Lewis of Morgan State College, represents long-overdue recognition of the contribution which our black community has made and continues to make to Maryland and to this Nation. Both in military and civilian endeavors, the black citizens have been full participants in meeting the obligations of citizenship, in spite of the fact that they have not always been participants in enjoying the benefits of citizenship.

The new monument is also indicative of the efforts of Mayor William Schaefer to bring the population of Baltimore together, to emphasize the unity requisite to the survival of our cities.

The master of ceremonies at the dedication was the Honorable Theodore R. McKeldin, twice Governor of Maryland and twice mayor of Baltimore. Governor McKeldin has, during a long career of dedicated service to Maryland, gained a deep appreciation for the commitment of our black citizens. I ask unanimous consent that, for the benefit of my colleagues, Governor McKeldin's remarks at the unveiling of the Monument to the Black Soldier be inserted in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

Mayor Schaefer has asked me to preside on this significant occasion, and I am honored by the request.

Mayor Schaefer's administration has been marked by an earnest desire to bring the different peoples of Baltimore together. This ceremony today is part of that kind of progressive administration all cities need if they are to thrive.

This ceremony is also symbolic for another reason. We are, with this monument, trying to erase some of our errors of the past. In this country we have done the Blacks two types of disservice. We have either excluded Blacks altogether from an area of activity or we have let him participate but never acknowledged his participation. The total exclusion of Blacks can be seen in such an area of American life as professional baseball where for years Blacks were so excluded that they had to form their own leagues. The tragedy is that there languished probably some of the great baseball players of the age. We can see how many by just looking at how many Black stars appeared once the odious color barrier was lowered.

But the second form of discrimination, letting Blacks participate but ignoring that participation, has been as tragic. We have, for instance, let Blacks fight in our wars but we have done little or nothing to recognize their contribution. Our history books were blank. Our newspapers were vacant. Our archives are bare. Blacks have fought for this country, died for this country, and, yet, one would hardly know it by looking around. This discrimination of silence has had its corrosive effects as much as the discrimination of exclusion. Not only have Blacks been denied pride in their own people's accomplishments, but we have been kept ignorant and stiffled about our true history and our common humanity. As with all other forms of discrimination this, too, has served to impoverish both those discriminated against and those discriminating.

A hopeful sign is that we are finally trying to do something about it. Our schools are beginning to teach Black history. Our television stations are starting to run programs on Black culture. Our government is trying to acknowledge the contributions of the Blacks.

This monument and this ceremony are part of that effort. But monuments are static symbols of the past unless they spur us to action. Our former silence will be truly broken when we recognize by word and deed that Blacks, who have been slaves in this land, have contributed significantly to the progress of America because they, too, believe this can be a Promised Land.

Let our history books and our governments and our newspapers and our television stations recognize this, but most importantly, let each of us remember the important part Blacks have played and are playing in American life.

THEY'LL GO ALL OUT

Mr. HANSEN. Mr. President, the distinguished columnist, Joseph Alsop, in an article printed today in the Washington Post points out some of the potential danger to the national security should the Congress fail to provide an adequate defense budget.

Mr. Alsop points out that the reason some have criticized the SALT agreements with the Soviet Union is that in 1966, "the United States began to neglect the nucelar-strategic balance." The columnist contends that President Nixon, to meet his duty to insure the national security, was forced to negotiate the SALT agreements because—

The Joint Chiefs judged that if we start from scratch, where we are now, and the Soviets go on at their present tempo, the Soviets will be even further ahead five years from now without the SALT agreement.

He says that we can expect the Soviets to "go all out" in an effort to achieve maximum strategic weapons development.

Mr. President, the Congress must examine carefully all of the facts and probabilities in consideration of the strategic arms situation and apply those findings accurately in development of a sufficient defense budget. I ask that Mr. Alsop's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, June 21, 1972]

THEY'LL GO ALL OUT

(By Joseph Alsop)

Privately, both President Nixon and Dr. Henry A. Kissinger have warned congressional leaders that they still expect the Soviets to make a "maximum" effort of strategic weapons development, within the limits of the SALT agreement.

"They'll go all out," is the quoted assessment on this highest of all levels.

If this is the message that Moses-Nixon has brought down from the mountaintop in Moscow, a serious question arises. The question is why it is sensible to sign a SALT agreement, aimed to halt the arms race, which will admittedly do no such thing. The answer comes in three parts.

First, the SALT agreement writes into a treaty and the accompanying executive agreement what seem like great advantages for the Soviets; yet the Joint Chiefs of Staff were strongly favorable. The JCS are favorable, in turn, because they believe that in the existing situation, the U.S. will be worse off without the SALT agreement's extremely modest limits on Soviet weapons-deployment.

In other words, the Joint Chiefs judged that if we start from scratch, where we are now, and the Soviets go on at their present tempo, the Soviets will be even further ahead five years from now without the SALT agreement. This is the bitter result of the follies committed since 1966, when the U.S. began to neglect the nuclear-strategic balance.

Second, no sort of change in the basic pattern of Soviet behavior is promised by the Nixon-Kissinger warning, "They will go all out." But there is a real chance of this kind of change if the United States also does what needs to be done about the nuclear-strategic balance in the vital interval just ahead.

We got a SALT agreement, such as it is, because we rejected the advice of the wise fools who favored unilateral disarmament. Conceivably, at this strange stage in history, we may get something like enduring stability for this weary world, if we just do a bit more to keep our guard up in the years immediately ahead.

Third, however, that last "if" is certain to be decisive. There is zero room for maneuver if the U.S. government's optimists (who include the people in the White House, for once) prove to be as wrong as usual.

One thinks of 1949, when the great Dr. Vannevar Bush had to tear a whole chapter from his forthcoming book, because the Soviets had just tested their first nuclear weapon. (In the chapter, he had said this could not happen for fifteen years!)

One thinks of 1949, in turn, because the White House has also bought the view of the Bush-like people in the U.S. intelligence community. These people hold the Soviets are "more than five years behind the U.S." in multiple warhead technology.

There is no doubt that the Soviets are somewhat behind on MIRV technology, because they took the wrong road to begin with. But in numbers of missiles, in warhead weight, and in all other respects one can think of, the Soviets now have every advantage that a MIRV technologist could ask for. They also have excellent scientists.

If the Soviets are going to go "all out," therefore, they sould soon be MIRVing their SS–9 missiles, and also the still bigger missiles they will soon be deploying. They may even multiply greatly their MIRVing capability, by adapting the "cold launch" technique of our Polaris-Poseidons to their SS–9 missiles.

The calculated risk in SALT, in short, is an immensely big risk. If we do not want the most disagreeable kind of surprise, we have to do three things, regardless of cost.

We have to go ahead, full speed, with the ULMS or Trident program. We have to go ahead with the B–52 replacement, the B–1 bomber. Above all, we have to go ahead with maximum improvement of the Minuteman system—which can more or less true up the nuclear-strategic balance in a fairly short time.

This will cost a lot of money. The arms race will not end, as the White House warned the congressional leaders. That leads to the real criticisms of the President. First, he did not directly ask the country, three years ago, for the kind of maximum effort that might have prevented the present imbalance.

The President did not do this because he thought he could not defeat the Democratic opposition in Congress. Against the background of the SALT agreement, however, the President will again have great difficulty with Congress in doing what needs to be done now. One has to conclude that he is gambling, probably quite shrewdly, on a much more pliant Congress after election day next November.

JAPAN'S FIGHT AGAINST ITS DRUG AND NARCOTIC PROBLEM

Mr. TALMADGE. Mr. President, I invite the attention of the Senate to an article published in the June 19 issue of Time magazine, which recounts Japan's fight against its drug and narcotic problem.

About 10 years ago, Japan cracked down on the hard drug problem with a vengeance. It is a harsh program which confines addicts for a minimum of 30 days of treatment, and forces them to go through the pain process of "cold turkey"—withdrawal unassisted by chemical crutches. It is a program of tough law enforcement, which hands out a life sentence for narcotic pushers.

But, more important, in terms of the overall well-being of the Japanese society, it is an effective program. Heroin use in Japan has been virtually eliminated. Even organized crime there has steered clear of hard drug traffic.

I think the Japanese have a program that the U.S. Government might very well examine closely. Although some people might flinch at the toughness of Japan's crackdown on drugs, it produces the desired results of protecting individuals in society from the evils of drug abuse and addiction.

This is not the case here in the United States, where drug addiction has become virtually epidemic.

In the midst of the national drug and narcotic crisis, pushers continue to ply their dirty trade in cities and suburbs alike. We passed new laws to combat narcotics, but more and more narcotics flow into the country from places like Southeast Asia, Turkey, and France. The fact is, hard drugs are now easier to get than ever. Moreover, they are cheaper. Hard drugs are one of the few commodities in America which have escaped the effects of inflation. Heroin is actually getting cheaper, reportedly costing on the street now only about 40 percent of what it cost in 1965.

As addiction increases, so does crime. The crime rate in the United States runs about 10 times higher than our population growth. Addicts, men, women, and children, turn to lawlessness and violence in order to support their habit. Drugs and narcotics are unraveling the country's moral fiber, turning human beings into desperate animals and making cities unsafe for law-abiding people. The problem is particularly acute among our young people. There are daily reports of drug traffic and addiction in our col-

leges, high schools, and even elementary schools.

If the ever increasing rate of drug addiction is any indication, if higher and higher crime is any indication, our Nation's approach to narcotic control and enforcement is a failure. We seem to be trying to shovel out the ocean with a teaspoon.

To my way of thinking, there could be no penalty too harsh for someone who peddles the ruin, the wasted lives, and human suffering and agony that comes from drug addiction. Drug traffickers are worse than murderers, and they should be treated as capital felons.

We need a nationwide assault on illegal drugs and narcotics, at every level of government, Federal, State, and local. We need tougher laws and tougher enforcement and tougher courts that will take narcotic pushers off the streets and put them away where they will no longer be a menace to the American society.

I ask unanimous consent that the Time magazine article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Time magazine, June 19, 1972]

SAYONARA HEROIN

Only a decade ago, a heroin epidemic threatened Japan. An estimated 40,000 addicts provided a market for the growing traffic in hard drugs, and some users brazenly mainlined on street corners in such areas as Yokohama's Kogane-cho (Gold Town). Today, says Dr. Yoshio Ishikawa of the Serigayaen mental hospital, heroin addiction "has become a subject without a living example for study, like smallpox," and medical students may finish their entire education without seeing an actual addict. Police and narcotics agents face the same triumphant scarcity.

Heroin use in Japan has been virtually eliminated by stringent enforcement of a 1963 law that provided for harsh handling of both pushers and addicts. A life sentence is meted out for selling *butsu* (the Japanese gangsters' untranslatable coinage for heroin). Mere possession can mean several years in jail. To cut off the demand, the government required that every user caught be confined for at least 30 days of treatment. The most Draconian fact—by American standards—is that each addict's treatment begins with "cold turkey," or withdrawal unassisted by chemical crutches such as methadone.

The ordeal can be excruciating. Early in the process, which can take a week or ten days, the addict's eyes water and his nose runs while sweat pours from his body. By the third day, he is likely to be wracked by severe intestinal cramps, diarrhea, vomiting and nerve spasms. Goose bumps cover his body; they make his skin resemble that of a plucked fowl and give the process its name in the U.S. Cold turkey is rarely fatal—the Japanese claim 100% survival for those treated in hospitals—but the urge to commit suicide can be strong.

VERGE OF HELL

Many U.S. physicians believe that such agony is neither necessary nor desirable. They prefer to assist the addict through his withdrawal with other drugs (TIME, Jan. 4, 1971) and even to keep a patient on a heroin substitute indefinitely if necessary. But the Japanese, who have always taken a puritanical attitude toward drugs, regard this as a continuation of addiction.

The country's first antidrug law, adopted in the 1880's, prescribed *zanshu*, decapitation with a samurai sword, for those trafficking in narcotics. Opium eating, a major problem in 19th century China, never caught on in Japan. After World War II, however, heroin began to gain a foothold. Rival gangs pushed the drug among prostitutes and in the underworld generally, bringing Japan to what Tokyo Social Worker Michinari Sugahara called "the verge of hell."

The authorities moved to end heroin use before it spread to the country's teen-agers. A government-financed public relations campaign, assisted by the press, lectured the public on the drug's social, moral and medical dangers. The 1963 statute persuaded drug abusers that the government meant business. Some pushers reacted to the new law by simply dropping out of the business. In some brothels, the gangsters themselves forced girls to go through cold turkey; those reluctant to kick the habit were sometimes tied to their beds until withdrawal symptoms ended. Others were put in government-run hospitals that had been constructed specifically for drug offenders.

The medical profession cooperated fully with law enforcement agencies, taking the attitude that addiction is not merely a personal medical problem but an offense against society. Says Tokyo Narcotics Agent Hiromasa Sato: "Addicts found no alternative but to capitulate, and eventually submitted to cold turkey. *Sayonara.*"

NOT FOR EXPORT

Drug abuse has not been completely eradicated, of course. Youngsters now go in for glue sniffing and amphetamines, and a heroin arrest is still made occasionally. But Japan's success has been dramatic enough to awe visiting American experts. Can the Japanese system be exported to the U.S.? Many U.S. experts think not. Japan's population is homogeneous, generally law-abiding and, where national goals are concerned, responsive to official appeals for cooperation. Americans are far more heterogeneous and resistant to authoritarian preaching. The young, in particular, insist increasingly on asserting their "individual rights." Many officials feel that it would be difficult to get wide support for a system that emphasizes the punishing process of withdrawal.

Dr. Vincent Dole of New York's Rockefeller University Hospital, a pioneer in the use of methadone, argues that physicians should relieve, not increase, the suffering of the heroin addict. Most drug users apparently agree. Addicts are far more likely to turn themselves in for treatment if chemical substitutes are offered than if the prospect is cold turkey. The flaws in that argument are that American treatment programs have a high relapse rate and that the addiction epidemic is nowhere near being checked in the U.S.

THE U.S. NUCLEAR DETERRENT

Mr. STEVENSON. Mr. President, Dr. Herbert Scoville, Jr., in the June edition of Scientific American, gives us a scholarly description of the nuclear deterrent on which the United States increasingly relies for its defense—our submarine-based nuclear missiles. He points out that from submarines alone the United States will soon be able to deliver 5,540 nuclear warheads against 5,120 targets. With a U.S.-U.S.S.R. agreement on the limitation of ABM's, our invulnerable submarines will continue to have the power to virtually destroy the U.S.S.R.

In short, our submarine-based deterrent is secure. The restraint with which Dr. Scoville describes the administration's plans to inflict a new $40 billion missile submarine fleet upon the taxpayers is admirable, if unwarranted. These new nuclear submarines would be larger than the Soviet's newest cruiser, so large I am told, that we will not have bases capable of serving them. The bases will be constructed or expanded at an additional cost. The environmental and political consequences of a sunk Trident submarine armed with perhaps 240 nuclear warheads are rarely considered, even by Dr. Scoville. And for the phenomenal expense and all the implicit dangers, the greatest of which is the destabilizing effect of another lurch forward in the arms race, we gain at best a marginally improved strategic submarine force.

It was not long ago that Mr. Laird said the United States had to proceed with a 15-percent increase in strategic programs for fiscal year 1973 because we could not bank upon a SALT agreement. Now he says that we must go forward because we do have a SALT agreement. I urge Members of Congress to read Dr. Scoville's article before accepting Mr. Laird's logic, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MISSILE SUBMARINES AND NATIONAL SECURITY

(Land-based missiles are giving way to submarine missiles as a secure deterrent to a nuclear first strike. The question now is whether or not the U.S. should spend perhaps $40 billion on a new missile fleet)

(By Herbert Scoville, Jr.)

In recent years, as the nuclear-weapons arsenals of both the U.S. and the U.S.S.R. have continued to grow, the concept of deterrence has become almost universally accepted as the key to maintaining national security and preventing the outbreak of a nuclear war. "Winning" a nuclear exchange is no longer regarded as a rational strategic objective; in such an exchange everyone, participant and nonparticipant alike, would be a loser. In keeping with the deterrence principle President Nixon affirmed in his State of the World Message of February 9 that "our forces must be maintained at a level sufficient to make it clear that even an all-out surprise attack on the U.S. by the U.S.S.R. would not cripple our capability to retaliate." For the Russians to feel secure they must have a similar capability; only then would a stable strategic balance exist.

The primary attribute required of any deterrent force is the ability to survive a "counterforce," or preemptive, attack. Ballistic-missile submarines are almost ideally suited to satisfying this requirement. Although they are expensive compared with other strategic weapons (more than $100 million per submarine exclusive of the missiles), their mobility and invisibility make them virtually immune to destruction in a surprise attack. In contrast, land-based intercontinental ballistic missiles (ICBM's) can readily be located with the aid of surveillance satellites, so that they must be regarded as "targetable" in the event of an enemy first strike. Attempts to "harden" such fixed missile-launchers (that is, to increase their resistance to the effects of nuclear explosions) are in the long run doomed to futility, since in the absence of qualitative arms-control agreements improvements in offensive missiles, particularly improvements in accuracy, will inevitably make fixed missile-launchers vulnerable and hence reduce confidence in their deterrence value

The advent of multiple independently targetable reentry vehicles (MIRV's), which are currently being deployed on a large scale by the U.S., creates a situation in which the "exchange ratio" strongly favors the attacker. Thus a single missile with, say, six warheads can potentially destroy six enemy ICBM's if they are caught in their silos.

Moreover, strategic bombers are extremely vulnerable while they are on the ground and would therefore be very susceptible to annihilation in a surprise missile attack. Attempts to avoid this weakness by maintaining aircraft on continuous airborne alert have proved to be expensive and potentially dangerous. Even the current 15-minute ground alert is not completely satisfactory, since adequate warning would be more difficult to obtain if fractional-orbital-bombardment systems (FOBS) or depressed-trajectory missiles launched from submarines were used to attack the bombers.

Hence given the present state of military technology and reasonable anticipated advances, the primary element in the strategic-deterrent forces of both the U.S. and the U.S.S.R. will continue to be the ballistic-missile submarine. All other strategic systems will remain secondary. Moreover, it seems likely that any agreement that may emerge in the near future from the strategic-arms-limitation talks (SALT) will further enhance the relative importance of the missile-submarine forces. Since the chances that MIRV's will be limited by a SALT agreement are extremely low, ICBM's will become increasingly vulnerable. The more likely limitations on anti-ballistic-missile (ABM) systems, on the other hand, would guarantee the retaliatory capability of even a comparatively small number of submarine-launched ballistic missiles (SLBM's). The expected failure to limit antiaircraft defenses and to restrain qualitative improvements in offensive-missile systems would further decrease the value of strategic bombers. Although there will probably not soon be restrictions on antisubmarine-warfare (ASW) measures, the technology in this area is so far behind that it could not possibly threaten the submarine deterrent, if it can threaten it at all, until far in the future. In sum, the Navy will increasingly be the principal military guardian of our national security.

What characteristics must an SLBM force have in order to fulfill its function as a deterrent against the initiation of nuclear warfare by the U.S.S.R.? (Since China is so far behind both the U.S. and the U.S.S.R. in this respect, the same forces would be more than adequate to deter China as well.) First of all, the submarines should be designed to operate in, and fire their missiles from, large enough ocean areas in a variety of directions around the U.S.S.R. so as to decrease their vulnerability to ASW detection and tracking and to facilitate the penetration of any ABM system. The closer these areas are to ports in the U.S., the less will be the time lost in moving to and from operational stations and the less will be the need for overseas bases. Higher submarine speeds will also reduce this travel time and increase the ability to break contact with a trailing ASW submarine or surface vessel. The gains here may be marginal, particularly since tracking vessels will probably be faster than any missile submarine. The faster a submarine moves through the water, however, the more noise it will produce, and in countering ASW measures quietness may be much more important than speed. The reduction of submarine noise is the most critical element in preventing detection and continuous covert tracking, both of which must rely on passive acoustic sensors.

If an ABM defense is a realistic possibility, then the submarine missiles must have enough payload capacity to allow the use of multiple warheads and other penetration aids. The entire submarine force should be large enough so that the destruction of a few submarines by a concerted enemy attack, by slow attrition or perhaps by a series of accidents does not seriously degrade its overall capability. If continuous tracking by antisubmarine submarines or other ASW vessels ever becomes a realistic operation on a large scale, then the more vessels there are in the missile-submarine fleet, the harder it will be for this tactic to be successful in destroying the entire force. Ballistic-missile submarines cannot be used to attack other submarines and are no threat to the SLBM deterrent of the other side.

In addition to an adequate number of submarines, missiles and warheads, it is essential to have secure and reliable communications between these vessels and their command authorities. It is not enough to send the submarines to sea with sealed orders. Controls to prevent inadvertent or unauthorized firing are an absolute necessity, and reliable methods for ordering retaliation in the event of a surprise attack are required. These communications must be jam-proof; the potential attacker cannot be allowed to hope that a communications failure might prevent a retaliatory strike.

The submarines must also be able to navigate accurately, so that after they have moved through the oceans into their operational areas they will always be in a position to fire their missiles at predetermined targets. High navigational accuracy is not as great a requirement for a retaliatory strike against cities as it would be if the submarines were to be used in a counterforce role for destroying such "hard" targets as enemy missile sites. In fact, if one side wishes to use missile submarines only as deterrent weapons, then it is important that the accuracy-yield combination of the system not be so great as to give the other side concern that the submarines have a first-strike capability against land-based ICBM's; otherwise the position of mutual stable deterrence will be eroded.

With these general principles in mind, let us examine how the U.S. missile-submarine forces have developed over the years. The U.S. launched the first nuclear-powered submarine, the *Nautilus*, in 1955, but it was not until the late 1950's that development of long-range missiles had proceeded to the point that these could be installed in such submarines. The first ballistic-missile submarine, the *George Washington*, became operational in November, 1960. It was armed with 16 solid-fuel Polaris *A–1* missile, which could be fired at a rate of about one per minute. The range of this missile was about 1,200 nautical miles and the warhead yield about one megaton. The submarines were designed to fire their missiles while submerged, using compressed gases to expel the missile; the rocket engine is then ignited after the missile has cleared the surface. By 1963, 12 more Polaris submarines were operational.

Meanwhile the development of more advanced missiles continued. The next generation missile, the *A–2*, had a range of about 1,500 nautical miles. The first test of the *A–3* missile, with a range of 2,500 nautical miles and a "triplet" reentry vehicle, was conducted from a submerged submarine in the fall of 1963. The triplet reentry vehicles, which could carry three individual nuclear warheads each, did not have independent guidance; the three warheads were intended to reenter the atmosphere in a shotgun pattern with the target at the center. Since such warheads cannot be aimed at separate targets, they do not alter the exchange ratio and do not provide any first-strike advantage. Their advent was therefore not in itself regarded as destabilizing.

In the early 1960's there was considerable debate over the appropriate size of the Polaris fleet. The Navy originally sought 48 ships, and the final decision was to build 41. One factor limiting the number of submarines is the problem of manpower recruitment. Nuclear-submarine duty, which involves 60-day underwater cruises, calls for a certain type of person who is not easy to find and who must be highly trained. Normally each vessel has two crews of about 140 men who go on alternate patrols.

By the end of 1966 all 41 Polaris submarines were operational; eight carried A–2 missiles and 33 were eventually fitted out with A–3's. Thus the force carried a total of 1,712 warheads, but since the triplet warheads cannot be aimed separately, 656 was the maximum number of separate targets that could be hit. Of course, not all of these submarines can be kept at operational stations at all times. In general a submarine spends 60 days at sea and 30 days in port for maintenance. In addition the submarine might take five or more days to move from the U.S. to its launch point and the same period to return. If a submarine wished to avoid detection by moving quietly and therefore slowly, the travel time would be even greater. Thus the number of submarines at launch stations at any one time could be reduced to some 20 to 25 ships. The situation is improved by using forward bases (on Guam, at Holy Loch in Scotland and at Rota in Spain), which reduces the time needed to reach launch stations from five or six days to one or two days.

With a range of 2,500 nautical miles, a submarine-launched missile can hit Moscow from most of the North Atlantic (inside an arc extending from the tip of Greenland to North Africa), from the Mediterranean and even from some parts of the Indian Ocean, a total sea area of about six million square miles [*see illustration below*]. The sea area from which a submarine-launched missile could hit important targets other than Moscow, say targets only 200 miles inside the U.S.S.R., is even larger [*see illustration on opposite page*]. One high-ranking Navy officer reported in 1964 that a Polaris submarine equipped with the A–3 missile could operate in 15 million square miles of ocean area while covering its targets in the U.S.S.R. No land target anywhere in the world is inaccessible from attack by the A–3 missile.

Although mobility provides a submarine with the tremendous advantage of improving its survivability, it creates a new problem: the determination of its location at the moment when the missile is to be launched toward its target several thousand miles away. Unless the missile is provided with some means of determining its position during flight or with a terminal-homing capability, the accuracy at the impact point can never be better than the uncertainty in the launch point. To determine the launch position calls for accurate submarine navigation, which is made more difficult by the requirement that in order to avoid disclosing its presence the submarine should not surface to determine its location. The attitude of the ship with respect to the vertical and true north at the time of the launch is also needed. When the missile force is being used for deterrent purposes, an accuracy greater than a few thousand feet is not needed; it is only necessary to be able to hit a large urban complex. Today this order of accuracy in locating the position and attitude of a submarine can be readily achieved. The U.S. has made tremendous advances in the development of inertial-navigation systems in recent years, and reasonably accurate position fixes can be obtained even after the submarine has been submerged at sea for many days.

The inertial-navigation system in a Polaris submarine is a complex system of gyroscopes, accelerometers and computers that relate the movement and the speed of the ship in all directions with respect to true north. If an initial position is known, then this system will provide continuous data on the ship's position. For an absolutely stationary submarine, or one whose motion can be corrected for, inertial sensors can determine without external data the vertical, the true north, the latitude and all velocity components by inertially sensing the earth's gravitational and rotational vectors, but there is no way of determining the longitude by inertial means. Submarines that have been voyaging at sea for protracted periods and

whose inertial-navigation errors may have become unacceptably large can, by trailing an antenna while they are still submerged, get a radio "position fix" from navigation satellites or land-based transmitters. It may also be possible to locate a submarine by reference to accurately known geographical landmarks on the ocean bottom such as seamounts. In sum, the present technology has advanced to the point where the location and attitude of the submarine could in principle no longer be the critical factor in obtaining missile accuracies down to less than an eighth of a mile.

A deterrent force must also be able to receive communications from national command centers. Direct command and control originating with the President and with many verification checks is vital to prevent unauthorized launching; it is also essential that command authorities be able to communicate in times of crisis with the submarine captains without fear of interference by the other side. Otherwise communication would be the Achilles' heel of the submarine deterrent. There are a number of means of communicating with a submarine, at least one way from shore to ship, that do not require the submarine to surface. Very-low-frequency (VLF) radio waves can penetrate a short distance into the water, so that a receiving antenna does not need to be exposed at the surface. Moreover, the submarine can operate at a considerable depth, since it can trail an antenna as much as several hundred feet above its deck. The U.S. has a number of land-based VLF transmitters at various locations around the world for communication with Polaris submarines, and more recently an airborne VLF system has been devised in order to eliminate the possibility that the fixed land-based stations would be destroyed in a surprise attack.

The use of satellites for relaying messages to submarines provides an alternative means of communication. Recently much research has been devoted to extremely-low-frequency (ELF) waves, which can penetrate even deeper into the water. The Navy project named Sanguine proposed to set up a vast antenna for this purpose in Wisconsin. The data rate of such a system would be quite low, but it would be adequate for command-communication purposes. The project has run into difficulties with local residents because the large antenna currents and the potential hazard to living things. For communication from a submarine to the command center the problem is more difficult; it calls at the very least for trailing an antenna close to the surface and must in any case be avoided in order to prevent disclosure of the submarine's location to listening enemy radios. Fortunately such communication is not essential to the viability of the submarine deterrent force.

By the end of 1966 the U.S. submarine-missile force together with its support systems was by itself more than adequate to deter any nuclear attack on the U.S. It had more than enough missiles and warheads to devastate the U.S.S.R. even when only a fraction of the submarines were on station. It could operate in ocean areas on all sides of the U.S.S.R., and the Russians ASW capability was quite rudimentary, with virtually no ability to "draw down" the size of the U.S. fleet. At that time the Russians had no ABM system deployed.

Military technology did not, however, stand still. The need to operate in restricted sea areas close to the northern coast of Europe and the Mediterranean in order to reach Moscow and other interior Russian cities created fears that someday ASW measures might become a threat. More important, concern that the U.S.S.R. might deploy a large ABM system capable of coping with our missile-submarine force was becoming more acute every day. The Russians were in the process of deploying an ABM defense around Moscow, using a large interceptor missile estimated to have a single-warhead yield large enough to destroy all three warheads of the Polaris A–3. In addition they were deploying radars and defensive missiles in the "Tallinn system" widely throughout the U.S.S.R. Some "worst case" analyses of U.S. planners, particularly during the early phases when factual information was limited, postulated that these facilities were for ABM defense. Later, as more data became available, the predictions were scaled down to the effect that the Tallinn system was an antiaircraft defense that could perhaps be upgraded to provide an ABM capability. (Now even this upgrading is not considered practicable by most experts.)

As a result research and development proceeded on a next-generation missile for the Polaris submarine that would give increased future assurance of penetrating any ABM defense and would at the same time give the submarines enough flexibility to operate at greater distances from the U.S.S.R. To increase either the payload or the range significantly called for a larger missile, and the resulting Poseidon missile required enlarging the launching tubes in the Polaris submarines, a costly and time-consuming task requiring 13 or more months. Since many of the submarines were due for overhaul in any case, however, the two shipyard activities could be combined with a minimum loss in operational readiness for the fleet as a whole. The cost of converting a Polaris submarine to carry the advanced Poseidon missiles is on the average $29 million, with another $38 million for normal submarine overhaul and replacement of the nuclear fuel.

The new Poseidon missile is about twice as heavy as the Polaris A–3 and has a payload about four times as great. Although its nominal range of about 2,500 nautical miles is the same as that of the A–3, a trade-off between range and payload is always possible, so that the potential range of the Poseidon is somewhat greater. The new missile incorporates MIRV technology, that is, the ability to disperse many warheads aimed at separate targets. The technique developed for this purpose employs the "bus" approach, in which shortly after burnout of the propulsion stages the missile's final stage (the bus) is aimed at a first target point and releases a warhead, which then follows a ballistic trajectory to that target while the bus is redirected toward a second aim point. The same procedure can be repeated until all the warheads have been sent to individual targets. If a single target is to be attacked, then MIRV technology allows the warheads to approach the target at widely spaced intervals and on different trajectories so that no more than one warhead can be destroyed by a single ABM interceptor. The Poseidon is reported to be capable of carrying 14 warheads, each with a yield of about 50 kilotons, several times the yield of the bomb that destroyed Hiroshima. Warheads can be traded off for either ABM penetration aids or increased range. The nominal complement is usually taken as being 10 MIRV warheads. Department of Defense officials have repeatedly stated that these warheads do not have the accuracy-yield combination to provide a first-strike capability against hardened silos (a "circular-error probability" of about an eighth of a mile or better would be needed with that yield), but the Russians might still be concerned on this score.

As with the Polaris A–3, a Poseidon missile with a range of 2,500 nautical miles can launch warheads at Moscow not only from large areas of the North Atlantic and the Mediterranean but also from some parts of the Indian Ocean, a total area of about six million square miles. Targets within 200 miles of the border of the U.S.S.R. can be reached from some 15 million square miles. These large ocean areas present great problems for any possible future ASW system. To deploy detection and tracking systems throughout these waters is a prodigious, if not impossible, task. Furthermore, on short notice these areas might be somewhat enlarged if it ever became critical by reducing the Poseidon payload, either by eliminating penetration aids or by cutting down the number of warheads in each missile.

The first Poseidon missile was tested in August, 1968, and the development of the entire Poseidon system was completed two years later. The first Polaris submarine went to sea with Poseidon missiles in March of last year. At present about 10 submarines have been converted. The program calls for modifying 31 submarines to carry these new missiles, leaving 10 to be equipped with the older A–3's. When the program is completed in 1976, the U.S. submarine force will be able to launch 5,440 warheads at 5,120 separate targets. It should be possible to keep considerably more than half of these submarines on station at all times, and in times of crisis the operational readiness can be stepped up if necessary. This is an awesome force, capable of overwhelming even a massive ABM defense system. There is, of course, no evidence that the Russians have any intention of building a large ABM system with nationwide coverage, and it is highly likely that such a system will be precluded in the first stage of a strategic-arms-limitation treaty.

Even one missile submarine can launch 160 warheads at separate industrial centers in the U.S.S.R., an attack that the Russians could not afford even if the U.S. had been annihilated. This means that any ASW system would have to be able to eliminate almost instantaneously every single submarine, a herculean task. Today it is difficult, if not impossible, to destroy even a single submarine that follows skilled evasion tactics. Yet if ABM defenses were forbidden by treaty, an ASW system that has still to be devised would be the only threat to the submarine deterrent. That is one reason why an ABM agreement at SALT would by itself be such an important gain to the security of both the U.S. and the U.S.S.R.

The U.S.S.R. has always lagged considerably behind the U.S. in the development of nuclear submarines and SLBM's. The first Russian nuclear submarine was built about four years after the *Nautilus*, and Admiral Hyman G. Rickover, the director of the U.S. nuclear-submarine program from the beginning has made it clear he believes the Russian submarines are technically inferior to the U.S. ships. The first Russian ballistic-missile submarines were diesel-powered and therefore had limited endurance and cruising range. Their first nuclear-powered missile submarine carried only three missiles with a 300-nautical-mile range, which in later models was extended to about 700 nautical miles.

By the late 1960's it must have been obvious to military planners in the U.S.S.R. that their land-based ICBM's would become increasingly vulnerable to the U.S. MIRV's, which were then under development and which had been publicly justified as providing an improved counterforce capability. The Russian deterrent needed shoring up with a more effective SLBM force, whose value had been demonstrated by the U.S. In 1966 the U.S.S.R. launched its first Y-class submarine, which carries 16 missiles with a reported range of 1,300 miles. This class of vessels was similar to the Polaris submarines, which the U.S. had put into operation seven years earlier. All the Russian SLBM's deployed so far have had storable liquid fuels, whereas all the U.S. missiles have had solid fuels. The Russians apparently decided to continue with the Y-class design and began building submarines at a rapid pace, initially at the rate of six to eight per year and currently at nine per year. Two shipyards are engaged in this work, one at Severodvinsk on the Arctic Sea and one in Siberia on the Pacific. At present the Rus-

sians have about 26 Y-class submarines operational and another 16 under construction.

Although the Russians have tested a new missile with a range of about 3,500 miles, John Stuart Foster, Jr., chief research scientist for the Department of Defense, recently reported that this missile was so long that he did not believe the Y-class submarine could be modified to launch it. The Russians have never even tested multiple warheads on their submarine missiles, let alone MIRV's. Their missiles are each armed with a single warhead with a yield of about one megaton. These missiles have no capability for attacking our ICBM silos, but it has been postulated that they might be employed to attack our bombers on the ground and our command and control centers, using a depressed trajectory to achieve the necessary surprise. The missiles have not, however, been tested in this mode, and this approach would, in any case, entail a reduction in their already limited range.

The U.S.S.R. will have a slightly larger ballistic-missile submarine fleet than the U.S. when it completes those vessels now under construction (42 to 41). Even then, however, the capabilities of the Russian fleet will be far inferior to those of the U.S. Polaris fleet. President Nixon in his 1972 State of the World Message said that "our missiles have longer range and are being equipped with multiple independently targetable warheads. Moreover, our new submarines are now superior in quality." The shorter range of the Russian missiles requires that their submarines operate fairly close to the U.S. coast in order to be able to strike inland U.S. targets; this makes the Russian submarines potentially more vulnerable to a U.S. ASW system [*see illustration on page 20*]. On the other hand, the population centers and industrial complexes on the east and west coasts of the U.S. can be reached from much larger ocean areas, and these targets would be quite satisfactory if the SLBM's were to be used for deterrent purposes [*see illustration on page 21*]. The restricted range would be a serious factor only if the SLBM's were to be used against our bomber bases or missiles in the interior of the U.S.

There are other reasons why the parity between the U.S. and the U.S.S.R. in operational submarines cannot be evaluated on numerical grounds alone. Since bases in the U.S.S.R. are farther from the operational launching areas and since the Russians have no locations available for forward bases, more time is wasted getting submarines on station and it takes more submarines to maintain the same deterrent force operational at any one time. It would take Russian submarines a minimum of six days in the Atlantic and eight days in the Pacific to reach the nearest launch stations, so that the transit time to and from home ports, in many cases a quarter to a third of the duration of the patrol, seriously degrades the operational readiness of the Russian fleet. This disadvantage can be only partly alleviated by using submarine tenders for maintenance and crew exchange at sea. Moreover, in any East-West comparison the small British and French missile-submarine fleets, each of which may eventually consist of four submarines and 64 missiles, must be added to the U.S. total. Thus, whereas the Russians now have an adequate missile-submarine deterrent, their fleet is markedly inferior to that of the U.S. and its allies and provides no threat to the U.S. deterrent.

As the first phase of SALT is drawing to an end, then, it is becoming universally recognized that ballistic-missile submarines are the essential foundation of a secure and stable strategic balance. Under these circumstances it is only natural to investigate ways to still further improve submarine missile systems. The U.S. has had a research and development program in this area for several years, so that the developments at the frontiers of technology could be incorporated in the successor to the Polaris-Poseidon system. The particular system proposed by the Navy for this role has been called ULMS, for undersea long-range missile system.

One obvious way to improve the present submarine missile would be to extend its range, making possible the launching of missiles from larger ocean areas in all directions around the U.S.S.R. Increasing the missile's payload would allow the incorporation of more warheads per missile or additional ABM-penetration aids. Payload can, of course, always be traded off for range. A longer-range missile would reduce the time required to move from U.S. ports to launching areas and thereby reduce the need for overseas basing in order to maintain the submarines on station for a larger fraction of their cruising time. With a range of 4,500 nautical miles a missile could reach Moscow shortly after the submarine leaves the U.S., whereas with a range of 2,500 nautical miles at least three days' travel would be required. Thus for a 60-day cruise lengthening the missile range by 2,000 miles could increase the period of operational effectiveness by about 10 percent if forward bases were abandoned.

More advanced guidance systems employing terminal control (the ability to change the path of the warhead during reentry) are being developed to avoid interception by ABM systems or to improve accuracy. Higher accuracy obtained by this means or others is not required if missiles are to be used as deterrent weapons. Indeed, it might be construed by the other side as an attempt to attain a counterforce capability for a first strike. Although it is more difficult to acquire such a capability with a submarine missile system than with an ICBM because of the inherent limitations on the payload and the nuclear explosive yield and because of navigational complications, there are no scientific barriers to its achievement. The greatest technical restriction on the use of SLBM's for a counterforce first strike may lie in command and control. It may be feasible to preprogram and command the initial launchings, but there will inevitably be failures. The difficulties of directing subsequent firings to destroy the silos missed the first time appear to be virtually insurmountable.

The submarine itself can be improved by making it quieter as it moves through the water, thereby rendering detection and tracking by passive acoustic techniques more difficult. Although increasing the speed of the submarine will make it somewhat harder for enemy ASW ships to follow it, the higher speed will also raise the level of noise produced by the submarine. In any case it is probably a losing proposition for a missile submarine to try to outrun an ASW vessel, which can always be designed to move faster. High speed will enable the submarine to reach its launch area more rapidly and thus reduce the time it spends in a nonoperational condition, but again the potential gains are not large, and they may be outweighed by the disadvantages. If all other factors are equal, it will require a bigger power plant and larger submarine, both of which will increase cost and detectability. Increasing the depth at which a submarine can operate is not particularly significant, at least for the depths that are likely to be achieved in the next generation of submarines; submarines can be detected acoustically and destroyed by nuclear depth charges or homing torpedoes at any reasonable depth.

If space for more and larger missiles is needed to increase the destructive capacity and the ABM-penetrability of any single submarine, then larger submarines with bigger power plants will be required. The larger the submarines, however, the fewer the ships that will be available for the same investment. Therefore, if funds are limited (and they always are), this means a smaller fleet, which is more vulnerable to being wiped out in a simultaneous surprise attack. Thus there are many trade-offs in system design, and the final decision on a successor to the Polaris-Poseidon system should be based only on the nature of the specific threat.

In 1971 $104.8 million was appropriated for the advanced development of ULMS. Although this expenditure still left options open, it was a major step on the path toward procuring a specific new submarine system. This year the Department of Defense is seeking $977 million for ULMS. If that amount is authorized, the U.S. will be irrevocably committed to a large and very expensive new shipbuilding program. Unclassified details of the proposed ULMS program are still scarce, but it appears that the submarine in the system would be quite large (more than twice the size of the Polaris ships) and that it would be capable of launching 20 to 24 large missiles equipped with MIRV's. It is proposed to have a higher maximum speed and to incorporate the latest available silencing techniques, although these two objectives are competitive.

The ULMS program has been divided into two parts. The first stage (ULMS 1) would involve a new missile with a range of about 4,500 nautical miles capable of being deployed in the present Polaris submarines as well as in any new vessel. The second stage (ULMS 2) would include the development of the new submarine and a still more advanced missile with a range of about 6,000 miles that would be too big to be substituted for the Poseidon in the existing Polaris ships. A maneuvering reentry vehicle (MARV) is also being developed for the new ULMS missiles. According to one estimate, the total cost of a program for 30 such ULMS vessels would be $39.6 billion [*see illustration at right*].

So far no convincing case has been made for the need to proceed with a replacement for the Polaris-Poseidon system and for making a commitment to a new large, high-speed submarine. Russian construction of SLBM's is no justification for ULMS; the Russian missile submarines do not in any way threaten the Polaris deterrent. Numerical superiority in launchers is meaningless; all authorities agree that the U.S. is far ahead qualitatively and can deliver from submarines about 5,000 warheads to fewer than 700 for the U.S.S.R. Even if we foolishly choose to race the Russians in the number of SLBM's, ULMS is certainly not the way to do it; each ULMS system will probably cost five or more times per missile launched than the Russian Y-class system.

The Poseidon with 10 or more MIRV's on each missile has a far greater capability than is needed to overwhelm any Russian ABM system that can be foreseen at present. Admiral Thomas H. Moorer, chairman of the Joint Chiefs of Staff, testified in February that "the Moscow ABM system even with improved radars and more and better interceptors could still be saturated by a very small part of our total missile force. In any event, the programmed Minuteman III and Poseidon forces, with their large number of reentry vehicles, provide a hedge against a future large-scale Soviet ABM deployment." Since such a large-scale ABM deployment will almost certainly be precluded by a first-stage SALT agreement, there is nothing in the ABM area that would require replacement of the Poseidon; in fact, even the Poseidon MIRV's will not be needed if a SALT ABM treaty is realized.

Therefore it is necessary to examine antisubmarine warfare to determine if there is anything that would currently justify the major ULMS step. Without going into a detailed analysis of possible ASW measures and countermeasures, suffice it to say that no evidence has yet been presented that the Russian ASW program could present a threat to the Polaris deterrent in the next decade. [An article on the ASW situation by Richard L. Garwin will appear in next month's SCIEN-

TIFIC AMERICAN.] Admiral Levering Smith, director of the Navy's Strategic Systems Project, testified in 1969 that even the new generation of Russian ASW submarines will not be able to follow our Polaris submarines, and that the U.S.S.R. has no specific new ASW methods that would make the Polaris fleet vulnerable to attack. That is still true today. The U.S. has spent tens of billions of dollars on ASW efforts over the past 20 years and still does not have any system that could even begin to approach the kind of capability that would be needed to eliminate 20 to 30 missile submarines almost simultaneously. The Russians are far behind the U.S. in this area, and they have the serious geographical disadvantages of remoteness from and unavailability of land areas contiguous to the oceans in which this ASW systems would have to operate. Since the nature of the potential ASW threat to the Polaris-Poseidon system cannot even be foreseen at this point, ULMS, if built now, may be designed to cope with the wrong threat. The most obvious improvement to Polaris-Poseidon would be to increase the range of the missile in order to enlarge the ocean areas from which missiles could be launched. The deployment of such a new long-range missile might cost nearly seven billion dollars, however, and in any case, as the maps on pages 18 and 19 how, the Poseidon system already has a tremendous operational flexibility and is not threatened in its present launch areas.

Thus there are strong arguments for keeping both the ULMS missile and the ULMS submarine options in the research and early development stage. This would allow the exploration of all approaches, including smaller, slower but quieter submarines, and would avoid the making of a premature commitment to a large, expensive submarine and missile program. We must not fall into the trap of buying new military hardware just because we have made technological advances; there is no quicker way to price ourselves out of the security market. The submarine missile force is the backbone of our deterrent; its present strength and invulnerability obviate the need for its replacement for at least a decade.

DEATH OF HAROLD WESTON

Mr. PELL. Mr. President, on Monday, April 10, Harold Weston, past president of the Federation of Modern Painters and Sculptors, and chairman of the National Council on the Arts and Government, died at his home.

Mr. Weston was long one of the leaders championing the concept of Federal support for the arts. Indeed, he was one of the first witnesses in the early 60's when hearings were held on what was to become the legislation which established the National Endowment for the Arts. From that time on, Mr. Weston continued to work with the Special Subcommittee on Arts and Humanities. His views were incisive and of much value, and his death deprives us of a leader in this field. I ask unanimous consent that this obituary, biography, and eulogy be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the New York Times, April 12, 1972]

HAROLD WESTON, LED ARTISTS' FEDERATION

Harold Weston, artist and past president of the Federation of Modern Painters and Sculptors, died Monday at his home, 282 Bleecker Street. He was 78 years old and lived also at St. Hubert's, N.Y., in the Adirondacks.

Mr. Weston prepared at Phillips Exeter Academy for Harvard, from which he was graduated in 1916. A volunteer Y.M.C.A. secretary in World War I, he served with British forces in India, Mesopotamia and Iran, and then traveled in that area, picking up themes for his first one-man show here in 1922. His last was in 1961.

In between, his works included murals in the lobby of the Federal Procurement Building in Washington, 1936–38, and many paintings in the Phillips Gallery and other collections.

Mr. Weston, as vice chairman of the National Council on the Arts and Government, was active in urging art patronage by the Federal and state governments. In World War II he was director of Food for Freedom, Inc., urging relief measures.

Surviving are his widow, the former Faith Borton; 2 daughters, Mrs. Esty Foster Jr. and Mrs. William H. Sudduth Jr.; a son, Bruce; and 11 grandchildren.

BIOGRAPHY OF HAROLD WESTON

Harold Weston, painter, etcher, muralist and author, was born in Merion, Pennsylvania, on February 14, 1894, and died at his home in New York City on April 10, 1972.

Mr. Weston attended Phillips Exeter Academy, class of 1912, and was graduated from Harvard in 1916, magna cum laude and Phi Beta Kappa.

He began painting as a child, influenced, perhaps, by winning fist prize in a children's competition at John Wanamaker's store in Philadelphia. His first one-man show of oils, consisting of 150 Adirondack and Persian landscapes, was held at the Montross Galleries in 1922. His canvases of that period, executed in brilliant color with bold outlines and distorted forms, were widely publicized and created for the artist an immediate reputation.

Forty one-man exhibits of Weston's oils, watercolors and etchings have been held in New York, Philadelphia, Washington, Chicago, St. Louis, San Francisco, Paris, and other cities. He has participated in numerous group shows in the United States and Europe. He received the Third Prize for American Painting at the Golden Gate International Exposition in 1939.

Paintings and etching by Harold Weston are owned by many private collectors, and over 300 examples of his work are in museums or public collections, among them: Phillips Collection, Washington; Whitney Museum of American Art; Museum of Modern Art; Fogg Art Gallery, Cambridge, Mass.; Corcoran Gallery of Art, Washington; Smithsonian Institution, Washington; Yale and Princeton Universities; and the Syracuse University Art Collection.

Duncan Phillips, who purchased more than thirty of Weston's works for the Phillips Collection, said this about his work:

"Color is Weston's instrument. He insists upon the linear demarcation in his pictorial document—to that extent he is an artist of abstract tendencies, although realist at heart. His lines . . . function in the dual capacity of giving emphatic contours of intensely expressive character to those shapes and of organizing a pattern of dynamic movement. The two chief attributes of anything that lives are coordination and movement. Weston's pictures are alive with both of those vital functions."

Harold Weston's artistic career was paralleled by an extraordinary involvement in public affairs and governmental activity.

A few weeks after Pearl Harbor, Weston proposed steps to prepare for a vast International relief effort to help win the peace, which could not be left until after the war was over.

In 1918 in Persia, where he had been in charge of YMCA activities (a paralyzed leg from polio had kept him from serving in the armed forces), he had witnessed the effects of famine, and he was deeply convinced of the urgency to forestall large scale hunger at the end of World War II. With encouragement from a dozen distinguished members of both political parties, he organized the Reconstruction Service Committee, serving as its Executive Secretary from 1942 to 1943. During this period he convinced responsible officials in the government to establish an office in the State Department to conduct the negotiations that eventually led to the creation of the United Nations Relief and Rehabilitation Administration (UNRRA).

In 1943 Weston's original Committee was expanded to become Food For Freedom, with Mrs. Dwight Morrow as President. By agreement with the White House, he remaind outside the Government to serve as Executive Director of this citizen's organization from 1943 to 1948. Major labor unions, church groups, civic and relief groups, and the U.S. Chamber of Commerce were represented on its Board of Directors.

Weston's activities from 1942 to 1948 are permanently recorded in the files of Food For Freedom in the Library of Congress. Also in its archives is a manuscript Weston wrote in 1948 about this organization under the title of "Battle of Bread."

Weston's international interests carried him into the early organizing of the International Association of Art, an affiliate of UNESCO for professional artists (painters, sculptors and graphic artists), first called together in Venice in 1954. He was elected a member of its ten man International Executive Committee, 1957 to 1963, Vice-President, 1960 to 1962, and President, 1962 to 1963. He was President of the United States Committee of IAA from 1961 to 1967. He also was chairman of the Exhibition Committee for the Exhibit of 75 Paintings by 75 Living Americans, toured by USIA in Germany and France from 1955 through 1957.

Perhaps the crowning touch of a career devoted to art and public service came for Harold Weston with the enactment of legislation for the National Foundation for the Arts and Humanities by the United States government in 1965. Long interested in governmental support for the arts, Weston had been a founding member in 1954 of the National Council on the Arts and Government, Inc., composed of distinguished practicing artists in all fields. He served as Vice-Chairman of this organization from 1954 to 1960, and its Chairman from 1960 to his death in 1972.

By obtaining bi-partisan sponsors of legislation affecting the arts, by testifying at numerous hearings, by being the principal author of National Council on the Arts and Government annual reports from 1956 to 1968, considered authoritative by members of Congress, national organizations and cultural leaders, and by numerous radio and television appearances, Weston brought his clear objective thinking and persuasive drive to bear on many groups and organizations.

Weston assisted in 1954 in drafting and promoting a bill for a New York State Council on the Arts. Three years later, with the support of Governor Rockefeller, such a bill was passed, and the New York State Council on the Arts has become, with variations, a model for arts councils in every state.

Weston became an authority on legislation for the arts. He wrote major portions of the bill that created the National Foundation for the Arts and the Humanities, passage of which in 1965 culminated ten years of unremitting work in attempting to convince the Congress that the welfare of the arts was in the national interest. Weston was among the guests at the White House when President Johnson signed the bill on September 29, 1965, and he was presented with one of the pens the President had used.

Earlier that same year, August Heckscher, speaker at a meeting of the Architectural League of New York, said: "There is one person who has a more dedicated spirit than

anyone I know in this epoch, and it is pertinent to mention him because his dedication is to the advancement of the arts—all the arts. The person I refer to is Harold Weston."

In 1963 Weston was elected a Life Fellow of the World Academy of Art and Science as a distinguished artist with world-wide humanitarian achievements. The American Society of Contemporary Artists honored Weston with its 1964 Annual Award "in recognition of his outstanding dedication to art and his tireless service in behalf of artists."

At the time of his death, the National Council on the Arts and Government declared: "Americans in all fields of the arts will be forever in his debt."

No biography of Harold Weston, however brief, can omit reference to his abiding passion for the preservation of the beauty of his beloved Adirondack Mountains, where he built a home of his own design, and where he summered with his family for many years.

In 1971 Mr. Weston wrote Freedom in the Wilds, A Saga of the Adirondacks, published under the sponsorship of Adirondack Trail Improvement Society, Inc. In the book he traced the development of the concept of wilderness preservation and the Adirondack State Park, and called attention to the importance of keeping similarly inviolate a forever wild area within each one of us.

Freedom in the Wilds was so well received upon publication that its first edition was quickly exhausted, and a second edition is currently in preparation.

EULOGY OF HAROLD WESTON GIVEN BY LLOYD GOODRICH

One of the chief things to remember about Harold Weston is that he was primarily an artist. In every action he took in his busy public-spirited life, playing a part in so many different kinds of activities, he was always acting as an artist. From the very first his art was that of an individualist, a man going his own way, hewing his own path, regardless of what other people were doing, regardless of fashions. From the first his subject matter was individual: whether it was the human figure, portraits, landscapes, still life, interiors, it was always something connected with his personal life, something that meant a great deal to him. Out of the intensity of his feeling for his subjects came a poetic quality—a combination of realism and poetry that was quite unusual. I always felt that even in his most realistic work there was a religious element, a sense of man and his place in the universe, and of the divinity latent in man. Even his six mural paintings of the construction of the United Nations buildings in New York, which are now owned by the Smithsonian Institution, even those pictures with all their meticulous accuracy of detail, express a feeling of the aspiration of the human spirit; they express what he himself felt about that great enterprise, the United Nations. And we know the part that he played in UNESCO and in the International Association of Art.

In Harold Weston's style, realism was combined with a clear sense of abstract values: an emphasis on design, a decided linear quality, a rhythmic sense of movement, and a feeling for the expressive role of color. Even in his earliest works these traits showed. As his art evolved, nature became more and more the dominant theme. You have heard about his feeling for the outdoors, the wilds of the Adirondacks, expressed so eloquently in his recent book, *Freedom in the Wilds*. The same emotion came through in his later work: a sense of the undying life of nature, the rhythm of the seasons—a pantheistic sense, especially in his very latest paintings. His style evolved in these late works into a highly individual kind of abstraction, growing out of natural forms and movements, but using these elements even more freely, to achieve pure design—and design which owed nothing to any other artist, an expression of his personal feeling about his world and the universe of nature.

Harold Weston's many public activities on behalf of the arts, and the effectiveness of these activities, are due a great deal to the fact that he always spoke as an artist, as a man who from youth had been involved in the creation of art. Hence his invaluable work as President of the Federation of Modern Painters and Sculptors from 1953 to 1957, and as President of the International Association of Art from 1962 to 1963, and last but not least, as Chairman of the National Council on the Arts and Government.

When the National Council on the Arts and Government was formed in 1954, the climate of opinion in our country about governmental activities in the arts was quite different from what it is today. The United States was then the only major nation whose government paid practically no attention to the arts.

And there was opposition to the idea of any governmental involvement in the arts. On the extreme right of the arts world there was hostility based on fear of governmental control, as in totalitarian countries; and a similar fear from the opposite side, the individualistic liberal wing of the arts. Only a minority of us in the artistic professions felt that our Federal government should do more for the arts than it had done in the past, and that it could do so without fear of official control of the arts.

So in 1954 we formed the National Council on the Arts and Government. It was a body made up entirely of professional persons, that is, creative artists. And it covered all the fields of the arts; not just Harold Weston's own field of the visual or plastic arts, but also theater, ballet, music, literature, architecture, interior design, crafts. The membership ultimately reached seventy or over. I don't think that any such body of distinguished creative individuals has ever been brought together for public purposes in this country.

The basic principles of the Council were a belief in the importance of the arts in the national life of our country, a complete dedication to freedom of artistic expression and to democratic diversity, and the cardinal principle, freedom from governmental control of the arts. We all recognized, like our opponents on both right and left, that the last was the greatest danger from any governmental participation in the arts. Hence, one of the fundamental principles of the Council was that governments on all levels, Federal, state and local, should draw on professional advice, and should form advisory committees made up of practising professionals. The final principle we stood for was the interdependence of all the arts in their relation to public matters. We felt that we had similar interests, and that we should work together.

To me it was always astonishing that Harold Weston, who was a painter, and one who of course knew a great deal about his fellow artists in that field, managed to pull together so many high-powered persons in other arts, to become familiar with their special problems, and to act on them. He had a unique combination of an acceptance of different viewpoints, an extraordinary grasp of details, tireless energy, and a complete devotion to any cause that he undertook. These were the qualities that made all of us follow his banner, and that made him our ideal leader.

I don't think that a single important piece of legislation concerning the arts took place in the years that Harold Weston was Chairman of the Council, without his giving it his complete attention, to the point of writing long critiques of such legislation, and making constructive suggestions. Many provisions of the statutes now on the statute books were largely proposed by him. And when I say by him, I mean by him and not by us. He was our leader and we backed him completely, but it was he who did all the detailed work, who did the exhaustive study that was needed in order to put pending legislation into the form that would correspond with what we believed in.

He had continuous contacts with members of the Congress. He would come to Washington to talk with Senators and Representatives, and persuade them to amend their bills, and also to offer our support, which we frequently gave for the measures we believed in. He carried on a voluminous correspondence with members of the Congress. He testified many times before Congressional committees. I know that he was always aware that these activities took away time from his painting, but we all know that he never stopped painting; he had so many different interests, and so much energy to pour into them.

The most important contribution, I think, that the National Council on the Arts and Government made was the part we played in the formation of the National Endowment for the Arts and the Humanities in 1965. This was the culmination of a long battle that had started way back in the late 1940's, when some of us in the art world believed that there should be a body in the Federal government which would be concerned with the arts. But it was Harold Weston more than any other individual, with the support of the Council, who did most to bring this about, building up national support, getting individuals and organizations to write their representatives in the Congress, persuading key members of the Congress to sponsor the legislation, and offering advice about essential provisions of the legislation. At the request of the administration, he produced a 72-page memorandum analyzing the good points and defects of the legislation, and many of his recommendations were incorporated in the final structure of the Endowment. The result was the first long-range, completely thought-out body in the Federal government concerned with all the arts—a great step ahead, one which we all hope will grow with years into a body with more financial support than it has now, but which now seems to be fully established, having been in existence for seven years, during which its appropriations have been increased.

The creation of the National Endowment for the Arts and Humanities was only one of the many legislative and administrative matters that received the benefit of Harold Weston's experience, wisdom and support. And his activities were not confined to the Federal level. The remarkable growth in the last few years of state councils on the arts, which now exist in a large majority of the states, is in no small part due to the initiative taken by the National Council on the Arts and Government and its devoted Chairman, Harold Weston, in working for greater governmental recognition of the arts.

In 1970 Harold Weston resigned as our Chairman, due to health and also I am sure because he wanted to devote more time to his central interest, the art of painting. So far, we have nobody to take his place.

LLOYD GOODRICH,
Vice-Chairman, National Council on the Arts and Government.

TAX REFORM AND NATIONAL PRIORITIES

Mr. HUMPHREY. Mr. President, recently, I was invited by Life magazine to respond to questions on Federal tax reform and national spending priorities. My views, side by side and in sharp contrast with those of Secretary of the Treasury George Shultz, appeared in the June 16, 1972 issue of this magazine.

In my remarks, I pointed to the cen-

tral and critical need for a more unique sense of vision about where America should be heading and in what manner. What we have confronted is an administration devoid of leadership on domestic policies and platforms—leadership that is desperately needed to address the complex problems of dramatic but seriously imbalanced economic growth since 1945, and at the expense of human and environmental priorities. This has resulted in middle-income families bearing a heavy tax burden, while poverty in America is on the rise, and extensive needs of the people for social and public services receive no response.

I called for a new vision, targeting a rural-urban balance, a healthy balance between the people and the land—a complete turnabout of our view of the land as something to be exploited, and of growth for the sake of growth, no matter how haphazard or how it concentrates and beats down upon our people. I spelled out the demand for comprehensive national growth policies, planned to revive and develop rural as well as urban areas. And these totally new national growth policies demand equally innovative reforms in our tax and financing strategies.

An important part of the legislative program I have presented to launch these strategies is the National Domestic Development Bank Act. Further immediate measures include:

Revenue sharing with reform, since State and city governments face both a fiscal and an organizational crisis at the same time.

A gradual Federal takeover of welfare to ease the fiscal burden of States and localities.

Tax reform which eliminates the poor from Federal tax liability, reduces the payroll tax burden on working and middle income families, and replaces the property tax with an alternative method of financing school costs, while closing the loopholes of special privilege for the wealthy and the giant corporations.

Mr. President, I ask unanimous consent that the text of my statement in Life magazine be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

FOR THE DEMOCRATS—HUBERT HUMPHREY

(Humphrey's familiarity with taxation and government stems from his experience as mayor of Minneapolis, nearly 18 years as a U.S. senator and as Vice-President)

When a post-Nixon administration takes office in January 1973, it will discover that not a single new or visionary federal program has been developed through executive branch leadership since 1968. Under the Republican administration, we have now been living through nearly four years of bankruptcy of vision and ideas about political issues and domestic programs. At no time since the late 1920s has our nation been so devoid of national leadership on domestic policies and platforms.

Justice Holmes once remarked that "We must sail sometimes with the wind, sometimes against it; but we must sail and not drift or lie at anchor." It is this lesson which the administration has ignored. Other than their plans for welfare reform and revenue-sharing, proposals initially put forth by Democrats a decade earlier, can anyone recall any innovative domestic programs put forth by the Nixon Republicans?

Our American author Thomas Wolfe said that we can't look back to the outmoded ideas and systems of yesterday if we are to be in league with the future. Our world must be that of 1972, 1980 and beyond, the world is growing smaller and smaller through increasing technological and social change. For a more human and, indeed, a more humane future we need, above all, new horizon, a more unique sense of vision about where America should be heading and in what manner.

Since 1945 the United States has experienced enormous economic growth whose magnitude is seen by the fact that the Gross National Product grew more between 1945 and 1971 than it did in the years between 1789 and 1945! The outcome of this growth has clearly been an improvement in the welfare of the majority of the American people.

But this has been an uneven growth, a growth grounded in economic, not in human and environmental, priorities, unplanned, now out of joint, and with its benefits spread in a grossly uneven and unjust manner. It has left us with greater and greater public benefits for the well-off, disproportionate tax burdens for middle-income families, enormous public poverty and vast unmet social services, transportation, housing and educational needs.

I, for one, think these trends can be stopped or at least slowed down and possibly reversed, provided we have a realistic vision of the future and a practical blueprint for liberal progress. This means we must avoid the chimera of abstract liberal perfectionism. Nor should we resort to sloganeering—"send them a message"—or flout the good sense of Adlai Stevenson who held that "Who leads us is less important than what leads us." To move beyond the past I believe we must grasp one central idea: the land as space to live on is taking priority over the old idea of the land as something to be exploited, no matter what the consequences. By using this principle as a touchstone for establishing a national policy of growth and development, I believe that we can create a new and a practical vision for America's future, yet not lose sight of the reality that we must and can solve the problems of the present.

NO-GROWTH IS NOT A CHOICE FOR AMERICA

The basis of our vision should be targeting a rural-urban balance, a healthy balance between the people and the land. This means focusing on orderly growth—designing this for people rather than for expediency—and slowing down the forces underlying our population "implosion"—forces which have pressed one-third of our people to live in the six states of New York, California, Illinois, Pennsylvania, Ohio and Texas.

With strong national policies and leadership we could improve all rural areas rather than see another million American farms disappear by 1980. Then we could spread out our population, build new cities on existing small towns, build whole new cities, re-create the old cities which are now in a desperate crisis, and provide adequate public services with our tax dollars. It is vital for our future, I believe, that we treat our population problems—and they are real—as a challenge to population planning and dispersal, not as a clarion to promote abortion-on-demand or other anti-life philosophies.

At the present time, apart from Title IX of the Agricultural Act of 1970 and Title VII of the Housing and Urban Development Act of that year, there has been scant legislation which mentions the nation's need to create national growth policies, and after setting up a commission on national goals, the Nixon administration quietly buried its report which dealt with new growth and development.

As new policies are established we should seek to improve our tax and financing strategies to pay for orderly growth. I have therefore proposed the creation of a national domestic development bank which would do for America what the World Bank does for others.

We are, then, being forced to reexamine where we are heading so that our national wealth can be fairly distributed and our civic well-being improved. Clearly, we cannot quest after a mythical regreening of America where we return to a Bronze Age community.

For several reasons, no-growth is hardly a viable option for the American economy. While we don't have to worship the great god Growth, continuing economic growth is, in fact, absolutely essential. How else can we provide an economic and social base under the living standards of all Americans and respond without a muffled conscience to world poverty and injustice?

Economic growth in a technological society, moreover, depends critically on advances in education, experience and managerial and production techniques. Unless we are willing to stifle all education and the pursuit of knowledge, we cannot curb growth, although, of course, we can reorder this through better planning. And we must remember that just stopping growth would not cause a change in the habits of men who pollute.

Man's knowledge about natural resources is really quite limited. When I first came to Congress in the postwar period, national commissions assured us we were exhausting the earth's mineral supplies and its agricultural potential. During the intervening years old resources were upgraded and substitutes or new resources were uncovered. The pessimists' alarms were not unfounded; their information was simply inadequate and they could not see into the future. At the present time Resources for the Future, Inc. has observed that our economy "is winning its independence from the traditional natural resources sector to a remarkable degree. Ultimately, the raw material inputs to industrial productions may be only mass and energy."

I don't deny that genuine shortages now threaten for many substances that are considered essential for current industrial society. But this is a long way from doomsday, and with cheap power and recycling of wastes on the horizon, perhaps even our natural resources will someday be reconstituted.

THE POOR SHOULD PAY NO FEDERAL TAXES

Yet as we look to 1980 and beyond we must equally cope with existing realities and not just presume that new faces, illusionary ideas or elusive proposals can substitute for hard policies and programs or that the American public will be deceived either by liberal utopianism or by conservative sloganeering. Our people want positive and decisive action on the serious questions we now face: revenue-sharing, welfare reform and taxes.

This means that we must pursue:

Revenue-sharing with reform, since state and city governments face both a fiscal and an organizational crisis at the same time. Federal money returned to states and localities should not be permitted to do harm by giving inefficient governmental structures and policies a new lease on life. Let us link revenue-sharing to modernization of state and local government and find ways to combine regional government with local power and community control. People want "street-level" government which is responsive to their daily needs, not some remote bureaucracy ruling from on high.

A gradual federal take-over of welfare to ease the fiscal burden of states and localities. The federal government now pays about $7 billion of an estimated $14 billion annual welfare cost. Astronomical increases are in sight. A federal take-over of financing welfare could provide a better welfare system, reduce the interstate welfare competition which now plagues states, and channel the

"local share" to states and communities with the greatest welfare cost.

Let us also have tax reform which eliminates the poor from federal tax liability. During the debate on the Revenue Act of 1971, I offered such an amendment, which was adopted by the Senate, but fought by the Nixon administration in conference committee as being "too costly." As I said during the debate in November: "The Treasury loses this revenue. There is no getting around it. But it loses it from those who can least afford to pay, and may I say from those whom society can least afford to tax." This principle is central to tax reform.

We also need to reduce the payroll tax burden on working and middle-income families by establishing one-third general revenue financing of social security and railroad retirement benefits and by replacing the property tax and an alternative method of financing school costs.

The property tax burdens the elderly living on fixed incomes and the poor; produces decreasing revenue for public services in cities and discourages rehabilitation and improvements in housing. An alternative revenue system with the federal government as a chief money supplier would require changes in the states as to the uniformity and equitability of property taxes but maintain local control over fundamental school decision-making.

In short, a reformed taxing system should include closing the door on the loopholes of special privilege for the wealthy and the giant corporations, promoting inventiveness and imagination among all our people by making certain that the tax system does not penalize some for the advantage of others and ending the fast write-offs, tax dodges and tax shelters which make our tax system unfair.

A creative response to both future and existing needs does not require a frenetic pursuit of change for its own sake but a positive vision and hard work. Our goal must be orderly, balanced national growth, the end of segregation by race, age and income—to bring Americans closer to each other, and a family policy which preserves individual freedom while also sustaining population growth adequate to enriching the values and goals of our heritage.

This is not a vision for an easy America. Nor do I think we will arrive at a once and future America. But it is a vision for a better future tempered by compassionate concern for the traumas of the present.

FUNDS FOR ADDITIONAL SERVICES TO RURAL AMERICA

Mr. TOWER. Mr. President, today I supported Senate Resolution 232, which is very similar to Senate Resolution 271, which I submitted. It expresses the sense of the Senate that the remaining $107 million in appropriated funds for the Rural Electrification Administration be released for use in providing additional services to rural America.

Rural development is of interest to each of us, as evidenced by the unanimous vote on the Rural Development Act of 1972. One of the major considerations of new business and industry is adequate utilities—this is the reason for having the Rural Electrification Administration. REA cooperatives were formed to provide modern facilities to rural areas when it was apparent that existing companies either would not or could not provide this service. The services of these cooperatives are in demand and the need for them doubles on the average every 7 years. Their customers increase at the rate of 150,000 every year.

Mr. President, I feel that the administration should be commended for their attempts to cut Federal spending. However, I feel there are other areas where budget cuts could be made. Money which can assist in promoting rural development is serving two purposes. It is giving needed assistance to rural areas, as well as indirectly assisting urban areas by promoting growth of smaller towns and eliminating many problems created by continued mass movement into already crowded areas.

The release of this $107 million will help to provide funds for the many REA cooperatives which need loans to modernize existing facilities, as well as for constructing new ones and providing the ever increasing needs for rural power.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

FOREIGN ASSISTANCE ACT OF 1972

The ACTING PRESIDENT pro tempore. The Chair lays before the Senate the unfinished business, S. 3390, which the clerk will read by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 3390) to amend the Foreign Assistance Act of 1961, and for other purposes.

The ACTING PRESIDENT pro tempore. The pending question is on the amendment by Mr. McGEE, which the clerk will read.

The legislative clerk read the amendment, as follows:

On page 9, line 25, strike out the figure "$297,000,000" and insert in lieu thereof "$345,500,000".

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time for the quorum call be equally charged against both sides on the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Wyoming is recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield me 1 minute?

Mr. McGEE. I am happy to yield.

LIMITATION OF TIME FOR DEBATE ON S. 3722, TO ESTABLISH FOREIGN SERVICE GRIEVANCE PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as S. 3722, a bill to provide for the establishment of the Foreign Service grievance procedure, is called up and made the pending business, there be a time limitation thereon of 10 minutes, to be equally divided between and controlled by the distinguished Senator from Indiana (Mr. BAYH) and the distinguished Senator from Kentucky (Mr. COOPER); that the time on any amendment thereto be likewise limited to 10 minutes, and that the time on any debatable motion or appeal be limited to 10 minutes, to be equally divided between the mover of such and the distinguished Senator from Indiana (Mr. BAYH).

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER FOR THE CONSIDERATION OF S. 3722 TOMORROW

Mr. ROBERT C. BYRD. I ask unanimous consent that on tomorrow, immediately following the disposition of Senate Resolution 299, the Senate proceed to the consideration of S. 3722, and that the unfinished business (S. 3390) remain in a temporarily set-aside status until the disposition of S. 3722.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FOREIGN ASSISTANCE ACT OF 1972

The Senate continued with the consideration of the bill (S. 3390) to amend the Foreign Assistance Act of 1961, and for other purposes.

AMENDMENT NO. 1262

Mr. McGEE. Mr. President, when I submitted my amendment yesterday, I inadvertently submitted the wrong figure on the amendment. I ask unanimous consent that the figure be changed from $345.5 million to $320 million.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McGEE's amendment, as modified, is as follows:

On page 9, line 25, strike out the figure "$275,000,000" and insert in lieu thereof "$320,000,000".

Mr. McGEE. That is the figure to which I wish to address my comments at this time.

The amendment, Mr. President, would seek to restore some funds to the assistance program for the Government of Cambodia. "Cambodia" has almost become a dirty word in the minds of some Members of this body, and I wish we had a substitute phrase for it. But it remains a proud name for the people of that beleaguered country—a country that, because of its location and its geography, finds itself caught up in the vortex of the fighting in Southeast Asia.

Therefore, some time back, we in this country recognized the immediacy of the problem of funds for Cambodia.

The ACTING PRESIDENT pro tempore. Will the Senator yield for an inquiry from the Chair? On the unanimous-consent request for reducing the 345 to 320, it was not clear whether the Senator intended to reduce it from 345.5 to 320.5, or to 320.

Mr. McGEE. I reduced it from 345.5, and I reduced it to 320.

The ACTING PRESIDENT pro tempore. Even?

Mr. McGEE. Even.

The ACTING PRESIDENT pro tempore. I thank the Senator.

Mr. McGEE. The Cambodian question is one of now trying to assist that coun-

try simply to hold on to its own national identity. Caught up as it has been with the encroachment by military personnel from North Vietnam, caught up as it has been by the historic difficulties that it has always been involved with in terms of South Vietnam, it was probably unavoidable that, in itself, it should become a battleground, as it did for some time, or at least as a supply base, a base of operations.

Because the Cambodian Government itself had recently gone through some significant changes, when Prince Sihanouk was finally put out of the country, and still remains out of the country, and they have striven to hold their own type of government together, it seems to me, Mr. President, to make it more important that we give whatever informal assistance we can on this important plane to the activities going on in Vietnam at this time.

I would hasten to add, Mr. President, that this does not seek to involve the Cambodians in someone else's conflict. It does not seek to tie them to the United States or anyone else as an ally. It simply recognizes one of the harsh, harsh facts of the political-military situation in that part of the world, which is that there is an absence of national boundaries in many areas, an overlap of similarly-based population, linguistic and cultural groups, particularly among some of the Montagnard tribal groups, and that all of this has tended to make it impossible to isolate the fields of battle along traditional geographical lines.

The fact that Cambodia, Vietnam, and Laos likewise were all the victims of the colonial powers' administrative convenience throughout history has attended and abetted the difficulties of separating their national distinctions.

That is by way of explaining why, given the importance we have attached to Vietnam, given the symbolism that we associate with a peaceful settlement in that area, it seems to me to be incumbent upon us to provide such technical military assistance, supplies, and equipment as will enable the Cambodians better to preserve their own national identity, if that is at all possible.

I realize this poses many problems. The Cambodians have had little opportunity to perfect their own techniques. They have had very short existence in developing the qualities of administrative independence in a new country. But the fact also remains that this is their aspiration, and that they would have a better chance at it were it not for the long and difficult war that has been raging among their neighbors.

I think this is the least that we owe. American troops are not there, and an American commitment is not there; this is simply trying to recognize the facts of life.

I would think, Mr. President, that any Member of this body should strive to understand, with some sense of the cravings of the Cambodians not to be Vietnamese, not to be Laotian, not to be Thai, but to try to be their own independent selves, and yet, as a very weak nation, unable to prevent their neighbors from using their territories as bases of operations, and thus becoming targets, that whatever we can do, whatever we can supply that may help them to survive this ordeal, will certainly go down in history as a very worthwhile and understanding contribution on our part.

I would also make one other point, Mr. President: It has to do with the course of very recent events in Southeast Asia. What is happening there now seems to be more promising, seems to hold greater opportunity for the chance of a peaceful settlement in the area. I think it does not exaggerate the present facts as we know them to suggest that those prospects are better now than at any time in a great many months. We all have been groping for light at the end of the tunnel, to borrow a well-worn phrase. That goes back to the very earliest years in Vietnam. But now, after the President's visit to Peking, in the wake of his visit to Moscow, with Mr. Kissinger at this moment in China and obviously there talking about a resolution of the difficulties in Vietnam, with the President having survived the risk that was taken in bombing in Haiphong and intensifying the bombing raids on the north, with the affairs both between Peking and Washington and Moscow and Washington not having been complicated by this development, it would seem to me that this combination of things augurs well for the prospects of a hopeful settlement of this long, tortured struggle in Southeast Asia.

Even the events on the battlefield seem to be taking a slight turn for the better. The North Vietnamese have not realized their fondest hopes of the south caving in. Apparently, they have run out of steam in their offensive that was launched a good many weeks ago. They have not seized the great provincial capitals that they had as their targets—a design, I suppose, that was more for psychological purposes than any other. They even have failed in this respect until now. I am sure that they have reserves left for other thrusts. for other attempts to discombobulate the Government of South Vietnam.

But let it be said, in all fairness, that the Government of South Vietnam and the people of South Vietnam have responded far above the levels that many of their critics were predicting, and that not only is the line being held against the invaders from the north, but also, counteroffensives have been launched and they have succeeded in recovering some significant chunks of territory.

This is indeed a new profile in that part of the world. This is indeed a new prospect that perhaps we are witnessing on the brink of other gains, of new breakthroughs.

Having said those things, Mr. President, I think we need to remind each other in our sober moments, as we reflect on this question, that what we are talking about is not two sets of invaders trying to grab somebody else's testimony, but one set of invaders from the North. No troops from South Vietnam are in North Vietnam. There are no military forays by the South Vietnamese into the territories that were under the control of North Vietnam. It all has been a one-way move, from Hanoi, north of the DMZ, into the territories of the South. But in that form of aggression, the North has likewise taken over large sections of its neighbor Laos and occupied considerable sections of its neighbor Cambodia. The result is that both Laos and Cambodia have their own difficulties, due to no fault of their own except their geography, their proximity to the areas of significant action.

What I am saying is that, as we seem to be approaching the best chance we have had until now to resolve peacefully this difficulty, it is even more important that we help Cambodia, with this kind of assistance, to try to stay on its feet—to try to stay afloat, as it were—to retain its posture of nationhood. That is pretty important in that part of the world as a symbol for others who seek the dignity of independence, as well as for the Cambodians themselves.

That is really what is behind the amendment I have offered to increase the committee's allowance of $275 million.

I have some other things that I want to discuss on this question a little later in the morning, but I did want to set forth the timing element as a critical one in our continuing this program at the level of $320 million, for the timing is of the greatest importance.

As the prospects for peace improve, our tendency, understandably, is to begin to let down. But it is at that moment that the need probably is even more acute and requires that we sustain our efforts to help these people until we can readjust and negotiate and resettle the great issues of that section of the world. It is imperative that we not lose ground or cause a small country to have to collapse for want of support at the very time that we will be at the negotiating table, trying to achieve an honorable agreement. So much, then, rides on our taking the action that my amendment would propose.

The Committee on Foreign Relations, of which I am a member, chose, in its wisdom, to authorize $275 million for this purpose. The President was requesting a much higher figure—nearly $350 million. We hear all kinds of dispute as to how much money really is necessary. At a time such as this, in an area of the world that has cost us tens and tens of billions of dollars, I do not think this is the moment to try to fudge over whether it is $275 million or $320 million; that, rather, it is important that we allow the benefit of the doubt, even as the talks are underway and as the face-to-face confrontations between the statesman of the President, Mr. Kissinger, and the leaders of the government in Peking are taking place.

So the appeal is not only for the restoration of some of these funds but also for acknowledging the factor of the timing as a reason to give the benefit of the doubt to the larger figure for the time being.

Mr. President, that is all I will take time to say at this time. I will have more to say a little later this morning.

I yield the floor.

QUORUM CALL

Mr. SPARKMAN. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. On whose time?

Mr. SPARKMAN. I ask unanimous consent that the time be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

TEN-MINUTE RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a recess for 10 minutes, that the distinguished Senator from Wyoming (Mr. McGEE) be recognized following the recess, and that the time for the recess be equally charged against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at 10:18 a.m. the Senate took a recess for 10 minutes.

The Senate reassembled at 10:28 a.m., when called to order by the Presiding Officer (Mr. ALLEN).

FOREIGN ASSISTANCE ACT OF 1972

The Senate continued with the consideration of the bill (S. 3390) to amend the Foreign Assistance Act of 1961, and for other purposes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Wyoming.

Mr. McGEE. Mr. President, in discussing the question of economic military assistance to Cambodia for the next fiscal year I think it important to review the recent history of that country.

It thus casts the need for my amendment into the perspective of the events that surround us right now. Most of us recall that in March 1970, Prince Sihanouk was deposed by unanimous vote of the Cambodia Parliament. At the time he was dismissed he was on a trip to Moscow and Peking to protest the occupation of eastern Cambodia by the North Vietnamese and the Viet Cong. He was seeking Russian and Chinese support in bringing a halt to the arrogant behavior of the North Vietnamese and the Viet Cong military units, which were stealing rice and cattle and abusing the population in general. These acts reached such proportions that even Sihanouk, who from his earlier statement was sympathetic toward China and Moscow, could no longer tolerate the violation of his country's borders.

The Cambodian Government which replaced Sihanouk immediately insisted on the withdrawal of all foreign forces. They called out the military reserves and they appealed to the United Nations to use its influence to have the North Vietnamese and the Viet Cong remove their forces from Cambodia. However, before that month of March was ended, these alien forces were moving westward and occupying large additional areas of Cambodian territory. It was at this time that Government forces were small and desperately equipped—ill-equipped is an understatement. However, in that crisis, volunteers — Cambodian volunteers— rushed to join the Government cause, and during the summer of 1970 the enemy's drive was contained.

The line between enemy and Government controlled territory remains about the same now as it was in the summer of 1970, almost 2 years ago.

Since Sihanouk's ouster, we have often heard dire predictions that the Cambodians were no match for the North Vietnamese and that the Government forces would soon be defeated.

I remember hearing from this floor, Mr. President, predictions that they would not last 6 days. The more temperate ones said they would not last 6 weeks. But the Cambodian Government still lasts, and that ought to cause the Members of our body here to move slowly in pronouncing the demise of a people that seems somehow determined to survive.

In the midst of all this, the Cambodian Army has grown from 35,000 men in March 1970, to about 200,000—almost entirely volunteers. Realizing the horrors of a protracted war against the North Vietnamese, the Cambodian people have chosen to stand up and to defend their country. At the same time that they were engaged in a full-scale military struggle, the Cambodians have recently taken important steps to rid themselves of the vestiges of the previous monarchy. On April 30 of this year, they voted overwhelmingly in favor of a new democratic constitution, and on June 4 they elected Lon Nol as the first President of the Khmer Republic. These steps indicate the determination of the Cambodians to develop their country in a democratic fashion while at the same time defending themselves against foreign intruders.

The United States has supported the Cambodians in a very limited way. We have provided no U.S. troops or advisers. There are no Americans dying in Cambodia. And I think the most encouraging point is that the Cambodians have not requested such assistance. We have provided only basic arms and equipment and considerable training which has been conducted in South Vietnam. We have also financed the essential imported commodities, which the Cambodians, themselves, were unable to fund because of extensive war damage to their economy.

The situation in Cambodia is an admirable example of a small country which is making an all-out effort to defend itself against a foreign invader. The United States is supplementing the Cambodian effort. It is their war—not ours.

But I hasten to add that what is happening to them is largely a spillover of events that to us have been basically important now for a great many years.

Under the circumstances which I have described and, given the contribution which the Cambodians are making to the protection of the withdrawal of our forces from South Vietnam, I believe that our aid is thoroughly justified, both from the standpoint of our national interest and in the interest of regional security in Southeast Asia. We must not lose sight of the fact that there are at the present time more than 50,000 United States servicemen in South Vietnam at a time when the North Vietnamese are continuing their all-out effort to crush the South Vietnamese Army. We are spending billions of dollars to try to thwart that act of aggression, the North Vietnamese offensive action. Then, in this situation, it makes no sense at all to reduce the very austere support to maintain the Cambodian Government's 200,000-man army in the battle against the North Vietnamese. The supply lines for the four NVA divisions which are attacking An Loc, for example, and in the Mekong Delta, run directly through Cambodia. Once more, this is the inescapable geographic factor I have alluded to before. The Cambodian Army is engaged in joint operations with the South Vietnamese in the border region, and is holding a key provincial capital at Svay Rieng in the Parrot's Beak. Furthermore, the Cambodians not only threaten the North Vietnamese supply lines, but also pose a threat to the NVA units which are now attempting to return to bases inside Cambodia to rest and refit after the severe casualties which they have taken around An Loc.

Thus it ought to be obvious to us that the pressures that the Cambodians themselves can keep on the flanks of the invaders from North Vietnam redound to our own advantage and our chances to preserve and protect the security of our flanks as we withdraw our remaining troops.

Second, Mr. President, the stopping of the North Vietnamese offensive, at a time when the President has just completed his historic trips to Peking and Moscow, creates the conditions for greatly increased prospects for a just negotiated settlement of the war. The next year is the crucial period which offers a hope for a peaceful end to this long conflict, and it is no time for the United States to be reducing its support to the Cambodians, who have a very important stake themselves in a fair negotiated settlement. Thus we should do nothing during this crucial period to discourage our friends in little Cambodia or to lead them to believe that we have lost faith in their ability to defend their own country against foreign invaders. The very modest aid which we are providing the Cambodians represents only the imported items such as basic arms, ammunition, and economic commodities which they themselves cannot produce. They are supplying all of the manpower and most of the economic material for their armed forces. We are only supplementing their own national effort in defending themselves.

At this crucial moment, it would be sheer folly to reduce our assistance by a few millions of dollars, when we are spending billions to dignify the status of independent nations in that part of the world, even as we help the South Vietnamese to meet their own requirements. Rather, now is the time to maintain and support our friends in Southeast Asia, at the same time as we attempt, with all of the skills and wisdom that we can command, to negotiate a just, equitable, and responsible settlement to the war.

I would like to point out, Mr. President, that the admirable efforts of the Cambodian people to defend themselves against foreign aggression have elicited substantial support abroad, particularly from Asian nations. Australia, Japan, Great Britain, Thailand, Malaysia, and New Zealand have all contributed to the $35 million exchange support fund for that country, and Malaysia, Thailand, South Vietnam, Indonesia, New Zealand, and Australia have provided various forms of military assistance.

So to sum up, let me again emphasize that here we have a situation where a small friendly nation is fighting against large numbers of North Vietnamese troops which are occupying its soil. Cambodia is fighting for its very existence, and is providing all of the manpower for its defense. The United States is furnishing minimum amounts of imported items which the Cambodians cannot pay for because of their war-ravaged economy, and at the same time we are helping the Cambodians, we are also reducing the threat to our own forces in South Vietnam.

This is a crucial moment in Southeast Asia, when the prospects for peace are improving, and our chances of a responsible survival of hopes in that part of the world are all far brighter than just a few months ago. At this very moment when we are conducting preciously delicate negotiations to end the war altogether, it is no time to be rocking the diplomatic or the economic boat. It is no time for Congress to limit the flexibility which is vital to the success of these negotiating efforts. And we cannot, in good conscience, arbitrarily cut the administration request by the very large figure that the committee itself has already cut it—$75 million. Given the overall reductions in the authorization for MAP and AID, it appears that the amount available for Cambodia may even so fall a bit short. My figure of $320 million is the best judgment we can make. It is far better than the committee figure of $275 million. But I reemphasize, Mr. President, that this is no time to be risking a misjudgment on too little. Too much rides on the wisdom and the judgment of our keeping Cambodia in a position to defend herself and to protect her own independence.

Therefore, I urge my colleagues in the Senate to join in raising the ceiling for Cambodia and in supporting this vital element of our policy and sustaining the process for bringing the war to a negotiated end.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ALLEN). On the Senator's time, or on equal time?

Mr. McGEE. I was thinking we could proceed on the equal distribution of the time between the two sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection, it is so ordered.

Mr. McGEE. Mr. President, a number of my colleagues have raised a couple of questions in regard to the Cambodian aid issue which is implicit in my amendment. In view of the fact that they are not here, obviously, I ask unanimous consent that my responses to the two questions along with the questions be printed in the RECORD.

There being no objection, the two questions and answers were ordered to be printed in the RECORD, as follows:

Several of my colleagues have asked what, if any, rationale there is for continuing to assist the Government of the Khmer Republic after US troops have been withdrawn from Vietnam.

I make the following points:

US assistance to Cambodia after all or most of US troops have been withdrawn from Vietnam must be considered in the context of our overall policy in Southeast Asia. Assuming continued aggression on the part of North Vietnam, I believe that our response must be to provide minimal amounts of economic and military assistance to friendly countries which are threatened by the North Vietnamese. Our assistance will be designed to supplement the essential self-defense efforts of the countries involved.

In the case of Cambodia, the Government has raised an all-volunteer armed force of about 200,000 men. By December of this year, we expect this force to be almost completely trained and equipped. Thereafter, we see our role primarily as that of supplying military consumables (such as ammunition and petroleum products) and some equipment items lost due to attrition. Thus we expect to make our basic contribution by the end of this year, and the cost of our military assistance should decline in future years.

However, I should add one note of caution. The planning which I have described assumes no increase in the threat to Cambodia. In other words, should the North Vietnamese give a higher priority to their efforts in Cambodia, we would have to reassess our assistance effort. At this time there is no indication that the North Vietnamese are in fact contemplating such a change in strategy.

I have been asked why the Cambodians failed to use all of last year's funds.

The Cambodians, for several reasons, did not utilize last year as much aid as originally thought might be required. Aid funds voted under the FY 1971 supplemental bill were drawn down at a slower rate than first anticipated, in large part because the Cambodians were able to use inventories and remaining pre war stockpiles of industrial materials. They were also able to drawn down, their foreign exchange reserves to buy goods from their accustomed sources rather than switching immediately to unfamiliar United States goods under the AID program. But Cambodia has used up its foreign exchange reserves. Its export earnings have dwindled to less than 10 percent of prewar because of the fighting. Reduction in the U.S. economic aid requested, $75 million in Security Supporting Assistance and $30 million in PL 480 would have a real impact on Cambodia's import level. Most likely, the import of industrial raw material would suffer rather than the level of consumption imports. But these raw materials are needed to get Cambodia's domestic production restored, and this is an essential prerequisite to any progress toward greater Cambodian self sufficiency.

Mr. SCOTT. Mr. President, section 9 of the bill under consideration would amend section 655 of the Foreign Assistance Act of 1961 by reducing the current ceiling for Cambodia of $341,000,000 to $275,000,000. The $275 million is not enough. The administration-submitted budget requests for Cambodia for fiscal year 1973 total $345.5 million. These requests break down to:

Supporting assistance, $75 million.

Public Law 480, $30 million.

Military assistance—of which about one-half is for ammunition—$225 million.

In addition, about $15.5 million in excess defense articles will be provided.

A limit of $275 million will result in sizable reductions of all three programs. We would be reducing funds to provide ammunition, we would impair the capacity of the Cambodians with their own courageous forces to defend population centers and lines of communications. The enemy—the same forces we are opposing in Vietnam and Laos—would regain freedom of movement, operation, and sanctuary in Cambodia which would impact on the battles in Vietnam and U.S. withdrawals.

This is not acceptable. I hope the House will support the administration request and that a higher level will be recommended by the conference.

Mr. DOLE. Mr. President, one of the questions which has been raised regarding our assistance to Cambodia is whether our aid is necessary at a time when U.S. troop levels have been considerably reduced in South Vietnam. I believe that assistance is vital, and two basic points support that belief.

First, there are still more than 50,000 U.S. servicemen in South Vietnam at a time when the North Vietnamese are continuing an all-out effort to crush South Vietnam. In this situation it makes no sense at all to reduce beyond reason the austere support which we are providing the Cambodian Government to maintain its 200,000-man army in the battle against the North Vietnamese. The supply lines for the four NVA divisions which are attacking An Loc and operating in the Mekong Delta run directly through Cambodia. The Cambodian army is engaged in joint operations with the South Vietnamese in the border region and is holdng a key provincial capital at Suay Rieng in the Parrot's Beak. Furthermore, the Cambodians not only threaten the North Vietnamese supply lines, but they pose a serious threat to NVA units which are now attempting to return to base areas inside Cambodia for rest and refitting after suffering severe casualties around An Loc.

Secondly, stopping the North Vietnamese offensive at a time when the President has just completed his historic trips to Peking and Moscow is highly important to the prospects for a just, negotiated settlement of the war in Indochina. The coming year is a crucial period which offers significant hope for a peaceful end to this long war. It is no time for the United States to reduce support to Cambodia. That nation has an important stake in the outcome of this conflict; and we should do nothing to hamper its self-defense efforts or to lead the Cambodian people to believe that we have lost faith in their ability to protect and defend their nation. The very mod-

est aid which we are providing Cambodia represents only imported items such as basic arms, ammunition, and economic commodities which they, themselves, cannot produce. They are supplying all of the manpower and most of the economic material for their armed forces. We are only supplementing their effort to defend themselves.

At this crucial point, it would be folly to reduce our assistance to Cambodia unreasonably. Rather, now is the time to maintain and support our friends in Southeast Asia while attempting to negotiate a settlement to the war which is just for all parties and which will allow us to withdraw our remaining troops in safety with the maximum prospects for an honorable and stable peace.

Mr. SYMINGTON. Mr. President, the Senator from Wyoming's amendment would make the ceiling on aid to Cambodia meaningless. I hope the Senate will demonstrate again that it is willing to impose some small restriction on our unfortunate involvement in Cambodia.

A little less than 2 years ago the United States did not have an aid program in Cambodia. Before the incursion began the Committee on Foreign Relations, by an almost unanimous vote, cautioned the administration not to become further involved in Cambodia. But the committee's warning was not heeded. When the Cambodian incursion began in April, 1970 the U.S. mission consisted of 12 people. We now have about 175 Americans there, an aid program that will cost the American taxpayers some $250 million this fiscal year, an army we pay for that is increasingly reluctant to fight, and a government which is fast taking on the economic and political characteristics of another South Vietnam.

Last year the executive branch asked for $341 million for assistance to Cambodia. The Senate approved this full amount with the understanding that the figure was to cover the U.S. share of South Vietnamese military operations in Cambodia. The Senate was forced to compromise in conference to exclude the cost of the South Vietnamese operations for the 1972 fiscal year. But both the House and Senate agreed that the cost for 1973 be estimated and calculated in the new 1973 ceiling. The executive branch has not only refused to comply with that mandate—it has refused to come up with any ceiling estimate at all. Apparently, it chose to ignore the requirement for a specific authorization for Cambodia for the 1973 fiscal year, preferring to go back to the old method where the bits and pieces of foreign aid for any country—Cambodia or otherwise—were hidden away in various programs so that Congress seldom knew the extent of the total package for any one country.

But Congress last year made it clear that it does not consider Cambodia to be an ordinary foreign-aid recipient, where the executive branch can allocate funds from various foreign-aid pockets as it sees fit. Congress said that it wants to keep a very tight rein on what the executive branch can do in Cambodia. Last year it said "$341 million worth of involvement in fiscal 1972 but no more." According to the information supplied to the committee, only an estimated $249.2 million will actually be used this fiscal year—$92 million less than the amount requested.

Since Congress imposed that limitation the military and political situation in Cambodia has gone downhill rapidly. A story in the June 6 New York Times reported that:

> In recent weeks the Cambodians have, almost without a fight, given up most of the territory east of the Mekong River.

It quoted a "high American official", talking of the U.S. military aid program, as saying, "I don't see any vigorous prosecution of the war in the cards." The military equipment bought with the enormous amounts of U.S. aid has, however, turned out to be handy for Lon Nol's presidential campaign. The article stated:

> A giant parade of military vehicles filled with soldiers bearing placards has circled the city every morning, blaring Marshall Lon Nol's political propaganda and DC-3 aircraft have dropped thousands of little pictures of the Marshal, similar to those printed on the ballots.

As to the war, the article ended;

> It is already a kind of de facto truce.

I ask unanimous consent that this, other pertinent articles, excerpts from a staff report to the Foreign Relations Committee, excerpts from House Report 92–1146, and a comparative table be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SYMINGTON. Mr. President, we have taken on another client state—that is true. But Congress has a duty to draw the line on how much the American taxpayers are going to shell out for that client. The various components of the executive branch's fiscal 1973 request for aid to, and spending in behalf of, Cambodia totals $348 million, excluding the cost of combat air operations over Cambodia and of South Vietnamese operations within the country; practically the same as the amount requested for the current fiscal year. We all know that executive branch foreign aid requests, by tradition, are grossly padded with fat in the expectation that Congress will make sizable cuts in amounts. Last year they asked for $110 million in economic aid for Cambodia; now they estimate that they will use only $37.1 million. The requests for the coming fiscal year are likely to be similarly exaggerated.

In agreeing to a ceiling which is $26 million more than the amount to be used this year, the committee believes that it is being generous. But at the same time, the ceiling should impose some restraint on any executive branch inclinations to increase the aid program there by a significant amount. If, by chance, the situation should change drastically and more aid truly warranted, the administration can come back to Congress and ask for an increase in the ceiling.

Mr. President, if the Senate wants to play a role in the making of foreign policy it must begin to say more specifically how the money it votes for foreign aid can be used. For too long Congress has given the President a free hand in the spending of billions in foreign aid. Let us not turn Cambodia into another Honda and Sony economy for the benefit of the elite, while the masses suffer from the ravages of war—as we did in South Vietnam.

This ceiling is but a small step toward helping assure greater congressional control over how tax dollars for foreign aid are to be used. And, hopefully, it will serve to prevent our becoming sucked even deeper into yet another quagmire in Southeast Asia.

EXHIBIT 1

CAMBODIA CEILING DATA

[In thousands]

Program	Fiscal year— 1972 estimate	1973 request
Military grant aid	$179.7	$225.0
Excess defense articles	15.0	15.5
Supporting assistance	37.1	75.0
Public Law 480	14.6	30.0
Military aid mission costs	2.8	2.5
Economic aid mission costs	(1)	(1)
Costs of Vietnamese operations in Cambodia	(2)	(2)
Total	249.2	348.0

1 Not yet received.
2 The Defense Department says it cannot provide a realistic estimate of the costs of Vietnamese operations in Cambodia.

Note: fiscal year 1972 ceiling was $341,000,000.

THAILAND, LAOS, AND CAMBODIA: JANUARY 1972

(A staff report prepared for the use of the Subcommittee on U.S. Security Agreements and Commitments Abroad of the Committee on Foreign Relations, May 8, 1972)

IV. CAMBODIA

A. GOVERNMENT AND ENEMY MILITARY STRENGTH

The Cambodian armed forces, known as the FANK, are now believed by some American officials to number not more than 175,000 (75,000 of whom are territorial forces who stay in one military region and 65,000 of whom are part of a general reserve which can be employed all over the country), about 5,000 in the Air Force and about 5,000[1] in the Navy. The Cambodian high command says that the FANK numbers 230,000, but that figure is considered to be grossly inflated by the inclusion of "phantom soldiers" (at least 10%), wounded and absentees. (The FANK has a census committee which examines various units. A recent report by the Committee, issued on January 19, states that "two officers, unit commanders, caught in the act of fraud have been indicted before the Military Tribunal.") The eventual "force goal" for Cambodia is 220,000—[deleted] in the Army, [deleted] in the Air Force and [deleted] in the Navy—meaning that this is the size of the force that the United States thinks the Cambodian economy can sustain and that the United States has agreed to support. Some high Cambodian Government officials have said that there should be a larger force and that they will support it themselves without outside assistance.

South Vietnamese Army strength in Cambodia at the time of our visit was estimated at 3,000 to 4,000. At times, the South Vietnamese have had as many as 15,000 troops in Cambodia.

Enemy forces in Cambodia in January consisted of 60,000 to 75,000 North Vietnamese and Viet Cong and 18,000 to 20,000

[1] The precise numbers are considered to be classified.

Khmer communists. About 45% of the North Vietnamese/Viet Cong are estimated to be combat forces (and of these 15 to 20% are estimated to be Viet Cong.) The other half are rear service troops (about half of whom are Viet Cong.) A new North Vietnamese division has arrived in Cambodia in the past year so that there are now about six divisions in the country. It is estimated that two and a half of these divisions are targeted against Cambodia, while the remainder can be targeted against either Cambodia or South Vietnam.

The Khmer communists are composed of various groups. Some are pro-North Vietnamese, others are not. Some are pro-Sihanoukist, others are not (they are considered to be non-Sihanoukist rather than anti-Sihanoukist.) The dissident Khmer military force as a whole, however, is considered to be anti-Sihanoukist and under close North Vietnamese direction. In the areas in which these Khmer groups are strong, communist civilian and military organizations are beginning to appear and that infrastructure may be as high as 35,000 to 50,000. It, too, is considered to be generally non-Sihanoukist.

In 1971, it is estimated that 4,146 members of the FANK and 5,866 enemy have been killed (but that only 140 Cambodian civilians have been killed in combat accidentally). This estimate of enemy killed does not include those killed by air. FANK estimates of enemy killed, which are always far higher than U.S. estimates, are considered to be greatly exaggerated. FANK sources estimated that between March 18, 1970, and January 23, 1972, the enemy had lost 71,295 killed and 30,588 wounded while FANK had lost 9,062 killed, 15,517 wounded and 9,067 missing. A high FANK official told us that the statistics for the period in question were: between 96,247 (confirmed) and 144,914 (estimated) enemy killed, 9,357 FANK killed, 22,562 FANK wounded and 1,752 FANK missing.

FANK headquarters says that their forces captured 997 Khmer communist prisoners in 1970 and 1,626 in 1971. The U.S. Mission does not know the number of North Vietnamese and Viet Cong prisoners held by the Cambodians but has the general impression that there are about 25. [Deleted.]

B. MILITARY ASSISTANCE

The Military Assistance Program in Cambodia was run by the Political-Military Section in the Embassy during 1970. On January 31, 1971, a Military Equipment Delivery Team Cambodia (MEDTC) was formed to administer the program. The Chief of the MEDTC and later an additional 7 MEDTC officers and his staff were located in Saigon, but 16 were stationed in Phnom Penh. In July 1971, the MEDTC Chief, a Brigadier General, moved to Phnom Penh, and the MEDTC element in Cambodia was raised to its present strength. In Phnom Penh, there are now 43 MEDTC personnel (50 are authorized and up to 12 more have been approved by the Executive Branch). There are 63 other MEDTC personnel at MACV in Saigon. Of the 12 new personnel, 4 will be used to monitor third-country national contracts (50 additional third-country nationals will be hired to train Cambodians in logistics), 4 to monitor training, 3 to be assigned to help advise on port operations at Kompong Som and 1 will be a fiscal specialist who will monitor the military uses portion of the Public Law 480 agreements (these agreements are discussed below).

Although American military personnel in the MEDTC seem to be acutely aware of the prohibition against their acting as advisors or participants in the planning and execution of tactical operations, they are nevertheless deeply involved as advisors or organizers in activities such as force planning, military budgeting, logistics and training. As noted above, 11 of the 12 new MEDTC personnel will be involved in logistics and training activities.

Last year, as the FY 1972 Military Assistance Program was being developed, there were extensive discussions within the U.S. Government and between the United States and Cambodia regarding the size of the armed force to be supported by the United States. The Cambodians maintained that they then had [deleted] men under arms and therefore wanted the United States to agree to support that number in FY 1972 and to agree to build toward an ultimate goal of [deleted] men. The Embassy at the time estimated the FANK at about [deleted] and took the position that there were not [deleted] under arms and that [deleted] was a more realistic goal. It was finally agreed, in an exchange of letters between [deleted] that we would support a force of 220,000 well trained and well equipped troops.

Since that time, there has been considerable disagreement between the State Department and the Embassy, on the one hand, and the MEDTC, CINCPAC and the JCS, on the other, regarding the nature of this undertaking. CINCPAC and the JCS have tended to regard 220,000 as a figure to be reached in FY 1972, while the Embassy and the State Department consider 220,000 as a goal to be reached over time subject to the availability of funds, training schedules and FANK's ability to use American support effectively.

Meanwhile, the MEDTC was told by the Department of Defense that it should be guided in its planning by a program figure of $200 million in this Fiscal Year (in the absence of appropriating legislation, the MEDTC had been told at the time of our visit that it could obligate up to a level of $115 million as the result of a Presidential Determination based on the continuing resolution). The MEDTC had already developed a program for this Fiscal Year, the cost of which turned out to be $252.6 million, and $52.6 million was thus put in "shortfall" to be funded out of the FY 1973 Military Assistance Program or discarded if necessary. With a $200 million program, the Military Assistance Program would have been supporting a FANK force of about [deleted] men in FY 1972 (the actual amount made available after the appropriation was passed was somewhat lower). Present plans are to recommend a Military Assistance Program in FY 1973 of [deleted] million[2] for a force level of not to exceed 220,000.

The program is aimed at providing the FANK with the most basic equipment. The cost of equipping each company is estimated at $15,000 (the cost for a South Vietnamese Army company is $55,000).

As of December 31, Military Assistant Program deliveries had totalled $172.5 million—$7.5 million from FY 1970 funds, $134.5 million from FY 1971 funds ($44.2 million more has been ordered but is still in the pipeline) and $30.5 million from FY 1972 funds. In addition, $14.2 million in long supply and excess materiel had been delivered in FY 1971 (in aircraft, weapons and ammunition) and $1.5 million in FY 1972. (In FY 1972 there is a projection of $11 million worth of excess at one-third of acquisition value because of the legislative ceiling of $341 million on expenditures in Cambodia; there was no ceiling on excess last fiscal year.) Packing, crating, handling and transportation costs are charged only from Vietnam and not from the continental United States except in the case of direct shipments.

Based on the assumption of an FY 1972 program of $200 million, the MEDTC made the following allocations (in no case are the amounts for each category the same as those in the Congressional Presentation Book):

	(Or 45% of the total)
Ammunition	[deleted]
Aircraft	[deleted]
Patrol Craft	[deleted]
Weapons	[deleted]
Trucks	[deleted]
Communications Equipment	[deleted]
Clothing	[deleted]
Aircraft spares	[deleted]
Training	[deleted]
Supply Operations	[deleted]
Other Articles	[deleted]
	$200

Since the beginning of the Military Assistance Program to Cambodia, 12 planes and 4 helicopters provided by the United States have been lost—5 T-28's, 4 C-47's, 2 O-1's, 1 T-41, 1 UH-1 and 3 U-1A's. Three were destroyed in the January 22, 1971, sapper attack on the Phnom Penh airport; five others were destroyed in rocket attacks on the airport (three on November 10); two were shot down by enemy fire; and the rest were lost in crashes.

Other than aircraft, MAP equipment losses, except for those incurred in Chenla II, have included: 92 trucks; 1 landing craft; 4,845 carbines; 79 60 mm mortars; 36 81 mm mortars; 6 105 howitzers.

The present MEDTC Chief, who is about to complete his tour and will be replaced by another Brigadier General, is convinced that even with 62 personnel in Cambodia he will not be able to carry out his assigned responsibilities. He cites the Congressional end use check requirements specified in the Military Assistance Manual, as amplified by CINCPAC directives, and the conclusions of a recent MACV study team which he said indicated that 35 people would be required to monitor Public Law 480 military uses, a job that will now have to be performed by one of the 12 new personnel to be assigned. He was, however, not able to give a figure when asked how many people he felt he would need in order to do what he thought should be done. On the other hand, there are Americans who know the program well who believe that the MEDTC element in Cambodia is, if anything, already too large.

At the time of our visit, a CINCPAC personnel team was about to visit Saigon and Phnom Penh to examine the question, but some officials believed that CINCPAC had already concluded that there should be an increase and that the personnel team was therefore unlikely to conclude to the contrary.

3. ECONOMIC ASSISTANCE

The economic assistance program for Cambodia in FY 1971 was $70 million, and the Executive Branch proposal to the Congress for FY 1972 was $110 million. In presenting the FY 1972 proposal to Congress, the Executive Branch stated that it had two purposes in mind: to finance a flow of imports at approximately pre-war levels to help off-set losses in Cambodian production and export earnings caused by the war and thus prevent a serious deterioration in living standards; and to complement U.S. support of Cambodian military efforts, using local currency generated by AID financed imports.

In March 1971 the U.S. agreed to give the Cambodian Government a reimbursable cash grant of $20 million from FY 1971 funds for the purpose of financing imports. At first, utilization of this grant was slow because of Cambodian inexperience in dealing with the United States, the technical complexities of procurement and a policy of watchful waiting on the part of importers who already had large inventories on hand. Eventually, however, between June and September 1971 al-

[2] In early April, the Executive Branch proposed $225 million in military assistance for Cambodia for FY 1973; $209.5 million in grant aid and $15.5 million in excess defense articles. Of the $209.5 million in grant aid, $100 million is for ammunition compared to an estimated cost for ammunition in FY 1972 of $85.7 million.

most the entire $20 million initial grant was committed. These commodities, primarily petroleum, have now begun to move into the country.

The agreement to establish a Commodity Import Program utilizing the remaining $50 million from the FY 1971 program was signed on May 1, 1971. All of this money was originally tied to U.S. procurement, and the General Services Administration was designated to handle all the procurement in the United States with SONEXIM the sole agency in Cambodia designated to process applications from importers. The General Services Administration was inserted into the process, first of all, because it was assumed that Cambodians had not had much contact with the U.S. market and thus did not know U.S. suppliers and, secondly, in order to cut down corruption. As a result, however, orders lagged because Cambodian importers had no direct contact with suppliers, had until recently been unable to specify brand names and were confronted with complicated bureaucratic procedures and long lead times (9–12 months) to which they had not been accustomed.

Importers have also proceeded slowly in placing orders under the Commodity Import Program because they were waiting to see whether the exchange rate would be lowered. As it turned out, exchange rates did fluctuate. The rate had initially been 55 to 1. In March 1971, it was set at 83. It then went to 140 in October 1971 and was subsequently dropped to 120. Because importers insisted this rate was too high, on January 18 a preferential rate of 90 was established for imports from the United States under the Commodity Import Program. The 120 rate still applies to all other transactions.

Mission officials also tend to attribute some of the blame for the program's slow start to delays in Congressional authorization of the FY 1971 aid program. In this connection, however, the following sequence of events is worth noting: (1) the legislation authorizing the FY 1971 aid program was passed by the Congress on January 4, 1971; (2) the initial $50 million commercial import agreement was not signed by the U.S. and Cambodian Governments until May 1971; and (3) procedures for implementing the Commodity Import Program were not established until September 1971. To date, no commodities financed under the May 1971 agreement have arrived in Phnom Penh and, in fact, only $17.6 million of orders have been placed.

Because the use of FY 1971 supporting assistance was so slow, the U.S. Mission in Phnom Penh recommended considering shifting $20 million from the Program to the Military Assistance Program. Washington did not concur, among other reasons because of a feeling that such a transfer would have a detrimental effect on FY 1972 appropriation requests to Congress. There was, however, a shift of $3.4 million worth of bridging material and $1.7 million of highway maintenance equipment from the Military Assistance Program to the Commercial Import Program. Some thought was given to shifting some POL from the Military Assistance Program to the Commercial Import Program but the decision was made that this shift could not be made because POL was fungible and it would therefore be illegal for AID to fund any part of the Cambodian Army's POL requirements.

It was decided at the end of October 1971, however, to free half of the $50 million from the requirement of U.S. procurement and to permit procurement in the so-called Code 941 countries which are free world less developed countries. As of mid-January, the Cambodian Government had authorized import licenses of $1.2 million out of this $25 million and of $15.4 million out of the $25 million tied to U.S. procurement, the latter consisting principally of purchases by the Cambodian Government.

As a further spur to imports, at the suggestion of the IMF an Exchange Stabilization Fund (ESF) will begin operations on March 1, 1972, with an initial capitalization of $35 million. The Cambodian Government is contributing $15 million, the United States will eventually contribute $12.5 million (out of FY 1973 aid funds) and the Japanese Government $5 million. Of the remaining $2.5 million, Australia has pledged $1 million, Thailand $250,000, New Zealand $119,000 and Malaysia $100,000. Indonesia, the Philippines, Korea, Itay, the U.K. and Singapore have refused to contribute at all, and the contributions of Japan, Australia and New Zealand were lower than the amounts these nations were requested to contribute.

The U.S. contribution to the ESF, as indicated above, will not be made until the FY 1973 aid program has been authorized by Congress. Originally the money was to have been taken out of FY 1972 funds, but it was decided not to do so because, despite the fact that the ESF had been included in the Embassy's plans since early 1971, the fund had not been included and justified in the FY 1972 program and the Executive Branch was thus concerned that there might be adverse Congressional reaction if FY 1972 funds were contributed.

In addition to the regular economic assistance program, two PL 480 agreements have been signed: one for $8.5 million on March 2, 1971, and one for $14.1 million on January 13 of this year. The agreements provide that 80% of the counterpart generated will go to pay Cambodian military salaries [a use which PL 480, Section 104(c) requires] and 20% for United States uses. The military-uses aspects of the counterpart program is administered by the MEDTC. The commodities to be furnished under the second of these PL 480 agreements are 18,400 bales of cotton, 4.4 million pounds of cotton yarn, 1500 metric tons of tobacco, 3,000 metric tons of vegetable oil and 24,000 metric tons of wheat flour.

The $110 million in economic assistance requested for FY 1972 was to be divided into several components: a cash grant of $20 million in connection with the economic reforms announced on October 29 (which has already been committed); a further $12.5 million cash grant to the Economic Stabilization Fund (which has been delayed); and the remaining $77.5 million to be divided between the Commodity Import Program (which some say was far too large to begin with and is now even larger by $12.5 million because of the delay in contributing to the ESF) and public sector imports. Present thinking in Phnom Penh is that for FY 1973 a supporting assistance program of about [deleted] million will be proposed.[3] There are some knowledgable observers who believe that the total FY 1972 and FY 1973 programs could be reduced by at least $50 million.

In 1969, 1970 and 1971 economic assistance to Cambodia from other countries amounted to $49.8 million, although $22.5 million of this amount was a loan from France negotiated in January 1970 and not yet implemented and $12 million was an East German loan negotiated in September 1969 but now in abeyance. Of the remaining $15.3 million, Belgium has loaned $7 million, Japan has provided a grant of $4 million, Denmark has loaned $4 million and the U.K. has provided a grant of $300,000. Not included in these totals are pledges to the Exchange Stabilization Fund (discussed above) and to the Prek Thnot Dam (for which loans and grants totaled $19.2 million) or a $1.5 million grant from the United Nations Development Board and a $300,000 grant from UNICEF.

[3] The Executive Branch subsequently proposed a supporting assistance program of $75 million and $12.3 million in P.L. 480 for Cambodia in FY 1973.

D. THE U.S. PRESENCE

As of January 27 this year, there were 160 Americans in the U.S. mission, well below the ceiling of 200 set in the Foreign Assistance Act. Of the 160, there were 52 civilians and 79 military personnel permanently assigned; 20 people on temporary duty; and 9 American contract personnel. There were also 31 American dependents. In addition, the Mission employs 35 Third-Country Nationals but is planning to hire 50 more for the MEDTC which will bring the total to the ceiling of 85 set by legislation. The 79 military personnel include 43 in the Military Equipment Delivery Team (50 are presently authorized and 12 more spaces have been approved by the Executive Branch) and 21 in the Defense Attaché's office. CIA personnel are not separately identified.

EXCERPTS FROM THE REPORT OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, "U.S. ECONOMIC ASSISTANCE FOR THE KHMER REPUBLIC (CAMBODIA)," H. REPT. 92-1146

APPENDIX D.—COMMODITIES APPROVED FOR FUNDING UNDER U.S. GRANT AGREEMENTS (THROUGH MAR. 10, 1972)

	$20,000,000 agreement	$50,000,000 agreement
Air-conditioning equipment and repair parts[1]		$65,407.97
Aircraft engines[1]		5,470.40
Aluminum sheets	$68,703.10	
Automotive equipment:		
Batteries[1]	237,128.97	126,065.74
Passenger vehicles (autos and station wagons)[1]		115,038.54
Repair parts[1]	71,895.14	299,706.21
Tires and tubes[1]	486,678.25	
Tractors, bulldozers, fork lifts, and repair parts	24,332.69	315,482.97
Trucks and trailers	169,831.16	544,743.19
Battery chargers		10,542.20
Bicycle parts[1]	146,448.00	
Bicycle tires and tubes[1]	24,600.00	
Brewery supplies (bottle tops)[1]	19,465.00	
Carbowax		19,223.52
Cellophane tape		10,340.44
Cement	232,539.00	
Chrome and nickel plating materials		22,607.50
Cigarette manufacturing materials	$360,519.82	$342,474.84
Compressors and repair parts		13,792.17
Copper wire		25,779.36
Cotton fabrics		623,023.00
Diesel engines and repair parts		21,472.13
Dry cell battery manufacturing equipment and materials	650,631.38	
Electric motors and blowers		25,430.00
Fire extinguishers		23,653.51
Fluorescent tubes, starter and ballasts	140,958.98	55,889.42
Freezer (commercial)		166,405.50
Freon gas		6,114.00
Garden hose	138,221.45	
Gasoline engines, 4-cycle, 1 cyclinder	462,275.37	6,158.10
Gasoline pumps and repair parts		62,278.30
Generators and repair parts		117,556.23
Glutamic acid (flavor intensifying season)	211,703.21	
Glycerine		34,010.43
Hand tools (mostly files and hacksaw blades)	5,398.00	127,159.66
Homogenizer and repair parts		1,489.00
Industrial chemicals[2]	578,860.12	317,308.44
Isopropyl alcohol, etc		27,399.83
Lactose		14,244.30
Magnetic tape[1]		7,682.00
Nonfat dry milk		1,445,961.00
Office machines:		
Accounting machines		46,998.88
Adding machines	59,780.16	
Calculators		126,110.00
Duplicating machines and accessories	30,356.63	6,540.00
Typewriters	260,480.77	175,995.00
Padlocks		5,158.45
Paper products:		
Cardboard	152,456.58	
Duplex board	63,640.50	
Duplicating paper	158,604.88	14,852.40
Kraft paper	30,480.00	
Manifold paper	90,411.90	
Newsprint	469,475.35	
Labels	57,075.00	
Waxed cartons	11,482.91	
Writing paper	421,647.00	
Paraffin wax	49,363.20	

EXCERPTS FROM THE REPORT OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS, "U.S. ECONOMIC ASSISTANCE FOR THE KHMER REPUBLIC (CAMBODIA)," H. REPT. 92–1146—Continued

APPENDIX D.—COMMODITIES APPROVED FOR FUNDING UNDER U.S. GRANT AGREEMENTS (THROUGH MAR. 10, 1972)—Continued

	$20,000,000 agreement	$50,000,000 agreement
Pen refills (4,000,000)		82,330.00
Petroleum products	7,950,448.20	
Pharmaceutical filtering machine		7,888.53
Photographic supplies		71,502.02
Plumbing fixtures (color)		9,991.28
Polyethylene/polypropylene/polystyrene	431,125.83	389,728.40
Polyvinyl	158,718.90	
Printing ink	25,602.80	
Pumps	9,648.93	17,441.00
Sewing machines (household)	315,360.00	
Soft drink manufacturing equipment and materials[1]	186,521.96	825,381.62
Spectrophotometer		5,680.16
Steel hoops and sheets		22,278.62
Sugar, raw		2,000,000.00
Sugar, refined		1,446,240.00
Television sets[1]		17,120.00
Textile equipment, dyes and bleaches	255,835.37	444,149.43
Time magazine		5,850.00
Tinplate		883,277.00
Toothpaste		55,483.14
Transmission belts	14,778.91	
Voltage regulators	5,387.00	
Welders		10,384.43
Welding rods		57,368.75
Total	15,238,872.42	11,727,659.10

[1] Includes commodities not eligible for financing under U.S. commodity import program for Vietnam.
[2] Includes chemicals for glass, leather, petroleum, plastic, rubber, soft drink, and textile industries.

Source: Subcommittee compilation from AID's paid vouchers and purchase authorization.

[From the New York Times, June 6, 1972]

CAMBODIA SEEMS ADRIFT AFTER 2 YEARS AS REPUBLIC—A DEMORALIZED CAMBODIA LOSING CONFIDENCE IN HER LEADERSHIP AND INSTITUTIONS

(By Craig R. Whitney)

PHNOMPENH, CAMBODIA, June 5—From a start full of hope two years ago, Cambodia has sunk into a deep malaise, without confidence in her leadership, institutions, or ability to decide her own future, in the assessment of a wide range of Cambodians and foreign diplomats.

The malaise has been months in developing, but has had a chance to take root in the last two months, during which the Government of President Lon Nol has been virtually paralyzed by its attempts to legitimize itself as a popularly elected presidential regime.

Yesterday the country held its first presidential election. Marshal Lon Nol was ahead in preliminary results today with 58 per cent of the vote, while his closest contender, In Tam had 24 per cent, and the marshal will almost certainly turn out to be the winner when the final results of the light voting are proclaimed by the Government in a few days.

He proclaimed himself President March 13 after dissolving what remained of the Cambodian legislature, with Mr. In Tam at its head, and bowed to student pressure to eliminate his friend and closest adviser, Lieut. Gen. Sisowath Sirik Matak, from the Government. The next legislative elections will not take place for three months.

The beginning of the worst part of the decline in Camboda's morale seems to date from the disastrous rout of Cambodian troops trying to clear Route 6 north of Phnompenh in December. Since that operation, called Tchenla 2, the Cambodian Army has made no new offensive sweeps except unsuccessful ones around the temples of Angkor.

In recent weeks the Cambodians have, almost without a fight, given up most of the territory east of the Mekong River that North Vietnamese and Vietcong troops are using as a staging area for the offensive in South Vietnam.

AMERICAN OFFICIAL GLOOMY

A high American official speaking of the United States' $200-million military aid program in Cambodia, shrugged his shoulders as if in despair and said: "I don't see any vigorous prosecution of the war in the cards. Tchenla 2 caused a certain lack of confidence on the part of Lon Nol and the army and the Communists' use of tanks and large amounts of heavy ammunition in their offensive has just indicated to the Khmer that they are no match for the North Vietnamese.

It was also the failure of Tchenla 2 that caused the exacerbation of political strains, but that had been growing quietly ever since March 1970 when Marshal Lon Nol enjoyed seemingly unanimous backing at the beginning of the republic. The trend since then has been one of centralized rule in his weak hands, but with growing frustration and with the elections of the weekend open opposition by some who supported the President in the beginning.

Marshall Lon Nol's principal opponent in the election. Mr. In Tam was president of the Cambodian National Assembly at the time of the overthrow of Prince Norodom Sihanouk and was one of the three principal figures of the new republic in 1970—along with the President and his close friend, General Sirik Matak.

What has happened to Mr. In Tam and to General Sirik Matak shows, in some ways, the deterioration of the regime. In the summer of 1971, Mr. In Tam became Minister of the Interior, but asked to resign and was dismissed last September as his differences with the marshal grew. He became president of the renamed Constituent Assembly in November after Marshal Lon Nol took away the legislature's law-making powers and told it to proceed with the drafting of a constitution.

But in March, after student demonstrations against General Sirik Matak, who was Lon Nol's premier and, in effect, the man who had ruled Cambodia since the marshal's stroke more than a year ago, the President bowed to these outside pressures, took Genera Sirik Matak out of the Government and abolished the Constituent Assembly.

Within 10 days, he had his subordinates draft a constitution to his liking, establishing a presidential form of government with a Cabinet answerable to him and to the two-house legislature, and submitted it to a nationwide referendum., which approved it April 30.

Since March, the Government has been headed by the only man Lon Nol could get to accept the job, Son Ngoc Thanh, a shadowy figure who was on the side of the anti-Sihanouk forces at the beginning of the republic but whose allegiance is now believed to be mostly to the forms and trappings of the republican Government.

"The Government has been virtually paralyzed for the past two months while Lon Nol has been trying to secure his political future," a senior diplomat said, "I would hope he'd start to govern again rather quickly after the elections."

Indeed in the last few days in Phnompenh have been devoted almost entirely to political activities. A giant parade of military vehicles filled with soldiers bearing placards has circled the city almost every morning, blaring Marshal Lon Nol's political propaganda and DC–3 aircraft have dropped thousands of little pictures of the marshal—similar to those printed on the ballots—all over the city.

During the voting yesterday, Mr. In Tam charged that the Government was making it difficult for his supporters to vote for him, and that his pollwatchers had not been permitted in some of the places where military people, who strongly support Marshall Lon Nol, were voting. Today, he said he would contest the results as "fraudulent and antidemocratic." There has been talk of a coup d'etat by disgruntled elements, but Mr. In Tam refused, in an interview, to go that far.

The third candidate, Keo Ann, was the dean of the Faculty of law of Phnompenh, whose students led the fight against General Sirik Matak in the spring, but he did not campaign prominently and was expected to get less than 5 per cent of the vote.

Mr. In Tam campaigned actively but, one Western diplomat said: Even if In Tam said nothing, a lot of people would vote for him. There's a feeling that the Government has not kept any of the promises it has made, and that it is corrupt.

NOT ENTIRELY BLEAK

In the preliminary results, Mr. Keo Ann did better than expected and the two opposition candidates together had almost 42 per cent.

American officials here point out that the situation is not entirely bleak, and say that a series of monetary reforms and changes in Government policy have staved off a serious rice shortage that seemed to be inevitable last fall. In fact, only 20,000 tons of rice was imported and only 10,000 tons had to be used, according to American economists.

The Nixon Administration has asked Congress for $75-million in economic aid to Cambodia for the fiscal year beginning July 1, twice this fiscal year's amount.

But the Cambodian budget is at a large deficit because of the war, and unrest is growing among low-paid civil servants and salaried workers whose pay has not kept up with inflation. In the last few weeks, for example, there have been a series of strikes for higher wages in Government ministries—something inconceivable in the early days of the republic.

The unrest within the Government and in political movements outside it has been matched by a growth in the ranks of the Cambodian Communists, who are fighting against the Government forces alongside the North Vietnamese and Vietcong in the occupied parts of the country.

The number of members of Khmer Rouge, the Cambodian Communist force, is now estimated at at least 30,000. "There has been a growth, a development of the movement, which, we think, has serious longer-term meaning for the country," an American diplomat said. "But the Government seems to resist the notion that the way to stand up to them is to fight them hard."

Both Mr. In Tam and Marshall Lon Nol, in their campaign statements, emphasized that they wished for a reconciliation with the Cambodian Communists but neither offered any detailed proposals for achieving a reconciliation. One Western diplomat even said, "I don't think it's certain that even if the Vietnam war ended by negotiations, the war in Cambodia would necessarily end at the same time."

All the Cambodian factions seem to realize that, ever since Tchenla 2, it is futile to talk of chasing the North Vietnamese out of the country and that peace will not come to Cambodia before it comes to Vietnam—in the framework of an internationally guaranteed settlement.

The outlook for the future, according to diplomats here, is that the Cambodian forces will offer only token resistance to the Vietnamese Communists, reoccupying lost territory only when the enemy abandons it, and leaving again—as the Cambodian Army has done in the last two months in Svayrieng and Preyveng provinces near the Vietnamese border—when the North Vietnamese want that territory. It is already a kind of de facto truce.

[From the Washington Post, May 8, 1972]

CAMBODIAN EXPERIENCE TURNS SOUR

(By Laurence Stern)

"Cambodia is the Nixon Doctrine in its purest form." Richard M. Nixon, Nov. 15, 1971

"The quarter-billion dollar aid program for Cambodia is, in my opinion, probably the best investment in foreign assistance that the United States has made in my lifetime." Richard M. Nixon, Dec. 10, 1970

The army that marched in sneakers, rode ebulliently to war in Pepsi-Cola trucks and fired Chinese carbines only two years ago seems like a romantic fiction. There are now proper trucks and uniforms and American M–16s.

Nonetheless President Nixon's description of the Cambodian aid program is a piece of hyperbole that has turned bittersweet, if not completely sour.

The Cambodian army, known as FANK (Forces Armee Nationale Khmer), has grown from a poorly equipped and ill-trained militia of 30,000 at the time Prince Norodom Sihanouk was overthrown in 1970 into a poorly led and frequently outfought force that is now, at least on paper, supposed to number 200,000.

Although the figure is still technically classified, the administration is seeking to raise its military aid sights to support a Cambodian army of 220,000, although U.S. military planners envision further expansion of the force.

The United States has been pouring in military supplies at a rate of 5,000 tons a month along the Mekong River from Vietnam and into Pochentong Airport in Phnom Penh. Half of the incoming cargo is ammunition.

More than 50,000 Cambodian troops have undergone training in South Vietnam, Thailand, the United States, Indonesia, Malaysia and elsewhere, knowledgeable U.S. officials in Phnom Penh report.

Since President Nixon spoke the above-quoted words 16 months ago the dollar value of assistance to Cambodia has more than doubled.

However, at least half of Cambodia's land mass and a quarter of its 7 million population now lie beyond the writ of the Lon Nol government, by official intelligence estimates.

GUERRILLA STRENGTH GROWS

The insurgent Khmer Rouge (Red Cambodian) movement has grown from a scattered force of about 2,000 to a wide-spread guerrilla force that one key White House official this week set at 50,000. State Department intelligence estimates of Khmer Rouge strength are 15,000 to 30,000.

The current North Vietnamese offensive demonstrates that the avowed objective of the American "incursions" two years ago and follow-up operations by the South Vietnamese army—the cleaning out of Cambodia's Communist sanctuaries—was short-lived in its effect.

Despite the rapidly rising scale of American weapons, logistic support and tactical air assistance, the Cambodian army failed its most important test of "Cambodianization" when a major offensive thrust along Route 6 last fall turned into a demoralizing rout.

These are not the judgments of amateur war critics or "knee-jerk" dissenters but of professional diplomats and military men whose job it is to know how the Cambodian conflict goes.

For the progress of the war is the test of the realism and efficacy of the military and economic support programs which in this fiscal year reached an obligational level of $341 million from a zero starting point two years ago.

One well-informed U.S. official in Cambodia said the defeat inflicted by counter-attacking North Vietnamese in the Highway 6 operation, known as Chenia II, devastated the Cambodian Army for the 1971–1972 dry season.

REOCCUPATION IS CONCEALED

Before the current Communist offensive into South Vietnam officials were conceding that the North Vietnamese had long reoccupied the eastern sanctuaries which served as the staging grounds for the new offensive probes toward Saigon and into the Mekong Delta.

Corruption, no stranger to the Cambodian military or to the civil government before Sihanouk's downfall, has increased in scale along wtih the enlarged range of opportunities.

The "phantom battalion" system that is a legacy of the Vietnam war experience, under which senior officers collect and pocket the pay of nonexistent troops claimed to be under their command, has achieved a solid reincarnation in Cambodia.

This has been tacitly recognized in the American assistance command. Last fall, at the direction of Gen. Theodore Metaxis, former head of the U.S. equipment delivery program in Cambodia, hundreds of cameras were distributed to Cambodian commanders for troop verification purposes. Several American surveys were also conducted on a spot basis. The results never surfaced nor, it is said, by some observers in Phnom Penh, did the cameras.

"HAVEN'T LOST ANY GROUND"

"What does anyone expect of a ratty-assed, inexperienced little country of seven million?" asked one senior U.S. official with rhetorical fervor. "At least they haven't lost any ground they didn't have in 1970." That was the year the North Vietnamese backed their forces throughout Cambodia following the American and South Vietnamese incursions from the east.

The scope and objectives of the American aid that has poured into Cambodia in the past two years seem to have expanded at a more rapid pace than was implied in President Nixon's April 30, 1970, telecast announcing the American incursions.

". . . We shall do our best to provide small arms and other equipment which the Cambodian army of 40,000 needs and can use for its defense. But the aid we will provide will be limited to the purpose of enabling Cambodia to defend its neutrality—and not for the purpose of making it an active belligerent on one side or the other."

On May 14, 1970, Secretary of State William P. Rogers said the defense of the Cambodian government is not "our primary purpose and that will not be our purpose in the future."

But on March 14, 1972, Rogers told the House Foreign Affairs Committee: "As you know, one of the reasons we have increased the request for Cambodian assistance is that we are anxious to see that the government in Cambodia survives."

With the irresistible momentum that has characterized so much of the American experience in Southeast Asia, the commitment took wings.

MILITARY AID GRANTS

Within 12 days of his April 1970 speech Mr. Nixon signed a presidential determination for $7.9 million in military aid grants to the Phnom Penh government. By June 30, there was another trickle of $1 million. Within a month—$40 million more. By November the President asked Congress for a $255 million supplemental military aid program—$155 million for Cambodia and the rest to repay the program for the emergency Cambodian borrowings.

When Congress enacted the supplemental bill it signaled a new stage in the Cambodian commitment and also touched off an intra-governmental debate over the U.S. military presence there.

Until that point the MEDT (military equipment delivery team) program was funded out of the President's own drawing account and run by ex-Green Beret Jonathan F. Ladd, a military maverick and legendary Vietnam combat advisor. Ladd was sent to Phnom Penh in May of 1970 by presidential National Security Adviser Henry A. Kissinger. His instructions were to provide objective reporting, set up a "primitive" logistics system and keep a low silhouette.

The mission was to his liking because of Ladd's anti-bureaucratic style of operation.

PENTAGON ASSUMES CONTROL

But when the program was funded by Congress it automatically went under the control of the Pentagon and gradually Ladd's influence waned while the military hierarchy in Washington and at Pacific Command headquarters in Honolulu took over.

The tendency from that point onward was toward more Americans, more sophisticated weapons and toward the erection of a typical military assistance bureaucracy in Phnom Penh. (The size of the American government contingent in Cambodia has increased from five in March, 1970, to about 160 today. A limit of 200 Americans has been imposed by Congress.)

An illustrative episode occurred last June when the Joint Chiefs of Staff asked for a U.S. logistics delivery team of 100 Americans in Phnom Penh. At the time Ladd had only 23 technicians working under him. Both Ladd and Ambassador Emory C. Swank protested vehemently. Defense Secretary Melvin R. Laird halved the Joint Chiefs' proposal to 50—still more than doubling the Phnom Penh contingent.

"No, no," Ladd pleaded. "I have functional use for no more than seven men." He got 27.

The size of the MEDT mission now exceeds 115, with less than half the number in Phnom Penh and the rest in Saigon. The new MEDT chief, Gen. John Cleland, who replaced the expansion-minded Metaxis, has put out the word that he will try to reduce the size of the American group and sharply police U.S. "end-use" inspections in the field. The end-use checks are intended to assure that the weapons are being put to the purposes for which they were delivered—and no more.

PRESERVE BUILDING SYMBOLIZES

The most palpable symbol of the American presence and of the Nixon Doctrine in Cambodia is a high-rise "tempo" building behind the enlarged American embassy that houses the MEDT program in Phnom Penh. Resident wags call it, as inevitably they would, Pentagon East.

American voices are heard where they would have been a jarring novelty in 1970. At the poolside of the Phnom (the republicanized Royal) Hotel, once a predominantly French sunbathing preserve, hefty U.S. technicians and officers shout, "Gar-sahn" at confused, scurrying waiters. It is an old page out of the Vietnam war next door.

Economic aid to Cambodia has also followed a well-rutted trail that winds through the earlier aid programs to Vietam and Laos. The newly established Commodity Import Program for Cambodia is stalled dead center and reflects little attention to the priorities of the country's war-disrupted economy.

It has already become a matter of unfriendly attention on Capitol Hill that in the one-year lifetime of the AID program far more money has been pushed on Phnom Penh than the government has been able to digest.

During the first half of 1971 less than a tenth of the $70 million in economic assistance obligated for Cambodia was used. Nonetheless AID officials in Cambodia asked for another $110 million to finance commodity imports in this fiscal year.

PROGRAM BORN OF HASTE

The economic aid program for Cambodia was hatched in the greatest of haste. AID

programmers arbitrarily set the level of the commodity import program, under which the U.S. finances the shipment of essential commodity items to Cambodian importers, at what they believed to be the level of imports before the war broke out in 1970. The guess proved disastrously high. Only a trickle of import applications were filed by the shrewd Chinese traders who form the elite of Indochinese mercantile society.

"It may be that they are unfamiliar with our procedures," conjectured one AID advisor in Cambodia, a theory that brings guffaws of incredulity from more experienced officials.

The Phnom Penh traders and financiers are past masters at dealing with governmental red tape, smuggling, black market operations, currency manipulation and the many other varieties of private enterprise in Southeast Asia.

The more plausible and commonly accepted explanation is that AID underestimated the disruption of the war on consumer demand.

Among the "essential items" approved by AID to underwrite Cambodia's economic survival last year were: 1,700 Italian motor scooters valued at $660,000; more than $100,000 worth of color movie film and other professional movie equipment; radio paraphernalia worth $307,700 to provide broadcasting facilities at the port city of Kompong Som and Battambang. (One U.S. official in Phnom Penh refers acerbically to the project as the "Cambodian Radio Amelioration Program, C-R-A-P."

UNITED STATES SHOWS CAMBODIA HOW TO SEND PLEAS FOR FUNDS

(By Bernard Gwertzman)

WASHINGTON, Jan. 11—The State Department said today that its technical assistance to Cambodia extended to showing the Government how to send fund-raising letters asking other countries for money.

Charles W. Bray 3d, the department spokesman, acknowledged that secret cablegram sent to Emory C. Swank, the United States Ambassador, contained a suggested form letter soliciting funds for Cambodia's for use by Premier Lon Nol in development.

The form letter, as drafted in Washington, left a blank space for the amount of money to be sought in each case.

The cable was made public today by Jack Anderson, the syndicated columnist, who has said that he has received "scores" of secret documents from an unidentified informant. Most of the material he has released so far has related to the recent Indian-Pakistan war.

"POLITICAL APPROACH" URGED

The message as quoted in part by Mr. Anderson, said: "We believe political approach necessary lest finance ministers who are generally opposed to new aid programs, arrange for an evasive or negative reaction to appeal."

"Department believes high-level political appeal needed to improve chances for success," the message said, according to Mr. Anderson. "Letter from Lon Nol to heads of prospective donor governments could help nail down."

The columnist said the form letter began as follows:

"Excellency: I am writing this note on a personal basis in order to bring to Your Excellency's attention directly the economic problem that we are now confronted with in the Khmer Republic."

It concluded: "I am asking that your government make a contribution of —— to the fund for 1972 at a meeting to be held on Phnompenh."

According to Mr. Anderson, Premier Lon Nol was to fill in the blank with the amounts sought from the countries scheduled to take part at a meeting beginning Friday in the Cambodian capital.

Mr. Bray, who confirmed that the meeting would take place, said that Roderic L. O'Conner, Assistant Administrator for the Agency for International Development, would head the American delegation.

The United States is prepared to pledge half of the $25-million sought by the Cambodians, Mr. Bray said.

The amounts sought from other countries, Mr. Anderson said, include $7.5-million from Japan, $3-million from Australia, $500,000 from Britain, $300,000 from New Zealand and $250,000 each from Indonesia, Malaysia, Singapore, Thailand and the Philippines.

Mr. Anderson asserted that the State Department message said:

"Once letters were sent, we prepared to urge our embassies in key countries to make high-level approaches in support of Lon Nol request.

"We understand that Japanese will then move out and actively lobby for participation in E.S.F. [exchange support funds.] We can, on selective basis, do some lobbying here, especially with U.K. and Australia."

Up to now the State Department has declined to comment on Mr. Anderson's published documents. Apparently because of Congressional sensitivity to American involvement in Cambodia. Mr. Bray was authorized to comment on the message and respond to Mr. Anderson's allegation that the United States was engaged in deception in getting others to aid Cambodia.

Mr. Bray, explaining that the United States was aiding Cambodia in organizing an aid consortium as it has done for Tunisia, Moracco, India and Pakistan, among others, said: "It is in part an attempt to lighten the burden on the United States taxpayers to enlist other countries in assistance."

"We have consistently sought to aid the Cambodians to elicit support in other countries." he said. "We have been open throughout and have kept Congress informed."

The form letter "falls clearly and openly" under that policy, he added, saying: "As part of our technical assistance to the Cambodian Government, and to get the multilateral assistance fund off the ground, the department sent the embassy in Pnompenh a kind of letter it might send to potential doners."

[From the Washington Post, Jan. 11, 1972]

U.S. DECEPTION ON ROLE IN CAMBODIA

(By Jack Anderson)

A secret exchange between Washington and Phnom Penh reveals that officials aren't telling the truth about the U.S. role in Cambodia.

Because of congressional hostility, the Nixon administration has pretended to take no active part in raising funds from other nations to support the tottering regime of Cambodian strongman Lon Nol.

The secret cables show, however, that the U.S. not only is bringing political pressure on other governments to contribute to Lon Nol but has actually prepared a solicitation letter for Lon Nol's signature.

Apparently, U.S. policymakers don't trust the Cambodian leader to write his own letters on such a delicate matter. The appeal was supposed to be addressed "on a personal basis" to other heads of state who might have a little cash to spare for Cambodian aid.

Congressmen have balked at financing Lon Nol because of the dismaying similarity between his regime and some of the corrupt, floundering South Vietnamese regimes that have cost the American taxpayers a fortune.

In an earlier column, we quoted from secret dispatches that described Lon Nol as "a sick man, both physically and mentally" and told of wide-spread incompetence and corruption throughout his government.

COMPULSIVE WOMANIZER

Even some of the able men under him were characterized respectively, as "an inveterate gambler," "a compulsive womanizer" and as a leader whose "personal authority is diluted by a tendency toward financial corruption."

American Ambassador Emory Swank, in one secret report, criticized "Lon Nol's haphazard, out-of-channel and ill-coordinated conduct of military operations." The result is that Communist hit-and-run harassing operations have developed—apparently much to the Viet Cong's surprise—into a serious military treat to the Cambodian capital.

Similar reports about some of South Vietnam's earlier political corruption and military bungling were kept secret from the American people. If the truth had been known in time, the U.S. might have been spared some of the lives and resources that have gone down the drain in Vietnam.

Because of the Vietnam experience, Congress is keeping a tight pursestring on Cambodian aid. The Nixon administration has gone behind congressional backs, however, to sneak military supplies into Cambodia through South Vietnam and Indonesia.

Now the administration has resorted to deception again to raise exchange support funds for Cambodia.

Cambodia "has undertaken to do its own representations to elicit donors for the ESF," a State Department spokesman told us blandly.

SECRET INSTRUCTIONS

But secret instructions were cabled to the American Embassy in Phnom Penh, declaring: "We believe political approach necessary lest finance ministries, who are generally opposed new aid programs, arrange for an evasive or negative reaction to (the Cambodian) appeal.

"Department believes high-level political appeal needed to improve chances for success. Letter from Lon Nol to heads of prospective donor governments could help nail down (contributions)."

The suggested letter begins: "Excellency: I am writing this note on a personal basis in order to bring to your Excellency's attention directly the economic problem that we are now confronted with in the Khmer Republic . . ."

It winds up: "I am asking that your government make a contribution of—to the fund for 1972 at a meeting to be held in Phnom Penh (on January 14.)"

All Lon Nol had to do was fill in the blank space with the correct amount for each country. The sums that will be sought are: U.S. $12.5 million; Japan, $7.5 million; Australia, $3 million; Britain, $500,000; New Zealand, $300,000; Indonesia, $250,000; Malaysia, $250,000; Singapore, $250,000; Thailand, $250,000; and the Philippines, $250,000.

Despite the State Department's public pretense that Lon Nol is running his own fund-raising drive, here's what the secret instructions add:

"Once letters sent, we prepared urge our embassies in key countries make high-level approaches in support of Lon Nol request. We understand that Japanese will then move out and actively lobby for participation in ESF. We can, on selective basis, do some lobbying here, especially with UK and Australia."

These secret instructions, like the India-Pakistan revelations, demonstrate, sadly, that the government of, by and for the people cannot always be trusted to tell the people the truth.

[From the Sunday Star, June 18, 1972]

CAMBODIAN AID DATA CONCEALED, PANEL SAYS

(By Carl C. Craft)

A congressional committee has accused the Nixon administration of suppressing the record on U.S. aid to Cambodia because it wants to conceal aspects of the operation.

Because President Nixon denied Congress access to a basic document called a "country field submission" dealing with Cambodia,

the House Government Operations Committee said yesterday:

"It may have to be assumed that there must be facts and positions in this document which administration officials do not want Congress to see, such as matters regarding the exchange support fund, the $20 million cash grant, and failures of the U.S.-financed commodity import program."

Furthermore, in a statement with the report, Rep. William S. Moorhead, D-Pa., head of the committee's foreign operations subcommittee, said administrative ineptness and waste of U.S. tax dollars have "marked the dismal failure of the Cambodian assistance program—a program that has been held up as the model of the Nixon Doctrine in Southeast Asia."

In reply, AID said in a statement that the committee report "has the flavor of a determined effort to discredit the administration of economic aid to Cambodia." AID said none of the report's allegations is new, "they have been reviewed with the committee in testimony and in extensive staff consultation for over half a year" and were answered by the agency.

ESSENTIAL COMMODITIES

The congressional report said AID "has made essentially no effort to determine specifically what—in the way of food, clothing, shelter materials and other truly essential commodities—are needed by the average Cambodian.

"Consequently, AID officials were approving for U.S. financing such imports as television sets, automobiles for government and banking officials, soft drink concentrates," household air conditioners and electric typewriters.

The report said the Cambodian government "is or should be fighting for its political and economic survival. The United States has agreed to assist it."

But, the report said, "If Cambodia desires to obtain economic assistance for the maintenance of a business-as-usual society, they should approach affluent neighbors and trading partners. The United States can no longer sustain such affluent practices, especially in light of its tenuous international economic condition."

"OUTRIGHT GIFT" OFFERED

AID replied that Cambodia "is not doing 'business as usual' nor is U.S. aid being conducted on a 'business-as-usual' basis." The program is successful and "is meeting Cambodia's basic economic needs in an emergency wartime situation," AID said.

The report said AID "offered Cambodian officials an outright gift of $20 million to get Cambodia to undertake some economic reforms, the two key elements of which were a floating exchange rate and an exchange support fund.

"In October 1971, Cambodia devalued its currency and established a floating rate—AID transferred $10 million to Cambodia's bank account in New York. In March 1972, Cambodia issued a governmental decree establishing an exchange support fund—AID transferred another $10 million to Cambodia's bank account."

Moorhead's statement said his panel's inquiry "uncovered the fact that part of U.S. aid commodities shipped to Cambodia were being reinsured by a Soviet State-owned insurance company.

"Agency for International Development officials admitted in testimony that such Soviet-bloc companies could well be providing such insurance for millions of AID-financed commodities in the Far East," he said.

Mr. McGEE. Mr. President, I introduced this amendment at the beginning with the principal purpose of permitting us to make a record on the issue.

Now that that has been done, I ask unanimous consent—first I have to yield back the remainder of my time——

Mr. ROBERT C. BYRD. The Senator does not have to.

The PRESIDING OFFICER. The Senator may withdraw his amendment by unanimous consent without yielding back his time.

Mr. McGEE. I thank the Chair. I ask unanimous consent that my amendment be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McGEE. I yield the floor, Mr. President.

FOOD, DRUG, AND CONSUMER PRODUCT SAFETY ACT OF 1972

The PRESIDING OFFICER (Mr. STEVENSON). Under the previous order, the unfinished business will now be temporarily laid aside and the Senate will proceed to the consideration of Calendar No. 800, S. 3419, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with amendments, on page 1, line 3, after the word "the", strike out "Consumer" and insert "Food, Drug, and Consumer Product"; on page 2, line 1, after the word "Of", insert "Food, Drug, and"; in line 2, after the word "Consumer", strike out "Safety" and insert "Product"; after line 2, insert a new section, as follows:

FINDINGS AND DECLARATION OF POLICY

SEC. 101. The Congress hereby finds and declares—

(1) that the regulation of foods, drugs, and consumer products is scattered widely throughout several Federal departments and agencies, and that inconsistent policies and incomplete regulation has resulted from this diffusion of regulatory efforts within the Federal Government;

(2) that effective consumer product regulation requires creation of a new independent agency with the power to take all action necessary to enforce food, drug, and consumer product safety laws, including the power to promulgate regulations, prosecute court actions, and make legislative and make legislative and budgetary recommendations;

(3) that each year many Americans are needlessly injured in their homes because present Federal law inadequately regulates most consumer products;

(4) that in addition to consolidating present food, drug, and product safety regulation in a new independent regulatory agency, new statutory authority is needed to protect consumers against the hazards of many household products not covered by present Federal safety regulation;

(5) that because intrastate and interstate commerce in consumer products are closely intertwined and directly affect each other, Federal control over intrastate commerce in consumer products is essential to the effective control of the intrastate commerce in such products;

(6) that unacceptable numbers of hazardous consumer products now affect interstate commerce, and their increasing number and complexity make it imperative that the Federal Government act promptly to eliminate unnecessary death and injury in the future; and

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

On page 3, at the beginning of line 16, change the section number from "101" to "102"; at the beginning of line 17, strike out "(1)" and insert "(a)"; in the same line, after the word "product", insert "or a component thereof,"; in line 18, after the word "produced", insert "for"; in the same line, after the word "distributed", strike out "for sale"; in line 21, after the word "or", strike out "otherwise; and an electronic product as defined in paragraph (3) of this section; but it does not mean" and insert "otherwise, but, except to the extent provided in section 104(c)(17), it does not include—"; at the beginning of line 25, strike out "(A)" and insert "(1)"; on page 4, at the beginning of line 1, strike out "(B)" and insert "(2)"; in the same line, after the word "to", insert "safety"; at the beginning of line 4, strike out "(C)" and insert "(3)"; in line 5, after the word "safety", strike out "regulations" and insert "regulation"; at the beginning of line 7, strike out "(D)" and insert "(4)"; in the same line, after the amendment just above stated, strike out "foods, drugs, or devices subject to safety regulation under the" and insert "food or drugs as defined in the Federal"; in line 10. after "(21 U.S.C. 201 et seq.)", strike out the comma and "as amended by section 204(a) of this Act"; at the beginning of line 11. strike out "(E)" and insert "(5)"; in the same line, after the word "safety", strike out "regulations" and insert "regulation"; at the beginning of line 14, strike out "(F)" and insert "(6)"; in line 16, after "(29 U.S.C. 651 et seq.)", insert "insofar as such products are regulated for use in employment"; at the beginning of line 18, strike out "(G)" and insert "(7)"; at the beginning of line 20, strike out "(H)" and insert "(8)"; at the beginning of line 23, strike out "(I)" and insert "(9)"; in line 24, after the word "to", insert "safety regulation under"; on page 5, at the beginning of line 3, strike out "(2)" and insert "(b)"; at the beginning of line 5, strike out "(3)" and insert "(c)"; after line 8, strike out:

(4) "Electronic product" means (A) any manufactured or assembled product which, when in operation, (i) contains or acts as part of an electronic circuit and (ii) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation, or (B) any manufactured or assembled article which is intended for use as a component, part, or accessory of a product described in clause (A) and which when in operation emits (or in the absence of effective shielding or other controls would emit) such radiation.

(5) "Electronic product radiation" means—

(A) any ionizing or non-ionizing electromagnetic or particulate radiation or

(B) any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

And, in lieu thereof, insert:

(d) "Subject to safety regulation" means authorized to be regulated for the purpose of eliminating any unreasonable risk of injury or death, as determined by the Administrator through communication and consultation with appropriate department or agency officials.

On page 6, at the beginning of line 5, strike out "(6)" and insert "(e)"; in the same line, after the word "means", strike out "accidental"; at the beginning of line 6, insert "adverse reactions and"; in line 7, after the word "electrical", strike out "or"; in the same line, after the word "radiological", insert "or other natural or man-made"; at the beginning of line 9, strike out "(7)" and insert "(f)"; at the beginning of line 14, strike out "(8)" and insert "(g)"; on page 7, at the beginning of line 5, strike out "(9)" and insert "(h)"; at the beginning of line 7, strike out "(10)" and insert "(i)"; in line 8, after the word "hazardous", strike out "elements, conditions" and insert "elements, conditions of use"; in line 11, after the word "for", insert "limitations on use and"; in line 12, after the word "eliminate", strike out "or"; in the same line, after the word "control", insert "or minimize"; and, in the same line, after the amendment just above stated, strike out "hazards," and insert "hazards and to promote health and safety."; at the beginning of line 15, change the section number from "102" to "103"; at the beginning of line 16, insert "Food, Drug, and"; in the same line, after the word "Consumer", strike out "Safety" and insert "Product"; in line 18, after the word "health", strike out "and"; in the same line, after the word "safety", insert "and welfare"; in line 19, after the word "consumers", insert "against adulteration, misbranding, and illegal distribution of food, drugs, devices, and cosmetics, and"; in line 21, after the word "of", strike out "foods, drugs, or"; in line 23, after the word "of", strike out "Foods" and insert "Food"; in line 24, after the word "of", strike out "Product Safety" and insert "Consumer Products"; on page 8, at the beginning of line 4, change the section number from "103" to "104"; in line 13, after the word "of", strike out "Foods" and insert "Food"; in line 14, strike out "Product Safety" and insert "Consumer Products"; after line 14, strike out:

(2) select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out his duties under this title, Act, subject to the civil service and classification laws;

At the beginning of line 19, strike out "(3)" and insert "(2)"; in the same line, after the word "personnel", strike out "so selected, appointed, or employed" and insert "of the agency"; at the beginning of line 21, strike out "(4)" and insert "(3)"; on page 9, at the beginning of line 9, strike out "(5)" and insert "(4)"; in line 12, after the word "this", strike out "title" and insert "Act"; in line 14, after the word "Government", strike out "without regard to any conflict of interest statutes"; at the beginning of line 20, strike out "(6)" and insert "(5)"; in the same line, after the word "such", strike out "rules" and insert "regulations"; at the beginning of line 22, strike out "delegate authority for the performance of any function to any officer or employee under his direction and supervision" and insert "for the efficient enforcement of the laws subject to the jurisdiction of the Agency"; at the top of page 10 insert:

(6) issue subpenas to require the attendance and testimony of witnesses and the production of documentary evidence relating to any matter within his statutory authority which is the subject of a public hearing, have access for the purpose of examining and copying any documentary evidence relating to any matter within his statutory authority, and require by general or special orders signed by him the submission of annual or special reports or answers in writing to specific questions containing such data and information relating to any matter within his statutory authority as will enable him to enforce the laws subject to his jurisdiction. The district courts of the United States shall have jurisdiction to enforce such subpenas or general or special orders or to require access to such documentary evidence upon application of the Attorney General or the Administrator. An action for such enforcement may be brought in any district court of the United States for the district wherein the person involved is found or transacts business.

After line 19, strike out:

(7) obtain by subpena where necessary such information as he is authorized to acquire under this title;

At the beginning of line 22, strike out "(8)" and insert "(7)"; in line 25, after the word "reimbursement", strike out "thereof" and insert "therefor"; on page 11, at the beginning of line 1, strike out "(9)" and insert "(8)"; at the beginning of line 9, insert "independent testing laboratory,"; at the beginning of line 10, strike out "(10)" and insert "(9)"; at the beginning of line 13, strike out "(11)" and insert "(10)"; at the beginning of line 21, strike out "(12)" and insert "(11)"; in the same line, after the word "research", strike out "and" and insert "or"; on page 12, at the beginning of line 4, strike out "(13)" and insert "(12)"; in line 6, after the word "consumer", strike out "products, and compel the attendance of witnesses by subpena when necessary" and insert "products"; after line 7, insert:

(13) prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate for the administration and enforcement of the laws subject to his jurisdiction, and receive from the President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Agency;

(14) prescribe personnel policies for the Agency including selecting, appointing, fixing compensation of, hiring, firing, promoting, and transferring of employees without prior approval or clearance, subject to the civil service and classification laws;

(15) submit legislative recommendations and testimony to Congress without prior approval or clearance;

(16) initiate, prosecute, defend, or appeal any court action in the name of the Agency to enforce the laws subject to his jurisdiction, through his own legal representative or through the Attorney General, and direct the course of all litigation involving the Agency;

(17)(A) petition any Federal department or agency which has jurisdiction over products included within the definition of consumer product in section 102(a) but exempt under paragraphs (1)–(9) to establish and enforce appropriate safety regulations for any such product;

(B) participate in the establishment of such regulations; and

(C) upon request of such department or agency, establish and enforce such regulations in accordance with title III of this Act. Upon such request, such product shall be deemed to be a consumer product under section 102(a).

On page 13, at the beginning of line 16, strike out "(14)" and insert "(18)"; in line 17, after the word "this", strike out "title" and insert "Act"; at the beginning of line 19, strike out "title" and insert "Act"; at the beginning of line 20, strike out "(15)" and insert "(19)"; in the same line, after the word "of", strike out "the above powers" and insert "his functions and duties under this Act, including functions and duties transferred to him pursuant to title II"; on page 14, at the beginning of line 2, change the section number from "104" to "105"; in line 4, after the word "of", strike out "Foods" and insert "Food"; in line 6, after the word "attempt", strike out the comma and "in good faith,"; at the beginning of line 8, strike out "safety"; at the beginning of line 10, strike out "and Representation"; at the beginning of line 14, strike out "accident occurrences resulting in injury or death" and insert "injuries or deaths associated with food, drugs, and consumer products"; in line 16, after the word "agents", strike out "producing" and insert "associated with"; in line 17, after the word "such", strike out "injury" and insert "injuries or deaths"; in line 18, after "(e)", insert "establish and"; in line 20, after the word "Counsel", insert "for the Agency and an Assistant General Counsel for each Commission"; in line 23, after the word "Act", strike out "and to coordinate the efforts of the legal representatives of each Commission"; on page 15, line 1, after the word "which", strike out "the Administrator and Commissioners are" and insert "he is"; at the beginning of line 9, change the section number from "105" to "106"; in line 10, after the word "this", strike out "title" and insert "Act"; on page 16, at the beginning of line 4, change the section number from "106" to "107"; in the same line, after the word "The", strike out "President" and insert "Administrator"; in line 5, after the word "shall", strike out "appoint, with the advice and consent of the Senate" and insert "appoint"; in line 6, after the word "of", strike out "Foods" and insert "Food"; in line 8, strike out "Product Safety" and insert "Consumer Products"; after line 8, strike out:

(b) TERM OF OFFICE. Each Commissioner shall be appointed to serve at the pleasure of the President.

After line 10, strike out:

(c) VACANCY. In the event of a vacancy in the position of Commissioner, the Administrator shall appoint an Acting Commissioner to serve until the President appoints, with the advice and consent of the Senate, another Commissioner.

At the beginning of line 16, strike out "(d)" and insert "(b)"; in line 18, after the word "are", insert "authorized and"; in line 24, after the word "products", strike out "and compel the attendance

of witnesses by subpena at such hearings when necessary"; on page 17, at the beginning of line 2, change the section number from "107" to "108"; in line 5, after "(1)", strike out "attempt, in good faith," and insert "attempt"; in line 6, after the word "injury", strike out "in accordance with procedures set forth in laws he is given authority to administer in accordance with titles II or III of this Act"; in line 15, after the word "facilitate", strike out "standard setting" and insert "regulation-making"; in line 20, after "(5)", strike out "establish" and insert "utilize where practicable and establish where necessary,"; on page 18, line 2, after the word "him;", insert "and"; after line 2, strike out:

(6) appoint a Counsel to assist him as his legal representative in carrying out his duties under this Act; and

At the beginning of line 6, strike out "(7)" and insert "(6)"; in line 10, after the word "Information", strike out "And Representation"; at the beginning of line 12, change the section number from "108" to "109"; at the beginning of line 14, strike out "and Representation who shall serve during the duration of the term of the Administrator unless removed by the Administrator for good cause shown"; in line 18, after the word "Consumer", strike out "Safety"; in line 20, strike out "concerning consumer safety"; in line 21, after the word "programs", strike out "based on data supplied by the Commissioners"; in line 25, after the word "by", insert "the Administrator or"; on page 19, at the beginning of line 9, strike out "or Commissioners related to consumer safety,"; in line 10, after the word "section", strike out "113" and insert "114"; in line 13, after the word "distribution", strike out "the"; in the same line, after the word "information", insert "available for public disclosure"; in line 14, after the word "shall", strike out "also"; in line 17, after the word "copy.", insert "The Agency shall charge the public the minimum practicable amount for the search for and production of documents, shall take all reasonable measures to reduce or waive, where appropriate, any charge to persons to whom such charge would be financially burdensome, and in no event shall charge any amount which exceeds the actual cost of such search and production. All funds collected for copying and for search for and production of documents shall be paid to the Administrator and shall be obligated and expended by him to finance the Agency's consumer information program."; on page 20, after line 2, strike out:

(d) POWERS OF DIRECTOR. (1) (A) In order to insure proper representation of the consumer interest in any rulemaking proceeding undertaken by any Commissioner or the Administrator, the Director shall appoint and compensate an attorney, chosen from among attorneys engaged privately in the practice of law or employed by the United States or any State thereof, to represent the consumer interest in that proceeding, unless he determines that the consumer interest will be adequately represented in any such proceeding without such appointment.

(B) The Director may appoint such other experts as he deems advisable unless the Administrator objects in principle to such appointment in writing.

(2) In proceedings other than rulemaking the Director may appoint an attorney or other expert to present for the public record the consumer interest to the Commissioner or Administrator unless the Administrator objects in principle to such appointment in writing.

(3) Any person appointed under authority of this subsection shall be chosen for his ability to represent the consumer interest fairly, effectively, and without conflict of interest.

(4) Nothing contained in this subsection shall be construed as limiting the authority or standing of any person to participate in the proceedings of the Agency.

On page 21, after line 2, insert:

(d) The Director shall establish a Consumer Information Library.

At the beginning of line 6, change the section number from "109" to "110"; at the beginning of line 11, strike out "accident occurrences that produce injury" and insert "injury associated with food, drugs, and consumer products"; in line 12, after the word "any", insert "natural or man-made"; in line 14, after the word "thermal", strike out "or"; in the same line, after the word "radiological" insert "or other"; in line 16, after the word "contact", strike out "accidentally"; in line 22, after the word "of", strike out "foods" and insert "food"; in line 23, after the word "or", strike out "other" and insert "consumer"; in line 24, after the word "injuries", strike out "resulting from the use of their" and insert "associated with such food, drugs, and consumer"; on page 22, at the beginning of line 5, strike out "(C) (1)" and insert "(d) LIMITATIONS.—(1)"; in line 17, after the word "this", strike out "Act;" and insert "Act, in a manner designed to preserve confidentiality to the greatest practicable extent"; on page 23, line 4, after the word "persons", insert "or person treating them"; at the beginning of line 12, change the section number from "110" to "111"; in the same line, after the word "designation.", strike out "Each Commissioner shall designate five persons within his Commission involved in the scientific detection of hazards or the establishment of standards to serve on a Joint Scientific Committee chaired by a Director of Science appointed by the Administrator to serve at his pleasure." and insert "After consultation with the Commissioners, the Administrator shall establish and appoint the members of a Joint Scientific Committee which shall be composed of at least one representative of each Commission and chaired by an Associate Administrator for Science appointed by the Administrator."; on page 24, line 1, after the word "The", strike out "Director" and insert "Associate Administrator"; after line 10, strike out:

AGENCY RESPONSIBILITY

SEC. 111. (a) CIVIL ACTION AGAINST THE AGENCY.—Any individual or class of individuals may commence a civil action on his or their own behalf against the Agency upon a showing that a person or persons in the Agency, by their acts or omissions have exposed said individual or individuals to foods, drugs, devices, or consumer products presenting unreasonable risk of injury or death. The district courts shall have jurisdiction without regard to the amount in controversy or the diversity of citizenship of the parties to entertain such action. The United States, through the Attorney General, shall defend the Agency against such action. Costs of litigation (including reasonable attorney's fees and expert witness fees) may be apportioned to the parties as the interests of justice require.

(b) POWERS OF THE COURT.—If the court finds that any person or persons in the Agency, have by any act or omission, or by any series of acts or omissions exposed individuals to foods, drugs, devices, or consumer products presenting unreasonable risk of injury or death, the court shall order performance or cessation of performance, as appropriate.

(c) CONFLICT OF INTEREST. No former Agency (1) in which he at any time person-employee shall at any time subsequent to his Agency employment assist any other person, whether or not for compensation, in any transaction involving the Agency (1) in which he at any time personally and not collaterally, casually, or incidentally participated during his Agency employment; or (2) if such transaction involving the Agency was under his official responsibility as an Agency employee, at any time within a period of eighteen months following such transaction.

And, in lieu thereof, insert:

AGENCY RESPONSIBILITY

SEC. 112. (a) PETITION OF THE AGENCY.—Any individual or class of individuals who alleges that he or they have been exposed by an act or omission of the Agency to a food, drug, or consumer product presenting an unreasonable risk of injury or death, shall first petition the Agency to take specific action sufficient to eliminate the alleged unreasonable risk of injury or death. After opportunity for interested parties to comment on the petition not to exceed thirty days, the Agency shall determine whether an unreasonable risk of injury or death exists as a result of an act or omission of the Agency and issue a decision either refusing to take any action or taking action designed to eliminate any unreasonable risk of injury or death. The Agency shall make such determination and issue such decision within a reasonable period of time, but in no event more than one hundred and twenty days following the presentation of the petition to the Agency.

(b) CIVIL ACTION AGAINST THE AGENCY.—If the Agency refuses to take any action in response to the petition, or if the Agency action taken in response to the petition is regarded by the petitioner or petitioners as insufficient to eliminate the alleged unreasonable risk of injury or death, a petitioner or petitioners may commence a civil action in a United States court of appeals. Any such action shall be filed within sixty days after the decision of the Agency pursuant to subsection (a) to take or refuse to take any action. If a petitioner or petitioners apply to the court to adduce additional evidence and show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure of the petitioner or petitioners to adduce such evidence in the proceeding before the Agency the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Agency either in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper.

(c) POWERS OF THE COURT.—(1) If the court finds, based upon a preponderance of the evidence which constitutes the record of the Agency, that the Agency, by an act or omission, has exposed such petitioner or petitioners to a food, drug, or consumer product presenting unreasonable risk of injury or death, the court shall remand the matter to the Agency for appropriate action. The "record of the Agency" means the information upon which the Agency based its decision, including the petition and any information submitted by the petitioner or

petitioners and all other information identified in the decision of the Agency as part of the record, and any additional evidence adduced in accordance with procedures established in subsection (b) of this section.

(2) No action pursuant to any section may be filed for the purpose of requiring the Agency to permit the sale, distribution, use, or shipment in commerce of any food, drug, or consumer product, and no award of money damages may be made in any court action pursuant to this section.

(d) COSTS OF PETITION AND CIVIL ACTION.—Costs of the petition and civil action (including reasonable attorney's fees) may be apportioned to the parties as the interests of justice require.

On page 28, at the beginning of line 2, change the section number from "112" to "113"; in line 5, after the word "submit", insert "directly"; at the beginning of line 6, strike out "without review of the Office of Management and Budget"; in line 12, after the word "the", where it appears the first time, strike out "President," and insert "President and"; in line 13, after the word "Administrator", strike out "and" insert "the budget recommendations of"; in line 15, after the word "for", insert "the fiscal year following the year of the report, for"; in line 21, after the word "Information", strike out "and Representation,"; on page 29, line 3, after the word "activities", strike out "standards-setting" and insert "regulation-making"; at the beginning of line 5, strike out "standards established" and insert "regulations promulgated"; in line 14, after the word "of", strike out "nontechnical"; in line 16, after the word "prosecutions", insert "and"; in line 19, after the word "Information", strike out "and Representation"; at the beginning of line 21, change the section number from "113" to "114"; in line 23, after the word "or", where it appears the second time, strike out "the" and insert "any"; on page 30, line 1, after the word "Information", strike out "and Representation", in line 17, after the word "this", strike out "Act;" and insert "Act, in a manner designed to preserve confidentiality to the greatest practicable extent; and"; on page 31, line 2, after the word "persons", insert "or persons treating them"; in line 9, after the word "person", insert "outside the Agency"; at the beginning of line 17, change the section number from "114" to "115"; in the same line, after the amendment just above stated, strike out "Upon request by the Administrator, each Federal agency is authorized—"; after line 18, insert:

(a) The Administrator is authorized to utilize the resources and facilities of the National Bureau of Standards in the Department of Commerce with or without reimbursement, for the purpose of developing food, drug, or consumer product safety standards, testing, enforcing compliance or for other purposes related to carrying out the authorities of the Administrator under the Act. The Administrator shall report to the Congress each year on his implementation of this section;

(b) Upon request by the Administrator, each Federal agency is authorized—

On page 32, at the beginning of line 5, strike out "(a)" and insert "(1)"; at the beginning of line 9, strike out "(b)" and insert "(2)"; at the beginning of line 16, change the section number from "115" to "116"; at the beginning of line 23, change the section number from "116" to "117"; on page 33, at the beginning of line 1, strike out "not to exceed $180,000,000 for the fiscal year beginning July 1, 1972, not to exceed $200,000,000 for the fiscal year beginning July 1, 1973, not to exceed $225,000,000 for the fiscal year beginning July 1, 1974, and for succeeding fiscal years only such sums as the Congress may specifically authorize by law" and insert "such sums as may be necessary"; in line 7, after the word "funds", strike out "so authorized to be"; in the same line, after the word "appropriated", strike out "shall" and insert "to carry out this Act may"; in line 9, after the word "research", strike out "and" and insert "or"; in line 10, after the word "by", insert "other"; at the beginning of line 11, change the section number from "117" to "118"; in line 15, after the word "Administrator", strike out "Consumer Safety" and insert "Food, Drug, and Consumer Product"; in line 19, after the word "new", strike out "paragraph" and insert "paragraphs"; in line 21, after the word "Commissioners", strike out "Consumer Safety" and insert "Food, Drug, and Consumer Product"; after line 22, insert:

"(96) General Counsel, Food, Drug, and Consumer Product Agency."

On page 34, at the beginning of line 2, change the section number from "118" to "119"; in line 18, after the word "the", strike out "Consumer Safety" and insert "Food, Drug, and Consumer Product"; in line 21, after the word "Welfare", strike out "administered by the Division of Biological Standards of the National Institutes of Health" and insert "under the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263 (a)) and under section 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263)"; on page 35, line 1, after the word "the", where it appears the second time, strike out "Consumer Safety" and insert "Food, Drug, and Consumer Product"; after line 2, insert:

(c) All functions of the Secretary of Agriculture under the virus, serum, toxin, and analogous products provisions applicable to domestic animals of the Act of Congress approved March 4, 1913 (21 U.S.C. 151 et seq.), under the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), under the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), and those functions of the Secretary of Agriculture and the Secretary of Commerce dealing with food performed pursuant to section 1622(h) of title 7, United States Code, are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(d) All functions of the Secretary of Commerce and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) and under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

At the beginning of line 20, strike out "(c)" and insert "(e)"; in line 25, after the word "the", strike out "Consumer Safety" and insert "Food, Drug, and Consumer Product"; on page 36, at the beginning of line 8, strike out "(d)" and insert "(f)"; after line 10, strike out:

SEC. 202. (a) The Administrator shall delegate all standard setting functions transferred to him to—

(1) the Commissioner of Foods and Nutrition if the functions relate to foods, including but not limited to functions in Chapter IV of the Food, Drug, and Cosmetic Act (21 U.S.C. 341) and section 702a of that Act (21 U.S.C. 372a); the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.); the Import Milk Act (21 U.S.C. 141 et seq.); the Filled Milk Act (21 U.S.C. 61 et seq.); and the Import Tea Act (21 U.S.C. 41 et seq.);

(2) the Commissioner of Drugs if the functions relate to drugs, including but not limited to functions in Chapter V of the Food, Drug, and Cosmetic Act (21 U.S.C. 351); and

(3) the Commissioner of Product Safety if the functions relate to other products over which the Administrator or the Commissioner of Product Safety have been given statutory authority.

(b) The Administrator shall exercise the functions under the Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) relating to color additives in cooperation with the Commissioners of Foods and Nutrition and Drugs.

And, in lieu thereof, insert:

SEC. 202. (a) The Administrator shall, insofar as practicable and consistent with sound administration of the laws subject to his jurisdiction, delegate all or part of the authority transferred to him to—

(1) the Commissioner of Food and Nutrition with respect to functions relating to food, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), the Federal Import Milk Act (21 U.S.C. 141 et seq.), the Filled Milk Act (21 U.S.C. 61 et seq.), the Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)), and the provisions relating to pesticides, interstate travel sanitation, milk and food service sanitation, and shellfish sanitation under the Public Health Service Act (42 U.S.C. 241, 243, 246, and 264);

(2) the Commissioner of Drugs with respect to functions relating to drugs, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), sections 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263), the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263a), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), and the virus, serum, toxin, and analogous products provisions applicable to domestic animals of the Act of Congress approved March 4, 1913 (21 U.S.C. 151 et seq.); and

(3) the Commissioner of Consumer Products with respect to functions relating to other consumer products over which the Administrator has jurisdiction, including but not limited to functions under title III of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Radiation Control for Health and Safety Act (42 U.S.C. 263b et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Act of August 2, 1956 (15 U.S.C. 1211), and the provisions relating to product safety under the Public Health Service Act (42 U.S.C. 241, 244, 246, and 264).

On page 39, at the beginning of line 10, strike out "(c)" and insert "(b)"; in the same line, after the word "shall", insert "annually"; in line 11, after the word "Congress", insert "as part of his annual report under section 113"; in line 12, after the word "detailed", strike out "plan of delegation, within ninety days after the effective date of this Act which shall become effective unless disapproved by Congress within ninety days following its submission by joint resolution" and insert "statement of delegation"; in line 18, after the word "effect.", strike out "(except as provided in section 204 of this title)."; on page 40, after line 10, strike out:

SEC. 204. (a) The following laws are repealed and superseded by the authority granted in title III of this Act:

(1) the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);

(2) the Flammable Fabrics Act, as amended (15 U.S.C. 1191 et seq.);

(3) Chapter VI of the Food, Drug, and Cosmetic Act (21 U.S.C. 361–63);

(4) the Radiation Control for Health and Safety Act (42 U.S.C. 262 et seq.);

(5) the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471–76); and

(6) the Act of August 2, 1956 (15 U.S.C. 1211).

(b) Orders, rules, regulations, permits or other privileges made, issued, or granted, or in the process of being made, issued, or granted, by authority of the laws enumerated in subsection (a) of this section shall continue in effect and be administered by the Commissioner and enforced by the Administrator to the same extent as if the laws under which they had been made, issued, or granted, or are being made, issued, or granted had not been repealed and superseded, until such time as they are modified, amended, or repealed under authority granted to the Commissioner of Product Safety or Administrator in title III of this Act.

On page 80, after line 4, insert a new title, as follows:

TITLE IV—FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

SEC. 401. The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended as follows:

(a) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(g) If in package form unless its label bears (1) the common or usual name of the cosmetic, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that fragrance and color may be designated as fragrance and color without naming each ingredient: *Provided*, That to the extent that compliance with the requirements of clause (2) is impracticable, or results in deception or unfair competition, exemptions may be established by regulations promulgated by the Secretary."

(b) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Unless its labeling bears adequate warnings against use where it may be dangerous to health."

(c) Section 201(i) of such Act is amended by striking "articles; except that such term shall not include soap.", and inserting in lieu thereof "articles.".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food, Drug, and Consumer Product Safety Act of 1972".

TITLE I—CREATION OF FOOD, DRUG, AND CONSUMER PRODUCT AGENCY

FINDINGS AND DECLARATION OF POLICY

SEC. 101. The Congress hereby finds and declares—

(1) that the regulation of foods, drugs, and consumer products is scattered widely throughout several Federal departments and agencies, and that inconsistent policies and incomplete regulation has resulted from this diffusion of regulatory efforts within the Federal Government;

(2) that effective consumer product regulation requires creation of a new independent agency with the power to take all action necessary to enforce food, drug, and consumer product safety laws, including the power to promulgate regulations, prosecute court actions, and make legislative and budgetary recommendations;

(3) that each year many Americans are needlessly injured in their homes because present Federal law inadequately regulates most consumer products;

(4) that in addition to consolidating present food, drug, and product safety regulation in a new independent regulatory agency, new statutory authority is needed to protect consumers against the hazards of many household products not covered by present Federal safety regulation;

(5) that because intrastate and interstate commerce in consumer products are closely intertwined and directly affect each other, Federal control over intrastate commerce in consumer products is essential to the effective control of the interstate commerce in such products;

(6) that unacceptable numbers of hazardous consumer products now affect interstate commerce, and their increasing number and complexity make it imperative that the Federal Government act promptly to eliminate unnecessary death and injury in the future; and

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

DEFINITIONS

SEC. 102. As used in this Act—

(a) "Consumer product" means a product, or a component thereof, produced for or distributed to an individual for his personal use, consumption, or enjoyment in or around a household or residence, a school, in recreation, or otherwise, but, except to the extent provided in section 104(c)(17), it does not include—

(1) tobacco and tobacco products;

(2) products subject to safety regulation under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.);

(3) aircraft or other aeronautical products subject to safety regulations by the Federal Aviation Administration;

(4) food or drugs as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.);

(5) products subject to safety regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.);

(6) products subject to safety regulation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) insofar as such products are regulated for use in employment;

(7) products subject to safety regulation under the Gas Pipeline Safety Act (49 U.S.C. 1671 et seq.);

(8) products subject to safety regulation under authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

(9) vessels, appurtenances, and equipment subject to safety regulation under title 52 of the Revised Statutes, as amended, the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.), or other marine safety statutes administered by the Department in which the Coast Guard is operating.

(b) "Commerce" means commerce among, between, or within the several States.

(c) "Consumer product safety standard" means a minimum standard promulgated under this Act which prevents such product from presenting an unreasonable risk of injury or death.

(d) "Subject to safety regulation" means authorized to be regulated for the purpose of eliminating any unreasonable risk of injury or death, as determined by the Administrator through communication and consultation with appropriate department or agency officials.

(e) "Injury" means harm (including adverse reactions and illness) produced by biologic, chemical, thermal, mechanical, electrical, radiological, or other natural or manmade agents.

(f) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Trust Territory of the Pacific Islands, or the Canal Zone.

(g) "Unreasonable risk of injury presented by a consumer product" means that degree of risk which the Commissioner determines is incompatible with the public health and safety either because the degree of anticipated injury or the frequency of such injury, or both, is unwarranted because—

(A) the degree of anticipated injury or the frequency of such injury can be reduced without affecting the performance or availability of the consumer product, or

(B) the degree of anticipated injury or the frequency of such injury cannot be reduced without affecting the performance or availability of the consumer product but the effect on such performance or availability is justified when measured against the degree of anticipated injury or the frequency of such injury.

(h) "Use" means: (A) exposure to, and (B) normal use or reasonably foreseeable misuse.

(i) "Risk-based analysis" means analysis which (A) identifies hazardous elements, conditions of use, and potential accidents, (B) determines the significance of their potential effect, and (C) provides the bases for limitations on use and design and procedural safety requirements to eliminate, control, or minimize hazards and to promote health and safety.

ESTABLISHMENT OF AGENCY

SEC. 103. There is hereby created an independent Food, Drug, and Consumer Product Agency (hereinafter referred to as the "Agency") whose function it is to promote the public health, safety, and welfare by protecting consumers against adulteration, misbranding, and illegal distribution of food, drugs, devices, and cosmetics, and against injury resulting from the use of consumer products. Within such Agency there shall be established a Commission of Food and Nutrition, a Commission of Drugs, and a Commission of Consumer Products, each to be headed by a Commissioner as provided in section 106 of this Act.

ADMINISTRATOR

SEC. 104. (a) APPOINTMENT.—The President shall appoint, with the advice and consent of the Senate, an Administrator of the Agency.

(b) TERM OF OFFICE.—The Administrator shall serve for a term of five years. He may be reappointed to the position of Administrator only once in succession.

(c) POWERS.—In order to fulfill his duties under this title, the Administrator is empowered to—

(1) direct and coordinate the activities of the Commissions of Food and Nutrition, Drugs, and Consumer Products;

(2) direct and supervise all personnel of the Agency;

(3) employ experts and consultants (including such experts as provided for in section 108 of this title) in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and, while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(4) appoint advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and to pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees, or otherwise serving at the request of the Administrator, compensation and travel expenses at the rate provided for in paragraph (4) of this subsection with respect to experts and consultants;

(5) promulgate such regulations as may be necessary to carry out the functions vested in him and for the efficient enforcement of the laws subject to the jurisdiction of the Agency;

(6) issue subpenas to require the attendance and testimony of witnesses and the production of documentary evidence relating to any matter within his statutory authority which is the subject of a public hearing, have access for the purpose of examining and copying any documentary evidence relating to any matter within his statutory authority, and require by general or special orders signed by him the submission of annual or special reports or answers in writing to specific questions containing such data and information relating to any matter within his statutory authority as will enable him to enforce the laws subject to his jurisdiction. The district courts of the United States shall have jurisdiction to enforce such subpenas or general or special orders or to require access to such documentary evidence upon application of the Attorney General or the Administrator. An action for such enforcement may be brought in any district court of the United States for the district wherein the person involved is found or transacts business.

(7) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State and private agencies and instrumentalities with or without reimbursement therefor;

(8) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Agency and on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory, or possession, or any political subdivision thereof, or with any public or private person, firm, association, corporation, independent testing laboratory, or institution;

(9) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31, United States Code;

(10) designate representatives to serve or assist on such committees as the Administrator may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies and independent standard-setting bodies carrying out programs and activities related to the protection of consumers against injury resulting from the use of foods, drugs, and consumer products;

(11) construct such research or test facilities as may be necessary to carry out the purposes of this Act, (A) after fully utilizing the personnel, facilities, and other technical support available in other Federal agencies, (B) when authorized by the Congress to plan, design, and construct such facilities, and (C) subject to the appropriation of funds for this purpose by the Congress;

(12) conduct public hearings anywhere in the United States to consider the safety of foods, drugs, or consumer products;

(13) prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate for the administration and enforcement of the laws subject to his jurisdiction, and receive from the President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Agency;

(14) prescribe personnel policies for the Agency including selecting, appointing, fixing compensation of, hiring, firing, promoting, and transferring of employees without prior approval or clearance, subject to the civil service and classification laws;

(15) submit legislative recommendations and testimony to Congress without prior approval or clearance;

(16) initiate, prosecute, defend, or appeal any court action in the name of the Agency to enforce the laws subject to his jurisdiction, through his own legal representative or through the Attorney General, and direct the course of all litigation involving the Agency;

(17)(A) petition any Federal department or agency which has jurisdiction over products included within the definition of consumer product in section 102(a) but exempt under paragraphs (1)–(9) to establish and enforce appropriate safety regulations for any such product;

(B) participate in the establishment of such regulations;

(C) upon request of such department or agency, establish and enforce such regulations in accordance with title III of this Act. Upon such request, such product shall be deemed to be a consumer product under section 102(a);

(18) undertake such other activities as are necessary to carry out his duties under this Act, including those enumerated in other sections of this Act; and

(19) delegate any of his functions and duties under this Act, including functions and duties transferred to him pursuant to title II, other than subpena powers, to the Commissioners or other officers or employees of the Agency.

DUTIES OF THE ADMINISTRATION

SEC. 105. The Administrator shall—

(a) direct and coordinate the activities of the Commissions of Food and Nutrition, Drugs, and Product Safety;

(b) attempt to secure levels of funding for the Agency that will permit it to carry out its mission on behalf of the public;

(c) establish an Office of Consumer Information in accordance with the provisions of section 108 of this title;

(d) establish a National Injury Information Clearinghouse which shall systematically monitor and report injuries or deaths associated with food, drugs, and consumer products and identify the agent or agents associated with such injuries or deaths;

(e) establish and supervise the activities of the Joint Scientific Committee;

(f) appoint a General Counsel for the Agency and an Assistant General Counsel for each Commission, to assist him as his legal representative in carrying out his duties under this Act;

(g) enforce the laws which he is required under title II of this Act to administer; and

(h) publish notice of any proposed public hearing in the Federal Register, and afford a reasonable opportunity for interested persons, including consumers, to present relevant testimony and data.

OBLIGATIONS OF AGENCY CONTRACTORS

SEC. 106. (a) MAINTENANCE OF RECORDS.—Each recipient of assistance under this Act pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) ACCESS TO RECORDS.—The Administrator and the Comptroller General of the United States or their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under section 103(c)(9) under other than competitive bidding procedures.

COMMISSIONERS

SEC. 107. (a) APPOINTMENT.—The Administrator shall appoint a Commissioner of Food and Nutrition, a Commissioner of Drugs, and a Commissioner of Consumer Products.

(b) POWERS.—In order to fulfill his duties under this title, a Commissioner is empowered to—

(1) undertake such activities as are authorized and necessary to carry out his duties under this title, including those delegated to him by the Administrator and those enumerated in other sections; and

(2) conduct public hearings anywhere in the United States to consider the safety of foods, drugs, or consumer products.

DUTIES OF THE COMMISSIONER

SEC. 108. Each Commissioner, in cooperation with the other Commissioners and as directed and coordinated by the Administrator shall—

(1) attempt to eliminate products presenting unreasonable risk of injury;

(2) establish a capability within his Commission to engage in risk-based analysis;

(3) establish an interdisciplinary epidemiology capability and undertake investigations in coordination with the National Injury Information Clearinghouse to facilitate regulation-making and to assist in risk-based analysis;

(4) establish a scientific capability within the Commission to assist in hazard detection, test method development, and quality control requirements;

(5) utilize where practicable and establish where necessary, field operations as authorized by the Administrator to facilitate detection of conditions which might lead to injury or death, to monitor compliance with required levels of safety performance, to report violations, and to assist the Administrator in any enforcement action taken by him; and

(6) publish notice of any proposed public hearing in the Federal Register, and afford a reasonable opportunity for interested persons, including consumers, to present relevant testimony and data.

OFFICE OF CONSUMER INFORMATION

SEC. 109. (a) DIRECTOR.—The Administrator shall appoint a Director of the Office of Consumer Information.

(b) DUTIES OF DIRECTOR.—The Director shall—

(1) establish a Consumer Information Center which can respond to written inquiries from consumers;

(2) conduct consumer education programs so as to inform the public about certain specified hazards and thereby reduce the risk

of those hazards. Such consumer education programs shall not be relied upon by the Administrator or any Commissioner as a substitute for action designed to minimize any hazard unless the Director publishes in the Federal Register a finding that such reliance would sufficiently reduce the risk of such product so that its use would not present an unreasonable risk of injury or death; and

(3) insure public access to information concerning pending or completed actions of the Administrator in accordance with section 114 of this title.

(c) PUBLIC INFORMATION ROOM.—In addition to publishing information in the form and manner best adopted for widespread distribution, information available for public disclosure shall be made available in a "Public Information Room" within the Director's office, equipped with a self-help copying machine, from which the public can make copies at the cost of the production of the copy. The Agency shall charge the public the minimum practicable amount for the search for and production of documents, shall take all reasonable measures to reduce or waive, where appropriate, any charge to persons to whom such charge would be financially burdensome, and in no event shall charge any amount which exceeds the actual cost of such search and production. All funds collected for copying and for search for and production of documents shall be paid to the Administrator and shall be obligated and expended by him to finance the Agency's consumer information program.

(d) The Director shall establish a Consumer Information Library.

NATIONAL INJURY INFORMATION CLEARINGHOUSE

SEC. 110. (a) DIRECTOR.—The Administrator shall appoint a Director of the National Injury Information Clearinghouse.

(b) DUTIES OF DIRECTOR.—The Director shall establish a system of nationwide reporting centers to monitor injury associated with food, drugs, and consumer products, to identify any natural or man-made biologic, chemical, mechanical, electrical, thermal, or radiological, or other agents that caused such injury to describe the way in which such agents came into contact with the victim, and to ascertain the severity of the injury.

(c) POWERS OF DIRECTOR.—(1) The Director may—

(A) obtain injury data from other governmental and nongovernmental sources; and

(B) require manufacturers, importers, processors, distributors, retailers or assemblers of food, drugs, or consumer products, and their insurers, to submit information concerning injuries associated with such food, drugs, and consumer products that have come to their attention in accordance with regulations promulgated by the Administrator, which ensure that such persons providing such information are not compromised in any pending litigation.

(d) LIMITATIONS.—(1) The Director shall not disclose information obtained by him under this section which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, in a manner designed to preserve confidentiality to the greatest practicable extent; and

(E) to the public in order to protect their health and safety after notice and opportunity for comment in writing or for discussion in closed session within 15 days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons or person treating them be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 522, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

JOINT SCIENTIFIC COMMITTEE

SEC. 111. (a) DESIGNATION.—After consultation with the Commissioners, the Administrator shall establish and appoint the members of a Joint Scientific Committee which shall be composed of at least one representative of each Commission and chaired by an Associate Administrator for Science appointed by the Administrator.

(b) MEETINGS.—Such Committee shall meet at least once a month.

(c) DUTIES.—

(1) The Associate Administrator and members of the Committee shall insure that there is an exchange of scientific information between the Commissions and shall report to the Administrator on the needs of the scientific personnel in each of the Commissions.

(2) The Committee shall advise the Administrator or any of the Commissioners on technical matters and shall make recommendations for the soliciting of expert scientific opinion on particular issues.

AGENCY RESPONSIBILITY

SEC. 112. (a) PETITION OF THE AGENCY.—Any individual or class of individuals who alleges that he or they have been exposed by any act or omission of the Agency to a food, drug, or consumer product presenting an unreasonable risk of injury or death, shall first petition the Agency to take specific action sufficient to eliminate the alleged unreasonable risk of injury or death. After opportunity for interested parties to comment on the petition not to exceed thirty days, the Agency shall determine whether an unreasonable risk of injury or death exists as a result of an act or omission of the Agency and issue a decision either refusing to take any action or taking action designed to eliminate any unreasonable risk of injury or death. The Agency shall make such determination and issue such decision within a reasonable period of time, but in no event more than one hundred and twenty days following the presentation of the petition to the Agency.

(b) CIVIL ACTION AGAINST THE AGENCY.—If the Agency refuses to take any action in response to the petition, or if the Agency action taken in response to the petition is regarded by the petitioner or petitioners as insufficient to eliminate the alleged unreasonable risk of injury or death, a petitioner or petitioners may commence a civil action in a United States court of appeals. Any such action shall be filed within sixty days after the decision of the Agency pursuant to subsection (a) to take or refuse to take any action. If a petitioner or petitioners apply to the court to adduce additional evidence and show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure of the petitioner or petitioners to adduce such evidence in the proceeding before the Agency the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Agency either in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper.

(c) POWERS OF THE COURT.—(1) If the court finds, based upon a preponderance of the evidence which constitutes the record of the Agency, that the Agency, by an act or omission, has exposed such petitioner or petitioners to a food, drug, or consumer product presenting unreasonable risk of injury or death, the court shall remand the matter to the Agency for appropriate action. The "record of the Agency" means the information upon which the Agency based its decision, including the petition and any information submitted by the petitioner or petitioners and all other information identified in the decision of the Agency as part of the record, and any additional evidence adduced in accordance with procedures established in subsection (b) of this section.

(2) No action pursuant to any section may be filed for the purpose of requiring the Agency to permit the sale, distribution, use, or shipment in commerce of any food, drug, or consumer product, and no award of money damages may be made in any court action pursuant to this section.

(d) COSTS OF PETITION AND CIVIL ACTION.—Costs of the petition and civil action (including reasonable attorney's fees) may be apportioned to the parties as the interests of justice require.

ANNUAL REPORTS

SEC. 113. (a) TIME OF REPORT.—With one hundred and twenty days following the convening of each regular session of each Congress, the Administrator shall prepare and submit directly to Congress and the President a report on the activities of the Agency and its recommendation for legislative action.

(b) CONTENTS.—Such reports shall contain the following—

(1) budget information containing the budget requests of the President and the Administrator, and the budget recommendations of each of the Commissioners, the appropriation of the Congress, and the distribution of appropriated funds for the fiscal year following the year of the report, for the fiscal year of the report, and for the preceding three fiscal years;

(2) a detailed summary of the activities of the Agency, including but not limited to an account of the activities of the National Injury Information Clearinghouse, the Office of Consumer Information and the Joint Scientific Committee detailing the number and type of personnel employed and the moneys expended by each;

(3) a detailed summary of the activities of each Commission prepared by its Commissioner which presents information as to its epidemiology efforts, risk-based analysis activities, regulation-making efforts (including a brief description of final regulations promulgated), certification programs, scientific activities (including basic research and test methods development) undertaken by the Commission or by other Government agencies or private persons under contract with the Agency, and its field operations;

(4) a detailed summary of the enforcement activities of the Agency including violations reported to the Administrator by each Commissioner, a summary of the disposition of violations including but not limited to voluntary agreements, seizures, recalls, civil fines, and criminal prosecutions; and

(5) legislative recommendations of each Commissioner, the Administrator, and the Director of the Office of Consumer Information.

PUBLIC ACCESS TO INFORMATION

SEC. 114. (a) AVAILABILITY.—Copies of any communications, documents, reports, or other information received or sent by the Administrator or any Commissioner shall be made available to the public, upon identifiable request, and at reasonable cost, through the Office of Consumer Information unless such information may not be publicly re-

leased under the terms of subsection (b) of this section.

(b)(1) LIMITATIONS.—The Administrator, Commissioner, or any officer or employee of the Agency shall not disclose information obtained by him under this section which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, in a manner designed to preserve confidentiality to the greatest practicable extent; and

(E) to the public in order to protect their health and safety, after notice and opportunity for comment in writing or for discussion in closed session within 15 days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons or persons treating them be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) PROCEEDING COMMUNICATIONS.—Any communication from a person outside the Agency to the Administrator, the Commissioners or any other employee of the Agency concerning a matter presently under consideration in a rulemaking or adjudicatory proceeding in the Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

COOPERATION OF FEDERAL AGENCIES

SEC. 115. (a) The Administrator is authorized to utilize the resources and facilities of the National Bureau of Standards in the Department of Commerce with or without reimbursement, for the purpose of developing food, drug, or consumer product safety standards, testing, enforcing compliance or for other purposes related to carrying out the authorities of the Administrator under the Act. The Administrator shall report to the Congress each year on his implementation of this section;

(b) Upon request by the Administrator, each Federal agency is authorized—

(1) to make its services, personnel, and facilities available with or without reimbursement to the greatest practicable extent within its capability to the Agency to assist it in the performance of its functions; and

(2) to furnish to the Agency such information, data, estimates, and statistics, and to allow the Agency access to all information in its possession, as the Administrator may reasonably determine to be necessary for the performance of the functions of the Agency as provided by this Act.

SEPARABILITY

SEC. 116. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 117. There are authorized to be appropriated for the purpose of carrying out the provisions of this Act such sums as may be necessary. No part of the funds appropriated to carry out this Act may be used to plan, design, or construct any research or test facilities unless specifically authorized by the Congress by other law.

SEC. 118. (a) EXECUTIVE SCHEDULE LEVEL OF ADMINISTRATOR.—Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(58) Administrator, Food, Drug, and Consumer Product Agency."

(b) EXECUTIVE SCHEDULE LEVEL OF COMMISSIONERS.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(95) Commissioners, Food, Drug, and Consumer Product Agency.

"(96) General Counsel, Food, Drug, and Consumer Product Agency."

EFFECTIVE DATE; INITIAL APPOINTMENT OF OFFICERS

SEC. 119. (a) This Act shall take effect ninety days after the Administrator first takes office, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

(b) Any officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Agency pursuant to this Act.

TITLE II—TRANSFERS OF FUNCTION

SEC. 201. (a) All functions of the Secretary of Health, Education, and Welfare administered through the Food and Drug Administration are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(b) All functions of the Secretary of Health, Education, and Welfare under the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263(a)) and under sections 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263) are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(c) All functions of the Secretary of Agriculture under the virus, serum, toxin, and analogous products provisions applicable to domestic animals of the Act of Congress approved March 4, 1913 (21 U.S.C. 151 et seq.), under the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), under the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), and those functions of the Secretary of Agriculture and the Secretary of Commerce dealing with food performed pursuant to section 1622(h) of title 7, United States Code, are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(d) All functions of the Secretary of Commerce and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) and under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(e) All personnel, property, records, obligations, commitments, and unexpended balances of appropriations, allocations, and other funds which are used primarily with respect to any office, agency, bureau, or function transferred under the provisions of this section are transferred to the Administrator of the Food, Drug, and Consumer Product Agency. The transfer of personnel pursuant to this subsection shall be without reduction in classification or compensation for one year after such transfer, and this provision shall not be construed to impair the authority of the Administrator to assign personnel during this period to carry out the functions of the Agency most effectively.

(f) The Civil Service Commission shall establish criteria, in consultation with the Administrator, when preparing competitive examinations for positions in the Agency.

SEC. 202. (a) The Administrator shall, insofar as practicable and consistent with sound administration of the laws subject to his jurisdiction, delegate all or part of the authority transferred to him to—

(1) the Commissioner of Food and Nutrition with respect to functions relating to food, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), the Federal Import Milk Act (21 U.S.C. 141 et seq.), the Filled Milk Act (21 U.S.C. 61 et seq.), the Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 (h)), and the provisions relating to pesticides, interstate travel sanitation, milk and food service sanitation, and shellfish sanitation under the Public Health Service Act (42 U.S.C. 241, 243, 246, and 264);

(2) the Commissioner of Drugs with respect to functions relating to drugs, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), sections 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263), the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263a), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), and the virus, serum, toxin, and analogous products provisions applicable to domestic animals of the Act of Congress approved March 4, 1913 (21 U.S.C. 151 et seq.); and

(3) the Commissioner of Consumer Products with respect to functions relating to other consumer products over which the Administrator has jurisdiction, including but not limited to functions under title III of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Radiation Control for Health and Safety Act (42 U.S.C. 263b et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Act of August 2, 1956 (15 U.S.C. 1211), and the provisions relating to product safety under the Public Health Service Act (42 U.S.C. 241, 244, 246, and 264).

(b) The Administrator shall annually present to Congress as part of his annual report under section 113 a detailed statement of delegation.

SEC. 203. All laws relating to any office, agency, bureau, or function transferred under this Act shall, insofar as such laws are applicable, remain in full force and effect. And orders, rules, regulations, permits, or other privileges made, issued, or granted by any office, agency, or bureau or in connection with any function transferred by this Act, and in effect at the time of the transfer, shall continue in effect to the same extent as if such transfer had not occurred until modified, superseded, or repealed. No suit, action, or other proceeding lawfully commenced by or against any office, agency, or bureau or any officer of the United States acting in his official capacity shall abate by reason of any transfer made pursuant to this Act, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceeding to obtain a settlement of the questions involved, may allow the same

to be maintained by or against the appropriate office, agency, bureau, or officer of the United States.

TITLE III—CONSUMER PRODUCT SAFETY

COLLECTION AND DISCLOSURE OF INFORMATION ON CONSUMER PRODUCT RISKS

SEC. 301. (a) The Commissioner of Product Safety (hereinafter referred to as the "Commissioner") shall collect, evaluate, and disseminate, on a continuing basis in conjunction with the National Injury Information Clearinghouse, information on the types, frequency, severity, and causes of injury associated with the use of consumer products, and on means to test, measure, or evaluate the risks of such injury. In carrying out his functions under this section the Commissioner in addition to or in aid of the foregoing—

(1) shall collect data or perform research or studies to facilitate the establishment of consumer product safety standards and to evaluate their efficacy in reducing risks associated with consumer products;

(2) shall use interdisciplinary epidemiological teams where appropriate to ascertain the details and causation of injury resulting from the use of a consumer product;

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

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

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

(6) shall obtain (by negotiation or otherwise) consumer products for research and testing purposes, and sell or otherwise dispose of such products.

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

(c)(1) The Commissioner shall not disclose information obtained by him under this section which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act; and

(E) to the public in order to protect their health and safety, after notice and opportunity for comment in writing or for discussion in closed session not to within fifteen days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

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

(e) Whenever the Commissioner finds, on the basis of information available to him, that exposure to an aspect of the household environment other than a consumer product presents an unreasonable risk of personal injury or death and that a recognized building, electrical, or other code covers that aspect of the household environment, he may recommend to the appropriate code-making authority, and to those authorities responsible for enforcing the code having jurisdiction over that aspect, the code changes he considers warranted to reduce the risk to a reasonable level.

AUTHORITY TO PROMULGATE STANDARDS FOR CONSUMER PRODUCTS

SEC. 302. Whenever the Commissioner finds a need for action to eliminate unreasonable risk of injury or death associated with the use of a consumer product, or any type or class of such products, he may by regulation, in accordance with the requirements of this Act, promulgate for such product, or type or class of such products, a consumer product safety standard or amend any standard previously established. Such standard or amendment to a standard, insofar as practicable, shall be compatible with any environmental standards established for any consumer product by the Federal Government.

INITIATION OF PROCEEDING TO PROMULGATE A CONSUMER PRODUCT SAFETY STANDARD

Notice of Proceeding

SEC. 303. (a) A proceeding to promulgate a consumer product safety standard shall be initiated by the Commissioner by publication in the Federal Register of a notice of proceeding. Such notice shall invite public comment with respect to the initiation of such proceeding and shall include—

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

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

(3) a summary description of the information upon which the Commissioner has found a need to initiate the proceeding, and the manner, consistent with subsection (c) of section 301, in which interested persons may examine such information;

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

(5) an invitation for any person, including any Federal agency, within thirty days after the date of publication of the notice—

(A) to submit information challenging the need to control any risk or risks presented by the consumer product, or type or class of such products, with respect to which the proceeding is initiated;

(B) to submit to the Commissioner an existing standard as such proposed consumer product safety standard; or

(C) to offer to develop such proposed consumer product safety standard in accordance with regulations of the Commissioner prescribing procedures for such development.

Petition by Interested Party

(b) Any consumer or other interested party may petition the Commissioner to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety standard or other action. Such petition shall set forth with particularity the reasons for such petition. The Commissioner shall publish petitions in the Federal Register and allow opportunity for comment. If the Commissioner denies such petition he shall publish his reasons for such denial.

Decision To Proceed

(c) If the Commissioner determines, after receiving and evaluating any information to the contrary, that there exists a need to control a risk or risks presented by the designated consumer product, or type or class of such products with respect to which the proceeding to promulgate a consumer product safety standard was initiated, then he shall proceed toward the publishing of a proposed consumer product safety standard.

Use of Existing Standard

(d) If the Commissioner—

(1) finds that there exists a standard which has been published by any Federal agency or other qualified agency, organization, or institution;

(2) has made reference to such standard (unless it is a standard submitted pursuant to section 303(a)(5)(B)) in his notice pursuant to subsection (a)(4); and

(3) determines that such standard may be acceptable to him as a consumer product safety standard, then he may, in lieu of accepting an offer pursuant to this section, publish such standard as a proposed consumer product safety standard pursuant to section 306.

Acceptance of Offers To Develop Proposed Consumer Product Safety Standards

(e)(1) Except as provided by subsection (b), the Commissioner may accept one, or more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (a)(5)(C), upon his determination that—

(A) the offeror is technically competent and is likely to develop an appropriate standard within 150 days of the notice of proceeding or such longer period of time not to exceed 360 days from the date of such notice; and

(B) the offeror has the capacity to comply with regulations of the Commissioner prescribed pursuant to section 305.

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

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

DEVELOPMENT OF A PROPOSED CONSUMER PRODUCT SAFETY STANDARD BY THE COMMISSIONER

SEC. 304. If the Commissioner has published a notice of proceeding as provided by section 303(a), and he has not accepted an existing standard pursuant to section 303(d) then the Commissioner shall proceed to develop a proposed consumer product safety standard whether or not he has accepted offers to develop a proposed standard if he

has determined that his own development will be of benefit to the public.

REGULATIONS GOVERNING DEVELOPMENT OF STANDARDS

SEC. 305. The Commissioner shall prescribe regulations governing the development of proposed consumer product safety standards under sections 303 and 304 of this Act, which regulations shall not be considered rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code. Such regulations shall include requirements—

(1) that standards recommended for promulgation be supported by test data or such other documents or materials as the Commissioner may reasonably require to be developed, and be suitable for promulgation pursuant to section 306;

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

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

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

(5) that the Commissioner, the Administrator, and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Commissioner, pursuant to section 303(e), to the development of such recommended standards.

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

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

SEC. 306. (a)(1) Not more than one hundred and eighty days after his publication of a notice of proceeding pursuant to subsection (a) of section 303 (which time may be extended by the Commissioner by a notice published in the Federal Register stating good cause therefor), the Commissioner shall publish in the Federal Register either a notice withdrawing such prior notice or a proposal to promulgate a consumer product safety standard applicable to any consumer product subject to such notice, or a proposal to declare any such subject product a banned hazardous consumer product. A proposal to promulgate a consumer product safety standard and a proposal to declare a product a banned hazardous consumer product may be published in the alternative with respect to any consumer product subject to such notice.

(2) A proposal to promulgate a consumer product safety standard shall contain only one such proposed standard formulated by the Commissioner on the basis of the proposed standard developed by an offeror under section 303(e) of this title or by the Commissioner, or both.

(3) A proposal to promulgate a consumer product safety standard, or to declare a product a banned hazardous consumer product, shall set forth such proposed standard, or the reason for such declaration, the manner in which interested persons may examine data and other information upon which such proposed standard or declaration, or need therefor, is based (consistent with subsection (c) of section 301), and the period within which all interested persons may present their comments on such standard or declaration, or the need therefor, orally or in writing.

Disputes of Fact

(b) The Commissioner may conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of material fact raised by any person when presenting comments in accordance with paragraph (3) of subsection (a) of this section.

Findings

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

(A) data and comments submitted in the course of any proceeding under section 303 relevant to such order;

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

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

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

(E) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commissioner shall include in any order promulgating a consumer product safety standard or banning a hazardous consumer product, a determination that his findings pursuant to paragraph (1), upon which such order shall be based, show that such standard or declaration is reasonably necessary to carry out the purposes for which such standard or declaration is authorized.

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

(d) Within sixty days after the publication of a proposal to promulgate a consumer product safety standard, or to declare a consumer product a banned hazardous consumer product, the Commissioner shall, by order published in the Federal Register, act upon such proposed standard or declaration, or withdraw the applicable notice of proceeding. The order shall set forth the consumer product safety standard or declaration, if any, the reasons for the Commissioner's action (including reasons for the promulgation of a consumer product safety standard materially different than that set forth in the proposal or for his failure to promulgate any standard), and the date or dates upon which such standard or declaration, or portions thereof, shall become effective. If such effective date is later than six months after publication of an order setting forth a consumer product safety standard, the Commissioner shall publish his reasons therefor.

Characteristics of Consumer Product Safety Standards

(e)(1) Consumer product safety standards shall, where feasible, pertain to the safety performance characteristics (including safe packaging characteristics) of a consumer product, or type or class of such products, and shall to the extent practicable set forth test procedures (including instrumentation) capable of producing reproducible results to measure such performance characteristics, except that any such standard may apply to the composition, design, construction, or finish of a consumer product (or any component thereof, or type or class of such products, if the Commissioner determines that it is not feasible to protect the public health or safety by development of a consumer product safety standard pertaining to safety performance characteristics or any other consumer product safety standard authorized by this subsection.

(2) A consumer product safety standard may require that a consumer product (or any component thereof), or type or class of such products, (1) be marked, tagged, or accompanied by clear and adequate warnings or instructions, or (2) be subject to precautions related to physical distribution, as may be reasonably necessary for the protection of the public health or safety.

Ban of Product

(f)(1) The Commissioner may declare a consumer product to be a "banned hazardous consumer product", in accordance with the procedures of this section, only upon his finding, to be included in the Commissioner's order pursuant to subsection (d), that no feasible consumer product safety standard will adequately protect, the public from unreasonable risk of injury or death presented by such product. A firearm or ammunition may not be declared a banned hazardous consumer product.

(2) Any banned hazardous consumer product sold after the date on which notice was published of the proposal to declare such product a banned hazardous consumer product shall, in accordance with regulations promulgated by the Administrator, be repurchased as follows:

(A) The manufacturer of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

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

(ii) if that person has repurchased such consumer product pursuant to subparagraph (B) or (C), reimburse him for any amounts paid in accordance with that paragraph for the return of such consumer product, and

(iii) if the manufacturer requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(B) The distributor of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

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

(ii) if that person has repurchased such consumer product pursuant to subparagraph (C), reimburse him for any amounts paid in accordance with the subparagraph for the return of such consumer product in connection with its repurchase, and

(iii) if the distributor requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(C) In the case of any such consumer product sold at retail by a dealer, if the person who purchased it from the dealer or a subsequent owner returns it to him, the dealer shall refund that person the purchase price upon tender of such product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender and reimburse him for any reasonable and necessary transportation charges incurred in its return.

SAFETY ANALYSIS STUDY

SEC. 307. In order to insure that a manufacturer gives adequate consideration to the safety aspects of a consumer product, so as to prevent an unreasonable risk of injury or death from such consumer product, the Commissioner, where applicable, may require by regulation that a consumer product (or component thereof), or type or class of consumer products, be subjected to a detailed safety analysis, if such consumer product is not subject to a consumer product safety standard under this Act. Such safety analysis shall be conducted in conformity with criteria set forth in such regulations promulgated by the Commissioner. If such consumer product is later subject to a proceeding under section 303 of this Act, then the Commissioner may take into consideration such safety analysis when considering the need for a consumer product safety standard on such consumer product. The Commissioner may demand of the manufacturer a copy of any required safety analysis report.

REVOCATION OR AMENDMENT OF STANDARD

SEC. 308. (a) The Commissioner may revoke, in whole or in part, any consumer product safety standard, upon the ground that there no longer exists a need therefor or that such standard is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner (consistent with subsection (c) of section 301) in which interested persons may examine data and other information relevant to the Commissioner's determination, and the period within which all interested persons may present their views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Commissioner shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Commissioner's action, and the date or dates upon which such revocation shall become effective.

(b) The requirements of sections 303, 304, 305, and 306 of this title for the promulgation of a consumer product safety standard shall apply to the promulgation of a material amendment of a consumer product safety standard. The Commissioner may promulgate an amendment of a consumer product safety standard, other than a material amendment, without regard to section 303, 304, or 305, but shall comply with the procedures set forth in subsections (a) and (b) of section 306, and shall set forth, in his order promulgating such amendment, such findings as he may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase any performance standard applicable to a consumer product, or substantially alter the composition, design, finish, or packaging of such product.

COMPLIANCE

SEC. 309. (a) QUALITY CONTROL PROCEDURES.—Whenever the Commissioner has good cause to believe that a particular manufacturer is producing a consumer product with a significant incidence of noncompliance with a particular consumer product safety standard—

(1) he may require such manufacturer to submit to the Commissioner a description of the relevant quality control procedures followed in the manufacture of such product; and

(2) if the Commissioner thereafter determines that such noncompliance is attributable to the inadequacy of the manufacturer's control procedures, he may, after notice and opportunity for hearing pursuant to section 554 of title 5, United States Code, order the manufacturer to revise such quality control procedures to the extent necessary to remedy such inadequacy.

(b) NAMES OF FIRST PURCHASERS.—(1) The Commissioner may establish, by order at any time, procedures to be followed by manufacturers or importers, including procedures to be followed by distributors, dealers and consumers to assist manufacturers or importers in securing and maintaining the names and addresses of the first purchasers (other than dealers or distributors) of consumer products for which consumer product safety standards have been promulgated. Such procedures shall be reasonable for the particular type or class of consumer products for which they are prescribed.

(2) In determining whether to require the maintenance of the names and addresses of the first purchasers, the Commissioner shall consider—

(A) the severity of the injury that could result if a consumer product were not manufactured in compliance with an applicable consumer product safety standard;

(B) the likelihood that a particular type or class of consumer product would be manufactured not in compliance with an applicable consumer product safety standard; and

(C) the burden imposed upon the manufacturer or importer by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of such maintenance).

(c) COMPLIANCE TESTING.—(1) The Commissioner shall conduct compliance testing of consumer products subject to consumer product safety standards in order to insure that such products are in compliance with applicable consumer product safety standards pursuant to regulations promulgated in accordance with section 553 of title 5, United States Code.

(2) (A) Any person who manufactures or imports a consumer product for which a consumer product safety standard is in effect shall furnish a reasonable number of such products without cost to the Commissioner upon request. Consumer products furnished to the Commissioner under this subsection shall be drawn from regular production runs of such product.

(B) Upon the completion of any compliance testing, the Commissioner shall return the consumer product in compliance with any applicable consumer product safety standard to the manufacturer or importer from whom he obtained it, and such manufacturer or importer, in any subsequent sale or lease of such product, shall disclose that it has been subjected to compliance testing and shall indicate the extent of damage, if any, prior to repair.

(d) Any manufacturer, importer, or distributor of a consumer product subject to a consumer product safety standard shall furnish to the distributor or dealer at the time of delivery of such consumer product by such manufacturer or importer, or distributor, certification that each such consumer product conforms to all applicable consumer product safety standards.

JUDICIAL REVIEW

SEC. 310. (a) Any interested person affected by a final order or regulation of the Commissioner promulgated pursuant to sections 305, 306(d), 307, 308, or 309 may, at any time after such order is published by the Commissioner, file a petition with the United States Court of Appeals for the District of Columbia, or any circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner or other officer designated by him for that purpose and to the Administrator. The Commissioner shall transmit to the Administrator, who shall file in the court, the record of the proceedings on which the Commissioner based his order, as provided in section 2112 of title 28, United States Code. Such record shall include such order of the Commissioner and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (a) of section 303; any notice or proposal published pursuant to section 305, 306(a), 307, 308, or 309; the transcript or summary of any proceedings and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Commissioner in the promulgation of such order.

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

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

EMERGENCY ACTION

SEC. 311. (a) The Administrator or the Attorney General may file, in a district court of the United States having venue thereof, an action against a consumer product to have such product described an imminently hazardous consumer product, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding the existence of a consumer product safety standard applicable to such product, or the pendency of proceedings initiated pursuant to section 303. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product presenting an unreasonable risk of injury or death which requires action to protect adequately the public health and safety prior to the completion of administrative proceeding held pursuant to this Act.

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

(c) Concurrently with the declaration of an imminent hazard, the Commissioner shall initiate a proceeding, pursuant to section 303, to promulgate a consumer product safety standard applicable to the consumer product with respect to which such declaration is made, or, if the initiation of such proceeding is not feasible, shall initiate a proceeding, pursuant to section 306, to declare such product a banned hazardous consumer product.

STOCKPILING

SEC. 312. Between the time a final order establishing a consumer product safety standard is issued and the time such order becomes effective, no manufacturer or importer, in an effort to stockpile that consumer product, shall produce or import such product in quantities significantly greater than quantities he had produced for a base

period established by the Commissioner prior to the promulgation of a final order establishing a consumer product safety standard.

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

SEC. 313. (a) Every manufacturer, importer, or distributor of, or dealer in, a consumer product who discovers that such product has a defect which relates to the safety of use of such product or that such product fails to comply with an applicable consumer safety standard shall immediately notify the Commissioner of such defect or failure to comply if such product has left the place of manufacture. The notification required by this subsection shall contain (1) a clear description of such defect or failure to comply with an applicable consumer product safety standard, (2) an evaluation of the hazard reasonably related to such defect or failure to comply, and (3) a statement of the measures to be taken to effect repair to such defect or failure to comply.

(b) If any consumer product fails to comply with any applicable order issued pursuant to this title and thereby presents an unreasonable risk of injury or death or has a manufacturing defect which causes it to present an unreasonable risk of injury or death, the manufacturer, importer, or distributor of, or dealer in, such product may be required by the Administrator (by order after opportunity for hearing pursuant to the provisions of section 554 of title 5, United States Code) to give public notice (including notice through electronic media when necessary to protect the public health and safety) and—

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

(2) to bring such product into conformity with the requirements of such order without charge to the consumer, or

(3) to either replace such product with a like or equivalent consumer product which complies with such order without charge to the consumer or to refund the purchase price of such product upon its tender, whichever option is elected by the manufacturer, importer, distributor, or dealer whose product fails to comply. If an election is made to refund the purchase price, the price shall be less a reasonable allowance for use, if such product has been in the possession of the consumer for more than one year at the time of tender.

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

INSPECTION AND RECORDKEEPING

SEC. 314. (a) For purposes of carrying out regulations, standards, or orders promulgated under this Act, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured, assembled, or held for introduction into commerce or are held for sale after such introduction; or to enter any vehicle being used to transport consumer products in interstate commerce; and

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

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

(b) Every person who manufactures, assembles, distributes, or sells in commerce, or imports, a consumer product required to conform to a consumer product safety standard shall establish and maintain such records, and make such reports, and provide such information as the Commissioner may by regulation reasonably require with respect to the safety of such product. Upon request of an officer or employee duly designated by the Commissioner every such person shall permit the inspection of such records and other books, records, and papers relevant too determine whether such person is in compliance with this Act and regulations, standards, and orders prescribed thereunder.

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

PROHIBITED ACTS

SEC. 315. It shall be unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to—

(1) (A) manufacture for sale or lease, in commerce, any consumer product which does not comply with a consumer product safety standard; (B) sell or lease, or offer for sale or lease, in commerce, any consumer product which does not comply with a consumer product safety standard (i) if such product was manufactured or assembled in the United States after the effective date of such standard, or (ii) if such product was imported into the United States in violation of clause (C); (C) import into the United States any consumer product which does not comply with a consumer product safety standard; or (D) manufacture for sale or lease, sell or lease, or offer for sale or lease, in commerce, or import into the United States, any consumer product which has been declared a banned or imminently hazardous consumer product;

(2) fail or refuse to comply with any order of the Commisisoner pursuant to section 313;

(3) fail or refuse to comply with any requirement of sections 309, 312, and 314;

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

(5) fail to provide to the Director of the National Injury Information Clearinghouse the information concerning injuries as required in section 109(c)(1)(B); or

(6) fail to provide, pursuant to section 307, any required safety analysis.

ENFORCEMENT

Civil and Criminal Penalties

SEC. 316. (a) Whoever knowingly commits any act prohibited by section 315, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Agency in its own name by any of its attorneys designated by the Administrator for such purpose, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year, or both. As used in this subsection, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including (A) knowledge obtainable upon the exercise of due care to ascertain the truth of representations, and (B) knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

Injunctions

(b) Upon application by the Administrator or the Attorney General, the district courts of the United States shall have jurisdiction to enjoin the commission of acts prohibited by section 315, and to compel the taking of any action required by this Act.

Seizure

(c) Any consumer product which is not manufactured in compliance with an applicable consumer product safety standard, or which is not in compliance with such a standard as the result of an action made unlawful by clause (4) of section 315, or which is declared a banned or imminently hazardous consumer product, shall be liable to be proceeded against while in commerce or at any time thereafter, on complaint for forfeiture by the Administrator, and condemned in any district court of the United States within whose district the consumer product is found.

Private Suits

(d) (1) Any person who may be exposed to unreasonable risk of injury or death presented by a consumer product may bring an action in any district court for the district in which the defendant is found or transacts business to enforce a consumer product safety standard, or to enforce any order under subsection (f) of section 306, or under section 311, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commissioner, to the Administrator, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this subsection if the same alleged violation is the subject of a pending action by the United States under this title. In any action under this action, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award reasonable attorney's fees to the prevailing party.

(2) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety standard, regulation, or order issued by the Commissioner may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of sec-

tion 1331 of title 28, United States Code, and shall recover damages sustained, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

IMPORTS

SEC. 317. (a) Any consumer product imported into the United States to which a consumer product safety standard applies (except insofar as the Commissioner may otherwise provide with respect to a consumer product accompanied by a certification of compliance with such standard in a form prescribed by the Commissioner) or which is declared a banned or imminently hazardous consumer product, shall not be delivered from Customs custody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product is delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and is declared a banned or imminently hazardous consumer product or fails to conform with a consumer product safety standard in effect on the date of entry of such merchandise, the Administrator shall so inform the Secretary of the Treasury, and unless it appears to the Administrator that the product can be brought into compliance with all applicable requirements under this title shall request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

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

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

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

EXPORTS

SEC. 318. This title shall not apply to any consumer product manufactured, sold, or held for sale for export from the United States (or to any consumer product imported for export), if such consumer product, and any container in which it is enclosed, bears a stamp or label stating that such consumer product is intended for export and such consumed product is in fact exported from the United States; except that this Act shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

EFFECT ON STATE LAW

SEC. 319 (a) No State or political subdivision thereof shall establish or continue in effect, with respect to any consumer product, any standard or similar regulation prescribing requirements applicable to any aspect of health or safety of such consumer product, if such aspect is required to conform to a consumer product safety standard under this title unless that standard or similar regulation is identical to a consumer product safety standard established pursuant to this title. Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing or continuing a health or safety requirement applicable to a consumer product for its own use, if such requirement imposes a higher standard of health or safety than that required to comply with the applicable consumer product safety standard under this title.

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

(c) Compliance with any consumer product safety standard issued under this title does not exempt any person from any liability under common law.

UTILIZATION OF OTHER FEDERAL AGENCIES

SEC. 320. (a) In carrying out their duties under this Act, the Administrator and the Commissioner shall, to the maximum practical extent, utilize the personnel, facilities, and other technical support available in other Federal agencies.

(b) Technical research support for fire safety projects undertaken by the Administrator or the Commission shall be provided by the National Bureau of Standards on a reimbursable basis.

TITLE IV—FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

SEC. 401. The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended as follows:

(a) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(g) If in package form unless its label bears (1) the common or usual name of the cosmetic, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that fragrance and color may be designated as fragrance and color without naming each ingredient: *Provided*, That to the extent that compliance with the requirements of clause (2) is impracticable, or results in deception or unfair competition, exemptions may be established by regulations promulgated by the Secretary."

(b) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Unless its labeling bears adequate warnings against use where it may be dangerous to health."

(c) Section 201(i) of such Act is amended by striking "articles; except that such term shall not include soap.", and inserting in lieu thereof "articles.".

RECESS AT 1:30 P.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, the manager of the pending bill, the distinguished Senator from Washington (Mr. MAGNUSON), and the ranking minority member of the committee handling the bill, the distinguished Senator from New Hampshire (Mr. COTTON), are both engaged at this time in a markup of the bill making appropriations for the Department of Labor and Health, Education, and Welfare. I have just been advised by those two Senators that they cannot be ready to come to the floor to handle the pending bill until 1:30 p.m. today.

Therefore, Senator MCGEE having withdrawn his amendment to S. 3390, and there being no other business at this time, I move that the Senate stand in recess until 1:30 p.m., with the time consumed by the recess not charged against either side.

The motion was agreed to; and at 11:04 a.m., the Senate took a recess until 1:30 p.m.; whereupon the Senate reassembled when called to by the Presiding Officer (Mr. CRANSTON).

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time be charged equally against the two sides on the pending bill.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TALMADGE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RURAL TELEPHONE BANK FUNDS

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may take up a

committee matter which will not take over 3 minutes, without the time being charged to either side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. TALMADGE. Mr. President, on Monday, June 19, the House passed H.R. 14423, which permits the Secretary of the Treasury to purchase debentures of the Telephone Bank. Yesterday that bill was referred to the Committee on Agriculture and Forestry. It is identical in substance to the provisions which the Senate adopted as section 905 of the Senate amendment to the rural development bill, H.R. 12931, and which was lost in conference.

Mr. President, I ask unanimous consent that the Committee on Agriculture and Forestry be discharged from the further consideration of H.R. 14423 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the clerk will read the bill by title.

The legislative clerk read the bill by title, as follows:

A bill (H.R. 14423) to amend the Rural Electrification Act of 1936, as amended, to enhance the ability of the Rural Telephone Bank to obtain funds for the supplementary financing program on favorable terms and conditions.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. TALMADGE. I am delighted to yield.

Mr. MILLER. I merely want to echo the sentiments of my colleague the distinguished senior Senator from Georgia, chairman of the Committee on Agriculture and Forestry. This matter was thoroughly discussed and was agreed to unanimously in our committee. I also hope that the bill will be passed without delay.

Mr. DOLE. Mr. President, the bill we are considering today pertains to legislation identical to an amendment I offered to rural development bill on April 20 of this year. It is also the same legislation introduced by the chairman of the Senate Agriculture and Forestry Committee in S. 3518. My amendment was agreed to in the rural development bill, but was deleted in conference due to question by the House conference members as to germaneness. This legislation has the endorsement of the administration. It was requested by the Secretary of Agriculture and the Treasury Department. It has the support of the Office of Management and Budget.

Essentially, this legislation will enable the Rural Telephone Bank to expedite its operation to provide better telephone service to rural America. The Rural Telephone Bank bill, which I authored last year, and which was signed into law May 1, 1971, has been readily accepted and already a backlog of applications for loans from the bank have caused the need for this legislation.

This bill enhances the ability of the Rural Telephone Bank to obtain funds with which to finance needed rural telephone Service.

At present, the borrowing authority of the bank is restricted to the private market; however, other Federal enterprises, after which this bank was patterned, have authority to borrow from the Secretary of the Treasury.

The lack of this authority denies to the Rural Telephone Bank the possibility of direct loans from the Treasury which can be obtained at lower costs than private market borrowing, even by Federal agencies which have their loans backed by the full faith and credit of the United States. These direct loans would have no adverse budgetary effect, since the Telephone Bank's receipts and expenditures are already included in the Federal budget, irrespective of its source of borrowings.

In addition, the bill would eliminate the need for the Rural Telephone Bank to have its own fiscal agency and permit it to minimize borrowing costs and avoid cash flow problems which could disrupt its lending program. Interest cost of the various federally sponsored agencies normally exceed Treasury borrowing costs by substantial amounts and the cost of money to such agencies is further increased by the higher underwriting costs of relatively small issues. The Treasury already has the necessary expertise, flexibility, volume, and the marketing power to minimize financing costs and assure an effective flow of credit for the supplementary financing program established by Congress.

Mr. President, due to the prior consideration already given this provision of the bill, the support, and approval of the administration and the Office of Management and Budget, and the need to provide more communications to rural America, I would ask Senators to support and promptly pass this legislation.

The PRESIDING OFFICER. The bill is open to amendment.

Mr. TALMADGE. Mr. President, I move its passage.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on third reading.

The bill was ordered to be read a third time, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question, Shall it pass? (putting the question).

The bill (H.R. 14423) was passed.

THE FOOD, DRUG, AND CONSUMER PRODUCT SAFETY ACT OF 1972

The Senate continued with the consideration of the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

Mr. TALMADGE. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MOSS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mr. MOSS. Mr. President, I ask unanimous consent that during the consideration of the product safety bill Mr. Michael Pertschuk, Mr. S. Lyon Sutcliffe, Mr. Edward A. Merlis, and Mr. Edward B. Cohen of the staff of the Committee on Commerce be accorded the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COTTON. Mr. President, I ask unanimous consent that Mr. Arthur Pankopf, the minority staff counsel, be permitted to remain with me through the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. MOSS. Mr. President, asking unanimous consent that the time for the quorum call not be taken from the time of either side, I suggest the absence of a quorum.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I call up for consideration S. 3419, a bill to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

The PRESIDING OFFICER. The bill is now before the Senate.

Mr. MAGNUSON. I yield to the Senator from Utah.

Mr. MOSS. Mr. President, I ask unanimous consent that the names of the following Senators be listed as cosponsors of the measure now before the Senate: Messrs. GAMBRELL, HARRIS, HART, INOUYE, KENNEDY, MCGEE, MCGOVERN, METCALF, MONDALE, MONTOYA, MOSS, MUSKIE, NELSON, PASTORE, PEARSON, PELL, PERCY, RIBICOFF, and WILLIAMS.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, this bill would usher in a new era in product safety—an era in which Government, industry, and the consumer would work together to assure the safety and efficacy of our foods, drugs, and other products.

The bill grants the Federal Government the authority to move decisively against any unsafe product in the marketplace. It also grants the consumer the right to cause such Government movement when the Government fails to act. Piecemeal product safety programs are broadened and combined in a single

Food, Drug, and Consumer Product Agency which is given undiluted responsibility for insuring the safety and efficacy of products in the marketplace. The bill is designed to bring about the rapid detection and the rapid elimination of those products determined to present unreasonable risk of injury or death. To enable the agency to do these things the bill provides for functional independence, incentives for proper resource commitment, and increased public accountability.

The bill would transfer to this new, independent agency, first, the authority of the Food and Drug Administration over foods, drugs, and other consumer products; second, the authority of the Division of Biologics Standards over human biological drugs; third, the authority of the Center for Disease Control over clinical laboratory licensing; and, fourth, the authority of the Department of Commerce, and the Federal Trade Commission over flammable fabrics and such things as refrigerator doors.

This legislation has been in the works a long time. In 1967 those of us responsible for the creation of categorical consumer safety laws recognized that the continued piecemeal approach to consumer product safety might not adequately protect the right of the American consumer to safety in the products he purchases. Therefore, we proposed the creation of a National Commission on Product Safety to survey consumer product safety problems and to make recommendations concerning the Government's proper role in securing the consumer's right to safety.

The final report of the National Commission on Product Safety—and they worked a long time—which recommended the creation of an independent Product Safety Commission gave great impetus to S. 3419.

I am pleased to report to my Senate colleagues that S. 3419 was reported favorably as an original bill by the Senate Commerce Committee by a vote of 17 to 1. Because the bill is broad in its scope and treats important safety matters which are within the jurisdiction of other committees, the Government Operations Committee and the Labor and Public Welfare Committee have also carefully examined the bill as originally reported to the Senate Commerce Committee. The Executive Reorganization Subcommittee of the Government Operations Committee and the Labor and Public Welfare Committee, in consultation with representatives of the Commerce Committee, have formulated certain improving and strengthening amendments to the Commerce Committee bill. The Labor and Public Welfare Committee has reported S. 3419, as amended, to the floor without a dissenting vote.

Mr. President, I would at this time like to yield the floor to my distinguished colleagues who have all worked diligently to forge improvements in S. 3419. They will be able to describe these improvements to the Members of the Senate.

Mr. President, the Senator from Utah did yeoman work on this bill, as did the Senator from Connecticut in his committee.

Does the Senator from Utah wish to make an opening statement?

Mr. MOSS. I thank the Senator for yielding.

Mr. President, I will take 2 or 3 minutes to indicate that this is a bill on which all members of the committee worked very diligently. We held long sessions on the matter. I think it is a landmark bill, because it now brings together, as the chairman has mentioned, bits of piecemeal legislation that we have passed during many years dealing with various consumer items. As this has gone on, the jungle has sort of grown like "Topsy."

This is an attempt, first of all, to expand the principle of safety in the marketplace to all products, not just certain selected ones, and to bring together the administration of the safety features of the marketing process under one independent agency that is not deterred or deflected in any way by other functions than making appropriate assessments of the safety in products that come before it, and to take appropriate measures to be sure that those who market the products and distribute them abide by the laws and the regulations to protect the consumers. This, of course, will become apparent as we discuss the structure of the agency.

I commend the chairman, the ranking Republican member of the committee, and all other members of the Commerce Committee and the other committees for the great diligence displayed in preparing this measure. The staff also has done yeoman work on it.

I probably will speak later with respect to amendments that are offered, but that is all I want to say by way of an opening statement.

I again thank the chairman for yielding to me.

Mr. PEARSON. Mr. President, the Senate today considers landmark legislation to promote the manufacture of safer consumer products for use in and around the home. The Food, Drug and Consumer Product Safety Act of 1972 is the result of more than a decade of effort to perfect the "consumer's right to safety" through responsible Federal laws and regulations.

The Committee on Commerce has attempted over the years to eliminate the most obvious hazards to the physical safety of the American people. The committee has approved—and the Congress has passed—the Child Protection Amendments of 1966, the Flammable Fabrics Act of 1967, the Gas Pipeline Safety Act of 1968, the Radiation Control for Health and Safety Act of 1968, the Child Protection and Toy Safety Act of 1969, and the Poison Prevention Packaging Act of 1970.

This piecemeal approach to product safety has reduced the incidence of unreasonable risk to the unsuspecting consumer of hazardous products, but has been wholly inadequate in responding to the broad spectrum of risks which confronts all of us in our daily lives.

An estimate by the National Center for Health Statistics indicates that each year, in and around the home, about 30,000 persons are killed, 110,000 permanantly disabled, 585,000 hospitalized, and more than 20 million injured seriously enough to require medical treatment or be absent from work a day or more. One estimate has put the annual dollar cost to the economy at more than $5 billion. Other surveys provide additional information, but none indicates that the accident toll is of less magnitude.

The legislation before the Senate today creates an independent agency with responsibility for the safety and efficacy of food, drugs, and consumer products. This reorganization of the Federal bureaucracy is needed to insure vigorous implementation of the mandate for consumer safety.

The new agency will be responsible to the consuming public and to the Congress. Its work will be visible, its leaders will be in the public spotlight. The budget of the new agency will not be buried in the budget of a larger department of the executive branch. The commitment to product safety will not be deemphasized or diminished by competing considerations, or competing requests for limited funds. The ultimate responsibility for consumer safety will not be fragmented among the various agencies of the Government—the responsibility will be vested in a single entity.

I do not believe the reorganization contemplated in S. 3419 will produce a bigger Federal bureaucracy—only a more effective one.

Mr. President, the Committees on Commerce and Labor and Public Welfare have considered this legislation in some detail; and 33 Senators have voted in committee to report the bill favorably. This degree of unanimity could not have been achieved without the strong commitment of Mrs. Knauer, Secretary Richardson, and President Nixon to effective product safety legislation. The administration is to be commended for recommending S. 1797, a bill containing language upon which the committees have drawn heavily.

The administration and the committees are of a single mind on the critical policy determination: That the Federal Government must have authority to identify hazardous products, promulgate standards of safety, and ban those products which create an unreasonable risk to the consumer. This consensus will permit this Congress to adopt meaningful legislation in the public interest. This consensus will promote full funding and adequate staffing for the agency charged with the heavy responsibilities enumerated in the bill.

Mr. President, I am moved to pay tribute to the distinguished chairman of the Commitee on Commerce (Mr. MAGNUSON). His leadership has been instrumental in developing a bill which enjoys such broad-based bipartisan support. This act will be a testament to Chairman MAGNUSON's legislative skills and commitment to consumer protection. I am

honored to have the opportunity to serve as cosponsor of S. 3419, and join the chairman in urging its adoption by the Senate.

Mr. MAGNUSON. Mr. President, I yield to the Senator from Connecticut such time as he may require.

Mr. RIBICOFF. Mr. President, I commend the distinguished chairman of the Committee on Commerce for another great achievement in behalf of the consumers of America. Due to the work of the distinguished Senator from Washington over the past 6 years, the consumers of this country have been provided increasingly more effective protection in the marketplaces of America.

Mr. President, I support the bill as amended by the Committee on Labor and Public Welfare. It has now been approved by two committees and the Subcommittee on Executive Reorganization of the Government Operations Committee. It deserves the approval of the Senate.

This bill was favorably reported from the Commerce Committee on March 24. Titles I and II were then jointly referred to the Government Operations and Labor and Public Welfare Committees. My Subcommittee on Executive Reorganization held 4 days of hearings on the legislation in April and May. We heard testimony from consumer spokesmen, industry groups, and the administration. Some thought that the new Food, Drug, and Consumer Product Agency should become a part of the Department of Health, Education, and Welfare. Others thought it should be an independent agency or a part of some other organization. But there was broad agreement that, for effective operation, the new agency should have a large measure of legal and functional independence.

After considering all the issues, we concurred in the judgment of the Commerce Committee that an independent agency should be established. This is the best way to assure that the programs entrusted to the agency will be carried out in the manner Congress intended. Plainly and simply, if the agency remained part of HEW, the regulatory decisions of the Administrator could be overruled by political appointees in the Department. Nor could Congress obtain the unaltered views of the Administrator on important matters such as the agency budget and legislation affecting its work. Though there is a strong policy against the establishment of new independent agencies, in these circumstances it is justified.

The amendments added by the Labor and Public Welfare Committee improve the organization and operation of the new agency. Overall, they will make the agency more efficient by giving the Administrator greater authority and flexibility in managing the agency.

I ask unanimous consent that a chart comparing the major provisions of titles I and II of S. 3419 as reported by the Commerce and Labor and Public Welfare Committees be printed at this point in the RECORD.

There being no objection, the chart was ordered to be printed in the RECORD, as follows:

S. 3419	REVISED BILL
1. Titled Consumer Safety Act of 1972.	1. Title changed to Food, Drug and Consumer Product Safety Act of 1972.
2. No provision.	2. Consumer products subject to safety regulation under other laws are defined as "authorized to be regulated for the purpose of eliminating unreasonable risk of injury or death." Such products may be regulated by the Consumer Product Agency after a petition to the agency with jurisdiction over the product, asking to regulate it, and a request by that agency to the Consumer Product Agency to regulate it.
3. Administrator authorized only to "coordinate" activities of the three Commissioners.	3. Administrator authorized to "direct and coordinate" the Commissioners.
4. Mandatory delegation of standard setting to Commissioners by Administrator.	4. Discretionary delegation of regulatory authority "insofar as practicable and consistent with sound administration."
5. Subpena authority limited to witnesses at hearings and "information."	5. Subpena broadened to cover access to records and general or special reports by producers.
6. No provision.	6. Direct submission of budget to President, for review and transmittal to Congress, and direct receipt of all funds from OMB.
7. No provision.	7. Authority to prescribe personnel policies "without prior approval of clearance," subject to civil service laws .
8. Law enforcement through Justice Department.	8. Law enforcement by Agency plus authority to "direct the course of all agency litigation."
9. Separate legal staffs for Administrator and three Commissioners.	9. One legal staff for Agency.
10. Commissioners appointed by President, no fixed term.	10. Commissioners appointed by Administrator.
11. Authorized appointment of private attorneys to represent consumers in agency proceedings.	11. No provision.
12. Mandamus action against agency where its act or omission has exposed a person to unreasonable risk of injury or death. DeNova trial in District Court.	12. Petition to agency for action to eliminate the unreasonable risk. Review in Court of Appeals on agreed record. Court will remand to Agency if petition shows by preponderance of evidence that agency action was not sufficient to eliminate risk.
13. Authorizes $180, $200 and $225 million for next three fiscal years.	13. Authorizes such sums as may be necessary.
14. No provision.	14. Transfers USDA authority under Meat, Poultry, Egg and other Agricultural Product Inspection Acts to Administrator, plus authority over animal drugs.
15. Repealed Hazardous Substances Act, Flammable Fabrics Act, Radiation Control for Health and Safety Act, Poison Prevention Packaging Act, Refrigerator Door Safety Act, and Chapter VI of the Food, Drug and Cosmetic Act.	15. Transfers authority under these laws to the new Agency.

Mr. RIBICOFF. These amendments were unanimously approved by the Subcommittee on Executive Reorganization on May 18. However, action on them could not be completed by the Government Operations Committee due to lack of a quorum at three scheduled meetings.

The most significant of these amendments is the transfer of the food inspection and animal drug programs from the Department of Agriculture. In my view these transfers are fully justified. Three GAO reports on the meat and poultry inspection programs in the past 2½ years have demonstrated that the Agriculture Department is not adequately protecting the public health. There is wide agreement that these programs should be combined with the food inspection programs in FDA. The 1969 White House Conference on Food and Nutrition, the GAO in June 1970, and the administration in 1971 all recommended this move. Mr. Rodney Leonard, former head of the Consumer and Marketing Service, which operated these programs until an internal reorganization in April, strongly urged the transfer, as did John Schnittker, former Under Secretary of Agriculture.

At recent hearings, FDA Commissioner Edwards recognized the overlap in food inspection programs between USDA and FDA, commented that the transfer of the USDA activities would increase FDA inspection capability and said the transfer was primarily a matter of timing. In my view the time is now.

The bill also transfers the Division of Biologics Standards to the new agency. The regulatory failures of DBS are well documented in a recent GAO report, which I requested. The GAO found that DBS had allowed at least 32 ineffective vaccines to remain on the market. Several of them had serious side effects. GAO also revealed that between 1966 and 1968, DBS allowed millions of doses of diluted influenza vaccine to be marketed. Combining DBS with FDA in the new agency will provide more effective vaccine regulation.

Mr. President, this bill shows that Congress is responding to the growing public demand for better consumer protection. Consumers will no longer accept the morals of the marketplace. They ex-

pect their Government to act as guardian of the market to assure that the goods they purchase are safe, effective, and meet the claims made for them.

American consumers no longer want just a larger pie. They want to know the quality of the ingredients and their nutritional value. There is a rising tide of concern over the quality of all our goods and services.

Too often Government and industry have defaulted on their promises of consumer protection. While no law can be any better than the people administering it, and the amount of resources committed to it, this bill provides a strong new framework for assuring the safety of hundreds of products. It will help assure that our promises to consumer protection become a reality.

Mr. President, I urge the adoption of the amendment and approval of the bill.

Mr. MAGNUSON. I say to the Senator from Connecticut that I tried to make clear and to explain the work he has been doing on this type of legislation for many years.

I thoroughly agree with him that here we are trying to bring together many things that we thought of piecemeal. I authored the Flammable Fabrics Act in 1953, and there has been a series of subsequent safety legislation resulting in different modes of administration. Some were badly administered, and some were not administered at all. Now we are putting them together for the purpose of efficient adminstration.

What the Senator and I are saying to the American people is that we are putting it together so that the consumer will get a better deal.

Mr. RIBICOFF. Mr. President, it has been a special privilege for me to work with the distinguished chairman of the Committee on Commerce.

Since we started our hearings on automobile safety many years ago, the Government Operations Committee has cooperated with the Commerce Committee on consumer protection legislation. During this entire period, the cooperative efforts between our committees have been of the highest quality.

I also want to commend the respective staffs of our committees, who worked closely to improve this bill and other legislation. I do not recall any proposal that went to our two committees for consideration on which we could not reach a meeting of the minds, and by our joint efforts improve the legislation finally presented to the Senate.

I again commend the distinguished chairman for his outstanding contribution and cooperation in the cause of consumer protection.

Mr. MAGNUSON. I thank the Senator.

Mr. President, I believe the Senator from New Hampshire wishes to speak at this time.

Mr. COTTON. I yield myself, on my share of the time, such time as necessary for a brief opening statement.

Mr. President, S. 3419—the Food, Drug, and Consumer Product Safety Act of 1972—is a far-reaching omnibus bill. It is a legislative measure which has a most praiseworthy objective of protecting consumers against unreasonable risk of injury from hazardous products.

It is a bill which has been considered by our Committee on Commerce and subsequently, by the Committee on Government Operations and the Committee on Labor and Public Welfare. Although the Subcommittee on Executive Reorganization and Government Research of the Committee on Government Operations did hold hearings on this bill and did consider it, it was not possible for that committee to complete its deliberations within the time limitation specified in the referral. However, the Committee on Labor and Public Welfare was able to complete its consideration and was able to report on this measure.

Mr. President, when the bill, S. 3419, was considered by our Committee on Commerce I was in general support for the need for new and improved authority with respect to consumer product safety. As a matter of fact, I joined with the distinguished chairman of our Committee on Commerce, (Mr. MAGNUSON), in cosponsoring Senate Joint Resolution 33 of the 90th Congress which established the National Commission on Product Safety, the report of which provided the genesis for the legislation now under consideration, S. 3419.

Unfortunately, Mr. President, I felt compelled to vote in the Committee on Commerce against reporting this bill owing to the following three principal objections as set forth in my minority views in that committee's report—No. 92–749 at page 139:

(A) There is no demonstrated need for the establishment of a new independent Consumer *Safety* Agency, especially in light of the pending legislation (H.R. 10835) which would establish a new independent Consumer *Protection* Agency, and which is, unlike that proposed in S. 3419, supported by the Administration;

(B) The apparent unknown impact of including "an electronic product" in the definition of "Consumer product" coupled with the repeal of the Radiation Control for Health and Safety Act (42 U.S.C. 263b–263n); and

(C) The erroneous and mischievous legislative interpretation given in the Committee report to the terms "subject to regulation" and "subject to safety regulation" found in section 101(1) of S. 3419 which could lead to dual and duplicative regulation in [several] product areas. . . .

Mr. President, the Committee on Labor and Public Welfare is in my opinion, to be complimented for meeting at least in part two of my three principal objections. It has met my second objection concerning the inclusion of "an electronic product" in the definition of "consumer product" by appropriately striking language from the definition provision of section 102 appearing on pages 3 and 5, as well as the repealing provisions of section 204 affecting several existing categorical consumer safety statutes. This, Mr. President, constitutes a definite improvement in this legislative measure.

The Committee on Labor and Public Welfare also met in part my third objection concerning the erroneous and mischievous legislative interpretation given in the Commerce Committee report to the terms "subject to regulation" and "subject to safety regulations" as found in section 101(1) of the bill. If the legislative interpretation placed upon these terms by the Committee on Commerce in its report had been left standing then we would have been confronted with the following situation as pointed out in my minority views:

Where the Commissioner of Product Safety has found that a particular consumer product, although coming within the purview of one of the enumerated statutes is not *in fact regulated*, then he, the Commissioner of Product Safety, would be able after notice to the administering agency to promulgate a safety standard. It would make the Consumer Safety Agency a "super agency", which could enter into all such areas not *actually* regulated! If so, then this would seem to prejudge the effectiveness of the Consumer *Protection* Agency proposed in legislation now pending before the Senate Committee on Government Operations and which, in its "watchdog" advocacy functions on behalf of the consumer, is designed to see that such consumer products are regulated where there is a demonstrated need.

In other words, if carried to its logical conclusion, the Ford Motor Company and the General Motors Corporation may be subject to regulation not only by the Department of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966, but by the Commissioner of Product Safety. Similarly, manufacturers of aircraft or other aeronautical products such as the Boeing Company and Beech Aircraft Corporation, might be subject to safety regulations issued by both the Federal Aviation Administration and the Commissioner of Product Safety. This same could hold true for the regulatory area of the Atomic Energy Commission. This could very well lead to an untenable situation.

Mr. President, the Committee on Labor and Public Welfare quite appropriately, I believe, has added a definition of "Subject to safety regulation" in subsection 101(d) appearing on pages 5 and 6 which represent a definite improvement. As noted in the report of the Committee on Labor and Public Welfare accompanying S. 3419—No. 92–835:

The Committee has added a definition of "Subject to safety regulation", in order to clarify the intended meaning. Under this definition, the enumerated products would not be considered "consumer products" if they were authorized to be regulated under the other statutes so as to eliminate any unreasonable risk of injury or death. Thus, the primary jurisdiction of other agencies has been recognized.

Mr. President, there remains my first objection concerning the efficacy of establishing a new independent Consumer Safety Agency. I still am convinced that there has been no demonstrated need shown for the establishment of a new independent Consumer Safety Agency, particularly cognizant as I am that within the not-too-distant future the Senate Committee on Government Operations will be calling upon this body to support yet another independent agency, the Consumer Protection Agency. A proliferation of independent agencies makes neither good sense nor good government. As a matter of fact, Mr. President, as pointed out in my minority views on S. 3419 the establishment of an independent Consumer Safety Agency is—

Contrary to recommendations on reorganization submitted by the President to this Congress, as well as, ironically enough, legislative proposals advanced by several of the proponents of the new Consumer Safety Agency.

I went on in my views to point out that there now is pending a conflicting legislative proposal, S. 3432, introduced by the distinguished Senator from Connecticut (Mr. RIBICOFF), himself a former Secretary of Health, Education, and Welfare, along with more than 20 cosponsors, four of whom are members of the Commerce Committee supporting the present proposal for an independent Consumer Safety Agency. Two more members of the Committee on Commerce have been added as cosponsors to this bill, S. 3432, since its introduction—the distinguished Senator from Nevada (Mr. CANNON) and the distinguished Senator from South Carolina (Mr. HOLLINGS).

I simply feel, Mr. President, that we in the Congress would be making a very grave mistake, indeed, if we continue what seems to be a growing trend to splinter off into separate independent agencies all those interests which seem to have an emotional appeal for such independence, especially at a time when we are confronted with a Government structure which constantly is being lamented as unmanageable. Agency independence certainly is no panacea. And, as a distinguished Cabinet officer under the administration of former President Johnson once observed:

A separate chapter in the Government Organization Manual is not going to be any magic elixer. . . .

Accordingly, Mr. President, at an appropriate time during the consideration of S. 3419 I plan to offer an amendment placing these product safety functions more appropriately at this time within the Department of Health, Education, and Welfare.

Mr. President, the only other amendment which I presently contemplate offering deals with an amendment made by the Committee on Labor and Public Welfare with which I do not agree. The amendment concerns the authorization of appropriations for the purpose of carrying out the provisions of S. 3419 and which appears in section 117 on pages 32 and 33. As reported by our Committee on Commerce, this provision carried a specific dollar amount ceiling for the next 3 fiscal years which the Committee on Labor and Public Welfare deleted substituting an "open-ended" appropriation authorization of "such sums as may be necessary."

Mr. President, this provision of the bill deleted by the Committee on Labor and Public Welfare was an amendment which I offered in the Commerce Committee and which was adopted. As a member of the Committee on Appropriations, I feel very strongly about this particular issue. There is a need, if not an obligation, upon legislative committees to furnish the Committee on Appropriations some guidance in the funding requirements of legislation which they handle. It also is necessary for purposes of future budgetary control. Accordingly it is my intention to offer an amendment prior to the conclusion of debate on S. 3419 which will restore a specified monetary ceiling on appropriation authorizations for purposes of carrying out the provisions of this legislative measure. Since any such figures will be dependent upon amendments which may be adopted by the Senate, it will be necessary for me to await the final action on whatever substantive amendments may be made to the bill before offering in this particular amendment.

Mr. President, I wish to extend my compliments to the distinguished chairman of the Committee on Labor and Public Welfare (Mr. WILLIAMS), and the senior Republican Senator of that committee (Mr. JAVITS), for the commendable drafting improvements made by that committee in amending S. 3419 and I would join in urging that these amendments be adopted en bloc at such time as they are offered.

Mr. President, this product safety measure could be a good bill. However, as the ranking minority member on the Commerce Committee I did find it necessary to file dissenting views on certain important points. Thus, our distinguished chairman's (Mr. MAGNUSON) comment that the vote was 17 to 1 in committee was correct.

Now, in conclusion, Mr. President, I should note that "consumer" has become a sacred word and any dissent from any particular proposal that can be interpreted into being "anticonsumer" is a sacrilege. Nevertheless, I did feel compelled to do so in this instance on some very basic issues.

Mr. MAGNUSON. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. I yield.

Mr. MAGNUSON. I want to say for the record that if there is any implication the Senator from New Hampshire has not been for the basic purposes of this bill or the goals of the bill, I deny it right here on the floor. We have all worked hard to perfect the bill. We could not agree on every amendment. That is what it is all about. But the Senator from New Hampshire has worked as hard on this bill with the members of the committee as any other member to achieve what we are trying to do in the total bill.

Mr. COTTON. I thank my chairman, the distinguished Senator from Washington (Mr. MAGNUSON). He is always fair. He is always considerate.

Let me say there has been no ill feeling engendered at any time during consideration of this legislation, because it is a bill with a worthy objective.

As I have always done in the past, I want to commend the distinguished chairman of the committee (Mr. MAGNUSON). I think, it can be honestly said—without disparaging the earnest efforts of many of our colleagues—that in the position he occupies the distinguished Senator from Washington probably has done more to advance the cause of the consumers of this Nation than almost any other man who has ever sat in the Senate.

Mr. President, as I have said, the purpose of this is a praiseworthy one. I have no doubt that it will pass.

I might add that I know of no intention on the part of any of our committee, to interfere, whatsoever, with functions which now repose in the Department of Agriculture. I understand that at an appropriate point an amendment will be offered to make this clear.

Mr. President, let me again say that there is no disagreement about the need for legislation in this area. The principal disagreement has to do with this matter of setting up a new and different agency of Government which confuses the picture more than clarifies it in the opinion of this Senator.

Mr. President, I again commend the chairman of our Committee on Commerce (Mr. MAGNUSON) and the other members who worked hard and diligently on this meritorious legislation. I also commend the Committee on Government Operations and the Committee on Labor and Public Welfare for their constructive work on the bill.

If this bill comes out with some amendments which this Senator feels are vitally necessary, I am confident that it will meet with the approval of the other body. I am also quite confident that it will meet with executive approval.

If this can be done, then the distinguished Senator from Washington (Mr. MAGNUSON), the chairman of the Committee on Commerce, and the chairman of the other two committees and the members of these committees will be able to pride themselves on the fact that they will have written on the statute books one of the most constructive measures of this session of Congress.

Mr. MAGNUSON. Mr. President, I yield to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. I thank my distinguished friend, the Senator from Washington. Mr. President, S. 3419, as amended by the Subcommittee on Executive Reorganization of the Government Operations Committee and by the Committee on Labor and Public Welfare, creates a new, independent agency within the Federal structure with undiluted responsibility for preventing consumers from being exposed to unsafe foods, drugs, devices, and other consumer products commonly found around the home. The measure would also consolidate within the new agency various consumer product safety activities now being handled by a number of Government entities by transferring to an independent Consumer Safety Agency the present food, drug, cosmetic, vaccine, and product safety activities of HEW and other product safety functions of the Commerce Department and the FTC.

S. 3419 would retain various existing consumer safety laws directed at particular products or specific hazards and complement them with a single omnibus product safety law capable of reaching any consumer product in the marketplace presenting an unreasonable risk of injury.

Although much of the discussion of S. 3419 concentrated primarily on organizational issues, I want to reaffirm the underlying reasons why the Congress is and should be addressing itself to a regulatory plan of this nature.

The American consumer has a right to safe products for use in his home. The safety of a product begins in its design, before it reaches the market, before it causes illness, injury, blindness, disfigurement, or death.

Today we are faced with a number of

unreasonable hazards in and around the home. In determining their unreasonableness, we can ill-afford to sit by and await an epidemic of tragedies to verify that a hazard exists. Instead, it is the proper role of the Federal Government to stimulate American industry to reduce product risks by an omnibus legislative approach which will permit the Government, where necessary, to promulgate and enforce minimal standards of reasonableness in product design and manufacture.

Currently, however, the folly of Federal regulation of consumer products is all too plain. Legislation in this area consists of a hodgepodge of unrelated statutes dealing with specific hazards in very narrow product categories. There is no general Federal authority to seize or ban consumer products which exhibit unreasonable risks nor to require such products to conform to minimum safety standards.

And to the extent any Federal authority does exist, jurisdiction is commonly scattered among agencies or shared by as many as four different agencies. As the National Commission on Product Safety concluded:

> Federal product safety regulation is burdened by unnecessary procedural obstacles, circumscribed investigative powers, inadequate and ill-fitting sanctions, bureaucratic lassitude, timid administration, bargain-basement budgets, distorted priorities, and misdirected technical resources.

All this in the face of 20 million Americans injured in the home each year in accidents involving consumer products, 110,000 of whom are permanently disabled and 30,000 killed.

Through the passage of S. 3419, we hope to move away from the facade of Federal regulation in the area of consumer products. To date, and largely due to the fault of Congress itself, such regulation consists of piecemeal pablum which provides little more than a morsel of protection for the American consumer.

The Senate Commerce Committee has identified the problem. The question before us in the Senate today is how best to house the related functions of food, drug, and consumer product safety regulation. One thing is certain. If we accept a straw house for protection, we will have to rebuild it year after year. And if we accept a scarecrow to oversee the terrain, we will have to prop it up so often that it will hardly be worth the effort.

The Commerce Committee proposes an alternative to the house of straw and the man of straw by offering an independent Consumer Safety Agency headed by an administrator with a full panoply of powers.

Clearly, an "independent regulatory agency" is not some kind of magical formulation which will eliminate for all time lackluster performance in the name of public protection. The history of such agencies as the Interstate Commerce Commission, the Federal Power Commission, and the Federal Maritime Commission, among others, attests all too sadly to that fact.

But after considering the alternate plans which were before us in the Executive Reorganization Subcommittee, I became convinced that, notwithstanding how we have treated this subject in the past, we cannot afford now to give less than the highest priority attention at the Federal level. Otherwise, I am afraid that our priorities are woefully askew.

The arrangement of a new and independent regulatory agency avoids mere box-shuffling, title changes, and pay raises which give the illusion of substance but in fact amounts to straw piled upon straw.

Significant changes reflected in consideration of the bill by the Executive Reorganization Subcommittee of the Government Operations Committee unanimously agreed upon, are as follows:

(1) The new agency is renamed "Food, Drug, and Consumer Product Agency" instead of "Consumer Safety Agency." This is to avoid confusion with the proposed Consumer Protection Agency, as well as to indicate that more than safety alone is involved (for example, nutritional labelling of foods, ingredient labelling of cosmetics, etc.).

(2) Section 101, containing findings and declaration of policy is added. The original bill had no comparable section.

(3) The definition of consumer product in Section 102 is clarified, primarily through the insertion of subsection (d), which defines the phrase "subject of safety regulation." This was one of the major points which Senator Cotton had appropriately raised in his minority views in the report accompanying S. 3419.

(4) The powers of the Administrator vis-a-vis the Commissioners under him are strengthened, in that practically all authority is vested in the Administrator who shall *direct and coordinate* the activities of the Commissions of Food, Drugs, and Consumer Products (see Section 104(c)(1)). The Administrator is, however, empowered to delegate any of his functions and duties under the Act to the Commissioners under him by virtue of Section 104(c)(20). See also Section 202(a).

(5) General subpoena power is granted not only to the Commission on Product Safety but also to the Commission on Food and the Commission on Drugs, by virtue of Section 104(c)(7). Omission in the original bill of enforcement authority by the courts is now corrected.

(6) The Agency is to submit directly to the President and transmit to the Congress its annual budget estimates, which is a departure from the typical OMB approval procedure (see Section 104(c)(14)).

(7) The Agency is to submit its legislative recommendations and testimony to the Congress without prior approval or clearance, as by OMB (see Section 104(c)(15)).

(8) The Agency would handle its own cases in court, without prior approval or recourse to the Justice Department (see Section 104(c)(17)).

(9) The Agency could petition other safety regulatory agencies (for example, FAA, Agriculture, AEC) to establish and enforce new safety regulations, to participate in the development of such regulations by that other agency, or, upon request of the other agency, to assist in establishing or enforcing such regulations (see Section 104(c)(18)).

(10) Elimination of an organizational defect, raised in the hearings, of four General Counsels, one reporting to each Commissioner (Section 105(f)). Now there is provision for a single General Counsel and an Assistant General Counsel for each Commission, reporting to the General Counsel and not to the individual Commissioners.

(11) Elimination of possible duplicative function involving the proposed Consumer Protection Agency. The Section 109 "Office of Consumer Information and Representation" is changed to simply an "Office of Consumer Information," and all consumer representation functions are eliminated.

(12) Instead of repealing the former product safety legislation now in effect as old Section 204(a) would have done, the new draft leaves that legislation in effect in order that there be no gap in coverage while new regulations, promulgated under the authority in Title III, are being developed over the next few years.

From my own experience of more than a quarter century in business, I think it is important to emphasize that the forces of competition, free enterprise, and profit motive are neither inherently conducive to nor inconsistent with consumer safety. But with the backing of Government, properly organized to do the job, these forces can be focused to reduce unreasonable product risks.

An investment of this kind in the safety of consumer products—from rotary lawnmowers, to power tools, to plate glass panels, to unvented floor furnaces, to children's toys, and the rest—can be expected to produce an exceptional rate of return on the capital required. Such investment will also result in a more productive economy, an expanded market for consumer goods that can be relied upon, and, most important of all, a safer home environment for ourselves and our children.

Mr. President, in closing I wish to commend very much, indeed, the Committee on Commerce, both the majority side and the minority side, for the outstanding job that has been done on this bill. There was no quarrel at all as to the objectives and purposes as we in the Government Operations Committee reviewed the bill. We addressed ourselves to how best to set this new function, organizationally.

My colleague, the Senator from New Hampshire, has a difference of opinion on this matter but it is not on the objectives we are trying to achieve.

I feel that this action today will culminate years and years of devotion to this subject by the distinguished Senator from Washington (Mr. MAGNUSON) and the ranking minority member from New Hampshire (Mr. COTTON) who had uppermost in their minds the fact that there is presumed to be a great deal more protection to the consumer in the consumer's mind than there is. Much of what we do is shallow, and we are now trying to beef up and give the support to this activity which it deserves.

The National Commission on Safety has done an excellent job and the members of that Commission should be commended for proposing comprehensive legislation of this nature. I particularly commend one member, Mr. Stuart Statler, whom we took on our staff as Chief Counsel to the minority of the Subcommittee on Executive Reorganization, and who has been the guiding spirit not only behind this legislation but also the drug abuse legislation and other matters of deep interest and concern, including the Consumer Protection Agency legislation that we will be dealing with very soon in the Senate.

But it is the outstanding work of members of this body and the staff that has made possible what I consider to be a landmark piece of legislation.

Mr. President, I ask unanimous con-

sent that the committee amendments be agreed to en bloc and that the bill as thus amended be treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Mr. PASTORE. Mr. President, will the Senator yield to me?

Mr. PERCY. I am happy to yield to the Senator from Rhode Island.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. COTTON. Mr. President, reserving the right to object, I want to hear what the Senator has to say. Is the Senator objecting to the unanimous-consent request?

Mr. PASTORE. No.

Mr. COTTON. Reserving the right to object, I ask for 1 minute on my time to inquire as to the request.

Mr. PERCY. I would ask the distinguished chairman to comment.

Mr. MAGNUSON. These are amendments the Committee on Labor and Public Welfare agreed upon. For technical purposes we adopt them en bloc as original text. Then the bill would still be open to amendment, such as by the Cotton amendment.

Mr. DOMINICK. Mr. President, as a member of the Committee on Labor and Public Welfare, if we adopt these amendments and we transfer inspections into that new agency, is the Moss amendment then in order to put them back where they were to begin with?

The PRESIDING OFFICER. The Parliamentarian informs the Chair it is in order.

Is there objection to the request of the Senator from Illinois? Without objection, it is so ordered.

Mr. PASTORE. Mr. President, I do not rise at this time to make any parliamentary observation on amendments proposed. Rather, I direct myself to the very complimentary statement the sound observation on this bill made by our distinguished colleague from Illinois (Mr. PERCY). I associate myself with everything he said. One significant element in my opinion, that lends tremendous credence to the statement by the Senator from Illinois is the fact that he was a distinguished businessman in his own right at the time he came to the Senate.

There has been some apprehension on the part of business as to whether or not we have gone too far in this product safety legislation. I think the end result will be that insofar as the legitimate businessman in this country is concerned, in time he is going to welcome this legislation. This legislation is for the benefit not only of the consumer but also for the benefit of the legitimate businessman who wants to produce a product that guarantees the safety of the people of this country who use it. I want to make that clear because I do not think that business is going to be harassed by any agency of government. This is true whether we go to HEW or an independent agency—and I think the independent agency is the best way to do this. But in either case I do not think any agency is going to harass business. This is a growing economy. What we want are more jobs created. We want them created by creating products that will be safe and salable in the open market.

I commend the Senator from Illinois.

Mr. PERCY. Mr. President, I thank the Senator from Rhode Island. I think the comment he has made is especially worthy of response because many of us have been subjected to tremendous pressures from the business community on this legislation and companion legislation to create an independent consumer advocacy agency. I warn all Senators ahead of time they will be subjected to similar pressures with respect to the Consumer Protection Agency legislation.

I have now appeared before the U.S. Chamber of Commerce and the National Conference of Better Business Bureaus. I have received close to four thousand letters from businessmen, many of whom I feel did not bother to read the bill.

They took the word of some executive director, perhaps fighting for his $35,000 job, and they responded by contacting me on things that most were just simply not properly informed about.

I feel that when I can specify the cost to American society and consumers—at least $5.5 billion a year in costs that we suffer, not to mention human hardship, as a result of products that never should have been put on the market by a company—when we have free license to market and distribute hazardous consumer products, it is time to do something.

I saw a rotary cutter at a hardware store that I would not even want around my house. It would be like putting a handgun on the open shelf for somebody to pick up. When we permit that to happen, the need is not simply to talk, but to do something about it.

Mr. PASTORE. Mr. President, talking about these rotary mowers, a very close friend of mine had a frightening experience, mowing his own lawn—it may have been through his own carelessness a mechanical fault, or it may have been for some other reason—accidentally he had three fingers of his hand severed. Should corporations be allowed to build these instruments with such disregard to product safety that younger people, as well as older people, cannot use them without practically taking their lives in their hands?

That is what the legislation is aimed at. Some have the idea that we are out to harass business. Of course we are not doing that. This country cannot survive without business. This Government cannot operate without taxes derived from business. Our wages cannot be paid without a prospering business. So we are not trying to put business out of business. What we are trying to do is to protect the consumer and at the same time to protect sound business.

Mr. PERCY. The greatest enemies of business are businessmen who do not adhere to reasonable laws. It is the 5 percent who put the taint on the 95 percent. We are not trying to get at the 95 percent. It is the 5 percent, or the 3 percent, or the 2 percent that will be especially affected by the provisions of this act and that must be regulated and controlled and kept to a reasonable level of responsibility with respect to consumer products.

Mr. MAGNUSON. Of course, this will stimulate more research by business itself, to be sure they are going to do the right thing.

Mr. PERCY. Absolutely.

Mr. MAGNUSON. Because when they see this law, they will not want to be hauled in and told they are not doing the right thing. I would say it is true of 98 percent of them. This is what we need. We have the technology to do many of these things. I have a friend who is a great technician, a research man in the electrical industry. He said to me, "There must be a better way to make an electric light plug than the way we are making it." It is things like this which will stimulate industry.

Mr. PERCY. Mr. President, if I may at this point, I would like to point out the social cost of injuries, including actual millions of dollars unrealized as income taxes as a result of preventable deaths and injuries: $446 million in public expenditures representing 1.7 percent of the current expenditures for health care. Injuries caused 2.1 percent of hospital admissions, filling 18,782 beds for acute care, a number equal to the annual construction of such beds at a capital expenditure of $600 million.

The loss to society is tremendous.

I once again commend our distinguished chairman for articulating so well how all of us agree on the purposes of this bill. I think virtually all of responsible business supports this purpose in legislation. I worry and wonder about those who say this is not a proper function of government after these and like figures are cited.

Mr. JAVITS. Mr. President, I support S. 3419 as reported by the Labor and Public Welfare Committee with amendments and have joined this bill in this form as a cosponsor. I believe the recommended changes improve the bill and more effectively serve consumer interests.

The Labor and Public Welfare Committee and the Executive Reorganization Subcommittee of the Government Operations Committee, on both of which I am the ranking member, had the responsibility for reviewing titles I and II. These titles were the executive reorganization provisions of S. 3419, "The Consumer Safety Act of 1972," as reported by the Commerce Committee. Since the bill extends considerably beyond issues of safety, and covers such matters as misbranding of food, drugs, cosmetics, and medical devices, and encompasses provisions that protect the health and pocketbook of the consumer, as well as his safety, the title of the bill has been changed to "The Food, Drug, and Consumer Product Act of 1972."

Title I of the bill would establish an independent agency in the executive branch with the responsibility to promote the public health and safety by protecting consumers against injury resulting from the use of foods, drugs, devices, and consumer products—as defined in the bill. Title II would transfer to the new agency all functions of the Secretary of Health, Education, and Welfare which are presently administered through the Food and Drug Administration or through the Division of Biologics Standards of the National Institutes of

Health, and the authority of the center for disease control over clinical laboratory licensing. It would also transfer consumer safety laws directed at certain classes of products or hazards such as the authority of the Department of Commerce and the FTC over flammable fabrics and refrigerator doors; and the authority of the Agriculture Department over food inspection and animal biological drugs.

A new title IV adds to the present cosmetic provisions of the Federal Food, Drug, and Cosmetic Act three new substantive labeling provisions which, in effect, bring the cosmetic requirements of the Act more closely into conformity with the labeling requirements for food, drugs, and devices.

As reported by the Committee on Commerce, the bill established a new independent agency. However, the Labor and Public Welfare Committee, of which I am ranking minority member, began from the well-accepted proposition that new independent agencies should be created only on evidence of compelling need and we should guard against unnecessary fragmentation of the Federal structure. I join with my other colleagues who have so eloquently put the case for some new Federal structure to better protect the consumer from hazards associated with food, drugs and consumer products. In this instance, the weight of the evidence as presented in both of my committees argued for an independent agency.

The administration was concerned that the creation of a new agency would sever the relationship between FDA and HEW, and sought to retain these functions within HEW. Their proposal to structure a consolidated regulatory effort within HEW did not, I believe, offer sufficient safeguards to insure the fullest protection in the consumer's interest.

Essential ingredients that I believed would be required for the administration of a structure in HEW and which the administration could not support are:

First, a measure of authority to initiate and litigate all court action in the name of such structure as may be necessary to carry out its functions, and to enforce the statutes subject to its jurisdiction as efficiently and effectively as possible.

Second, a measure of authority to submit its budget request and legislative recommendations directly to Congress.

Third, the authority to prescribe its own personnel policies.

The Agency established by this bill clearly has the aforementioned authorities—and certain additional authorities—which permit it to perform in the public interest, and I anticipate that there will be strong ties between the Department of Health, Education, and Welfare and the new Agency. Removing FDA from the Department of HEW is simply an organizational move to increase responsiveness and accountability, and need have no adverse impact on its relations with the health components of that Department in the future. In fact, these relationships may be substantially improved once the new Agency is established and is in a position to operate with the new strength and mandate given it in this legislation.

Mr. JAVITS. Mr. President, as the ranking minority member of the Committee on Labor and Public Welfare, which revised this bill after the Committee on Commerce completed its work, I feel it my duty not only to state my support for the bill but also to ask unanimous consent to have printed in the RECORD at this point a table of the revisions made in the bill by the Committee on Labor and Public Welfare and concurred in by a large number of members of the Committee on Government Operations, which never had a chance formally to act on these changes but concurred in those of the Committee on Labor and Public Welfare.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REVISIONS

S. 3419	REVISED BILL
1. Titled Consumer Safety Act of 1972.	1. Title changed to Food, Drug and Consumer Product Safety Act of 1972.
2. Definition of "Consumer Product" authorized to be regulated under Title III. Exemption of certain products "subject to safety regulation" under certain other laws was confusing; could have been interpreted to authorize this Agency to regulate in those exempted areas (e.g. FAA, Motor Vehicles, Occupational Safety and Health, etc.).	2. "Consumer products subject to safety regulation under other laws" are defined as "authorized to be regulated for the purpose of eliminating unreasonable risk of injury or death." Such products may be regulated by the Food, Drug and Consumer Product Agency after it petitions the agency with jurisdiction over the product, asking to regulate it, and such agency requests the Food, Drug and Consumer Product Agency to regulate it. Sec. 102(a), p. 3. Sec. 104(c)(17), p. 13.
3. Administrator authorized only to "coordinate" activities of the Commissioners (Food, Drug and Consumer Products).	3. Administrator authorized to "direct" and coordinate" the Commissioners. Ultimate responsibility rests with the Administrator. Sec. 105(a), p. 14.
4. Mandatory delegation of standard setting to Commissioners by Administrator.	4. Delegation of regulatory authority "insofar as practicable and consistent with sound administration." Sec. 202, p. 37.
5. Subpoena authority limited to witnesses at hearings and for "information."	5. Subpoena broadened to cover access to records and general or special reports by producers (based on FTC). Sec. 104(c)(6), p. 10.
6. No provision.	6. Direct submission of budget to President, and direct receipt of all funds from OMB. Sec. 104(c)(13), p. 12.
7. No specific provision.	7. Authority to prescribe personnel policies "without prior approval or clearance." Sec. 104(c)(16), p. 12.
8. Law enforcement through Justice Department.	8. Law enforcement by Agency authorized plus authority to "direct" the course of all agency litigation." Sec. 104(c)(16), p. 12.
9. Separate legal staffs for Administrator and 3 Commissioners.	9. One legal staff for Agency. Sec. 105(f), p. 14.
10. Commissioners appointed by President, no fixed term of office.	10. Commissioners appointed by Administrator. Sec. 107(a), p. 16.
11. Authorized appointment of private attorneys to represent consumers in agency proceedings.	11. No provision. Consumer Protection Agency (advocacy), as embodied in S. 1177 now pending, will perform this function. "Representation" struck from Sec. 109, p. 18.
12. Mandamus action against agency where its act or omission has exposed a person to unreasonable risk of injury or death.	12. Rewritten to require suit against the Agency only after petitioning Agency for corrective action. Petitioner would have to show by preponderence of the evidence that act or omission has exposed a person to unreasonable risk of injury or death. Sec. 112, p. 25.
13. Authorizes $180-$200-and $225 million for next three fiscal years.	13. Authorizes such sums as may be necessary. (Subsequently modified by Senator Cotton's amendment to authorize $250-300-and 350 million for next three fiscal years). Sec. 117, p. 32.
14. No provision.	14. Transfers USDA authority under Meat, Poultry, Egg and other Agricultural Product Inspection Acts to Administrator. (Subsequently deleted by amendment offered by Senator Moss.) Sec. 201(c), p. 35.
15. No provision	15. Transfers authorities of Division of Biologics Standards. (DBS works on vaccines, *inter alia*; is in NIH). Sec. 201(b), p. 34.
16. Repealed several consumer safety laws.	16. Transfers authority under these laws to the new Agency. Old Sec. 204, p. 40 struck; now in Sec. 202(a), p. 37.
17. No provision.	17. Adds certain labeling requirements for cosmetics by amending the Food, Drug and Cosmetic Act to bring cosmetics more closely into conformity with the labeling requirements for food drugs and devices. Title IV, p. 80.

Mr. JAVITS. The need for this new agency is clear. We were unable to work out any arrangement putting the essentials of this agency in HEW that would have best served the consumer with all the changes made by the Labor and Public Welfare Committee. This bill now deserves the support of the Senate.

PRIVILEGE OF THE FLOOR

Mr. MAGNUSON. Mr. President, I yield to the Senator from New Mexico.

Mr. MONTOYA. Mr. President, in view of the fact that I intend to offer an amendment, I ask unanimous consent that Mr. Frank Silbey, one of my legislative assistants, be permitted to be on the floor with me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I yield to the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. RIBICOFF. May I offer an amendment at this time?

The PRESIDING OFFICER. An amendment would be in order.

Mr. RIBICOFF. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment offered by Mr. RIBICOFF, for himself and Mr. WILLIAMS.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 35, lie 20, insert the following:

"(1)" immediately after "(e)".

On page 36 following line 7, insert the following:

"(2) Any commissioned officer of the Public Health Service who, upon the day before the effective date of this Act, is serving as such officer primarily in the performance of functions transferred by this Act to the Agency or the Administrator may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency subject to paragraph (1) of this subsection, under the terms prescribed in Sec. 15(b)(3)—(8)(A) of the Clean Air Amendments of 1970 (84 Stat. 1676, 42 U.S.C. 215 nt).".

Mr. RIBICOFF. Mr. President, the purpose of this amendment is to assure that the Public Health Service personnel transferred to the new agency under this bill may retain their status, or be permitted to acquire competitive Civil Service status. This was done in a similar situation in the 1970 Clean Air Act Amendments. This amendment follows that precedent. I hope the chairman of the Commerce Committee will accept the amendment.

Mr. MAGNUSON. Mr. President, yes; I think the amendment helps the bill. I think this is just something that was overlooked.

Mr. RIBICOFF. I agree.

Mr. MAGNUSON. If it is all right with the Senator from New Hampshire.

Mr. COTTON. Certainly, I have no objection.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. RIBICOFF. Mr. President, I yield back my time.

Mr. MAGNUSON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. RIBICOFF. Mr. President, I send another amendment to the desk.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

On page 33, following line 24, insert the following:

"(c) ADDITIONAL POSITIONS.—Section 5108(c) of title 5, United States Code, is amended by—

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and", and

(3) by adding immediately at the end of such subsection the following new paragraph:

"(11) The Administrator of the Food, Drug, and Consumer Product Agency, without regard to this chapter (except section 5114), may place twenty-five positions in the Food, Drug, and Consumer Product Agency in GS–16, 17 and 18 for the purposes of carrying out his responsibilities under the Food, Drug, and Consumer Product Safety Act of 1972.".

Mr. RIBICOFF. Mr. President, the purpose of this amendment is to provide 25 new positions in grades 16, 17, and 18 for the Food, Drug, and Consumer Product Agency. This bill will establish a major new Federal agency. While its core will be the present Food and Drug Administration, the responsibilities and powers are significantly expanded. At present, the FDA has been allocated 40 supergrade positions under its quota by the Civil Service Commission. The Agency has requested 18 additional positions.

Mr. President, the new agency will require several additional top quality employees in administrative and supervisory positions to carry out its expanded duties competently. This amendment will provide them. I hope the chairman of the Commerce Committee will accept the amendment.

Mr. MAGNUSON. Mr. President, I shall be glad to accept the amendment. It is a matter that the committee has looked at for a long time, and I think it helps to perfect the bill.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. RIBICOFF. Mr. President, I yield back my time.

Mr. MAGNUSON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. MAGNUSON. Mr. President, I congratulate the members of the Government Operations Committee and the Labor and Public Welfare Committee for their efforts in improving S. 3419. I was, of course, pleased that both committees concurred in the judgment of the Senate Commerce Committee that an independent agency was essential in order to insure the safety and efficacy of foods, drugs, and other consumer products.

The changes in the agency responsibility section of the bill—section 112—bring clarity of meaning and administrative efficiency to the section. I still believe that this section is one of the most important in the bill. The section grants citizens in this country the right to overturn bureaucratic inertia in a court of law by showing, through a preponderance of the evidence, that the bureaucracy has failed in its mission to protect consumers from unsafe foods, drugs or other consumer products.

The Government Operations Committee and the Labor and Public Welfare Committee have also improved the definition of "consumer product." These committees have eliminated ambiguity with respect to the treatment of "electronic products" and clarified the words "subject to such regulation." These are both areas which appropriately concerned my distinguished colleague, Senator COTTON, in his minority views on S. 3419.

I also agree with the decision of these committees to retain the present authority over cosmetics and medical devices while simultaneously applying the new authority in title III to these products. I am also pleased with the transfer of the Center for Disease Control to the new Food, Drug, and Consumer Product Agency. Secretary Richardson in his statement before the Senate Commerce Committee mentioned that CDC was an important resource upon which the Food and Drug Administration drew. By having CDC and FDA under one roof, their exchange of resources should be significantly facilitated.

Mr. MOSS. Mr. President, I call up my amendment No. 1258.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk proceeded to read the amendment.

Mr. MOSS. Mr. President, I send to the desk a modification of that amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the modification.

Mr. MOSS. Mr. President, I ask unanimous consent that I may explain it, without its being read. It is a technical matter, and I think it can be better done that way.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 35 beginning with line 3, delete all through line 14, and renumber accordingly by changing "(d)" on page 35, line 15 to "(c)", by changing (e)" on page 35, line 20 to "(d)", and by changing "(f)" on page 36, line 8 to "(e)".

Beginning on page 37, line 21, with the word "the" strike out all through "(h)", in line 2 on page 38.

On page 38, beginning in line 15 with ", and

the", strike out all down to but not including the semi-colon in line 18.

Mr. MOSS. Mr. President, this amendment has to do with the transfer of functions from the Department of Agriculture to the Food, Drug, and Consumer Product Agency as presently in the bill.

It is with no great joy that I offer this amendment, because I fully support the action of the Committee on Labor and Public Welfare and the Committee on Government Operations in placing the authority of the Agriculture Department over food inspection in the Food, Drug, and Consumer Product Safety Agency. But to do so would involve the jurisdiction of another committee of this body and would involve recalling from the Department of Agriculture some of its jurisdiction. To do this, of course, would greatly delay the bill before us, while we discussed the matter in committee and held hearings and later had to come to the floor.

So, in the interest of passing meaningful product safety legislation in this Congress, I think it is advisable to delete from the bill the section transferring the agricultural functions.

If we were to accept the amendment, procedural difficulties would ensue both in the Senate and in the House of Representatives concerning the appropriate jurisdiction of the bill. It has already been through three committees, and to pass jurisdiction on to additional committees would certainly jeopardize our chances of creating this important agency this year.

I feel, therefore, that it is of greater importance that we create the agency and pass the bill, leaving the agricultural functions out at this time, and then at a later time this body and the House of Representatives may determine whether or not they wish to bring within the new agency the functions of agriculture such as inspection of meat and poultry.

So my amendment, Mr. President, simply deletes those sections of the bill which transfer agricultural functions to the new agency that would be created by the bill.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. MOSS. I am glad to yield to the Senator from Kansas.

Mr. PEARSON. Mr. President, I intend to support the amendment of the Senator from Utah. This was not in the original bill as reported out by the Committee on Commerce, and although it does run contrary to one of the main purposes of the legislation, which is to consolidate the various consumer protection and safety agencies and activities, I think another reason why we might delay the consideration of consolidating these agricultural agencies and the consumer protection activities at this time is that the new agency itself is really taking a very big bite at this time, with the consolidation of the various protective agencies coming in, the promulgation of rules, and the enforcement of the same. I think the commission report indicated that there was going to be an enormous amount of activity for the first year or two.

In dealing with the independent agency question, I think the chairman indicated that after 2 or 3 years we might consider putting it back into HEW, for instance; but I think that perhaps one important reason why we ought to leave it out at this time is the enormous amount of work, with the promulgation of rules and enforcement, that will be incumbent upon the new agency at this time.

The PRESIDING OFFICER. Who yields time?

Mr. COTTON. Mr. President, I call up my amendment——

The PRESIDING OFFICER. The Chair reminds the Senator there is an amendment pending.

Mr. COTTON. Oh, I beg the Senator's pardon.

The PRESIDING OFFICER. Who yields time on the pending amendment?

Mr. MOSS. Mr. President, does the Senator from North Dakota seek time on my amcndment?

Mr. YOUNG. Yes, I do.

Mr. MOSS. I yield to the Senator from North Dakota.

Mr. YOUNG. Mr. President, I think it would be a serious mistake to take the meat inspection, and not only the inspection of meats, but that of other food commodities as well, out of the Department of Agriculture. They have done a superb job over the years, and have a great number of highly trained, qualified people in that field. Not only clean and wholesome meat and food products such as that are involved, but better quality food products of all kinds.

Moreover, in the Department of Agriculture we have research people who have done a marvelous job in breeding better cattle, hogs, and poultry, so as to provide better food products for the consumer. This and other important programs are closely related to meat inspection in the Department of Agriculture.

With respect to grades, we get into a terribly involved problem. In wheat alone, for example, there are many different grades. We have the problem of providing the necessary amount of protein and the necessary amount of gluten in wheat to produce a good bread.

There is no other department of Government as qualified in this area as the Department of Agriculture. We have this same problem of grades involved with all farm commodities. As I understand this provision, it would take all of these functions out of Agriculture, where I believe they are best able to handle them.

Mr. RIBICOFF. Mr. President, will the Senator yield?

Mr. MOSS. I am happy to yield to the Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I agree to this amendment with great reluctance. The Department of Agriculture has so poorly performed its duties in connection with meat, and poultry inspection that the situation has become a national disgrace. If there is one agency in our Government that needs a thorough shaking up, it is the food inspection divisions of the Department of Agriculture. For the past 3 years the General Accounting Office has pointed out its negligence. It has failed year after year, through one administration after another, to clean house.

I understand the problem with which the chairman is faced. This bill has gone through three committees. Legitimately, the Committee on Agriculture and Forestry, under the distinguished leadership of the Senator from Georgia (Mr. TALMADGE), does have a right again, if it so demands, to have this bill referred to it.

If that were done, there is no question in my mind that we would not be able to have this independent agency come into being during this session of Congress. Three committees, and especially the distinguished Senator from Washington, have done yeoman work to bring the bill to this point. It would be a shame to refer this bill to another committee at this time because that would mean we would not have any bill to present to the American people this year. Therefore I agree to this amendment, as I say, with great reluctance.

But I do hope that this will act as a warning to the responsible officials in the Department of Agriculture to clean up their own house and truly fulfill their mandate to provide the American housewife clean and wholesome meat and poultry.

Mr. MAGNUSON. Mr. President, I was about to make somewhat the same remarks that the Senator from Connecticut has made. We have been on this bill for a long time. We started out originally talking about hazardous substances and things that caused injury. Then it branched out, and we had the long Product Safety Commission report, but we did not include the Agriculture inspection functions in the Commerce bill originally.

I thoroughly agree with the Senator from Connecticut and the Senator from Utah, and I also reluctantly, for the purpose of getting this bill passed and getting the agency established, am going to suggest that we accept the amendment.

I know how the Senator from Utah feels about it. I just had a conversation with the Senator from Georgia at the beginning of the debate on this bill, and I suggested to him, as the Senator from Connecticut has, and I am sure he agrees, "Let us go ahead with this bill."

We do have this problem down at Agriculture. In some places they may have done a good job; other places it is terrible. If they do not shape up sooner or later and do the kind of job we want, then I shall be the first to join with the Senator from Connecticut, the Senator from Utah, and the rest to put them under an independent agency.

I think this is the better part of discretion. After all, legislation is a matter of getting things done. Maybe we do not get the whole loaf at once, but we can get this moving and get this commission established.

I know some of the Senators feel deeply about this matter. There are a great number of people working down at the Department of Agriculture; I do not know how many hundreds are involved in this inspection process, but there are a great number, and some of them are good. But I just want to say, if they

do not shape up, I am going to be the first to join with the Senator from Connecticut and the Senator from Utah. I am sure the Committee on Commerce will back me up, and I am sure the Senator from Georgia will join in making every effort to see that they shape up.

Mr. YOUNG. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. YOUNG. I cannot understand what bad record the Senator has been talking about. There is nowhere in the world where consumers are getting purer food than in the United States, or where food products are subject to more severe inspections than in the United States. Where is the Senator buying rotten eggs?

Mr. MAGNUSON. Oh, I have bought several.

Mr. YOUNG. Not in recent years. Years ago.

Mr. MAGNUSON. I have bought several.

Anyway, I can give the Senator from North Dakota many cases, chapter and verse, on some of these things. I did say that some of them do a good job. I have been in two or three packinghouses in my time in which the inspector let them get away with everything, and finally they were caught. In the meantime, it all went to the market.

Mr. YOUNG. We passed a bill a couple of years ago that required all the States to live up to certain new standards of meat inspection or the Federal Government would take over. Our State let the Federal Government take over. The restrictions were so stringent and the cost so high that they said, "Let the Federal Government inspect." The restrictions could not be tougher. It would be a terrible mistake to take meat and other food inspection out of USDA.

Mr. MAGNUSON. I hope they continue to be tough, because they should be. I agree that some of them are all right.

Mr. RIBICOFF. Mr. President, there is no man for whom I have higher respect than the distinguished senior Senator from North Dakota. But we have had report after report from GAO on the poor performance of the food inspection programs of the Department of Agriculture. Since he raises the point, I ask unanimous consent to have printed at this point in the RECORD summaries of four reports on the food inspection programs of the Department of Agriculture.

There being no objection, the reports were ordered to be printed in the RECORD, as follows:

[Comptroller General's Report to the Congress, Sept. 10, 1969]

ENFORCEMENT OF SANITARY, FACILITY, AND MOISTURE REQUIREMENTS AT FEDERALLY INSPECTED POULTRY PLANTS

WHY THE REVIEW WAS MADE

The Poultry Products Inspection Act of 1957, as amended, provides for the inspection of poultry and poultry products which are processed in plants engaged in interstate or foreign commerce to ensure that the poultry products are wholesome, free from adulteration, and processed under sanitary conditions.

Because of the widespread production and consumption of poultry and poultry products and the fact that about 86 percent of all poultry is processed in about 900 plants under Federal inspection, the General Accounting Office (GAO) has examined into the Federal inspection program to ascertain whether the Department of Agriculture's Consumer and Marketing Service (C&MS) was adequately enforcing the minimum standards established in accordance with requirements of the Poultry Products Inspection Act. GAO's review was directed primarily to the adequacy of actions taken by C&MS at those federally inspected plants which had been reported for repeated violations of minimum standards for sanitation, facilities, and moisture absorption.

FINDINGS AND CONCLUSIONS

GAO found that there was a need for C&MS to strengthen its enforcement procedures to ensure that minimum standards for sanitation, facilities, and moisture absorption were met by federally inspected poultry plants.

GAO identified 40 plants that were reported by C&MS supervisory personnel for repeated violations of minimum standards over periods ranging from 6 months to over 5 years. Most of the violations involved sanitation requirements which were intended to ensure the wholesomeness of the product. The 40 plants accounted for about 6 percent of the 11.2 billion pounds of poultry slaughtered under Federal inspection during calendar year 1967.

GAO believes that the lack of timely action by C&MS to suspend or terminate inspection services at plants which were in repeated violation of minimum standards did not adequately protect the consuming public from poultry or poultry products that could have become adulterated or otherwise unfit for human consumption. During a period of suspension, plants cannot process poultry or poultry products for sale in interstate or foreign commerce.

GAO believes also that the failure of C&MS to suspend or terminate inspection services at such plants could imply to the management of other federally inspected plants that violations would be treated with minimum consequence.

GAO identified also 44 federally inspected plants which were permitted to ship poultry in interstate commerce for sale to the consuming public that, on the basis of daily tests, contained water in excess of that permitted by regulations. These plants exceeded moisture requirements at least 20 percent of the time during 4 to 11 months of calendar year 1967. The 44 plants accounted for over 13 percent of the poultry slaughtered under Federal inspection during calendar year 1967.

GAO believes that the consuming public was not adequately protected against increased costs resulting from excessive water in poultry because C&MS inspection personnel were not authorized to retain poultry containing water found to be excessive on the basis of the results of daily moisture absorption tests.

RECOMMENDATIONS OR SUGGESTIONS

The Administrator of C&MS should:

Strengthen enforcement procedures by establishing effective criteria for the suspension and termination of inspection services at those plants in violation of minimum standards.

Determine whether the poultry plants identified during GAO's review as having operated in violation of minimum standards over extended periods of time are currently operating in compliance with minimum standards.

Establish a daily-testing procedure that can be used as a basis for retaining for additional processing any product that is in excess of moisture absorption tolerances.

Authorize the C&MS inspector in charge at the plant to retain poultry for additional processing on the basis of daily tests.

AGENCY ACTIONS AND UNRESOLVED ISSUES

C&MS informed GAO that a rigorous national effort had recently been activated to ensure adequate sanitation in inspected plants. C&MS stated that inspection had been suspended at several plants, that numerous plants had been required to make immediate improvements, and that major long-term improvements were being called for and rigid deadlines established therefor.

C&MS stated also that suspension action was being and would be taken on plants unwilling to provide acceptable sanitary conditions and that instructions to field personnel were being amended to ensure proper understanding of their authority to take action to ensure proper plant sanitation. GAO agrees with the actions taken by C&MS and believes that the intensified C&MS efforts to ensure adequate sanitation in federally inspected plants should be continued as a permanent part of the enforcement program.

C&MS advised GAO that the regional directors having responsibility for the plants identified in GAO's review had been advised of the need for immediate in-depth reviews of such plants and for taking appropriate action, including suspension of inspection, should the nature of current findings warrant such action.

With respect to moisture control, C&MS informed GAO that there was in the final stages of design a statistical control system of daily tests to be performed by C&MS inspectors assigned to the plants. C&MS stated that full authority for retaining birds out of compliance on the basis of the results of daily tests would be placed in the hands of the plant inspector in charge and the retained birds would not be distributed to consumers until excessive moisture had been removed. C&MS stated also that it planned to put this system into use, nationally, in the near future.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Because poultry products are an important source of the Nation's supply of food and are consumed throughout the Nation, the Congress may wish to consider the matters discussed in this report in its continuing evaluation of consumer protection programs.

[Comptroller General's Report to the Congress, June 24, 1970]

WEAK ENFORCEMENT OF FEDERAL SANITATION STANDARDS AT MEAT PLANTS BY THE CONSUMER AND MARKETING SERVICE

WHY THE REVIEW WAS MADE

The Congress has determined that it is essential for the health and welfare of consumers to be protected by ensuring that meat and meat food products distributed to them are wholesome and processed under sanitary conditions.

Under the Federal Meat Inspection Act, the Consumer and Marketing Service, Department of Agriculture, has the responsibility for establishing and enforcing sanitation standards in federally inspected meat plants. Inspectors assigned to the plants are responsible for enforcing the sanitation standards.

The Consumer and Marketing Service also is responsible for ensuring that sanitation standards are maintained by nonfederally inspected plants that receive Federal grading service—a marketing service provided to meat plants upon request.

As of December 31, 1969, there were about 3,200 federally inspected plants and about 140 nonfederally inspected plants which had been approved by the Consumer and Marketing Service as eligible to receive Federal grading service.

The General Accounting Office (GAO) in a report to the Congress (B–163450, September 10, 1969) pointed out the need for the Consumer and Marketing Service to strengthen its enforcement procedures to ensure that standards for sanitation, facilities, and equipment were met by federally inspected poultry plants. Also, the Office of the Inspector General, Department of Agriculture, in 1965 and 1969 pointed out weak-

nesses in the enforcement of sanitation standards at federally inspected meat plants.

In view of previously indicated weaknesses in the enforcement of sanitation standards, GAO wanted to ascertain the adequacy of the Consumer and Marketing Service's enforcement of sanitation standards at meat plants provided Federal inspection or grading service.

GAO's review was directed primarily to certain of the plants which Consumer and Marketing Service records indicated had sanitation problems.

Conditions found in the plants and reported in this review therefore may not be typical of conditions in all plants receiving Federal inspection or grading service.

FINDINGS AND CONCLUSIONS

The Consumer and Marketing Service needs to strengthen its enforcement procedures to ensure that standards for sanitation are met by plants receiving Federal inspection or grading service.

Accompanied by Consumer and Marketing Service supervisory personnel, GAO visited 40 federally inspected plants and eight nonfederally inspected plants receiving Federal grading service. Evaluations of the plants were made in accordance with Consumer and Marketing Service sanitation standards.

In calendar year 1969, the 40 federally inspected plants accounted for about 7.7 percent of the cattle and swine slaughtered and about 4.9 percent of meat products processed in all federally inspected plants.

Consumer and Marketing Service inspection personnel were not uniform in their enforcement of sanitation standards and generally were lenient with respect to many unsanitary conditions unless product contamination was obvious.

At 36 of the 40 federally inspected plants and at the eight nonfederally inspected plants, animals were being slaughtered or meat food products were being processed for sale to the consuming public under unsanitary conditions. GAO observed instances of product contamination at 30 of the federally inspected plants and at five of the nonfederally inspected plants. Some of the major unsanitary conditions observed during GAO's plant visits included:

Lack of adequate pest control as evidenced by flies, cockroaches, and rodents.

Improper slaughter operations resulting in contamination of carcasses with fecal material and hair.

Use of dirty equipment and processing of product in unsanitary areas.

Contamination of product by rust, condensation, and other foreign material from deteriorated or poorly maintained overhead structures.

At the plants visited, Consumer and Marketing Service inspection personnel had not consistently:

Rejected for use equipment and plant areas or suspended inspection in federally inspected plants when unsanitary conditions were found and

Recommended the withdrawal of Federal grading services at nonfederally inspected plants that were found operating under unsanitary conditions.

If Federal inspection service is suspended, a plant cannot slaughter animals or process meat for movement in interstate commerce. The withdrawal of grading service from a nonfederally inspected plant precludes the plant's using any official mark or other identification of the Federal grading service.

GAO was unable to ascribe to any one cause the failure of inspection personnel to require plant managements to promptly and effectively correct unsanitary conditions. GAO believes, however, that a primary cause of the lack of uniformity and leniency in enforcement of sanitation standards was a lack of clear and firm criteria setting forth the actions to be taken when unsanitary conditions were found.

GAO believes that weaknesses in the Consumer and Marketing Service's system for reporting on plant reviews also contributed to the inadequate enforcement of sanitation standards at federally inspected plants. Because reports generally did not show what action, if any, was taken to correct reported unsanitary conditions, information was not readily available to Consumer and Marketing Service management as to whether appropriate and timely corrective actions were required by inspection personnel.

Clear and firm criteria—setting forth the actions to be taken when unsanitary conditions are found—and improved reporting policies can provide a basis for improving the enforcement of sanitation standards at meat plants. In the final analysis, GAO believes that the effectiveness with which such standards are enforced will be dependent on the resolve of Consumer and Marketing Service personnel at each and every level—from the plant inspectors to the Washington officials.

RECOMMENDATIONS OR SUGGESTIONS

The Administrator of the Consumer and Marketing Service should reemphasize to individual employees at all levels their responsibilities for the enforcement of regulations to ensure that meat and meat food products are wholesome and unadulterated.

To assist employees at all levels in carrying out their responsibilites the Administrator should establish:

Criteria setting forth specific conditions under which inspection and grading services should be suspended at plants in violation of sanitation standards and under which equipment and specific plant areas in federally inspected plants should be rejected for use until made acceptable, and

A uniform reporting policy whereby action taken and to be taken will be a required part of all reports pertaining to observed sanitation deficiencies.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Administrator of the Consumer and Marketing Service (see app. I) stated that:

The conditions described in GAO's report are of deep concern to the Department of Agriculture, and the Department is and has been determined to eliminate such threats to the wholesomeness of the Nation's meat and poultry products.

The emphasis and objectives of the major inspection improvement program already under way and now being intensified in the Consumer and Marketing Service are completely in line with and responsive to GAO's recommendations.

Much has been accomplished but much remains to be done.

With respect to specific actions taken and planned, the Administrator stated that:

A letter had been directed to all Consumer Protection Program personnel clearly outlining inspection objectives and procedures regarding sanitation and assuring each employee of full support for his efforts in enforcing sanitation standards.

Meetings would be held with committees from major meat packer organizations for the purpose of reemphasizing meat inspection objectives and developing an educational program for their membership on the whole spectrum of meat inspection, particularly sanitation.

Revised procedures, forms, and instructions had been issued to assist inspectors in carrying out the Consumer and Marketing Service's policy at plants where unsanitary conditions are found, including criteria for withholding or suspending inspection for cause.

The Administrator also provided detailed information on enforcement actions taken as a result of the inspection improvement program. He stated that, although the record demonstrates progress during the past year, the need for still further action is acknowledged.

The action needed will be determined by a management study now under way to determine improvements needed in administration. This study is expected to have strong impact on carrying out GAO's recommendation relating to improved reporting systems to demonstrate actions taken.

The Administrator provided the following report on the status of the 48 plants visited by GAO as determined by recent Consumer and Marketing Service plant visits.

Federal inspection has been discontinued at five of the 40 federally inspected plants.

Conditions of sanitation in 27 of the federally inspected plants have been so improved as to meet Consumer and Marketing Service sanitary requirements.

Two of the eight nonfederally inspected plants ceased operations following withdrawal of recognition for Federal grading service.

Four nonfederally inspected plants' operating conditions are now acceptable.

In the remaining eight federally inspected plants and the two nonfederally inspected plants, action has been taken to protect the product while the remaining needed plant improvements are being completed.

GAO believes that the actions already taken and the further actions outlined by the Administrator, if fully implemented, substantially comply with its recommendations and will provide greater assurance to the consuming public that meat products are processed under sanitary conditions. GAO believes, however, that, even with the intensified enforcement actions planned by the Consumer and Marketing Service, continuing efforts of all inspection personnel to require compliance with sanitation standards are vital to mainaining the integrity of the inspection program and ensuring the consuming public of a wholesome product.

MATTERS FOR CONSIDERATION BY THE CONGRESS

This report discusses matters of such importance to the consuming public that the Congress may wish to consider the facts revealed and the steps being taken to correct the situation.

[Comptroller General's Report to the Congress, Nov. 16, 1971]

CONSUMER AND MARKETING SERVICE'S ENFORCEMENT OF FEDERAL SANITATION STANDARDS AT POULTRY PLANTS CONTINUES TO BE WEAK

WHY THE REVIEW WAS MADE

The General Accounting Office (GAO) made this follow-up review at poultry plants to determine whether the Consumer and Marketing Service had improved the enforcement of sanitation standards after GAO's earlier reviews. This review covered 68 federally inspected plants, including 17 of the 40 plants GAO covered in its prior review and 51 plants selected at random from five of the leading poultry slaughtering and processing States. The 68 plants accounted for about 19 percent of the 13 billion pounds of poultry slaughtered in the United States in calendar year 1970.

FINDINGS AND CONCLUSIONS

Enforcement of sanitation standards still weak

Following GAO's earlier reviews, the agency took some actions to improve the enforcement of sanitation standards, including:

Sending letters to its inspection program employees, including plant and supervisory inspectors, clearly outlining inspection objectives and sanitation procedures and assuring each employee full support for his efforts in enforcing sanitation standards.

Issuing revised procedures, forms, and instructions, including criteria for withholding or suspending inspection, to assist inspectors in carrying out the agency's policies.

The actions taken by the agency have not been successful in achieving adequate enforcement at the plants GAO visited. For

each of the 68 plants, supervisory inspectors, who accompanied GAO and evaluated each plant for compliance with the agency's standards, reported some deficiencies. The types and extent of the deficiencies, classified as either minor variations or unacceptable conditions, varied from plant to plant.

The evaluations showed that unacceptable conditions:

Continued to exist at most of the 17 plants covered in GAO's prior review. In many cases the conditions were similar to those previously noted.

Existed at most of the 51 randomly selected plants. At many of these plants, the conditions appeared to be of a long-standing nature and were similar to conditions noted at most of the 17 plants.

After most of GAO's fieldwork had been completed, the agency implemented a revised regulation providing criteria on the amount of moisture which may be absorbed and retained in poultry during processing. When the amount of moisture absorbed is determined to be above the specified limits, the inspector is to require that all poultry processed be held and drained to acceptable levels. Because of the timing of the regulation's implementation, GAO did not determine how well it was being implemented.

Conclusions

Many of the sanitation deficiencies appeared to have existed over a long period. In GAO's opinion, this situation is indicative of a lack of strong, day-to-day enforcement by the agency's plant inspectors and of a lack of effective supervisory review. Weaknesses in the agency's enforcement of sanitation standards may be widespread.

Adequate criteria and policies now exist for enforcing sanitation standards. Such criteria and policies, however, provide only a basis for improving enforcement. In the final analysis the effectiveness with which sanitation standards are enforced depends on the resolve of the agency's employees at every level—from plant inspectors to Washington officials.

Ways must be found to demonstrate convincingly to the agency's inspection employees that consumer protection is the main objective of enforcing sanitation standards and that strict enforcement of such standards is essential.

RECOMMENDATIONS OF SUGGESTIONS

In August 1970 two consultants hired by the Department of Agriculture completed a study of the agency's consumer protection programs. The consultants recommended a number of changes for reorganizing the programs. Most of the recommendations were adopted; however, one recommendation—that a separate agency be established within the Department for consumer protection programs—was not. The consultants stated that the recommendtion was predicated on their belief that:

There is an inherent difference between the nature of the agency's marketing activities and that of its consumer protection activities which creates an internal conflict.

Consumer protection is so large an area and has such complex problems that it needs a full-time administrator.

GAO recommends that the Secretary of Agriculture reevaluate the consultants' recommendation because GAO believes that implementation of the recommendation would demonstrate convincingly that the Department was placing emphasis on consumer protection.

GAO recognizes that, should the Department adopt the consultants' recommendation, its full implementation would take some time. Also, if a separate agency were established within the Department, many of the employees now responsible for enforcing sanitation standards would continue to be responsible.

For these reasons GAO recommends also that the Secretary explore other and more immediate avenues to improve and emphasize the enforcement of sanitation standards. Such avenues might include an intensification of efforts already under way to strenghten supervision and to improve the training of inspection employees as well as increased use of disciplinary action when inspection employees do not meet their responsibilities.

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department said:

That it initially decided not to adopt the consultants' recommendation to establish a separate agency because the consultants had stated that the meat and poultry inspection program also could function within the existing agency and because one advantage of keeping it there would be that separate administrative support functions would not have to be developed.

That the agency was attempting to respond in specific ways to deficiencies in its supervisory structure which had been totally inadequate and was taking or planning other actions to improve the enforcement of sanitation standards.

That the merits of establishing a separate agency should be considered but that, in its judgment, it would be a grave error to consider the creation of a new agency until the actions already under way and others being planned had been given a reasonable time test.

MATTERS FOR CONSIDERATION BY THE CONGRESS

The Congress may wish to consider the matters discussed in this and earlier reports in connection with a number of measures now before the Congress. These measures include bills to establish a separate Department of Consumer Affairs and the President's Reorganization Plan which would transfer the agency's poultry and meat inspection activities to a proposed Department of Human Resources.

[Comptroller General's Reports to the Congress, June 30, 1970]

NEED TO REASSESS FOOD INSPECTION ROLES OF FEDERAL ORGANIZATIONS

WHY THE REVIEW WAS MADE

Before acceptance by the Government or distribution to the public, food is generally subject to inspection by two or more organizations. Because of apparent overlapping of Federal food inspection activities, the General Accounting Office (GAO) made a Government-wide review.

FINDINGS AND CONCLUSIONS

Federal food inspection started in 1891. The function evolved from piecemeal legislation and regulations designed to solve specific problems as they arose.

Because of their relatively limited scope, the laws and related regulations do not provide a clear expression of overall Federal policy for food inspection. As a result, parts of the food inspection function are performed by many Federal, State, and local organizations. This has led to some inspection overlap and to problems in making inspections and has caused dissatisfaction in the food industry.

GAO conservatively estimated that over 14,500 people were involved in Federal food inspection activities which were costing over $185 million annually. About $48 million of this amount was reimbursed by the users of certain inspection services.

Similar inspection activities are frequently performed by more than one organization at the same commercial establishment and often on the same food product. At a dairy products company visited by GAO:

Military veterinarians made monthly sanitary inspections and obtained bimonthly milk samples which were analyzed for bacteria and butterfat,

One group from the Department of Agriculture checked plant sanitation quarterly to qualify the plant for grading services, while another group obtained butter and cheese samples eight times a month,

Food and Drug Administration personnel inspected periodically for potential health hazards, and

The State health department inspected for sanitation and analyzed fluid milk for bacteria, at least quarterly, to qualify the plant for the approved listing of the U.S. Public Health Service.

Many of the inspections are made for different purposes and vary in degree. However, GAO believes that a more effective and economical method of discharging the Federal food inspection function could be devised.

Several Federal organizations have established food standards, some for the same item. This creates a need for close coordination which in practice appears to be a lengthy process. Although more than one standard for the same food item may not be improper in itself, it has caused dissatisfaction among food suppliers.

For example, the Departments of Agriculture and Defense tested the same lot of smoked hams. Because of the use of different product standards and testing methods, these hams met Defense requirements but did not meet Agriculture standards for moisture content.

Agreements have been made between organizations to establish clearer lines of responsibility, make more effective use of the skills and experience of each, and reduce overlap. To reach agreements has been time consuming. Moreover, the agreements sometimes have been difficult to administer and, in some cases, have led to further difficulties. Accordingly, GAO believes that a more effective system for discharging food inspection responsibilities—involving changes in existing legislation where necessary—would reduce, or eliminate, the need for such agreements.

There are basic differences in the concepts and practices of the inspecting organizations. Some of the differences involve

The extent of reliance placed on food vendors for product quality,

The desirability and extent of the use of statistical sampling techniques for product inspection, and

Federal surveillance of State and/or local inspections in lieu of direct Federal inspection.

GAO believes that maximum standardization in requirements, procedures, and concepts is desirable and would enable inspections to be made more effectively and economically.

GAO believes that there is a need to reassess the Federal role in food inspection and the participation of the various organizations that currently perform parts of the function so as to arrive at sound recommendations for improvement. This reassessment—involving as it does sensitive relationships between the numerous Federal, State and local governmental agencies and the food industry—should be conducted under the leadership of the Bureau of the Budget.

RECOMMENDATIONS OR SUGGESTIONS

The Director, Bureau of the Budget, should make a detailed evaluation of the food inspection function to determine the most effective method of improving the administration of this function. The study should determine the feasibility of consolidating at least some of the inspections, and it could draw upon the skill and experience of the agencies performing inspections.

The findings and recommendations of this evaluation should be reported to the Congress as soon as possible since reconsideration of existing legislation may be involved.

AGENCY ACTIONS AND UNRESOLVED ISSUES

Federal agencies that make food inspections agreed that there is a need for reassessing the food inspection function. The Bureau of the Budget agreed to make the evaluation when sufficient resources are available.

MATTERS FOR CONSIDERATION BY THE CONGRESS

Significant legislation affecting food inspection has been passed in recent years and several bills are pending. This report is being furnished to the Congress to provide a basis for considering actions taken or proposed by the executive branch and for such other action as the Congress sees fit.

Mr. TALMADGE. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. TALMADGE. Mr. President, I thank the distinguished chairman of the Committee on Commerce and the distinguished Senator from Utah for offering this amendment and agreeing to it on the Senate floor.

The distinguished chairman of the committee will recall that months ago, when this matter was floating around in the various committees, I pointed out to him that the Committee on Agriculture and Forestry had jurisdiction of the subject matter which was intended to be included in the new consumer agency by various committees.

The jurisdiction of the Senate Committee on Agriculture and Forestry is extremely clear. It is set out in rule XXV of the Standing Rules of the Senate, as follows:

RULE XXV, STANDING RULES OF THE SENATE

1. * * *

(b) Committee on Agriculture and Forestry, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

1. Agriculture generally.
2. Inspection of livestock and meat products.
3. Animal industry and diseases of animals.
4. Adulteration of seeds, insect pests, and protection of birds and animals in forest reserves.
5. Agricultural colleges and experiment stations.
6. Forestry in general, and forest reserves other than those created from the public domain.
7. Agricultural economics and research.
8. Agricultural and industrial chemistry.
9. Dairy industry.
10. Entomology and plant quarantine.
11. Human nutrition and home economics.
12. Plant industry, soils, and agricultural engineering.
13. Agricultural educational extension services.
14. Extension of farm credit and farm security.
15. Rural electrification.
16. Agricultural production and marketing and stabilization of prices of agricultural products.
17. Crop insurance and soil conservation.

The Poultry Products Inspection Act and the Federal Meat Inspection Act which would be transferred by the amendments of the Committee on Labor and Public Welfare clearly fall within item 2 of rule XXV, "inspection of livestock and meat products." The Egg Products Inspection Act, the Agricultural Marketing Act of 1946, and the act of March 4, 1913, all fall within item 16, "agricultural production and marketing and stabilization of prices of agricultural products." The act of March 4, 1913, also falls more specifically within item 3, "animal industry and diseases of animals." The food inspection bills also fall within item 11, "human nutrition and home economics" and all of these measures, of course, fall within item 1, "agriculture generally."

Once again the Department of Agriculture is faced with an effort to undermine, or perhaps even destroy, the achievements of over 100 years of dedication in the pursuit of a policy of abundance for mankind. For over 100 years the Department of Agriculture has been involved in the technical progress in agriculture in this country. For over 100 years the Department of Agriculture, with the support of the farming community, has been engaged in a never ending struggle to provide consumers of this land with a variety and an abundance of wholesome food at fair and reasonable prices.

In just the past 20 years total farm output has increased by 44 percent. The production of beef has increased 2½ times; the production of broilers by over 5 billion pounds. This abundance was achieved despite the fact that about 50 million acres were retired from production of corps through various programs.

Farmers and the food industry have combined to make it possible for consumers to enjoy the widest variety and the most wholesome and healthful food in the world. More than 200 million persons in this country and many more millions throughout the world now depend upon our farms for most of their food and fiber. When we go to market we can choose from over 6,000 different food items including fresh, frozen, canned, concentrated, dehydrated, ready mixed, ready to serve, or in heat and serve form. Today farmers feed over 50 million more persons in this country than they did just 20 years ago. Despite this consumers are now required to devote less of their income for a wider variety and higher quality of food than ever before. In 1972 only 15.8 percent of disposable income was spent on food as compared to about 23 percent 20 years ago. Compare this with up to 30 percent in Europe, 50 percent in the Soviet Union, and as high as 90 percent in many other countries. This tremendous productivity did not just happen. It is a result of combined efforts of millions of dedicated farmers on the one hand and the application of technology developed by the thousands of the dedicated technicians in the Department of Agriculture and in our land grant colleges.

Food is basic to life but the bounty that has been forthcoming from the farms of America is little appreciated. There is no praise, rather there is constant criticism and continued efforts to belittle the achievements of our farm community. But I say that the miracle of agriculture in this country is a never ending story and it has many facets. The farmers of this land have long been involved in the preservation of our environment and in the conservation of our resources. The farmers of this Nation through their own Department of Agriculture have long been involved in efforts to provide for and protect all of the people of this Nation long before the present general interest in the preservation of our environment, the conservation of our resources and the protection of consumers.

In 1957, my first year in the Senate, the Senate Committee on Agriculture and Forestry approved the continuous Federal inspection of poultry and poultry products in interstate commerce. This mandatory inspection law succeeded a voluntary program that had been put in operation by the Department of Agriculture some 28 years before.

But that was not the first law administered by the Department of Agriculture designed to protect the consumers of this Nation. In 1946 the Congress approved the Agricultural Marketing Act which directed the Secretary of Agriculture among other things to inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce to the end that consumers may be able to obtain the quality product which they desire. He was directed to conduct and cooperate in consumer education.

But even before this, in 1906, Congress directed the Secretary of Agriculture to provide for a mandatory continuous inspection service for meat moving in interstate commerce in order to protect consumers.

Federal meat inspection laws were updated in 1967 to provide additionally that all meat and meat products moving in intrastate commerce must be federally inspected or inspected by States to standards at least equal to the Federal.

And as late as 1970 the Department of Agriculture was entrusted with the Egg Products Inspection Act signed into law on December 29 of that year.

The 1946 Marketing Act, among other things, provided for national uniform standards of quality for agricultural products to be applied to specific lots of products to promote confidence, reduce hazards in marketing, encourage better preparation for uniform quality products for market, and furnish consumers with more definite information on the quality of products they buy. These standards are applied by or under the supervision of Federal employees at the request of any interested party and generally for a fee.

Last year almost 20 billion pounds of beef and veal were produced under Federal inspection standards, plus about 14 billion pounds of pork and over 13 billion pounds of liveweight poultry. In addition, USDA inspection and grading covered about 55 billion pounds of fresh fruits and vegetables; about 14 billion pounds of processed fruits and vegetables; over 3 billion pounds of dairy products; and over 3 billion pounds of eggs.

For more than half a century the Department of Agriculture has been intimately involved in protecting consumers. They have done a magnificent job under very adverse conditions with little support outside the farming community until recent years.

In the committee report on S. 3419 by the Committee on Labor and Public Welfare the statement is made "the consum-

er benefits that can result in the form of more balanced and effective inspections throughout the country and greater efficiency through the elimination of duplicative efforts are too important to ignore." But there is nothing in that report that guarantees that there will be more effective inspections throughout the country or even that duplicative efforts will be eliminated. To make a statement is not to guarantee that it will come to be.

The report further states that "the food regulatory functions of the Department of Agriculture which cover just a portion of the Nation's food supply involve resources, funds, manpower, organization and scientific capability which are greater than those available to the Food and Drug Administration for regulation of all other food, drugs, and consumer products." But the report does not say in respect to meat and poultry that there is continuous inspection rather than spot inspection, such as the Food and Drug Administration usually provides.

Earlier I spoke of the billions of pounds of food inspected by Agriculture. This has been going on for years. The transfer of the continuous inspection of meat and poultry programs and other inspection programs from the Department of Agriculture will not improve one iota the inspection of other food establishments by the Food and Drug Administration. The only way to accomplish this is to increase the budget of the Food and Drug Administration. The fact of the matter is, that today under the present organization, the people in this country, the consumers of this country, are receiving the most nutritious, the most wholesome, the most healthful food ever provided any people anywhere in the history of this world. And to dismantle this protection will lead only to deterioration and abuse of existing law.

Mr. President, the provision that the Senator from Utah would strike invade at least five different categories of the jurisdiction of the Committee on Agriculture and Forestry. I do not think the people of this country or Members of the Senate want the Committee on Agriculture and Forestry to give up its jurisdiction on legislative matters.

This is a vitally important matter, affecting the lives, the incomes, and the method of livelihood of countless millions of people in this country.

The Department of Agriculture has been engaged in meat inspection for 66 years, since 1906. It has considerable expertise in that field.

I think the housewives of this country, report to the contrary notwithstanding, when they see a stamp on a food item, "USDA inspected and approved," have absolute confidence in its quality and its desirability.

The fact is that the food inspection services of the United States of America are the world's best and the world's greatest, and the food that our housewives purchase is more sanitary and more suitable for human consumption than any other food on the face of the earth.

I do not expect all people to be perfect, and certainly not every inspector of the Department of Agriculture is perfect. Doubtless, from time to time some of them make errors. But they have done an outstanding job. To take away all their functions, with 66 years of experience and expertise, and transfer those functions to a new, unknown, and untried Federal agency is the height of folly.

That is particularly true when the farmers of this country, those who produce the swine, those who produce the poultry, those who produce the livestock, and those who slaughter and process and market them, have not had an opportunity to come to Congress and state their views on an issue of such fundamental importance.

Again, I thank the distinguished Senator from Utah and the distinguished chairman of the Commerce Committee for accepting this amendment, which would delete from this bill subject matter over which the Committee on Agriculture and Forestry has jurisdiction. We had no opportunity to study the proposed legislation until it was reported to the Senate. We have had no opportunity to let the people of this country come before the committee and state their views on a matter of such vital importance. I appreciate the cooperation of the Senators.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. TALMADGE. I yield to the Senator from Nebraska, with the permission of the distinguished floor manager of the bill.

Mr. CURTIS. I thank the distinguished chairman of the Committee on Agriculture and Forestry. I should like to associate myself with his remarks.

I point out that a great deal is involved in food inspection, particularly meat inspection. The meat inspection involves the inspection of live animals before the slaughter as well as the carcasses of the meat products afterward. Is that not true?

Mr. TALMADGE. That is entirely correct. It involves inspection on the farm for tuberculosis and various other matters, in order to protect the consumers of this country. Not only does the Department of Agriculture protect the consumer, but also it has jurisdiction over matters such as tuberculosis and various other diseases, even on the farm.

Mr. CURTIS. It would be totally illogical to attempt to transfer this out of the hands of the agriculturalists and the Agriculture Department.

Mr. TALMADGE. That is correct. They have jurisdiction over livestock, as the Senator knows.

Mr. CURTIS. I will not take any further time, but I do commend those who have offered this amendment and who have agreed to accept it, because I believe that what they are doing is in the very best interests of the consumers of the country as well as the producers.

If this change were made. I am sure that all parties involved would suffer through higher costs in carrying on these operations by putting a new agency in charge, and I am also sure that there would be a loss to the consuming public by the disruption that would occur to our very efficient production facilities and record of agriculture.

Mr. TALMADGE. I thank the distinguished Senator from Nebraska, the distinguished senior Senator from Washington, and the distinguished Senator from Utah.

Mr. ALLEN. Mr. President, I wish to state my strong opposition to the amendment to include among the responsibilities of this proposed Consumer Protection Agency those functions presently performed by the Department of Agriculture relating to the grading of agricultural commodities, the inspection of meat, poultry, and eggs for wholesomeness, and the regulation of animal biologics under the Virus-Serum-Toxin Act.

We in Congress have heard before the complaint that consumer services are badly scattered throughout the Federal Government—at a purportedly high price in wasted tax dollars and inefficient service. I, for one, would not support anything which would tend to increase this inefficiency. However, while those who propose this amendment do so out of a virtuous intent to avoid such waste—from a very practical side—they fail to realize that they would be compounding the very problem they seek to remedy.

Let us look at the matter of grading agricultural commodities, for example. This work has been done as a voluntary service by USDA for over half a century. The cost of the service is paid for by those who want it.

From the very outset, these grading services were meant to facilitate the orderly and efficient marketing of farm commodities—to enable producers, marketeers, and buyers who are widely separated geographically to trade with the assurance that a neutral, independent third party has attested to the quality of the product involved. The bulk of these grades are not carried through to the consumer, for they are not meant to be used in the purchasing of individual packages in small volume.

Further, these grading services are based upon the development of precise standards for the raw commodity. But this standardization work would not be transferred—nor should it be—since it is more closely related to basic agricultural production. The result would be a fragmentation of interrelated activities—to the detriment of all.

There are other USDA services which are closely intertwined with the grading program which would also suffer. This would include the extensive market news network, which provides farmers and others interested in farm marketing with precise data on the supply, demand, price, and movement of various commodities from farm to market. The collection of this data is augmented considerably by the grading service—but this, too, would be lost if they are separated as has been proposed.

Hence, to carve out one part of what is now a closely interrelated network of marketing services would be to fragment a system which has been serving this Nation very effectively for many years. That, it seems to me, is totally illogical.

There is another angle to this fragmentation that cannot be overlooked. Some of us in Congress—and more recently the executive branch—have sought for years to gain recognition for

the advantages of decentralizing Government services at the Federal level. From long experience, we have known that the States are willing and competent to perform such services when they receive proper resources and support. And, oftentimes, they can do a better job, because they are closer to the people they serve.

This proposal to shift the voluntary grading and mandatory inspection services to a consumer protection agency would violate that principle. Worse yet, it would destroy what is now an efficient and effective system of Federal-State cooperation to the benefit of no one.

I suspect that some of my colleagues here are unaware of the fact that many of these grading and inspection programs are conducted in close cooperation with the States under long-standing cooperative agreements. This is authorized by the Agricultural Marketing Act of 1946, under which the grading programs are carried out.

These cooperative agreements offer many advantages—advantages that would disappear if this amendment were passed. For example, the grading of many products is performed by employees of State departments of agriculture who work under the broad supervision of counterparts in USDA. If these grading programs were transferred to a consumer protection agency, and this counterpart relationship severed, the base for such cooperation would no longer exist.

Likewise, these agreements permit the Nation's food marketing system to benefit from the cross-utilization of highly trained commodity specialists. By destroying the relationship between USDA and the State agencies, it is doubtful that such cross-utilization would survive.

The administration of the Egg Products Inspection Act—another part of this proposal—provides a case in point. This act has three basic parts: First, it provides for the continuous inspection in plants which process egg products; second, it regulates the sale and disposition of eggs of less than U.S. grade B quality; and third, it provides for the enforcement of uniform egg standards, grades, and weight classification that are established under the Agricultural Marketing Act of 1946.

Currently, about 150 plants process egg products in the United States. These plants are supervised by a force of about 185 inspectors. Since many of these plants are part of a shell egg grading operation, this allows the USDA to cross-utilize some of these inspectors and use one person where two or more would otherwise be needed.

Also, to insure that only eggs of U.S. grade B or better quality are sold to consumers, USDA will rely upon currently employed egg graders in those shell egg grading plants which presently use the voluntary grading service. About 700 graders are now employed, hence their services can be utilized at no additional cost to anyone. In addition, USDA is assembling a force of about 1,000 more graders to monitor the marketing of shell eggs that are currently handled by plants that do not use the voluntary grading service. Ninety percent of these new graders, as I understand it, will be employed by the States, and will work under cooperative State-Federal agreements.

It is doubtful whether a new Consumer Protection Agency could duplicate this type of cooperative enforcement relationship, therefore necessitating the hiring of a whole new force of Federal inspectors that are not needed under the present arrangement.

Mr. President, I am positive that many other examples can be cited whereby the interrelated network of services now performed by USDA would be severed by passage of this amendment to the detriment of the other programs involved; that is, meat and poultry inspection, and regulation of animal biologics. USDA has long been the nerve center of technical and scientific knowledge on animal production and disease control. I cannot understand the logic that says it is better to split apart these functions which have helped to achieve for this Nation a food production and marketing system that provides the best fed consumers in the world today.

Therefore, Mr. President, I submit to you and our colleagues here today that passage of this amendment would not be in the best interests of this Nation, because it would badly fragment—rather than draw together—important services which should remain closely related for the long-term benefit of all Americans.

Mr. MAGNUSON. That is why we did not have the original bill in the Committee on Commerce.

Mr. TALMADGE. I am aware of that.

Mr. MILLER. Mr. President, I fully support the amendment by the distinguished Senator from Utah (Mr. Moss). Transferring the functions from the Department of Agriculture to the new Consumer Safety Agency—or to the Department of Health, Education, and Welfare would serve no useful public purpose and, indeed, could be very harmful. The Department of Agriculture has performed these functions well, and these functions are closely interrelated to other functions of the Department, which insures the harmony and coordination needed for maximum efficiency.

If it be suggested that all concerned personnel would be transferred from the U.S. Department of Agriculture to the new agency to preserve the expertise needed. I would suggest that there would be large scale resignations and retirements in the face of such an unnecessary and warranted action.

The amendment should be approved.

The PRESIDING OFFICER. Who yields time?

Mr. MOSS. I yield back the remainder of my time.

Mr. MAGNUSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment is yielded back.

The question is on agreeing to the amendment of the Senator from Utah. (Putting the question.)

The amendment was agreed to.

Mr. TALMADGE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOSS. I move to lay that motion on the table.

The motion was agreed to.

AMENDMENT NO. 1263

Mr. COTTON. Mr. President, I call up my amendment No. 1263.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COTTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 2, lines 1 and 2 strike out "FOOD, DRUG, AND CONSUMER PRODUCT AGENCY" and insert in lieu thereof "CONSUMER SAFETY ADMINISTRATION".

On page 2, line 12, strike out "independent agency" and insert in lieu thereof "Administration within the Department of Health, Education, and Welfare".

On page 2, strike out lines 14, 15, and 16 and insert in lieu thereof "cosmetic, medical device, and product safety laws;".

On page 2, strike out lines 21 and 22 and insert in lieu thereof "drug, cosmetic, medical device, and consumer product safety regulation in a new Administration within the Department of Health, Education, and Welfare, new statutory authority is needed".

On page 3, line 23, strike "(17)" and insert in lieu thereof "(13)".

On page 4, strike out line 8 and insert in lieu thereof "food, drugs, cosmetics, or devices, as defined in the Fed-".

On page 6, lines 2 and 16, strike out "Administrator" and "Commissioner", respectively, and insert in lieu thereof "Commissioner of the Product Safety Administration".

On page 7, line 14; page 15, line 8; and page 25, line 18, strike out "AGENCY" and insert in lieu thereof "ADMINISTRATION".

On page 7, lines 15, 16, and 17, strike out "an independent Food, Drug, and Consumer Products Agency (hereinafter referred to as the 'Agency')" and insert in lieu thereof "a Consumer Safety Administration (hereinafter referred to as the 'Administration') within the Department of Health, Education, and Welfare,".

Strike out "Agency" and insert "Administration" in lieu thereof on page 7, line 22; page 9, line 25; page 11, line 3; page 13, line 24; page 14, line 7; page 25, lines 19, 21, and 23; page 26, lines 3, 5, 7, 10, 11, 12, 13, 18 and 25; page 27, lines 1, 6 (two places), 10 (two places), 11, 14, and 18; page 28, lines 7 and 19; page 29, lines 9 and 12; page 32, lines 7, 9, 10, and 13; page 34, line 13; and page 76, line 25.

On page 7, lines 23 and 24, strike out "Commission" (three places) and insert "Office" in lieu thereof.

On page 8, line 1, strike out "Commissioner" and insert "Director" in lieu thereof.

On page 8, line 2, strike out "106" and insert "107" in lieu thereof.

On page 8, strike out lines 3 through 9 and insert in lieu thereof the following:

"ADMINISTRATION FOR HEALTH; COMMISSIONER OF THE CONSUMER SAFETY ADMINISTRATION

"SEC. 104. (a)(1) APPOINTMENT OF ADMINISTRATOR.—There shall be in the Department of Health, Education, and Welfare, in addition to the officers now provided for by law, an Administrator for Health who shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such functions (related to health and science) as the Secretary may prescribe. The provisions of the second sentence of section 2 of the Reorganization Plan Numbered 1 of 1953 shall apply to the Administrator to the same extent as they apply to the Assistant Secretaries authorized by that section.

"(2) The President shall appoint, by and with the advice and consent of the Senate,

a Commissioner of the Administration (hereinafter referred to as the 'Commissioner'), who shall report directly to the Administrator for Health.

"(3) There shall be in the Administration a Deputy Commissioner who shall perform such functions and duties and exercise such powers as the Commissioner may prescribe and shall be Acting Commissioner during the absence or disability of, or in the event of a vacancy in the office of, the Commissioner.".

On page 8, line 10, strike out "(c)" and insert "(b)" in lieu thereof.

Strike out "Administrator" and insert "Commissioner" in lieu thereof on page 8, line 11; page 9, line 17; page 11, lines 4 and 14; page 15, lines 12 and 20; page 16, line 5; page 18, lines 12 and 25; page 19, lines 8 and 25; page 21, line 6; page 22, line 2; page 23, lines 21 and 22; page 24, lines 4 and 7; page 28, line 4; page 32, lines 11–12; page 34, line 3; page 67, lines 15–16; page 68, line 1; page 75, lines 19 and 21; page 76, lines 12 and 18; page 77, line 5; and page 79, lines 4 and 15.

Strike out "Associate Administrator" and insert "Commissioner" on page 24, line 1.

On page 8, lines 12–13, strike out "Commissions" and insert "Offices" in lieu thereof.

On page 8, strike out lines 21 and 22 and insert in lieu thereof—

"(3) employ experts and consultants".

On page 10, lines 15–16, strike out "upon application of the Attorney General or the Administrator".

On page 11, line 20, strike out "and" and insert "cosmetics, devices, or" in lieu thereof.

On page 12, line 5, strike out "or" and insert "cosmetics, devices, or" in lieu thereof.

On page 12, strike cut lines 8 through 24.

On page 13, strike out lines 1 and 2.

On page 13, line 3, strike out "(17)" and insert "(13)" in lieu thereof.

On page 13, strike out lines 16 through 19.

On page 13, line 20, strike out "(19)" and insert "(14)" in lieu thereof.

On page 13, line 23, strike out "Commissioners" and insert "Directors" in lieu thereof.

On page 13, line 24, strike out the period, insert "; and" in lieu thereof, and add thereafter the following:

"(15) undertake such other activities as are necessary to carry out his duties under this Act, including those enumerated in other sections of this Act; and shall—

"(A) attempt to eliminate products presenting unreasonable risk of injury;

"(B) establish a capability within the Administration to engage in risk-based analysis;

"(C) establish an interdisciplinary epidemiology capability and undertake investigations in coordination with the National Injury Information Clearinghouse to facilitate regulation making and to assist in risk-based analysis;

"(D) establish a scientific capability within the Administration to assist in hazard detection, test method development, and quality control requirements;

"(E) utilize where practicable and establish where necessary, field operations to facilitate detection of conditions which might lead to injury or death, to monitor compliance with required levels of safety performance to report violations; and

"(F) publish notice of any proposed public hearing in the Federal Register, and afford a reasonable opportunity for interested persons, including consumers, to present relevant testimony and data.".

On page 14, lines 3 and 4, strike out "Commissions" and insert "Offices" in lieu thereof.

On page 14, line 11, strike out "title" and insert "Act" in lieu thereof.

On page 14, line 19, insert "and" after "Committee;".

On page 14, strike out lines 20 through 24.

On page 15, strike out lines 1 through 3.

On page 15, line 4, strike out "(h)" and insert "(f)" in lieu thereof.

On page 16, line 1, strike out "103(c)(9)" and insert "104(b)(8)" in lieu thereof.

On page 16, line 3, strike out "COMMISSIONERS" and insert "DIRECTORS" in lieu thereof.

On page 16, line 4, strike out "APPOINTMENT.—".

On page 16, lines 6 and 7 (two places), strike out "Commissioner" and insert "Director" in lieu thereof.

On page 16, line 8, insert immediately before the period ", who shall undertake such activities as may be delegated to them by the Commissioner".

On page 16, strike out lines 16 through 25.

Strike out all of page 17.

On page 18, strike out lines 1 through 9.

On page 18, line 12, strike out "109" and insert "108" in lieu thereof.

On page 19, line 1, strike out "Commissioner" and insert in lieu thereof "Director of an Office established under section 103".

On page 19, line 2, strike out "Director" and insert in lieu thereof "Director of the Office of Consumer Information".

On page 19, line 10, strike out "114" and insert "113" in lieu thereof.

On page 19, line 25, strike out "documents" and insert "documents" in lieu thereof.

On page 20, line 1, strike out "Agency's" and insert "Administration's" in lieu thereof.

On page 21, line 6, strike out "110" and insert "109" in lieu thereof.

On page 21, lines 12 and 22, strike out "drugs," and insert in lieu thereof "drugs, cosmetics, devices,".

On page 23, line 12, strike out "111" and insert "110" in lieu thereof.

On page 23, line 18, strike out "Commissioners, the Administrator" and insert in lieu thereof "Directors of the Offices established under section 103, the Commissioner".

On page 23, line 21, strike out "Commission" and insert "of such Offices" in lieu thereof.

On page 24, lines 3–4 and 5–6, strike out "Commissions" and insert "such Offices" in lieu thereof.

On page 24, line 8, strike out "Commissioners" and insert "Directors of such Offices" in lieu thereof.

On page 25, line 19, strike out "112" and insert "111" in lieu thereof.

On page 25, line 22, strike out "drug," and insert "drug, cosmetic, device," in lieu thereof.

On page 27, line 8 and 19, strike out "drug," and insert "drug, cosmetic, device," in lieu thereof.

On page 28, line 2, strike out "113" and insert "112" in lieu thereof.

On page 28, line 5, strike out "directly" and "and the President".

On page 28, lines 7 and 8, strike out "and its recommendation for legislative action".

On page 28, lines 12, 13, and 14, strike out "and the Administrator, and the budget recommendations of each of the Commissioners".

On page 29, strike out line 1 and insert in lieu thereof "Office established under section 103 which pre-".

On page 29, line 8, strike out "Commission" and insert "Office" in lieu thereof.

On page 29, line 10, insert "and" after the semicolon.

On page 29, lines 12 and 13, strike out "including violations reported to the Administrator by each Commissioner".

On page 29, line 16, strike out "; and" and insert a period in lieu thereof.

On page 29, strike out lines 17 through 19.

On page 29, line 21, strike out "114" and insert "113" in lieu thereof.

On page 31, strike out lines 16 through 19 and insert in lieu thereof the following:

"COOPERATION OF FEDERAL AGENCIES

"SEC. 114. (a) The Commissioner is authorized to utilize the".

On page 31, line 22, strike out "drug," and insert "drug, cosmetic, device," in lieu thereof.

On page 31, strike out line 25 and insert in lieu thereof "the authorities administered by him. The".

On page 32, line 2, strike out "section" and insert "subsection" in lieu thereof.

On page 32, strike out lines 3 and 4 and insert in lieu thereof the following:

"(b) Upon the Commissioner's request, each Federal agency is authorized—"

On page 32, lines 16 and 23, strike out "116", and "117" and insert respectively in lieu thereof "115", and "116".

On page 33, line 11, strike out "118" and insert "117" in lieu thereof.

On page 33, strike out lines 15 and 16 and insert in lieu thereof the following:

"(59) Administrator for Health, Department of Health, Education, and Welfare."

On page 33, strike out lines 17 through 24 and insert in lieu thereof the following:

"(b) EXECUTIVE SCHEDULE LEVEL OF COMMISSIONER, DEPUTY COMMISSIONER, AND DIRECTORS, CONSUMER SAFETY ADMINISTRATION.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"'(95) Commissioner, Consumer Safety Administration.

"'(96) Deputy Commissioner, Consumer Safety Administration.

"'(97) Director (5), Consumer Safety Administration.'"

On page 34, line 2, line out "119" and insert "118" in lieu thereof.

On page 34, strike out line 14 and all that follows down to and including line 10 on page 40.

On page 41, line 10, strike out "III" and insert "II" in lieu thereof.

On page 41, line 13, strike out "301" and insert "201" in lieu thereof.

On page 41, lines 13 and 14, strike out "of Product Safety (hereinafter referred to as the 'Commissioner')".

On page 43, line 11, strike out "or the Administrator".

On page 45, lines 9 and 23, strike out "302" and "303", respectively, and insert "202" and "203", respectively, in lieu thereof.

On page 46, line 10, strike out "301" and insert "201" in lieu thereof.

On page 48, line 4, strike out "303" and insert "203" in lieu thereof.

On page 48, line 10, strike out "306" and insert "206" in lieu thereof.

On page 48, line 25, strike out "305" and insert "205" in lieu thereof.

On page 49, line 17, strike out "304" and insert "204" in lieu thereof.

On page 49, lines 18 and 19, strike out "303" and insert "203" in lieu thereof.

On page 50, line 2, strike out "305" and insert "205" in lieu thereof.

On page 50, line 4, strike out "303 and 304" and insert "203 and 204" in lieu thereof.

On page 50, line 13, strike out "306" and insert "206" in lieu thereof.

On page 51, lines 8 and 9, strike out "303" and insert "203" in lieu thereof.

On page 51, line 16, strike out "306" and insert "206" in lieu thereof.

On page 52, lines 9 and 17, strike out "303" and "301", respectively, and insert "203" and "201" respectively, in lieu thereof.

On page 53, line 11, strike out "303" and insert "203" in lieu thereof.

On page 58, line 15, strike out "307" and insert "207" in lieu thereof.

On page 59, lines 1, 8, and 18, strike out "303", "308", and "301", respectively and insert "203", "208", and "201", respectively.

On page 60, lines 3 and 9, strike "303, 304, 305" and insert "203, 204, 205" in lieu thereof; on lines 4 and 11, strike "306" and insert "206" in lieu thereof; and on line 19, strike "309" and insert "209" in lieu thereof.

On page 63, line 16, strike out "310" and insert "210" in lieu thereof.

On page 63, line 18 strike out "305, 306 (d), 307, 308, or 309" and insert "205, 206 (d), 207, and 208, or 209" in lieu thereof.

On page 63, line 25, strike out "and to the Admin-" and insert a period in lieu thereof.

On page 64, strike out lines 1 and 2 and insert in lieu thereof "The Commissioner shall file in the court the record of the proceed-".

On page 64, lines 8 and 9, strike out "303" and "305, 306(a), 307, 308, or 309" and insert "203" and "205, 206(a), 207, 208, or 209", respectively, in lieu thereof.

On page 65, line 2, strike out "SEC. 311. (a) The Administrator or" and insert "SEC. 211. (a) Upon request of the Commissioner" in lieu thereof; and at line 11, strike out "303" and insert "203" in lieu thereof.

On page 66, lines 5, 9, 12, and 22, strike out "303", "306", "312", and "313", respectively, and insert "203", "206", "212", and "213", respectively, in lieu thereof.

On page 68, line 2, strike out "the Administrator's" and insert "his" in lieu thereof; and at line 25, strike out "314" and insert "214" in lieu thereof.

On page 70, line 18, strike out "315" and insert "215" in lieu thereof.

On page 71, lines 13 and 15, strike out "313" and "309, 312, and 314", respectively, and insert "213" and "209, 212, and 214", respectively in lieu thereof.

On page 72, lines 3, 7, and 8, strike out "307", "316", and "315", respectively and insert "207", "216", and "215", respectively, in lieu thereof.

On page 72, strike out lines 15 and 16 and insert "United States" in lieu thereof.

On page 73, line 4, strike out "Administrator or the".

On page 73, lines 7 and 14, strike out "315" and insert "215" in lieu thereof.

On page 73, line 17, strike out "Administrator" and insert "Attorney General" in lieu thereof.

On page 74, line 1, strike out "306" and "311" and insert "206" and "211", respectively, in lieu thereof.

On page 74, line 5, strike out ", to the Administrator,".

On page 75, line 5, strike out "317" and insert "217" in lieu thereof.

On page 78, lines 2 and 14, strike out "318" and "319", respectively, and insert "218" and "219", respectively, in lieu thereof.

On page 79, line 22, strike out "320" and "their" and insert "220" and "his" in lieu thereof.

On page 79, line 23, strike out "the Administrator and".

On page 80, line 2, strike out "the Administrator or".

On page 80, line 5, strike out "IV" and insert "III" in lieu thereof; and at line 7, strike out "401" and insert "301" in lieu thereof.

The PRESIDING OFFICER. The Chair asks the Senator whether this is the amendment on which there is an agreement for 3 hours of debate.

Mr. COTTON. That is correct, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. COTTON. I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. COTTON. Mr. President, I ask unanimous consent to correct a typographical error in my amendment. On page 2, line 12 of the amendment, strike out the word "Product" and insert the word "Consumer."

The PRESIDING OFFICER (Mr. STAFFORD). Without objection, it is so ordered.

Mr. COTTON. This simply conforms to the text of the amendment. It is purely typographical.

Now, Mr. President, this amendment embodies the real sharp difference of opinion in regard to the bill now under consideration by the Senate. So far, with the exception of some slight altercation about rotten eggs, everyone has spoken on the same side. But, the real issue is whether we want the best, the most effective, and the best organized machinery we can devise in the Government to protect the American consumer from the dangers from many products which come onto the market.

As I have said before, I hope this bill, properly amended, will be a milestone in the history of the crusade in Congress, participated in by all of the distinguished Senators here this afternoon, to protect the consumers of our Nation.

Now, Mr. President, my amendment is quite simple. It would establish by statute the reorganization proposed within HEW by President Nixon in his letter of July 19, 1971, to the distinguished chairman of our Committee on Commerce (Mr. MAGNUSON) which was presented and explained by Secretary of Health, Education, and Welfare Richardson when testifying before the committee on the same date—that is July 19, 1971.

The President's letter to the distinguished Senator from Washington (Mr. MAGNUSON) noted in part the following:

> Today, Secretary Richardson will announce with my approval, that upon enactment of this bill [i.e., S. 1797], he will create within DHEW a new Consumer Safety Administration. This unit will build upon the activities, personnel, and facilities of the Food and Drug Administration, which has a long and distinguished history in the field of consumer safety, primarily in the vital regulation of the food we eat and the drugs we use.

At the same time, Secretary Richardson went on to note the following:

> Upon its enactment, therefore, I propose to build, as the President's letter has just informed the Committee, upon the FDA framework by establishing a new Consumer Safety Administration to be composed of three major offices:
>
> The Office of Product Safety Regulation;
> The Office of Drug Regulation; and
> The Office of Food Regulation.

Mr. President, rather than await enactment of the pending legislation and the establishment of such an organizational structure within HEW by administrative action, my amendment proposes to establish this framework by law.

Mr. President, briefly described what my amendment proposes is that in lieu of the creation of an independent Food, Drug and Consumer Safety Product Agency as proposed in S. 3419, there be created a Consumer Safety Administration within the Department of HEW. My amendment would also accomplish the following:

First. Provide for the appointment by the President, by and with the advice and consent of the Senate, of an Administrator for Health and for a Commissioner to head up the proposed Consumer Safety Administration;

Second. Provide for a Deputy Commissioner who shall be Acting Commissioner during the absence or disability of, or in the event of a vacancy in the Office of, the Commissioner of the Consumer Safety Administration;

Third. Provide that the Commissioner of the Consumer Safety Administration appoint three Directors, each to head up one of the three offices established by my amendment—that is, the Office of Food and Nutrition, the Office of Drugs, and the Office of Consumer Products;

Fourth. Retain the Office of Consumer Information as now provided for in S. 3419, but provide for the appointment of the Director of that Office by the Commissioner of the Consumer Safety Administration;

Fifth. Retain the provision concerning the National Injury Information Clearinghouse, but provide that the Director of such Clearinghouse be appointed by the Commissioner of the Consumer Safety Administration;

Sixth. Retain the proposed Joint Scientific Committee but provide that its establishment and appointment of members be made after consultation with the Director of each of the Office of Food and Nutrition, the Office of Drugs, and the Office of Consumer Products;

Seventh. Retain the provision for petition of and civil action against the agency, but substitute the Consumer Safety Administration for the proposed independent agency;

Eighth. Retain in large measure the provisions concerning annual reports and public access to information as now provided for in S. 3419;

Ninth. Retain the provision for cooperation of Federal agencies with appropriate technical amendments substituting the proposed Commissioner for the presently proposed Administrator;

Tenth. Provide that the Administrator for Health in my amendment be compensated at level III of the Executive Schedule—that is $40,000—the same level as that proposed for the Administrator of the proposed independent agency; and the Commissioner, Deputy Commissioner, and the five Directors of the proposed Consumer Safety Administration at level IV of the Executive Schedule—that is, $38,000—which is the same as that now proposed in S. 3419 for the Commissioners within the independent agency;

Eleventh. Strike all of title II which would seek to divest the Secretary of HEW of several areas of statutory responsibility, leaving that appropriately to be delegated by the Secretary to the proposed Administrator for Health and the Consumer Safety Administration;

Twelfth. Redesignate title III as title II and all sections accordingly, making no other changes in the provisions of that title except for—technical amendments, and, the single substantive change of providing that judicial actions and enforcement proceedings be handled by the Attorney General of the United States as has been the case rather than in the alternative by the Attorney General or by the proposed head of the independent agency; and

Thirteenth. Redesignate title IV as title III to conform with the earlier deletion of title II concerning the transfer of certain statutory functions.

Mr. President, the proposal embodied in my amendment is quite similar to that introduced by the distinguished and knowledgeable chairman of the Subcommittee on Public Health and Environment of the House Committee

on Interstate and Foreign Commerce—Congressman PAUL G. ROGERS, Democrat of Florida—and several of his colleagues as H.R. 15315.

Mr. President, my amendment is a logical and a sensible approach when compared with the dismantling of HEW as now proposed in S. 3419.

Most important, Mr. President, I believe that each and every Member of this body should constantly keep in mind that waiting in the wings for action by the Senate is a proposal now before the Senate Government Operations Committee to establish still another independent agency, the Consumer Protection Agency.

Now, Mr. President, I am not predicating what I am saying purely on the position of the administration. I have been in the Senate long enough to know that if we are going to make a party issue of something, we had better do so when we have more members of our party than the other. I hope that this amendment will not be considered—and I think before I get through I can reasonably demonstrate that it should not be considered—purely as to whether the Senate decides it wants to comply with the wishes of the Executive. That is not that case at all.

Some time ago Secretary Richardson issued a statement in which he said:

> The bill for a separate agency is regressive. It will deal the cause of consumer safety a crushing setback.

He then went on to say:

> It would abandon the field to exploiters of the consumer by destroying existing mechanisms for regulation. It would create a serious vacuum—one lasting as long as three years—into which the exploiters could move while the new agency is being set in motion. It would have an adverse impact on the public health and the public purse.

The point is, Mr. President, one cannot move the whole Food and Drug Administration operation out of HEW and move into this new independent agency without a hiatus. It takes time to get a new organization functioning. So it is true as the Secretary contends, that it will require a period of time—I do not know whether it will be 1 year or 2 years—but a period of time in which current on-going efforts to protect the consumer will retrogress.

Mr. President, during the debate on my amendment we, no doubt, will hear considerable about what HEW and FDA have and have not done. Then, the proposed independent agency set forth in S. 3419 will be held up as some sort of panacea for all of these ills and personal bureaucratic frustrations. But, Mr. President, there is no truly definitive evidence to show that this will be the case.

On the contrary, Secretary of HEW, Elliot Richardson, rebutted such argument in the following manner:

> I doubt that these observations hold true over the long run. As examples, actions of the Federal Trade Commission or Interstate Commerce Commission have never seemed to me to be more "visible" than an action of the Food and Drug Administration, even though they are independent agencies. Nor do I think that independent regulatory agencies have historically shown a greater resistance than other agencies to the pressures that often cause agencies to identify their interests with those of the industry they regulate.

I might add, Mr. President, that in recent months the FDA has begun to function more effectively than it has, perhaps, ever before. Just as it begins to produce, the proponents of S. 3419 want to pull it up by its roots and move it somewhere else.

Continuing with the Secretary's statement, he goes on as follows:

> This Administration has submitted its own strong product safety legislation to the Congress, along with a letter from the President committing HEW to establishing within the Department a new consumer safety administration which would have an upgraded Food and Drug Administration as its core.
>
> Yet, to my complete disbelief, the Senate Commerce Committee seems to have chosen to counter this strong proposal by adding to it a disruptive reorganization which threatens to harm the health concerns of consumers. Instead of helping the consumers, the regressive bill now before the Senate Commerce Committee moves counter to this with its new load of fatal flaws.

The Secretary then begins to numerate the flaws such as—

> Slow downs the increasing momentum the FDA and HEW have been building in consumer safety.

The next thing the Secretary calls attention to is that—

> It would destroy vital relationships between the FDA's food, drug, cosmetic, and product safety regulatory processes and other health responsibilities of the HEW.

When I got to that point in the Secretary's pronouncement, I began to wonder what relationships he was talking about. So, I took steps to inquire of the Secretary's office. I put the minority staff of the Commerce Committee on the job of seeking clarification of this statement that says in effect:

> You are tearing this agency out of the HEW and by tearing out the Food and Drug Administration, you are leaving other vital functions that are closely related and are separating rather than consolidating the function of protecting the consumer.

I discovered what the Secretary was talking about. I discovered that it is very necessary to have complete cooperation and close cooperation—not as between one independent agency and another or between one department or another—but cooperation between the Food and Drug and the National Institute of Mental Health, which is interested in the methadone treatment for drug addicts as well as all other drug regulations.

I also learned that the operation of blood banks requires cooperation between the Biologics Division, recently transferred to the Food and Drug Administration and the National Heart and Lung Institute, which are, of course, at the very heart of the health delivery activities of HEW.

In addition, toxicological research required by the Food and Drug Administration is performed by the National Institute of Environmental Science and the National Cancer Institute—which has been greatly enlarged. Also, FDA's regulations of vaccines, allergenic products, and derivatives closely related to research in the National Institute of Allergy and Infectious Diseases, and the National Heart and Lung Institute and other institutes of the NIH.

In other words, by creating a new agency, we move away from the allies that we need to have if the Food and Drug Administration is really going to be effective. Thus, we are weakening rather than strengthening our case.

Mr. President, I am not saying this in criticism. However, I think it justifies my feeling that this is a somewhat hastily considered bill, creating this new agency at this time.

Let me also point out that we have a Senate bill (S. 3432) sponsored by 26 Members of the Senate, or more than one-fourth of the entire membership of the Senate. And among its sponsors are six members of the Committee on Commerce, including its distinguished chairman, and several chairmen of its subcommittees.

It is a bill to establish a Department of Health introduced by the distinguished chairman of the Subcommittee on Executive Reorganization and Government Research of the Senate Committee on Government Operations (Mr. RIBICOFF), himself a former Secretary of HEW. Cosponsoring S. 3432 were such distinguished Members as the Senators from California (Mr. TUNNEY), from Florida (Mr. CHILES), from Georgia (Mr. TALMADGE), from Indiana (Messrs. HARTKE and BAYH), from Massachusetts (Mr. KENNEDY), from Michigan (Mr. HART), from Minnesota (Messrs. MONDALE and HUMPHREY), from Missouri (Mr. EAGLETON), from Maine (Mr. MUSKIE), from New Jersey (Mr. WILLIAMS), from Nevada (Mr. CANNON), from New Hampshire (Mr. MCINTYRE), from Rhode Island (Messrs. PASTORE and PELL), from South Dakota (Mr. MCGOVERN), from Oklahoma (Mr. HARRIS), from South Carolina (Mr. HOLLINGS), from Washington (Messrs. MAGNUSON and JACKSON), and from Wisconsin (Mr. NELSON).

The point is, Mr. President, whether it be the reorganization proposals of the President of the United States or legislative proposals such as S. 3432, what the new independent agency in S. 3419 represents is a prejudgment of all such proposals. I personally do not feel that we have all the necessary evidence at this time to render such a judgment.

Now, I recognize that both in the Senate and in the House, there is a strong sentiment—and I think the chairman of the committee and I share this view to a considerable extent—that we have amassed in HEW far too many activities. Personally, I feel that health and welfare are so closely intermingled that these functions could not be separated. However, the sooner we separate education from health and welfare, the sooner we will be able to deal with the problems of the Department and its appropriations more intelligently.

Mr. CURTIS. Mr. President, would the distinguished Senator yield?

Mr. COTTON. Mr. President, I am pleased to yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Mr. President, what information can the Senator from New Hampshire give me with reference to the powers granted to this new agency to issue citations and levy fines or take other punitive actions for alleged violations of the law?

Mr. COTTON. Mr. President, I was about to come to that. The new agency would be glad to enforce the act in court

itself. It would not have to go to the Justice Department to prosecute its cases. It would have the power to prosecute in court for violations.

That in itself is rather significant, because we have pending a bill that I would predict is very likely to pass. It would set up still another agency, a Consumer Protection Agency. It would serve an advocacy function for consumers.

It is just one more point that further complicates the picture.

Mr. CURTIS. Mr. President, the Senator from New Hampshire has said this agency would have access to judicial processes. I wonder how judicial they are. Some 18 months or more ago, Congress enacted an Occupational Safety and Health Act. And I find that their inspectors are actually serving as inspectors, prosecutors, judges, and juries. Then they go a step further and write up the case and give it to the newspapers.

There was an incident in Nebraska in which a company was fined $36,000, and none of the parties ever went near a courthouse. It was not a judicial procedure at all. It was the case of an inspector who said that the amount of his fine depends upon the attitude of the person he is dealing with.

Are we presented with a possibility of something of that sort in the pending bill?

Mr. COTTON. I do not believe so. I refer the distinguished Senator to page 72 of the bill and to section 316, entitled "Enforcement—Civil and Criminal Penalties," which says:

SEC. 316. (a) Whoever knowingly commits any act prohibited by section 315, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Agency.

That is, this new Agency—

In its own name by any of its attorneys designated by the Administrator for such purpose, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year, or both.

In other words, it would be its own prosecutor. If my amendment is agreed to that part will be out and the Agency, as a part of the HEW setup, would refer its complaints to the Department of Justice. But, we must also keep in mind the new Consumers Protection Agency that is following so close on the heels of this bill that it is almost overtaking us.

Mr. CURTIS. This section to which the Senator referred states they shall be subject to a civil penalty of not more than $10,000 for each such act, and it may be recovered in a civil action brought by the United States or the Agency. It does not say where the action shall be brought. Is that before the Agency or must it be brought in the U.S. district court?

Mr. COTTON. In the Federal court.

Mr. CURTIS. It may be that some other section refers to that but here it does not say the court.

Mr. COTTON. I am informed by the staff that the action would be brought in Federal court.

Mr. CURTIS. But it is the Senator's understanding that the agency cannot fine or penalize individuals or persons on its own?

Mr. COTTON. No; I do not think so.

Mr. CURTIS. It must go to court.

Mr. COTTON. It must be said, in fairness, in my opinion that is not in the bill and not in this independent agency.

Mr. CURTIS. What is not?

Mr. COTTON. That they themselves can act as judge and exact penalties. It could bring the action through its own attorneys in Federal court rather than to wait for the Department of Justice.

But I do want to make clear that the independent agency cannot move against John Doe or Richard Roe and exact a penalty on its own without first going to court.

Mr. CURTIS. They cannot have inspectors running around all over the country, with the inspectors levying fines and penalties.

Mr. COTTON. No. The action has to be brought in court by its attorneys.

Mr. CURTIS. I thank the Senator.

Mr. COTTON. Mr. President, I want to make it clear that this amendment which I am asking the Senate to consider is not a negative amendment. It sets up, in the Department of Health, Education, and Welfare machinery which I insist is every bit as comprehensive and effective as this proposed independent agency. I want to make this clear to the Senate.

First, let me show on this blackboard as well as I can the proposed setup under my amendment.

(Chart referred to not printed in the RECORD.)

Mr. COTTON. Mr. President, this is the organizational structure proposed by the Secretary of Health, Education, and Welfare with the approval of the President of the United States. I therefore do not claim any authorship. But, I want to make plain exactly what my amendment would set up in place of the independent agency, and I can do this best with the diagram on this blackboard.

Up here we have the Secretary of Health, Education, and Welfare. Down here, in the next slot, this amendment would create an Administrator for Health. In other words an Administrator for Health would be responsible to the Secretary of HEW for the health activities of the Department, which in a sense does exactly the same thing that 26 Senators have urged that we do in separating the health functions from the other functions of HEW.

Now, this Administrator of Health would be appointed by the President, with advice and consent of the Senate. It would be a Presidential appointment with a salary of $40,000.

Now, next in the chain of succession would be the Commissioner for the Consumer Safety Administration. In other words, this would separate consumer safety from the other health functions of the present Department of HEW. He would be responsible and devoted to consumer safety. He, too, would be appointed by the President and have to be confirmed by the Senate. He would receive a salary of $38,000.

Under the Commissioner would be a Deputy Commissioner, who would not be a Presidential appointment.

Now we come to the important part. We come to the three offices that would function under this Health Administrator, and this Commissioner for Consumer Safety. First would be the Director, Office of Food and Nutrition. The second would be the Director, Office of Drugs. The third would be the Director of the Office of Consumer Products. By consumer products, I mean all those substances and all those appliances that do not come under food and do not come under drugs.

Also, under my amendment, there would remain in full force and effect these extremely important and meritorious acts: the Federal Hazardous Substances Act, the Flammable Fabrics Act, Radiation Control for Health Safety Act, Poison Prevention Packaging Act. In other words, all the acts relating to dangerous toys, dangerous substances, household substances—all of these very necessary and very effective acts that have been passed by the Congress. Frankly, every one of these have been enacted under the guidance and leadership of the distinguished chairman of the Commerce Committee (Mr. MAGNUSON).

Mr. President, if that does not come as close to an independent agency, without tearing FDA out by its roots from HEW and separating it from the National Institutes of Health, and from all of the other agencies in the Department whose work must be closely coordinated in the enforcement of this very meritorious act we are considering this afternoon, then I do not know what would do it.

Mr. President, I would not want to take advantage of my distinguished chairman (Mr. MAGNUSON). But, I have been handed a letter addressed to him, which I would like to get into the RECORD at this time, if the chairman does not object.

Mr. MAGNUSON. Mr. President, I did not hear the Senator.

Mr. COTTON. I said I did not want to take advantage of my chairman in any way, shape, or manner, but I have had handed to me a letter addressed to the Senator, excerpts of which I would like to put into the RECORD. I may say there is nothing derogatory in it about my distinguished friend.

Mr. MAGNUSON. Very well.

Mr. COTTON. This is from Jean Mayer, Ph. D., D. Sc., A.M., M.D., professor of nutrition, and lecturer on the history of public health, Harvard University School of Public Health.

Mr. President, I have been waiting almost 26 years for a chance to get up and make a speech and prove that I am a real liberal by quoting somebody from Harvard, and my hour has come. What a joy it is.

In this letter Dr. Mayer says:

I am writing in opposition to the separation of the Food and Drug Administration from the Department of Health, Education and Welfare. In doing so, I am well aware of my difference in attitude from that of other consumer-oriented spokesmen. I understand their impatience with the slowness that the

FDA has often exhibited in taking necessary action, the frequent lack of consumer input and the seeming vulnerability to special interest pressures in the past.

Dr. Mayer does not gloss over the situation and goes on to note the following:

At the same time, I believe that policies concerning foods and drugs are so much a part of the management of health programs that separating the FDA from the administration of national health programs would make overall planning impossible. This is particularly so at a period when our emphasis in health programs should increasingly be on preventive medicine.

Mr. President, I will put the whole letter in the RECORD, but to save time, I will skip to the closing paragraph:

As for drugs, there is little doubt that the gigantic number of over-the-counter drugs (200,000 to 500,000) is in need of total re-evaluation, regulation and reduction of this absurb amount. Considering the pressures of the market place, only tight coordination with the medical authorities, and in particular with the National Institutes of Health, can achieve this goal. Prescription drugs are in need of better statistical evaluation, so that effectiveness and dangerous side effects can be evaluated faster.

This cannot be done—

Says Dr. Mayer of Harvard—

except through tighter relationship with our health care delivery system.

In that sentence alone, Mr. President, is the whole thrust of my amendment. All I have been saying is that in order to make this very praiseworthy project in the bill work, it must be tied tighter to the National Institutes of Health, to the medical facilities, to the medical experts, and to the activities of Government in the health field, and not moved away from there.

I continue quoting Dr. Mayer:

I am perfectly ready to believe that the present structure of HEW is in need of reform to make it more manageable. I would personally favor a structure similar to that of the Department of Defense, with full secretaries for Health, for Education, and for Social Security and Welfare.

That is practically what I wrote on that blackboard before to show what my amendment suggests, and Dr. Mayer observes:

In such a structure, FDA would naturally be a part of Health, and be involved in policy planning concerning Health. I believe that separating FDA from HEW is a step backward from the viewpoint of Public Health.

Mr. President, I ask unanimous consent to insert the entire letter in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HARVARD UNIVERSITY,
SCHOOL OF PUBLIC HEALTH,
Boston, Mass., June 6, 1972.

HON. WARREN MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing in opposition to the separation of the Food and Drug Administration from the Department of Health, Education and Welfare. In doing so, I am well aware of my difference in attitude from that of other consumer-oriented spokesmen. I understand their impatience with the slowness that the FDA has often exhibited in taking necessary action, the frequent lack of consumer input and the seeming vulnerability to special interest pressures in the past. At the same time, I believe that policies concerning foods and drugs are so much a part of the management of health programs that separating the FDA from the administration of national health programs would make overall planning impossible. This is particularly so at a period when our emphasis in health programs should increasingly be on preventive medicine.

Consider for example, the heart disease picture. In the past twenty years we have quintupled our health expenditures, pursued the most vigorous effort in medical research the world has ever known, and enormously increased the scope of our system of delivery of medical care, all this without achieving any improvement in the life expectancy of adults. Decrease in mortality from other causes has been nullified by a corresponding increase in cardiovascular mortality. It seems obvious to me that just building and manning more intensive cardiovascular care units, desirable though it may be, will not arrest this trend. What is needed is a coordinated, nationwide effort entailing screening and correcting high blood pressure, effectively campaigning against cigarette smoking, and changing both food habits and our food supply. We must clearly label all our foods so people can count their calories while remaining on balanced diets; decrease the overall fat content of the diet and improve the polyunsaturated to saturated fat ratio; this can be done, again, by the pressures engenered by proper labeling as well as by issuing the proper standards of identity. We must also decrease the sugar content of our diet, again by the same methods, and it would also be wise to decrease the salt content of diet or at least to make labeling of sodium content compulsory on all processed foods in common use. Initial steps have been taken in this direction. I think the needed measures are more likely to be taken if we bring the FDA closer to the federal health institutions than they are now, rather than if we separate them further.

As for drugs, there is little doubt that the gigantic number of over-the-counter drugs (200,000 to 500,000) is in need of total re-evaluation, regulation and reduction of this absurd amount. Considering the pressures of the market place, only tight coordination with the medical authorities, and in particular with the National Institutes of Health, can achieve this goal. Prescription drugs are in need of better statistical evaluation, so that effectiveness and dangerous side effects can be evaluated faster. This cannot be done except through tighter relationship with our health care delivery system.

I am perfectly ready to believe that the present structure of HEW is in need of reform to make it more manageable. I would personally favor a structure similar to that of the Department of Defense, with full secretaries for Health, for Education, and for Social Security and Welfare. In such a structure, FDA would naturally be a part of Health, and be involved in policy planning concerning Health. I believe that separating FDA from HEW is a step backward from the viewpoint of Public Health.

Respectfully yours,
JEAN MAYER, Ph. D., D. Sc.,
A.M. (hon.), M.D. (hon.),
Professor of Nutrition and Lecturer on the History of Public Health.

Mr. COTTON. Mr. President, I have tried to make as clear as possible what is in my rather lengthy amendment, and the organizational structure that it advocates. I wish to assert with all the emphasis at my command that this amendment should receive favorable consideration if this very fine bill is going to be effective and move forward rather than backward.

I intend to read two or three quotations which will somewhat refute any idea that this is purely an administration appeal.

The Honorable Charles L. Schultze—not to be confused with the Republican Shultz who is now the Secretary of the Treasury—the Honorable Charles L. Schultze, Director of the Bureau of the Budget under the administration of former President Lyndon B. Johnson, noted the following with respect to an earlier legislative proposal to create a new Federal Maritime Administration:

Consolidation, not fragmentation, is the direction we should follow.

He continued:

Many groups in our community seek to have independent agencies established within the Executive branch which can act as advocate for their particular interest. This is an understandable desire. . . .

With the growing complexity of our Federal government and the increasing demands on the time of both the President and the Congress, a relatively small independent agency . . . can easily get lost in the shuffle. . . .

I would add, it either gets lost in the shuffle or it becomes so big that we have created another Frankenstein's Monster.

Another Cabinet officer under former President Johnson, the first Secretary of Transportation, Alan S. Boyd, made the following observation:

A separate chapter in the Government Organization Manual is not going to be any magic elixir.

Finally, on this point, Mr. President, the distinguished and knowledgeable chairman of the Committee of Government Operations of the House of Representatives (Mr. HOLIFIELD) observed the following when debating against an independent agency during the consideration of the Department of Transportation Act in 1966:

Will they obtain a dynamic, viable . . . program by withdrawing themselves from the mainstream of . . . attention, and getting off to one side and playing solitaire in the back room, or if they allow themselves to be put into this Department . . .—and that is where the chips are—they might be able to sit in and get a few more chips from that game.

Mr. President, as the President of the United States stated in his message on Government reorganization of March 25, 1971:

The problem with government is not by and large, the people in government.

* * * * *

Good people cannot do good things with bad mechanisms. But bad mechanisms can frustrate even the noblest aims.

I respectfully submit, Mr. President, that the proposal now embodied in S. 3419 is just such a "bad mechanism."

Mr. President, while I agree with and I enthusiastically commend the work of my chairman and my colleagues on the Commerce Committee, as well as the two other committees involved in producing this bill, I believe this bill should be a measure that marshals and makes more effective measures such as the Hazardous Substances Act and other acts that have been enacted by the Congress. It should not create a period of confusion while we

draw new lines. Nothing is to be gained by creating a new agency, which, in accordance with Parkinson's law, will grow and grow and grow into another huge department, and would of necessity, only create confusion.

I, therefore, earnestly urge the Senate to favorably consider my amendment. I insist that it does not detract one ounce or one iota from the effectiveness of this meritorious measure to protect the consumer. Rather, it would separate within the department the whole health setup from education and welfare as practicably as it can; provide presidentially appointed leadership; and establish Offices of Food, Drugs, and Consumer Products, each headed by a director. Most important, it would not do violence to the experience and the know-how that has been gained through all the years that we have been working on these problems.

From the very fact that we have written into this bill—and quite properly so—provisions for transferring all the Civil Service personnel, or giving them an opportunity to do so, in moving one setup into another, anyone who has watched government must know—and I defy anyone to intelligently refute this statement—that there will be a period of confusion in the process.

And, that I truly fear is exactly what will happen, I insist, if we persist with this independent agency. I believe that if we want this bill to pass not only the Senate but the House of Representatives, and be signed by the President into law in the short time remaining in this session, my amendment would aid that effort very materially.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MAGNUSON. Mr. President, I yield such time as he may require to the Senator from Utah.

Mr. MOSS. Mr. President, I rise to oppose the amendment offered by my distinguished friend and colleague the senior Senator from New Hampshire, whose amendment strikes at the very heart of this bill.

Three committees have taken favorable action on a bill which would create an independent agency, and I urge my colleagues to reject the amendment of the Senator from New Hampshire, which would eliminate any semblance of independence of the Food, Drug, and Consumer Product Agency.

To retain administration of the Food, Drug, and Cosmetic Act, the Federal Hazardous Substances Act, and the host of other important consumer protection measures in FDA, as well as place in the Department of Health, Education, and Welfare authority for regulating consumer product safety, would be an incalculable disservice to the American people.

Look at the record of the FDA within HEW. FDA Commissioner Edwards has chastised us for failure to provide appropriate aid in the form of high budgets. In checking the FDA budgets for the last 4 years, we find that Congress has appropriated just about every dollar that has been requested. In 1 year, Congress even appropriated some additional money. In 1 year, we did appropriate a smaller amount than requested, but with a justifiable reason: The agency had failed to spend the appropriations from the year before, and we had no way to gauge whether the budget request was trumped up or was realistic. Last year, the agency asked for $99 million and Congress appropriated it. The agency needs more money, but it also needs visability. It has neither in a tight-fisted HEW where social programs have always exceeded public protection in the eyes of the budget makers.

Look at the administration of the Flammable Fabrics Act, the Toy Safety Act, and the Poison Prevention Packaging Act in HEW. There is not a single standard in effect for child-resistant safety closures on hazardous products under the Poison Prevention Packaging Act. When criticized about this in a WCBS–TV editorial several months ago, the FDA's injured response to the station's citation of 400 children's deaths since passage of the act was that only 284 had died.

Mr. President, we can go on and on. We can cite the GAO report on the dimensions of unsanitary conditions in the food industry. We can cite the intolerable ineptness of FDA in gathering the data necessary for proper implementation of the Flammable Fabrics Act. We can cite the cozy relationships between the Food and Drug Administration and the industries it regulates, a virtual revolving door of personnel between industry and Government. We can talk about the lead tinsel deal, a secret the Food and Drug Administration kept from the American people until brought to light by the distinguished Senator from New Mexico.

We can cite many many gaps in the administration of the laws under the Department of Health, Education, and Welfare. To compound these errors by including additional authority in this agency would be a bungling disaster and an insult to the American people.

During executive consideration of the toxic substances bill several months ago, one of the staff members on the Commerce Committee was overheard to ask why administration of this act was given to EPA rather than FDA. The distinguished chairman, overhearing the comment, leaned over and laid it out clearly. He said:

Everytime we give something to HEW to administer, they mess it up.

Another situation which might be mentioned: As the Senate Commerce Committee was about to report this bill in March, Secretary Richardson issued a statement criticizing the bill and saying that the consumer was being sold a "phony bill of goods." But the ineptness of HEW was showing through even in this vehement denunciation of our well thought out bill, for the Secretary's release was headlined "Secretary Opposes Consumer Protection Agency Bill." Mr. President, you really fumble it when you do not now the identity of the bill that you are denouncing.

I invite attention to an article which recently came over the Associated Press wire, dated Washington, D.C.:

Whenever President Nixon attends an official dinner in the nation's capital, Arnold K. Clark is in the kitchen to protect the President's health.

Clark, 42, is Washington's field service chief of the Bureau of Food and Drugs and part of his job is checking everything from sauce to silverware at a presidential banquet.

Clark says:

My job includes making sure that the proper sanitary methods are adopted to assure the protection of the President's health. And my men and I—there are usually four or five of us—are extremely cautious in this regard. And we have available techniques and equipment for analyzing food on the spot for any sort of contaminent.

Defeat of the Cotton amendment and passage of the Food, Drug, and Consumer Product Safety Act will be an important step toward placing an "Arnold Clark" in each of our household kitchens.

The thrust of this bill is to provide for the safety of the products that our citizens buy in the marketplace, and this must be done by a competent, hard-driving, efficient organization. I think it would be the greatest mistake we could make to just put it in HEW along with the other many, many divisions and bureaus that are administered in that conglomerate department.

I think that the Cotton amendment, which would have the effect of leaving this in HEW, would very largely defeat the work that has been done over such a long period of time by the committees of Congress in which we have had testimony from many people—industry and consumers alike.

As a consumer protection bill, I think this will be one of the landmark bills that this Congress has provided to protect our consumers. I do not want to see it shunted aside or put in a disadvantageous position by the Cotton amendment. Therefore, I oppose the amendment.

Mr. President, I am very happy to yield to the Senator from New Mexico.

Mr. MONTOYA. I thank the Senator from Utah for yielding to me.

Mr. President, I think one thing has emerged from the debate on this amendment, and it is very clear: The present administration of the Food and Drug Act and other related acts has been bungled, and we have to come up with a very new approach.

For years we have had an ad hoc consumer agency emanating from the White House. We have received a great deal of rhetoric, and I think that we in this Chamber have been responsible for some of it. But I think that finally a bill has emerged from the Commerce Committee which answers the expectations and the aspirations of the American consumers.

The distinguished Senator from New Hampshire has made a very valuable contribution to this bill as a member of the committee. But I also want to commend all the members of this committee, who worked day and night and deliberated over the fine features of the measure now before the Senate.

One point made repeatedly by critics is that a separate consumer protection agency is unnecessary. They say that allowing consumer protection functions

to remain within HEW would serve just as well. I disagree.

Many Federal consumer protection functions are concentrated in the Food and Drug Administration. If we allow retention of consumer protection functions within HEW, FDA will certainly retain much authority, which would be against the consumer interest.

I say this with regret, but with certainty based upon sad experiences. Most of my dealings with FDA make me conclude that the agency requires elementary restructuring in the public interest. Stripping it of much of its consumer protection functions and reposing them in a separate consumer protection agency seems to be the only reasonable solution.

FDA failures at public expense are appalling, inexcusable, and intolerable. Here are some examples.

About 3,900 children annually eat caustic detergents, although many times that number of cases go unreported. Tests conducted by the National Institute of Environmental Health Sciences indicate such detergents cause blindness in lab animals. Authorities suspect some cases of human blindness are being caused by these products, yet the FDA has never required reporting of their causing eye damage.

Lead-based paints were revealed to be the cause of a variety of ills afflicting children from low-income families in disadvantaged environments. Minimal controls on use of lead in paint were bitterly opposed by the FDA's Bureau of Product Safety.

John Nestor, leading FDA cardiologist, led the fight against thalidomide in that agency. Recently he was transferred to a job with little relation to his specialty in the Bureau of Compliance. It has been alleged that drug industry pressure was responsible.

The relationship between FDA and the drug industry is of great public concern, yet nothing changes. Drug industry personnel move between the FDA and industry as if on an interchangeable circuit.

Disclosures by the General Accounting Office on FDA's inability to prevent unsanitary conditions in food manufacturing and processing were intended to inform us but they made us sick instead. We are blandly informed by FDA apologists we should not worry about "allowable quantities" of rodent hairs, droppings, and other garbage in our food.

The Safe Toy Act sat unenforced for an intolerable time because of FDA inaction.

A disgraceful example of FDA inability or unwillingness to enforce strong consumer protection laws revolves around the Poison Prevention Packaging Act of 1970, requiring childproof safety closures on products containing substances potentially harmful to small children if ingested.

It has taken FDA 18 months to guarantee even minimal compliance. FDA's Bureau of Product Safety turned out to be a roadblock to enforcement that cannot be adequately described here.

It took FDA more than 4 months to appoint a technical advisory committee, and more than 11 months to publish a testing protocol. Today, even though several categories of products are under final orders as published in the Federal Register, not a single safety closure to protect children is being marketed and sold as a direct result of FDA enforcement of this law.

It will be the middle of August, at the earliest, when FDA enforcement results in even one product, aspirin, being sold equipped with a safety closure that meets requirements under the law. Meanwhile, children under age 5 die at a rate of approximately one daily, and at least one other is crippled daily.

Yet the worst example of FDA inability and unwillingness to perform comes under the heading of what I prefer to call, "The Lead Tinsel Caper."

In February of 1971, FDA addressed a series of inquiries to prominent medical authorities across the Nation regarding potentially harmful properties of lead tinsel, such as millions of Americans use to decorate homes and Christmas trees during the holiday season.

Letters came back swiftly to FDA's Bureau of Product Safety, indicating the product was potentially very dangerous to small children, especially those in inner cities where exposure to lead was high and cumulative accumulation could result in severe, permanent harm to youngsters.

Letters urging FDA action to ban its manufacture and sale came from the Commissioner of Public Health of New York City and the chief pediatrician of Baltimore's city hospitals.

Under the Child Protection Act of 1966, FDA is authorized to ban from interstate commerce household substances so hazardous that warning labels are not adequate safeguards. Also, under the Hazardous Substances Act, FDA has power to simply remove from the market any substance deemed a menace to public welfare.

The agency took no action as it digested these answers from prominent public health and medical authorities. Meanwhile, on all sides, there was a public outcry as further revelations revealed that lead in our environment, in any form, was a growing, cumulative hazard to the health of Americans, especially children. The agency people seemed to have been oblivious to all this.

Dr. Mary McLaughlin, commissioner of public health of New York City, said in her letter to FDA:

> It is our opinion that the safest and best course of action would be to ban the use of lead as Christmas tree tinsel . . .

FDA sat on all such letters and facts until August of 1971, at least 5½ months, presumably contemplating the evidence and their virtues, such as they may be.

Then the agency moved. On August 12, 1971, FDA's Bureau of Product Safety called a secret meeting of all domestic manufacturers of lead-foil icicles, or Christmas tree tinsel. The gathering was in no way publicized. While the media, Congress, the public, and consumer protection people remained unaware, the meeting was held in the office of FDA's Director of Product Safety, Malcolm Jensen.

At the meeting, FDA proposed the following deal, for such it was:

(1) No manufacture of lead tinsel after Christmas of 1971.

(2) No sale of lead tinsel after Christmas of 1972.

(3) If all six affected companies agreed, the Bureau of Product Safety would recommend FDA accept voluntary action and take no rulemaking or court action on lead tinsel until the end of the 1972 Christmas season.

(4) To minimize manufacturer loss, FDA would not initiate or publicize the secret agreement or alleged dangers from lead tinsel until conclusion of the Christmas, 1972 season.

(5) FDA would take appropriate action to see to it that the Bureau of Customs of the Treasury Department banned import of lead icicles at the end of the Christmas, 1971 season.

There is the entire business. In effect, they said, we will let you make it for another 5 months and sell it for another year and 5 months. We will not tell anyone about dangers doctors told us about or of this meeting and agreement. Plus, we will sweeten your pot by making sure your foreign competition gets shut off from the American market this year, so you boys can make a killing next year and get rid of your entire stock.

Our distinguished colleague, JOHN MOSS, of California, Congressman from California, first unearthed this outrage. I managed to get hold of part of the correspondence and inserted it into the CONGRESSIONAL RECORD.

There is a letter from Malcolm Jensen to the president of one of the affected companies, in which he acknowledges the entire agreement and its terms. There are three letters, all published in the CONGRESSIONAL RECORD of March 22, 1971; each from an official of one of the companies to Jensen, again acknowledging the entire meeting and agreement.

When JOHN MOSS assailed the deal, Jensen vigorously defended it, stating he knew of no cases of lead poisoning arising from this product. Yet in one of his letters to one of the lead tinsel manufacturing executives, Jensen speaks of the agreement helping, "to reduce the occurrence of lead poisoning," and "reducing the threat to the children of the Nation."

No public warning was ever issued, even though one was asked for by Congressman Moss. No ban on the product was placed in effect. No tests on laboratory animals were conducted, even though one of the physicians answering the original query from FDA urgently recommended this be done.

Yet FDA knew the lead tinsel in question was 77 percent lead.

It knew, or at least its Bureau of Product Safety knew, that other commercial tinsels, made out of plastic, were easily available. These are safe, according to Dr. McLaughlin's letter of March 4, 1971. The same advice was offered FDA by MIT's environmental medical service. This, too, was ignored.

FDA has allowed this agreement to fall into the "dead letter" category as a result of our public disclosures and resulting publicity. Yet there is a more meaningful lesson to be learned from the entire shabby experience.

The basic philosophical enforcement premise of the Bureau of Product Safety is not: "How do we protect the public." Rather, it appears to be "How do we protect profits of industry."

Here is FDA's entire enforcement philosophy. A cozy relationship has been cumulatively built up over the years between this agency and people it is supposed to regulate. It has become: "Good old Joe," and "Good old Chuck," instead of a regulator and regulated relationship. In the process, the public interest has been cast aside, and the public has become an unwelcome intruder in its own domain.

FDA has become almost completely divorced from the reality of consumer protection and what it means to an average citizen who thinks that somewhere, somehow, his Government is protecting him and his family against such menaces.

Mr. President, I find that the concept contained in the bill which provides for a separate protection agency is a healthy concept for the reason that the Director of this agency is going to be responsible to the American people, to Congress, and to the President. For any mistakes that he makes and for any omissions in his duties, he will be responsible and he will be charged with them. He will be responsible to the legislative, to the executive, and also to the American people.

However, if we immerse again the protection and enforcement in a vast agency such as HEW, we will lose sight of the responsibility vested in any public official with respect to enforcement.

Mr. President, that is the fatal defect I see in the amendment offered by my good friend, the Senator from New Hampshire.

Mr. COTTON. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 5 minutes.

Mr. COTTON. Mr. President, I commend the distinguished Senator from New Mexico for his very able presentation. I find much that I can agree with in what he has said. There have been chapters throughout the history of this situation that we viewed not only with deep regret, but also many times with horror. However, I would call the attention of my good friend, the Senator from New Mexico, to the fact that the question before the Senate is the amendment of the Senator from New Hampshire.

The amendment of the Senator from New Hampshire not only does not entrust enforcement to the Food and Drug Administration, but it reorganizes it more effectively within HEW. Furthermore, I think that the Senator from New Mexico should bear in mind that only the other day the subcommittee chaired by the distinguished Senator from Connecticut (Mr. RIBICOFF) reported to the full Committee on Government Operations a bill creating a Consumer Protection Agency to assume the advocacy role for the consumer.

Now, I cannot quite understand the theory of the Senator from New Mexico. Does he want two agencies, each entrusted with and made responsible for protecting the consumer? Usually when there are two or three agencies entrusted with similar duties, it does not get done because it falls between their respective jurisdictions.

The Consumer Protection Agency bill is practically certain to receive the approbation of the Senate. So we are not in disagreement. I agree with much that the distinguished Senator from New Mexico has said.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article that was published in the Evening Star of Thursday, February 10, 1972, entitled "Overreacting on Consumer Safety" written by Charles Bartlett.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Evening Star, Thursday, Feb. 10, 1972]

OVERREACTING ON CONSUMER SAFETY

(By Charles Bartlett)

Politicians these days have a tendency to overreact on issues involving the consumer and many in Congress want to go further than is wise on product safety.

Sen. Warren Magnuson's Commerce Committee is bent on creating a five-man independent commission to police consumer goods which cause, the experts say, some 20 million accidents a year. Many Democrats favor the commission over HEW Secretary Elliot Richardson's proposal to enlarge the Food and Drug Administration into a consumer safety administration.

The notion of a special commission on product safety arose from studies by an earlier commission whose members found the FDA laggard in pushing toy safety and poison prevention. They want the visibility and vitality of a body whose lone concern will be the average man's surprising lack of concern with the safety aspect of the items he purchases.

Their argument against Richardson's proposal is that a huge bueraucracy directed agaist unsafe foods, drugs, and cosmetics may not give adequate attention to the perils which lurk in power lawn mowers, electronic gadgets, and glass doors. "There needs to be a special focus," maintains Arnold Elkind, chairman of a two-year study of the problem.

But the record does not show that five regulatory commissioners, appointees from both parties with fixed terms, are capable of sustaining a high-lighted focus on any problem. The regulatory agencies are the dreariest corner of the government. Except during rare periods when they have unusual chairmen, they drift into industry-oriented mediocrity.

The FDA has known dark days also but not until recently has it been given funds to do what Congress expected of it. It does have 3,000 agents, laboratory facilities, and a headquarters staff which can be expanded to regulate product safety.

Apart from the duplication and confusion involved in creating a wholly new agency, a divided jurisdiction will leave regulation more vulnerable to the special interests. Consumer protection requires a running sequence of decisions based on good science and good sense. Five commissioners, divided amongst themselves, will find it harder to make rapid decisions beyond reach of industrial or emotional bias than one good administrator.

Sen. Frank Moss, D-Utah, wants the consumer protected by two independent agencies. He proposes to take FDA out of the Department of Health, Education and Welfare where it performs a policeman's function quite unlike the department's other activities. The aim is to free the FDA's regulatory activities from domination by the department.

This issue is less important than the need to keep consumer protection under one agency headed by a single administrator. Richardson holds his FDA administrator, Charles Edwards, on a long leash. Richardson demands only to be kept informed on what Edwards is doing. If he doesn't like what he learns, he will choose a new commissioner but he does not become involved in the decisions on products.

The issue of whether the consumer agency should be taken away from HEW is linked, like the issue of whether education should be a separate department, to the larger question of whether Congress intends to accept President Nixon's proposal for a Department of Human Resources. This in turn depends on whether Congress wants the organization of government to be more fragmented or compact.

But it is an illusion to believe that shaking up the bureaucracy or putting new reliance on the outdated commission style of regulation will give consumers all the protection their champions demand. The best hope is to give adequate funds to a strong administrator.

Mr. COTTON. Mr. President, the article I have had printed in the RECORD deals with consumer safety and with enforcement. In the article attention is called to the very fact which I wanted to call to the attention of the very able Senator from New Mexico when we create a new agency. Quite frankly, looking at the history of the ICC, the FTC, and all of these independent agencies, I am not especially thrilled with their performance in the matter of enforcement. And, in this new agency, in the opinion of the Senator from New Hampshire, the question of enforcement is going to be taken care of by the advocacy role of the proposed Consumer Protection Agency.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, would the Senator from Washington yield me 3 minutes?

Mr. MAGNUSON. Mr. President, I yield 3 minutes to the Senator from West Virginia.

ORDER FOR CONSIDERATION OF AND TIME LIMITATION ON PUBLIC BROADCASTING BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, on the disposition of S. 3722, the Senate proceed to the consideration of H.R. 13918, the public broadcasting bill; and, having discussed this matter with Senators WEICKER, GRIFFIN, COTTON, BAKER, and PASTORE, I propose the following further unanimous-consent request thereon: That there be 2 hours on the bill, to be equally divided between the distinguished senior Senator from Rhode Island (Mr. PASTORE) and the distinguished senior Senator from Tennessee (Mr. BAKER); that time on any amendment be limited to 30 minutes with the exception of one amendment by the Senator from Tennessee (Mr. BAKER), on which there be a 1-hour limitation; that time on any debatable motion, or appeal be limited to 30 minutes, the time to be divided between the mover of the amendment, debatable motion, or appeal and the distinguished manager of the bill, the Senator from Rhode Island (Mr. PASTORE).

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR YIELDING OF TIME ON PUBLIC BROADCASTING BILL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators in control of time on the public broadcasting bill, H.R. 13918, may yield therefrom to any Senator on any amendment, debatable motion, or appeal.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TEMPORARILY LAYING ASIDE AMENDMENT TO THE FOREIGN ASSISTANCE ACT AND FOR CONSIDERATION OF THE FEDERAL FINANCING BANK BILL TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, upon the disposition of H.R. 13918 on tomorrow, the Senate proceed to the consideration of S. 3001, the Federal financing bank bill, and that the unfinished business, S. 3390, remain in a temporarily laid-aside status until the final disposition of S. 3001 on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF TREASURY AND POST OFFICE APPROPRIATIONS BILL ON FRIDAY MORNING

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Friday morning, immediately following the recognition of the two leaders or their designees, and any Senators for whom 15-minute orders may have been entered in the meantime, the Senate proceed to the consideration of H.R. 15585, the bill making appropriations for the Treasury and Postal Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF SCOTT AMENDMENT NO. 1265 TO THE FOREIGN ASSISTANCE ACT OF 1961 ON FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the Treasury and Postal Service appropriations bill, H.R. 15585, on Friday, the Senate proceed to the consideration of the Scott amendment, No. 1265, to the unfinished business, S. 3390.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION ON FRIDAY OF THE DOMINICK AMENDMENT TO THE AMENDMENT TO THE FOREIGN ASSISTANCE ACT OF 1961

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the Scott amendment, No. 1265, on Friday, the Senate proceed to the consideration of the Dominick amendment to S. 3390.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION ON TOMORROW OF BILL FOR CONTINUATION OF PROGRAMS AUTHORIZED UNDER ECONOMIC OPPORTUNITY ACT OF 1964

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, following the disposition of S. 3001, the Senate proceed to consider, for a second track item, Calendar order No. 759, S. 3010, a bill to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964.

Mr. GRIFFIN. Mr. President, reserving the right to object, is the Senator from Michigan correct that with respect to the last bill, the OEO bill, on which I understand there are some differences in controversy, there is no time limit that has been agreed to?

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. GRIFFIN. The Senator just plans to lay it down.

Mr. ROBERT C. BYRD. To lay it down as a second track item, with S. 3390 to remain as the first track item, the unfinished business.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. MAGNUSON. That is a pretty long list the Senator has there. I hope we can get it finished. If it should happen that the HEW appropriation bill will be ready for consideration, the Senator would move one of these aside.

Mr. ROBERT C. BYRD. May I ask the Senator—if I may have the attention also of the Senator from New Hampshire (Mr. COTTON)—would it be agreeable to take up the HEW appropriation bill on Tuesday next?

Mr. MAGNUSON. Yes.

Mr. ROBERT C. BYRD. Would it also be agreeable on Tuesday next to lay aside S. 3390, the unfinished business temporarily, and to take up the HEW appropriation bill under a time limitation, say, of 3 hours on the bill, and 1 hour on any amendment thereto, so that we could finish that bill next Tuesday?

Mr. COTTON. I would say to the distinguished Senator that that would be all right with me.

Mr. MAGNUSON. Many people have an interest in the scores of items in the bill. I would not like to agree and then find that they would be shut off.

Mr. COTTON. The Senator from Washington and I are for the bill. When we agree to any time limitation, we are a little bit out of our scope.

Mr. PASTORE. How about a time limitation of 5 hours?

Mr. ROBERT C. BYRD. May I request, as the distinguished Senator from Rhode Island has proposed, that there be a time limitation of 5 hours on the bill making appropriations for the Department of HEW, 1 hour on any amendment, and one-half hour on any amendment to an amendment, debatable motion, or appeal, with the understanding that Senators in control of time on the bill may yield time therefrom on any amendment, debatable motion, or appeal.

Mr. MAGNUSON. That would cover it. If someone came in here and said, "We wanted to talk a long time about NIH," I guess we could arrange for that by unanimous consent.

Mr. COTTON. It seems to me that 5 hours on the bill would be enough time. At this juncture if we cannot get through that bill in 5 hours, I would say that someone would be filibustering, although I know that is not an acceptable word.

Mr. ROBERT C. BYRD. Very well, Mr. President, with the acquiescence and consent of the Senators who have just participated in the colloquy, I so ask unanimous consent.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. MAGNUSON. Mr. President, I hope we can start it early Tuesday morning and that there will not be too many speeches in the morning hour so we can get through with the bill.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator that his request will be kept in mind, and I think the schedule can be arranged accordingly.

The PRESIDING OFFICER. Is there objection to the previous request of the Senator from West Virginia made prior to the unanimous consent request on the appropriation bill?

Mr. ROBERT C. BYRD. I take it that the Chair is now referring to the economic opportunity bill.

The PRESIDING OFFICER. Yes. The Chair hears no objection, and it is so ordered.

FOOD, DRUG, AND CONSUMER PRODUCT SAFETY ACT OF 1972

The Senate continued with the consideration of the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

Mr. COTTON. Mr. President, while there is a sufficient number of Senators in the Chamber I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. MAGNUSON. Mr. President, I yield to the Senator from Illinois such time as he wishes.

Mr. PERCY. Mr. President, I feel I have an obligation to my colleague from New Hampshire to review very briefly the history of the relationship of the Committee on Government Operations to the bill. I thoroughly agree with my colleague that clearly the history of such agencies as the Interstate Commerce Commission, the Federal Power Commission, the Federal Maritime Commission, and others, attests all too sadly to the fact that independent regulatory agencies do not all of a sudden provide a sudden formulation which will wipe out for all time lackluster performance in the name of public protection. So we approached this responsibility, fully accepting the objectives and goals with the understanding that our purpose was to find the best way to go about organizing around this vital function, and knowing the administration wanted to keep it within the framework of HEW.

We held hearings with the thought in mind that we would try to make this accommodation; that we would lay down certain principles and guidelines that we felt extremely important.

As I look at this particular design that the distinguished Senator from New Hampshire has presented, when he talks about Parkinson's Law, this scheme fits the description. The one thing I have been absolutely certain of in looking at organizational structure is that the further down one is on a totem pole and the further he gets from the decision-making power, the greater difficulty he has and the greater chance there is in the process for things to go wrong. So as I look at this structure, we have the President, then the Domestic Council under the directorship of John Ehrlichman, the Secretary of HEW, the Under Secretary, who is not shown here, then an Administrator for Health, then, the Commissioner, the Deputy, and finally we get down to Food, Drug, and Product Safety. So we are down about eight layers deep.

Mr. COTTON. No; I have not shown the Under Secretary.

Mr. PERCY. No Under Secretary. Then, Mr. President, you are still seven layers deep. So deep is this that when the Secretary came to the Committee on Government Operations, he had a retinue, an entourage of assistants with him that spread across the room. And so low was consumer product safety that the Administrator of that particular function—a Mr. Jensen, who has regulatory authority over approximately $145 billion worth of products turned out by American industry every year and has the responsibility for safeguarding the safety of these products—was not at the table and was not even in the room.

I would imagine that if he wanted to see the Secretary he would not have a very easy time of it since he is so far down the line. Whereas the organizational structure established in the bill adopted by the Committee on Commerce has the Administrator reporting directly to the President. The Administrator would, of course, have someone in the White House responsible for that activity and for cognizance over it, but there would be just one other line down to the Commissioner on product safety.

Approaching this from the standpoint of good organization, I suggested certain guidelines be established whereby we could keep the unit within HEW. I even outlined to the Secretary certain critical facets of independence that would have to be guaranteed.

Mr. President, to save the time of the Senate, I ask unanimous consent that those guidelines be printed in the RECORD at this point.

There being no objection, the guidelines were ordered to be printed in the RECORD, as follows:

[From May 2, 1972 Hearings Before the Subcommittee on Executive Reorganization]

In the event that we in the Government Operations Committee determine that there is good reason for keeping food, drug, and consumer product safety regulation together under the Department of Health, Education, and Welfare, instead of an independent agency, it may be helpful, based upon my study of the issue to date, to set forth certain minimal guidelines for organizing around this vital purpose and assuring virtual regulatory independence.

Most important of all, authority for regulating in the area of consumer safety would have to be elevated within the Department and vested in an Assistant Secretary or Administrator for Consumer Safety reporting directly to the Secretary. I can think of no higher concern, or any function more deserving of immediate attention by the Secretary of this or any other Department of the Federal Government, than the protection of public health and safety.

By vesting authority directly in the Assistant Secretary or Administrator for Consumer Safety, I mean that he should have final authority to establish standards, to promulgate regulations, to decide when and whom to prosecute, and to enforce Agency rules and orders. This would promote certainty in decision making and hopefully avoid future cyclamate snafus or vacillation over phosphate detergents, which ill-serve the consuming public as well as affected industries.

Consideration should also be given to the other important facets of independence which are reflected in S. 3419 in order to fully insulate this peculiar safety function from forseeable political influences and economic and other trade-offs. These factors include a fixed term of office for the Agency head, and his removal only for cause; permitting him to appoint those who will serve under him; flexibility and an absence of interference in his budget submissions and legislative recommendations.

Finally, to facilitate an ongoing exchange of information and health-related research within HEW, I would suggest the formation of a Health and Safety Council consisting of the Secretary, the Assistant Secretary (or Administrator) for Consumer Safety, the Assistant Secretary for Health, the Directors of HSMHA and NIH, and the Commissioners of Food, Drugs, and Product Safety.

Mr. PERCY. Mr. President, we approached the organizational question from the standpoint that certain key ingredients had to be maintained: that final regulatory authority be vested in the commissioner who, to the extent practicable, would be immunized from political pressures. Whether there is a Democratic administration or a Republican administration, in the scheme contemplated by Senator Cotton's amendment there are so many layers of pressure that can be put on the Commissioner of Product Safety. We also felt it necessary to have authority for the commissioner to go to the court to enforce laws rather than subcontracting that function to the Department of Justice.

Similarly, we felt it important to have authority for the Administrator to come directly to the Congress for funds and new legislative proposals and to make his appeal without the necessity of having that subjected to a whittling down process or to a layering of bureaucracy or to a filtering through the Office of Management and Budget, or to any like process that would deprive him of the opportunity to show what he really needs to carry out his responsibilities.

We offered the proposition that if those guidelines could be met, we would find a way to structure this within HEW. Those guidelines were not met, and it was for that reason that I reluctantly came to the conclusion that there was no alternative other than the alternative that was offered in this bill which I think will succeed. I could not in good conscience agree to mere cosmetics as by just shuffling around boxes, making it look like we were changing things around, but not really. I could not be satisfied that the public and the consumer interest could be met by any cosmetic treatment. So often we make cosmetic changes that do not amount to a hill of beans.

We have in the committee bill a direct line of responsibility. The buck cannot be passed beyond the Administrator. We will know, after having passed this provision, who has the responsibility and whom we can hold responsible if they do not carry out that function.

It is for that reason that I reluctantly have to oppose the amendment.

Mr. COTTON. Mr. President, will the Senator yield to me on my time?

Mr. PERCY. I yield.

Mr. COTTON. I do not blame the Senator if he cannot read the chart on the blackboard owing to my handwriting. But, I am sure the Senator understands the Commissioner certainly will have stature. He would be a Presidential appointee, subject to confirmation by advice and consent of the Senate. His complete job would be that of product safety. He also would have a Deputy and the Directors of the three Offices. That is where the real chain of command follows.

I recognize what happens when it comes to getting appropriations. I serve on the Appropriations Committee, as does the Senator from Illinois. But, I also inquire of the Senator from Illinois, of whom I have great respect for his judgment, and I think he presents his case very well, is it not the expectation of the Senator, who is a distinguished member of the Government Operations Committee, that a bill establishing a Consumer Protection Agency is going to come out of that committee very shortly?

Mr. PERCY. Yes. The Consumer Protection Agency bill has been unanimously reported out of the Subcommittee on Executive Reorganization and it will be acted on, I trust, sometime next week by the full committee.

The functions are entirely separate, of course. The Food, Drug, and Consumer Product Agency will have full initiatory power and regulatory power. It acts directly with manufacturers, with industry, and with other Government agencies, to regulate in the area of consumer safety. The Consumer Protection Agency, on the other hand, is not a regulatory agency. It is an agency to which the consumer can go to have his interests represented. It is an advocate for the consumer before other Government agencies and the Federal courts, but cannot decide cases, set standards, or punish violators of laws. We have been very careful to have no duplicative functions whatsoever between the two agencies. We have removed any reference to advocacy in the bill before us now, and we have deleted any reference to product safety regulation in the CPA bill.

Mr. COTTON. I want to thank the Senator. His explanation to me is both enlightening and confusing.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the Senator from New York (Mr. JAVITS) be added as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. Mr. President, will the Senator yield to me for a unanimous consent request?

Mr. MAGNUSON. I yield.

Mr. MOSS. I ask unanimous consent that the Senator from Indiana (Mr. BAYH) be shown as a cosponsor of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, the amendment offered by my distinguished friend and colleague, the senior Senator from New Hampshire (Mr. COTTON), strikes at the very heart of S. 3419. Three Committees have taken favorable action on it. It would create an independent agency. I urge my colleagues to reject the amendment of Senator COTTON which would prevent independence of the Food, Drug, and Consumer Product Agency.

Mr. DOMINICK. Mr. President, I strongly support my distinguished colleague from New Hampshire's amendment which would establish a Consumer Safety Administration within the Department of Health, Education, and Welfare. I think this approach is far preferable to S. 3419's proposed transfer of the Food and Drug Administration to a new independent Food, Drug, and Consumer Product Agency outside of the Department of Health, Education, and Welfare.

I agree that additional household product regulatory authority is needed in order to protect consumers adequately. But a persuasive case has not been made that such authority would be more effectively utilized by a new independent agency than by a strengthened and reorganized Food and Drug Administration within the Department of Health, Education, and Welfare, as the Administration has proposed. A Consumer Safety Administration within HEW would accomplish the objectives of the independent agency proposed in S. 3419—strengthening and consolidating food, drug, and product safety regulatory authority; and increased viability and accountability.

Independent agencies have no more viability or accountability to the public than agencies within Cabinet-level departments. They have less access to the President, and certainly no advantages in competing for funds. And they are probably more vulnerable to political pressures.

I don't see how consumers will benefit from disruption of the close relationships between the regulatory functions of the Food and Drug Administration and the consumer-related functions of other agencies within the Department of Health, Education, and Welfare. The same applies to the proposed transfer to the new agency of the Agriculture Department's meat, poultry, and egg products inspection functions. Considerations like these led Congress to reject the separate independent agency approach in the cancer legislation enacted last year. Further, the functions of the new independent Food, Drug, and Consumer Product Agency would overlap and conflict with the consumer safety functions of the new independent Consumer Protection Agency which is proposed in House-passed legislation.

I think much of the motivation for the independent agency approach lies in the fact that it gets the attention of constituents. This approach to problem solving, which appears to be overtaking the "let's appoint a blue-ribbon panel to study it" approach, was described by Secretary Richardson in his testimony on S. 3419, as "reorganization for its own sake." He suggested the effect is to sell the consumer "a phony bill of goods." I agree. This expedient is unfortunate because, given the opportunity to choose, I think most constituents would prefer an agency within a Cabinet-level department if they knew it could accomplish the same purposes—probably more effectively—without contributing to the complexity of our already too complicated bureaucracy. There are now some 62 separate Federal entities reporting directly to the President. S. 3419 as reported would add yet another.

Mr. President, I urge my colleagues to support this amendment.

Mr. MAGNUSON. Mr. President, unless a Senator wants to speak on the amendment, I am prepared to yield back the remainder of my time.

Mr. COTTON. Mr. President, I yield back my time.

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from New Hampshire. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Indiana (Mr. HARTKE), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), and the Senator from Maine (Mr. MUSKIE) are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL), the Senator from Iowa (Mr. HUGHES), the Senator from South Dakota (Mr. MCGOVERN), and the Senator from New Hampshire (Mr. MCINTYRE) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oregon (Mr. HATFIELD) is necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senator from South Carolina (Mr. THURMOND) is detained on official business.

On this vote, the Senator from South Carolina (Mr. THURMOND) is paired with the Senator from Oregon (Mr. HATFIELD). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Oregon would vote "nay."

The result was announced—yeas 32, nays 51, as follows:

[No. 232 Leg.]

YEAS—32

Aiken	Dole	Jordan, N.C.
Allott	Dominick	Jordan, Idaho
Baker	Eastland	Miller
Beall	Ellender	Smith
Bellmon	Ervin	Spong
Bennett	Fannin	Stennis
Brock	Fong	Taft
Buckley	Griffin	Tower
Cooper	Gurney	Weicker
Cotton	Hansen	Young
Curtis	Hruska	

NAYS—51

Allen	Hollings	Percy
Bayh	Humphrey	Proxmire
Bentsen	Jackson	Randolph
Bible	Javits	Ribicoff
Boggs	Kennedy	Roth
Brooke	Long	Saxbe
Burdick	Magnuson	Schweiker
Byrd, Harry F., Jr.	Mathias	Scott
	McClellan	Sparkman
Byrd, Robert C.	McGee	Stafford
Cannon	Mondale	Stevens
Case	Montoya	Stevenson
Church	Moss	Symington
Cook	Nelson	Talmadge
Cranston	Packwood	Tunney
Eagleton	Pastore	Williams
Fulbright	Pearson	
Hart	Pell	

NOT VOTING—17

Anderson	Hartke	McIntyre
Chiles	Hatfield	Metcalf
Gambrell	Hughes	Mundt
Goldwater	Inouye	Muskie
Gravel	Mansfield	Thurmond
Harris	McGovern	

So Mr. COTTON's amendment was rejected.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 2394. An act for the relief of Antonio Benavides;

H.R. 2703. An act for the relief of Mrs. Concepcion Garcia Balauro;

H.R. 7946. An act for the relief of Jerry L. Chancellor;

H.R. 9256. An act for the relief of Kyong Ok Goodwin (Nee Won); and

H.R. 10713. An act for the relief of Wilma Busto Koch.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 513. An act for the relief of Maria Badalamenti; and

H.R. 7088. An act to provide for the establishment of the Tinicum National Environmental Center in the Commonwealth of Pennsylvania, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred to the Committee on the Judiciary:

H.R. 2394. An act for the relief of Antonio Benavides;

H.R. 2703. An act for the relief of Mrs. Concepcion Garcia Balauro;

H.R. 7946. An act for the relief of Jerry L. Chancellor;

H.R. 9256. An act for the relief of Kyong Ok Goodwin (Nee Won); and

H.R. 10713. An act for the relief of Wilma Busto Koch.

AUTHORIZATION FOR RECEIPT AND REFERRAL OF H.R. 15585

Mr. MOSS. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to receive a message from the House of Representatives on H.R. 15585 making appropriations for the Treasury Department, the U.S. Postal Service, and the Executive Office of the President, and that the bill be referred to the Appropriations Committee during the adjournment of the Senate or until 9 a.m. Thursday morning, June 22.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOOD, DRUG, AND CONSUMER PRODUCT SAFETY ACT OF 1972

The Senate continued with the consideration of the bill (S. 3419) to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.

Mr. HUMPHREY. Mr. President, I rise in support of S. 3419, the Food, Drug, and Consumer Product Safety Act of 1972.

I believe the enactment of this legislation is dictated by the clear need of the American consumer for adequate protection in obtaining safe foods, drugs, and cosmetics, and in avoiding accident hazards in the use of fabrics, toys, certain electronic products, toxic substances, and other articles, and in the prevention of deceptive packaging and inadequate labeling.

The heavy responsibilities laid upon existing Federal regulatory agencies in these areas cannot be met with full effectiveness without the establishment of an independent agency in the executive branch, directly responsible to the President and Congress and openly accountable to the public. The operations of the Food and Drug Administration, which will provide many of the primary components of this new agency can only be strengthened under this reorganization. This is an essential step that must be taken beyond the increase of FDA appropriations and the expansion of staff.

I do not regard the establishment of an independent Food, Drug, and Consumer Product Agency as an unnecessary fragmentation of the Federal structure. To the contrary, there is a compelling need for this consolidation of diverse and uncoordinated regulatory, research, and inspection functions in the Federal Government, if full protection is to be provided to consumers, and if a priority level of authority and responsibility is to be established to articulate clear regulatory policies to industry.

Further deliberation must be given to the need for providing in this legislation for the transfer of Department of Agriculture food inspection programs. But it is essential that the functions of the new Agency be organized as provided for under the three subordinate Commissions of Food and Nutrition, Drugs, and Consumer Products. A direct line of authority must also be provided to the Agency Administrator, appointed by the President, by and with the advice and consent of the Senate, for an initial term of 5 years with a one-time reappointment—a provision designed to achieve a reasonable Agency independence from immediate political pressures, but at the same time to assure the Agency's responsiveness to immediate public concerns. And this line of authority is further emphasized by the provision in this bill directing the Administrator to submit an annual Agency budget directly to the President for review and submittal to Congress, and prohibiting the Office of Management and Budget from impounding any funds appropriated to the Agency by Congress.

I applaud the initiatives taken in this bill to establish an Office of Consumer Information, a Consumer Information Library, and a National Injury Information Clearinghouse, as well as a Joint Scientific Committee to assume the coordination of functions within the Agency. An unacceptable number of hazardous consumer products now affect interstate commerce, and their increasing numbers and complexity make it imperative that the Federal Government act promptly to eliminate hazards resulting in death or injury.

I also strongly believe the Agency must adopt a position of openness toward and accessibility by the American consumer public. It is for this reason that I fully support provisions in this legislation to assure public access to information received or sent by the Administrator or any Commissioner, subject only to specified and fair limitations on information relating to trade secrets as covered under Federal law. Further provision is made for a consumer to commence a civil action against the Agency, if it refuses to take action in response to a petition, or if its action is regarded by the petitioner as insufficient to eliminate an alleged unreasonable risk of injury or death. And specific guidelines are provided in this bill to assure that the promulgation of consumer product standards is expedited and that hazardous products are removed from the market, if necessary by emergency action initiated before the appropriate U.S. district court by the Agency Administrator or the Attorney General. Finally, I fully support the provisions in this bill giving the Agency Administrator the necessary powers to take all action necessary to enforce food, drug, and consumer product safety laws.

The time has come to end needless injury and death resulting from the inadequate regulation of consumer products under present Federal law. I urge the Senate to address this national issue forthrightly by passing the Food, Drug, and Consumer Product Safety Act.

Mr. KENNEDY. Mr. President, it gives me great pleasure to support S. 3419, the Food, Drug, and Consumer Product Safety Act of 1972, as amended and reported by the Committee on Labor and Public Welfare.

S. 3419 is far-reaching and comprehensive legislation to protect consumers in the vital areas of food, drugs, and consumer products. It provides a clear mandate to insure the safety and efficacy of drugs, the wholesomeness of foods, and the safety of consumer products to prevent unnecessary injury and harm to the consumer. S. 3419 is a giant step forward to implement and achieve a strong Federal commitment in an area of critical concern to all Americans. The Committee on Commerce and its distinguished chairman, Senator MAGNUSON, are to be highly commended, for once again reporting outstanding legislation for Senate consideration.

I strongly support S. 3419 as amended by the Committee on Labor and Public Welfare and believe the committee amendments merit strong support and consideration. S. 3419 would establish an independent agency in the executive branch to regulate foods, drugs, and consumer products. It would combine into a single agency; first, the authority of the Food and Drug Administration over food, drugs, and consumer products; second, the authority of the Division of Biologics Standards Over Human Biological Drugs; third, the authority of the Center for Disease Control over Clinical Laboratory Licensing; fourth, the authority of the Department of Commerce and the FTC over flammable fabrics and refrigerator doors; and fifth, the authority of the Agriculture Department over food inspection and animal biological drugs. The result will be one agency with comprehensive jurisdiction and authority to regulate all food, drugs, and common household products.

FDA's shortcomings have not been a matter of partisan politics; the same kinds of problems have plagued the FDA in Democratic as well as Republican administrations. Under all administrations, the Agency has failed either to provide full protection to consumers against unsafe products or to articulate clear regulatory policies to industry.

The most important reason for this failure has been the agency's lack of clear-cut responsibility for accomplishing its mission. Authority for the regulation of food, drugs, and consumer products is widely fragmented within the Federal Government: The FDA sets standards for the level of dangerous drug residues in meat and poultry, but testing and inspection is done by the Department of Agriculture; the FDA has responsibility to investigate the safety of flammable fabrics, but regulatory authority is vested with the Federal Trade Commission, the Department of Commerce, and the Department of the Treasury. The same division of authority is present in other areas.

FDA has never had independent authority to regulate those matters within its jurisdiction. As presently structured within the Department of Health, Education, and Welfare, the Commissioner of the Food and Drug Administration must report to the Assistant Secretary for Health and Scientific Affairs, who must report to the Under Secretary of the Department of Health, Education, and Welfare, who must report to the Office of the Secretary of Health, Education, and Welfare, who must report to the Office of Management and Budget,

to the Domestic Council, and finally, once all those channels have been exhausted, to the President. At any step along that route, a regulatory decision by the Commissioner could be reversed. Because of this structure, the agency has not been able to make clear-cut regulatory decisions or even to make clear to consumers and to industry what its basic policies are.

In the Department of Health, Education, and Welfare, basic health programs are directed toward health research and health delivery systems. Even if all of FDA is considered health-related, 98 percent of the health resources of the Department and 88 percent of the manpower in fiscal year 1972 was devoted to health research and delivery. Health regulatory functions of FDA are only a small part of HEW's total health responsibility and cannot receive the attention they deserve.

Furthermore, in addition to health regulation, FDA plays an important role in economic regulation. It is concerned not only with adulteration of food and drugs which may be harmful to health, but with misbranding and deceptive labeling. With respect to adulteration of food, there are problems that are important but which do not, strictly speaking, involve dangers to health. For example, the FDA has published guidelines governing the amount of filth and foreign matter that may be permitted on food. In hearings before the Subcommittee on Executive Reorganization and Government Research, the Secretary stated that the presence of such foreign matter as rodent hairs in chocolate bars raised no health problem. Implicit in his statement was the assumption that since no health problem was raised, there was no pressing need for effective regulation to improve the purity of food. Yet, there is clearly an interest in regulation to assure the purity of food, even when impurities are merely displeasing and do not pose a clear danger to health.

It is unlikely, however, that interests in economic and non-health regulation will ever be given appropriate consideration in a department in which health responsibilities focus on research and delivery. Nor is it likely that the entire program of regulation of food, drugs, and consumer products can ever be given the attention resources, support, and services it deserves in as enormous and multifaceted a department as HEW. This problem is built into the very structure of the Department, and is as prevalent in Democratic as in Republican administrations.

It will continue to exist so long as the Secretary is called upon to choose between competing needs. In short, to be an effective policeman of the marketplace, the agency must be free from the restraints of competing policies, priorities, and objectives.

Examples are numerous. In the regulation of cyclamates, confusion over whose policy would prevail led the industry to build up vast inventories of products ultimately and unexpectedly banned from the market. This would not have happened if clear-cut authority to determine policy had been placed in one responsible official. Another example is the confusion concerning the use of detergents containing phosphates. Neither consumers, environmentalists, nor industry can tell for sure what the Government's regulatory policy is.

Finally, once a policy is enunciated, the FDA lacks the authority to enforce these decisions. The FDA must turn to the Department of Justice which because of other priorities may inadvertently frustrate or delay implementation of the FDA policy.

Mr. President, the problem of food, drug, and consumer product regulation also satisfies both of the basic criteria for the creation of an independent agency set out by the President in his message proposing the Environmental Protection Agency. The first, was that responsibility is divided among several agencies, but is not the primary function of any of them, and the other functions affect the agencies' views of the regulatory issues. The committee record shows that this situation exists in food, drug, and consumer product regulation.

The President stated a second criterion justifying the creation of an independent agency; a situation must exist in which the centralizing of authority in one agency would better enable that agency to make decisions about the activities of other agencies. The President stated that such decisionmaking functions were better lodged in an independent agency than in an existing Cabinet department. He reasoned that a Cabinet agency, with multifarious nonregulatory responsibilities, might be regarded by other agencies as a representative of competing interests and constituencies and a promoter of its own programs at the expense of those of other agencies. He felt that it would be unwise in such a situation to transfer regulatory responsibilities to such a Cabinet agency.

It is entirely possible that promotion of HEW's health research and health delivery programs might appear to be in conflict with the promotion, marketing, and manufacturing of certain products. This problem could arise, for example, from the transfer of all authority over the use of the hormone diethylstilbesterol—DES—used to promote growth in cattle. The hormone has been shown to cause cancer in some animals, and residues of it in human food are prohibited. At present, authority is divided between HEW and the Department of Agriculture; largely because of this division, the Government's policies have been inadequate and neither consumers nor industry have been satisfied with the result. Consolidation of authority would be desirable. But if all authority were transferred to HEW, heavily influenced by the need to promote its health delivery and research programs, the concerns of the Department of Agriculture might be ignored. Similarly, if all authority were transferred to the Department of Agriculture, health interests in HEW would feel uneasy.

A similar situation exists in the area of flammable fabrics, where the division of authority among the FDA, the FTC, the Department of Commerce and the Department of the Treasury, has produced great confusion and no effective regulation. Consolidation is necessary, but authority would be lodged in an independent, wholly regulatory agency, without promotional programs designed to serve particular constituencies.

It is essential to keep product safety regulation together with food and drug regulation, enforcement and field operations in the three areas are already shared. To establish product safety regulation in a separate agency would cause needless duplication of staff, facilities, training, and other resources.

The creation of a new agency will not sever the relationship between FDA and HEW. There should be strong ties between the Department of HEW and the new agency, just as there are presently strong ties between FDA and its sister agencies such as, FTC, EPA, and USDA. Removing FDA from the Department of HEW is simply an organizational move to increase responsiveness and accountability, and need have no adverse impact on its relations with the health components of that department in the future. In fact, these relationships may be substantially improved once the new agency is established and it is in a position to operate with the new strength and mandate given it in this legislation.

Mr. President, as amended, S. 3419 covers food, drugs, and a wide variety of other consumer products. Accordingly, the short title of the bill has been changed to "the Food, Drug, and Consumer Product Act of 1972," and the name of the new independent regulatory agency created by the bill has been changed to "the Food, Drug, and Consumer Product Agency." This title more adequately describes the precise regulatory function of the new agency. Further, it draws upon the name of its predecessor agency, the Food and Drug Administration, which has been well-known since it was first adopted in 1931, and thus has 41 years of recognition by the public.

Since many of the primary components of the new agency come from the Food and Drug Administration, the Committee on Labor and Public Welfare expects that it shall retain its present jurisdiction respecting regulatory authority exercised by the new agency. The committee also expects that it shall share the responsibility for holding confirmatory hearings on the administrator of such agency with the Senate Commerce Committee.

In keeping with the change in name for the new agency, section 103, establishment of agency, has been amended to show that its mission includes protecting consumers against adulteration, misbranding, and illegal distribution of food, drugs, cosmetics, and medical devices, as well as against injury resulting from the use of consumer products.

The Labor and Public Welfare Committee has amended section 104 to provide the Administrator of the agency full subpena power, access to documentary guidance, and authority to require general or special orders. This will make the authority of the Administrator to issue subpenas equal to that contained in sections 6 and 9 of the Federal Trade Commission Act. The new authority will cover products presently regulated by the Food and Drug Administration as well

as all of the other products over which jurisdiction is granted to the new agency. The FDA does not now possess subpena authority. In testimony before the Executive Reorganization Subcommittee, Secretary Richardson agreed that the FDA should be granted such power. This amendment remedies an important gap in the enforcement authority of the new agency.

The committee has also added five other new paragraphs providing additional authority for the Administrator.

Paragraph 13 permits the Administrator to prepare and submit, directly to the President without review by the Office of Management and Budget for review and transmittal to Congress, an annual budget estimate. It also requires that all appropriated funds be obligated and expended by the Agency, without the possibility that they may be reduced by the Office of Management and Budget. This language is modeled on section 407(b) (9) of the Pubic Heath Service Act, as added by the recently enacted National Cancer Act of 1971, Public Law 92–218. It will insure that the Congress receives the undiluted judgment of the Administrator concerning his budget needs and that no funds appropriated for the Agency will be withheld.

Paragraphs 14 and 15 authorize the Administrator to prescribe personnel policies and to submit legislative recommendations and testimony to Congress without the usual prior approval or clearance from the Office of Management and Budget or the President. If the Agency is to be effective, the Administrator must be capable of informing Congress, directly and without outside interference, exactly what he and his Agency believe to be the facts about the matters before it. The inevitable compromise softening of approach and delays achieved through a review process, which often includes several departments and agencies, is inconsistent with the type of strong new Agency envisioned by this bill. Similarly, it is important that the Administrator establish his own personnel policies in a manner suited to the regulatory mission of the new Agency, rather than the judgment of some official outside the Agency.

Paragraph 16 authorizes the Administrator to initiated and litigate all court action in the name of the Agency. He will be represented in court by his own representative, the general counsel of the Agency, or through the U.S. attorneys, representing the Attorney General. The Secretary of Health, Education, and Welfare, in his testimony before the Executive Reorganization Subcommittee, endorsed this authority for FDA in principle. It may be unnecessary for the new Agency to establish its own network of local attorneys to handle routine matters. In the past, the Food and Drug Administration has prepared all pleadings for the U.S. attorneys, has sent its own attorneys who are experts in the field to assist in the litigation of the case, and has prepared all appellate briefs. The committee intends this to continue, but the authority granted here will safeguard the independence of the new Agency.

It is important that the litigation of the Agency, which is critical to enforcement of the laws it administers, be directed and controlled by the Administrator. No one else has the responsibility for enforcement of those laws, and no one else should be in the position to frustrate their enforcement. The decision whether to file a criminal information, and the decision whether to include or to dismiss individual defendants, must be made by the Administrator. The Administrator must also be in the position to file, within hours, seizure or injunction actions, in order to prevent continued violation of the law. Similarly, the decision as to what legal arguments are to be made and how to make them most effectively for orderly development of the law through trial and appellate litigation is best handled by the Administrator who is responsible solely for enforcing the food, drug, and product safety laws.

Paragraph 17 provides that where a product is subject to safety regulation under certain other laws, the Administrator may petition the appropriate Federal department or agency to establish and enforce necessary safety regulations for such product. The Administrator may establish and enforce such regulations upon request of other agencies and may participate in proceedings of other agencies to establish safety regulations.

The committee has also substantially modified section 109, Office of Consumer Information. Conforming amendments and technical changes have been made in subsections (a), (b), and (c). With respect to the public information room, it is specifically provided that all funds collected for copying, or for search for and production of documents, shall be paid directly to the Agency and obligated and expended to finance the consumer information program, after start up costs have been met. The Freedom of Information Act does not provide that funds paid for copying should remain available to the agency involved. As a result, the information program is a drain on an agency's resources. This new provision corrects that deficiency. The Agency will be able to hire personnel and finance a program out of the funds collected for copying.

Subsection (c) has also been amended to provide that the charge for search and copying shall be the minimum practicable amount, not exceeding actual cost. The bill also directs the Agency to take all reasonable measures to reduce or waive charges which would be financially burdensome to any person. These provisions are intended to carry out the basic policy of this bill to encourage consumer participation in the procedures and processes of the Agency. This can only be achieved if ordinary citizens are provided access to all essential Agency information free or at a reasonable cost. It is intended to apply to small numbers of documents that can reasonably be obtained without significant burden to the Agency, and not to permit fishing expeditions or requests for large numbers of documents that could impede the regulatory work of the Agency.

The committee deleted the subsection (d) which provided for the appointment of private attorneys to represent consumers in proceedings before the Agency to avoid potential conflict with the proposed Consumer Protection Agency bill, S. 1177, and added new subsection (d) establishing a Consumer Information Library. There is no single location in government where the vast amount of literature on foods, drugs, and consumer products is available to the general public. This provision will cover that deficiency.

The National Injury Information Clearinghouse established under section 110 is a most important and innovative provision. A system of monitoring should be invaluable to assist the Commissioners and the Adminstration to carry out their functions. A confidentiality provision is included for the names or identification of either the injured parties or the person treating them. Either party may waive such privilege concerning his or her own name.

S. 3419, as reported by the Committee on Commerce, authorized in section 112, agency responsibility, a civil mandamus action by individuals against the agency where its act or omission has exposed a person to an unreasonable risk of injury or death from a food, drug, or consumer product. The Committee on Labor and Public Welfare fully agrees with the concept underlying this provision, but has revised it to streamline its functioning and to make it more efficient. The basic policy behind this provision is that the Agency should be responsive and accountable to the public.

The section now provides that an individual, by himself or as a representative of a class, who believes he has been exposed by an act or omission of the Agency to a food, drug, or consumer product presenting an unreasonable risk of injury or death shall first petition the Agency to take specific action sufficient to eliminate the alleged unreasonable risk. This permits a petition by an individual or class complaining that a product such as a new drug presents an unreasonable risk, and does not permit a person to submit a petition with respect to an agency act or omission removing a product from the market or failing to allow it on the market.

After submission of the petition, and a 30-day period during which interested parties will be permitted to comment, the Agency must issue a decision either refusing to take action or taking action which it determines sufficient to eliminate any unreasonable risk. This decision is to be made within 120 days following the filing of the petition. The parties may, of course, stipulate to a longer period of time.

If the petitioner disagrees with the Agency decision, he may commence a civil action in a U.S. court of appeals against the Agency. Any such action must be filed within 60 days after the decision of the Agency—if such an action is not filed within that time period, the petitioner may seek judicial review of the Agency decision pursuant to the applicable provisions of the Administrative Procedure Act.

The court of appeals may remand the matter to the Agency for the gathering of additional evidence upon a request by the petitioner for good cause shown. The

court may place any conditions it wishes upon such a remand for additional evidence. Such new evidence might then require the Agency to reconsider its decision.

The U.S. Court of Appeals is charged with determining whether a preponderance of the evidence in the record on which the Agency made its decision—which is limited to the petition, all information submitted by the petitioner, and all information identified in the Agency's decision as part of the record—shows that the Agency has exposed the petitioner to a food, drug, or consumer product presenting an unreasonable risk of injury or death. In making this determination, the court must consider whether the risk is unreasonable in light of all the relevant circumstances shown in the record. The burden of proof is on the petitioner to show that a preponderance of record evidence establishes the unreasonableness of the risk associated with the product, and that an act or omission of the Agency has exposed him to such risk.

If the petitioner prevails, the remedy available to the court is to remand the matter to the Agency for appropriate action. The Agency will then have an opportunity to consider what alternatives are available to eliminate the unreasonable risk determined by the court to exist, and to choose among those aiternatives one that will be sufficient. Should the petitioner again dispute the Agency decision, the same type of civil action could again be undertaken. The court has no power to award money damages against the Agency or any individual.

This provision establishes a new standard of review applicable only in these cases, but this departure from the administrative procedure act is justified by the nature of the right involved. In these cases an individual, or a group, is seeking protection from some food, drug, or consumer product which may expose them to an unreasonable risk of injury or death.

Agency action affecting interests in life and health should be subject to the most searching judicial examination. The importance of these interests justifies a departure from the normal standard of review. In such cases, substantial evidence in the record should not be sufficient to sustain the Agency action. Since this right of action gives the plaintiff no economic incentive—only costs may be recovered in the discretion of the court—it is unlikely that a large number of suits will disturb the orderly processes of agency decision. Yet the possibility of suit will serve as a constant spur to action safeguarding the public, but this does not preclude an independent tort action against an individual by the injured party.

Mr. President, the committee also accepted an amendment proposed by Senator EAGLETON which adds to the present cosmetic provisions of the Federal Food, Drug, and Cosmetic Act three new substantive labeling provisions. These provisions in effect bring the cosmetic requirements of the act more closely into conformity with the labeling requirements for food, drugs, and devices.

The first provision requires each cosmetic to be labeled with the common or usual name of the cosmetic, and with the common or usual name of each ingredient. The provision permits exemptions to be established where there is a showing that ingredient disclosure would be impracticable or deceptive.

The second provision requires warnings in all labeling for any cosmetic which would be dangerous under any reasonably foreseeable conditions of use or misuse.

The third provision deletes the present exemption for soap from the cosmetic requirements of the act.

The committee strongly supports these provisions which shall insure greater safety for consumers in regard to cosmetics.

The committee believes cooperation among the Federal agencies is most important and has provided in section 115 for the administrator to utilize the resources and facilities of the National Bureau of Standards. The Bureau can be of invaluable assistance in the area of public health and safety. The committee does not intend for the administrator to delegate to the Bureau the setting and enforcement of standards.

Mr. President, the present fragmentation of regulation of food, drugs, and other consumer products throughout a number of Federal departments and agencies has resulted in inconsistent policies and incomplete regulations, to the detriment of the consuming public. Effective food, drug and consumer product regulation requires creation of a new agency with independence to exert the leadership and vigorous enforcement necessary for consumer protection. Past experience shows that, unless the agency has the power to issue regulations, direct the course of all litigation, and make legislative and budgetary recommendations, without approval or clearance by outside agencies, its effectiveness will be substantially impaired.

The Committee on Labor and Public Welfare has made many amendments to the bill, yet its basic framework remains intact. The amendments strengthen and improve the bill by expanding the mandate of the agency, broadening its powers and increasing the authority of the administrator to manage the business of the agency efficiently. These changes will help assure that the bill's promise of better consumer protection in foods, drugs and consumer products becomes a reality.

I commend the Senate Commerce Committee and its distinguished chairman, Senator Magnuson, for originally reporting out S. 3419, and I strongly urge that S. 3419, as amended by the Committee on Labor and Public Welfare do pass.

As chairman of the Health Subcommittee of the Committee on Labor and Public Welfare, I want to express my deep appreciation to the distinguished Senator from Wisconsin, GAYLORD NELSON, who was kind enough to chair the Health Subcommittee hearings on S. 3419. I also wish to thank the Subcommittee on Executive Reorganization, and Government Research of the Government Operations Committee and its distinguished chairman, Senator RIBICOFF, for the cooperation and support in respect to S. 3419.

Mr. EAGLETON. Mr. President, I rise in support of S. 3419, and particularly title IV which requires ingredient labeling of all cosmetics, and where applicable, cautionary labeling.

Federal law now requires that a cosmetic be labeled without false or mis leading representations, with information about the manufacturer, packer or distributor of the product, and the quantity of its contents. The law also provides that a cosmetic be packaged in a safe and non-deceptive container, and that it be produced in a sanitary plant. That is all the law presently requires.

The inadequacy of these existing provisions under the Federal Food, Drug, and Cosmetic Act, is clearly demonstrated by the 60,000 persons injured annually by cosmetics, as reported by the National Commission on Product Safety. The Food and Drug Administration cannot require pretesting for safety of cosmetics before they are marketed. They cannot even demand that the manufacturers list the ingredients. The FDA can act to ban harmful products, but only after some damage has been done.

My amendment, which the committee adopted with no dissenting votes, would be the first step toward giving the consumer protection from potential harm. It is directed to protecting the consumer with a known allergic reaction to a particular ingredient. The provision requires each cosmetic to be labeled with the common or usual name of the cosmetic, and with the common or usual name of each ingredient. Color, fragrance, and flavor ingredients may be declared generally by "color", "fragrance", or "flavor", without specifying each color, fragrance, and flavor ingredient. This is the same type of requirement as presently applies to food under section 403 of the same act.

Despite the contention of the cosmetic industry that half the population is allergic to one or another ingredient and that manufacturers cannot possibly guard against all sensitivities, many consumers could protect themselves if they knew what a cosmetic contained before they bought it—simply by reading the label.

The cosmetic manufacturers have in the past protested vigorously that the listing of ingredients would give away jealously guarded trade secrets. We are not asking that they list formulations on the label, or that they give specific quantities of each ingredient; we are only asking that they list each ingredient of the product so that the consumer can protect him or herself by minimizing use of those containing suspected substances. Cases of cosmetic injury range from mild discomfort to temporary damage to serious disfigurement and permanent injury. Consumers have suffered underarm and skin irritations from deodorants and lotions, vision damage from shampoo, scalp burns and loss of hair from hair dye, eye infection from contaminated mascara, and systemic reactions from creams and powders.

Yet in most cases, all of this could be prevented. Upon reading the ingredient

labeling, the consumer could know which products contain ingredients to which she is sensitive, and thus, which products not to use.

The second provision requires warnings in all labeling from any cosmetic which would be dangerous under any reasonably forseeable conditions of use or misuse. This cautionary label would also contain directions for proper use of the product to avoid a hazard, or direction for steps to be taken if a problem does occur.

The provisions before you now would be a major breakthrough for cosmetic safety. I urge that the Senate retain these provisions in the bill as reported from the Committee on Labor and Public Welfare.

Mr. TALMADGE. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 64, after line 25, insert the following:

(d) (1) Any manufacturer of a product declared a banned hazardous consumer product under this Act, who seeks judicial review under this section, may be awarded at the discretion of the court, damages, interest, and the cost of suit, including reasonable attorney fees, for actual damages suffered by him due to any order of the Commissioner declaring a product to be a banned hazardous substance determined by the court to constitute an abuse of the discretion granted to the Commissioner under this Act.

(2) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated the amount of damages, interest, and costs awarded by the court under paragraph (1).

Mr. TALMADGE. I yield myself as much time as I may require.

Mr. President, this is a very simple amendment. I have discussed it with the distinguished floor manager of the bill and his staff, and it is my information that they are agreeable to it.

The amendment I have offered will correct what I believe to be a fundamental inequity which exists in this act.

The situation which I am trying to correct can best be illustrated by the following example. Suppose we have a shoe manufacturer in Georgia. He has a relatively small operation. Let us assume that under the provisions of this bill, the Consumer Protection Agency orders that his shoes be banned because they cause injury to the feet of children.

Under the provisions of this act, he can take an appeal to the Federal courts. He can urge the courts to stay the effective date of this order until the appeal is settled, but there is no guarantee that the court will find that it is in the public interest to do so. I do not think it is unreasonable to assume that this appeal would take from 1 to 2 years. In the meantime, he will have no other choice than to close down his business and dismiss his employees. Even if he wins the court fight, what is he left with—a business which has been shut down, a life which has been wrecked, and an admission from the Government that they were wrong, and they are sorry that his business was closed down.

That is not enough, Mr. President. He is an American citizen, too, and the Government owes him more than that. In my amendment, I propose the following solution. If a Federal court finds that a product which was banned should not, in fact, have been banned, the court shall then make an inquiry into the question of whether or not the decision to ban the product constituted an abuse of discretion. If such an abuse is found, then a special master would be appointed to assess the manufacturer's actual damages and refund them to him from the public treasury, along with the payment of the legal rate of interest on this sum computed since the order to ban was issued.

This is only simple justice, Mr. President. Why should the American manufacturer be required to indemnify himself against abuses of discretion on the part of Government officials? The power to ban is an extensive one. If a manufacturer has only one product, the power to ban amounts to a life and death power over his entire enterprise. If we are going to assume this kind of power as a government, then we must take the responsibility which goes with it.

Some will say that this will have a "chilling effect" on the administrator. To them I say that when you are dealing with a power this broad, it should be exercised with maximum caution. If a manufacturer is victimized by an abuse of discretion on the part of the Government, then he deserves to be made as whole as possible.

Quite frankly, Mr. President, I think that he should be reimbursed even for those decisions to ban which are found to be good-faith errors of judgment on the part of the administrator. It is still an error. If it is not an error which was made by the manufacturer, why should he be called on to pay for it with his entire business?

But I am not asking for that, Mr. President, though I think it would be the fair thing to do. All I am asking the Senate to do is to say to the American manufacturer, "If a Government official abuses his discretion and takes action which causes you severe financial damage, then we will do what we can to make you whole again." I am not talking about punitive damages, Mr. President, only actual damages.

I would ask any Senator who is prepared to vote against this amendment to stop and think for a moment how he would try to explain to that shoe manufacturer in Georgia why his shoe plant was closed down because of a governmental abuse of discretion, and there is no recourse for him.

This is a new and viscous kind of eminent domain, Mr. President. I am totally opposed to it, and I hope the floor manager will accept this amendment.

Mr. MAGNUSON. Mr. President, I have conferred with the Senator from Georgia and the ranking minority member of the committee, and I think it is an amendment we can take and talk to the House. I think, as the Senator points out, it is only fair to the people to be made whole if something happens to them, if an administrator abuses his authority or his power. I think it is common justice.

Mr. TALMADGE. Mr. President, I thank the distinguished floor manager of the bill and I agree with him.

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

Mr. TALMADGE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. JORDAN of North Carolina). All time on this amendment has now expired.

The question is on agreeing to the amendment of the Senator from Georgia (Mr. TALMADGE).

The amendment was agreed to.

Mr. TALMADGE. Mr. President, I send another amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment, as follows:

On page 56, line 24, insert "except as provided in subsection (g)," after "(ii)".

On page 57, line 18, insert "except as provided in subsection (g)," after "(ii)".

On page 58, between lines 13 and 14, insert the following:

Notice by Manufacturer or Distributor

(g) If any maufacturer of a product which has been declared a banned hazardous consumer product under this Act furnishes notice by registered mail to a distributor or retail dealer of that product, his liability to reimburse that distributor or retail dealer under subsection (f) (2) (A) (ii) of this section with respect to the refunded purchase price of any such product sold by that distributor or retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that distributor or retail dealer. If any distributor of such a product furnishes notice by registered mail to a retail dealer of that product, his liability to reimburse that retail dealer under subsection (f) (2) (B) (ii) of this section with respect to the refunded purchase price of any such product sold by that retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that retail dealer.

Mr. TALMADGE. Mr. President, this is a simple amendment. I have discussed it with the distinguished floor manager of the bill and my understanding is that he is agreeable to accepting it.

Mr. President, the purpose of my amendment is to correct a defect which exists in the section of the bill dealing with repurchasing requirements.

Under the bill as it is currently written, when a manufacturer's product is banned, he is obligated to repurchase it from the distributors, retailers and general public. An aggrieved consumer can also resell the product to the retailer from whom he purchased it, in which case, the retailer resells it, in turn, to the manufacturer. The manufacturer is required to refund, to the retailer, the retail price paid for the product, and not the wholesale price.

The purpose of my amendment is to give the manufacturer an option by which he can protect himself. In the event that his product is banned, he can notify his distributors and retailers by registered mail of the fact that the product has been banned. They can then resell them to the manufacturer for the price they paid for them. But if they

continue to sell these products after receiving the notice from the manufacturer, in the event that the manufacturer is required to repurchase such items from the retailer and distributor, he only has to pay them the wholesale price, and is not responsible for their mark-up as he would be in the case of goods sold before notice is received.

Mr. President, if this amendment is not accepted, we will have created a situation where a retailer could continue to sell products after learning that they are banned, knowing that even if they were returned by the consumer, he could resell them to the manufacturer at the retail price rather than the wholesale price. I think that this is a perfectly reasonable protection to extend to the manufacturer.

I urge the Senate to adopt this amendment.

Mr. MAGNUSON. Mr. President, the pending amendment pursues the same objectives as the Senator's first amendment. It does simple justice and I am in favor of it.

Mr. TALMADGE. I thank the distinguished floor manager of the bill and I agree with him.

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

Mr. TALMADGE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Georgia (Mr. TALMADGE).

The amendment was agreed to.

Mr. COTTON. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 33, line 6, strike: "such sums as may be necessary" and insert in lieu thereof the following: "not to exceed $250,000,000 for the fiscal year beginning July 1, 1972, not to exceed $300,000,000 for the fiscal year beginning July 1, 1973, not to exceed $350,000,000 for the fiscal year beginning July 1, 1974, and for succeeding fiscal years only such sums as the Congress may specifically authorize by law"

Mr. COTTON. Mr. President, I can explain this amendment in just 2 minutes. When the bill was reported by the Commerce Committee, it had limits on the appropriation authorizations.

The limit for the first year was $180 million; for the second year, $200 million, and for the third year, $225 million.

When it was reported by the Committee on Labor and Public Welfare, it took the limits out.

The original limit was the best judgment of the Commerce Committee. I am a member of the Appropriations Committee, as is the chairman of the committee, the distinguished Senator from Washington (Mr. MAGNUSON). We both share, I believe, a dislike for open-ended authorizations. So I am not so much interested in what the authorization is, but rather that some benchmark be set.

My amendment would provide for the first year, not to exceed $250 million, instead of $180 million; for the second year, not to exceed $300 million, instead of $200 million, and for the third year, not to exceed $350 million, instead of $225 million.

Mr. President, I offer these higher limits since I understand there is some concern that the appropriation authorization contained in the bill as reported by the Committee on Commerce might be too low. However, I have no personal knowledge of any other estimates of either any committee or agency of the Executive which contradict those made by the Committee on Commerce.

Quite frankly, I feel that I have been generous in raising the ceiling as I have in the amendment which now is pending since over the first 3 fiscal years it represents an increase in appropriations authorizations of almost $300 million.

Accordingly, Mr. President, unless my colleagues in the Chamber know of some compelling reasons why the sums specified in my pending amendment are still too low, then I would urge its adoption.

Mr. MAGNUSON. Of course, I will be glad to join my colleague in support of his amendment. We have had a little trouble getting exact figures on the bill. Surely, I think, with the figures the Senator from New Hampshire has would be a sufficient ceiling for them to enforce the bill. So I join him in support of his amendment.

Mr. COTTON. Mr. President, I yield back the remainder of my time.

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from New Hampshire (Mr. COTTON).

The amendment was agreed to.

AMENDMENT NO. 1259

Mr. PERCY. Mr. President, I call up my amendment No. 1259 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read the amendment as follows:

On page 58, line 23, delete the sentence beginning with the word "Such" down through line 25 and substitute in lieu thereof the following: "Such safety analysis shall be conducted in conformity with criteria set forth in such regulations promulgated by the Commissioner and may be conducted by the manufacturer, an independent testing laboratory, or any other person who the Commissioner may designate."

On page 62, line 11, delete the words "The Commissioner shall conduct compliance testing" and substitute in lieu thereof the following: "The Commissioner shall conduct or contract pursuant to section 104(c)(8) for compliance testing".

On page 63, line 1, insert the words "or cause to be returned," after the word "return".

On page 63, beginning on line 8, delete the sentence beginning with the word "Any" down through line 14 and substitute in lieu thereof the following:

"(d) CERTIFICATION.—Any manufacturer, importer, or distributor of a consumer product subject to a consumer product safety standard shall furnish to the distributor or dealer at the time of delivery of such consumer product certification

"(a) by said manufacturer, or importer, or distributor; or

"(b) by an independent testing laboratory qualified to perform such tests or testing program,

that each such consumer product conforms to all applicable consumer product safety standards. Any certification under this subsection shall be based upon test procedures in conformance with subsection 306(e)(1) or, where no procedures are prescribed, upon a reasonable testing program approved by the Commissioner.".

On page 78, line 9, delete the word "Act" and substitute in lieu thereof the word "title".

Mr. PERCY. Mr. President, as my general remarks on this bill indicate, I take great pleasure, as a cosponsor of S. 3419, in knowing that after so many years the American consumer will be afforded the protection he deserves in connection with the ordinary products used in and around the home.

My purpose at this time is to introduce an amendment on behalf of myself and the distinguished floor manager from the State of Washington (Mr. MAGNUSON), who, as chairman of the Committee on Commerce, has steadfastly and forcefully fought for this legislation for almost a decade. The fact that the Senate is taking up this bill today is a tribute to the persistence of Senator MAGNUSON.

This amendment consists of several parts, all directed to the single reality that private testing laboratories are and should be an important facet in any ongoing consumer safety program in this country.

The amendment is meant to make clear that the omission of any reference to private testing laboratories was unintended and that, upon the commencement of a Federal standards program as authorized by this bill, such laboratories will continue to perform a vital service to the manufacturing community of this Nation. Accordingly, in amending S. 3419, Senator MAGNUSON and I have provided that—in connection with any safety analysis study as provided for in section 307 and in connection with compliance testing as provided for in section 309(c)—qualified independent testing laboratories be authorized to conduct such studies and tests as are prescribed, approved, or otherwise necessary to insure the safety of consumer products which may present an unreasonable risk of injury or death.

Typically today, with respect to many potential hazards—electrical, thermal, mechanical, toxic, or whatever—a manufacturer will ask an independent laboratory, such as Underwriters' Laboratories, to test his product to make sure that it complies with recognized consumer safety standards, most of which, to date, have been voluntarily promulgated by one or another industry. The amendment we offer at this time simply recognizes this state of affairs and assures that the legislation before us in no way impairs that procedure. Indeed, a firm like Underwriters', which has proven time and again to be eminently qualified to perform such tests, will I suspect in the future be more and more in demand as the Federal Government promulgates product standards in connection with particular hazards.

I am particularly interested in the

increased sensitivity of a private, not-for-profit firm like Underwriters' Laboratories toward the safety problems that beset the American consumer today. I note that in its final report issued in June 1970, the National Commission on Product Safety referred to Underwriters' Laboratories as a "principal force in preventing electrical and fire hazards in the home," and went on to make the following observations:

Until recently, a product bearing a UL mark might have been tested with regard to only one hazard. An electric toy might be tested for shock hazards but not for sharp or protruding surfaces. UL announced in February 1970 that it would hereafter restrict its Listing Service for household products to those which have been evaluated with respect to "all significant hazards."

With its acknowledged technical competence and inspection force, UL has been an important factor in self-regulation by private industry. Its standards are particularly important to consumers, since UL listings are frequently relied upon by county and municipal electrical inspectors in discharging their duties under the National Electrical Code.

Considering the technical and economic realities, UL has been relatively independent of the manufacturers who finance its work. None of its 124 "members"—elected by the board of trustees to 4-year terms—has a financial connection with manufacturers of products which UL might test. Nonetheless, its president says it must "successfully walk the tightrope of responsibility" between setting standards too high to be acceptable to manufacturers and permitting an unacceptable number of injuries. The problem of drafting an acceptable standard is also locked into the capacity of the manufacturer to produce and the willingness of the consumer to pay. UL says:

"Getting safe equipment into the hands of the public is not always achieved by simply publishing a standard whose requirements provide for a high level of safety. Standards could and sometimes do provide such high levels of safety that no one manufactures them, hence, they are self-defeating."

Underwriters' Laboratories, Inc., is an independent, not-for-profit corporation founded in 1894, chartered by the State of Illinois in 1901, and incorporated under the laws of Delaware in 1936. Its certificate of incorporation provides that it shall have no capital stock; it shall be for service and not for profit.

The certificate further provides that members and trustees shall be associated with one of the following categories: insurance industry, consumer interest, governmental body or agency, education, public safety body or agency, safety expert, standardization expert, public utility, or officer of the corporation. No more than one-third of the board of trustees may be from any one of the above categories.

Its objectives, as stated in the certificate of incorporation are:

By scientific investigation, study, experiments, and tests, to determine the relation of various materials, devices, products, equipment, constructions, methods, and systems to hazards appurtenant thereto or to the use thereof, affecting life and property and to ascertain, define and publish standards, classifications and specifications for materials, devices, products, equipment, constructions, methods, and systems affecting such hazards, and other information tending to reduce and prevent loss of life and property from such hazards.

Underwriters' is supported solely by charges made to clients and subscribers for its services. These charges are generally on a time and material basis and are not affected by the nature of the report rendered, whether favorable or unfavorable.

Operations are primarily in two phases: New work engineering and factory followup services. The new work engineering is conducted by six engineering departments: burglary protection and signaling; casualty and chemical hazards; electrical; fire protection; heating, air-conditioning and refrigeration; and marine.

The engineering departments, by test and examination of submitted products, ascertain their conformity or nonconformity with established requirements. The factory followup service is for the purpose of auditing the procedures of the manufacturer that provide for conformance with the established requirements.

Testing laboratories are located in Chicago, Ill.; Northbrook, Ill.; Melville, N.Y.; Santa Clara, Calif.; and Tampa, Fla. Inspection services at factories are conducted on a worldwide basis.

The factory followup services encompass all the procedures by which Underwriters' audits those mechanisms manufacturers employ to assure compliance with the laboratories' requirements.

Factory inspection visits in 1971 increased to 209,673, an increase of 2.8 percent over the previous year.

The number of labels issued in 1971 to identify listed products increased 25.8 percent, to a total of 1,685,589,950—the largest single annual increase in the number of labels issued in the laboratories' history. This reflects a wider use of UL's method of identifying products that meet nationally-recognized safety requirements.

While there is no record of the units of production to which the listing mark was applied during the past year, it is estimated that in the electrical appliance industry alone, over 100,000,000 units were identified by manufacturers as having met the laboratories' requirements.

The number of full-time domestic inspection centers increased by 15 during the year, while 25 part-time centers were closed or consolidated into the full-time centers, resulting in 190 domestic inspection centers in operation at year's end.

New domestic inspection centers were opened during the year in the following cities:

Casper, Wyo., Chicago, Ill. (North Shore), Chicago, Ill. (South Shore), Cody, Wyo., Electra, Tex., Huskerville, Nebr., International Falls, Minn., Laurens, S.C., Lower Brule, S. Dak., Lumberton, N.C., Mobile, Ala., and Pawtucket, R.I.

Supplementing the factory inspection program, the market survey program, inaugurated in mid-1970, continued throughout 1971 with 3,483 shopping visits in 81 different cities. This activity frequently included unannounced visits to trade shows where new developments are exhibited to prospective buyers for the first time.

I have gone into this detail, Mr. President, to point up that with respect to Underwriters' Laboratories and several other qualified testing laboratories throughout the country, the major new legislative impetus of S. 3419 in the consumer product safety area will not disrupt what is now a most beneficial and worthwhile service to the manufacturing community and to the consumer. With the approval of this amendment to S. 3419, the compliance and certification role of such laboratories will be preserved in a manner consistent with the original intention of this measure.

Mr. COTTON. Mr. President, will the distinguished Senator from Illinois include me as a cosponsor of his amendment?

Mr. PERCY. I am happy to do so. Mr. President, I ask unanimous consent that the distinguished Senator from New Hampshire (Mr. COTTON) be added as a cosponsor of my amendment.

The PRESIDING OFFICER (Mr. BAYH). Without objection, it is so ordered.

Mr. MAGNUSON. As a cosponsor of the amendment, I yield back my time.

Mr. PERCY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois (Mr. PERCY).

The amendment was agreed to.

AMENDMENTS NOS. 1260 AND 1261, AS MODIFIED

Mr. GURNEY. Mr. President, I send to the desk two amendments and ask for their immediate consideration.

The PRESIDING OFFICER (Mr. BAYH). Which amendment is the Senator from Florida sending to the desk at this time?

Mr. GURNEY. Both, Mr. President.

The PRESIDING OFFICER. Does the Senator from Florida wish both to be read by the clerk at this time?

Mr. GURNEY. Yes, Mr. President, please.

The PRESIDING OFFICER. Does the Senator from Florida ask unanimous consent that they be considered en bloc?

Mr. GURNEY. I was going to ask for that next.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will read the amendments.

The legislative clerk read as follows:

On page 65, beginning with line 2, strike out through line 17 and insert in lieu thereof the following:

"SEC. 311. (a) Whenever the Administrator has reason to believe that a consumer product presents an unreasonable risk of injury or death, necessitating immediate action to protect adequately the public health and safety prior to the completion of administrative proceedings held pursuant to this Act, he or the Attorney General may bring suit in a district court of the United States having venue thereof to enjoin any person from engaging in the manufacture for sale, sale, offering for sale, or otherwise offering for public consumption, in commerce, or the importation into the United States of such an imminently hazardous consumer product. Upon a proper showing, and after notice to the defendant, a preliminary injunction may be granted without bond under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity. Notwithstanding the existence of a consumer product safety standard appli-

cable to such product, such an action may be filed or the pendency of proceedings initiated pursuant to section 303 of this Act.".

On page 65, line 21, strike out the words "or permanent".

On page 65, line 23, insert before the period "prior to completion of administrative proceedings held pursuant to this Act".

On page 2, line 13, strike out the word "enforce" and insert in lieu thereof the words "assure the enforcement of".

On page 2, line 15, strike out the first comma and the words "prosecute court actions".

On page 3, line 23, strike out "(17)" and insert in lieu thereof "(16)".

On page 12, beginning with line 22, strike out through line 2 on page 13.

On page 13, line 3, strike out "(17)" and insert in lieu thereof "(16)".

On page 13, line 12, strike out the word "enforce" and insert in lieu thereof "assure the enforcement of".

On page 13, line 16, strike out "(18)" and insert in lieu thereof "(17)".

On page 13, line 20, strike out "(19)" and insert in lieu thereof "(18)".

On page 29, line 12, strike out the words "of the Agency" and insert in lieu thereof the words "of this Act".

On page 72, beginning with the words "or the Agency" on line 15, strike out through the comma in line 16.

On page 73, beginning with the word "upon" in line 4, strike out through the word "the" the first time it appears in line 5, and insert in lieu thereof the following: "The".

On page 73, beginning with the word "on" in line 16, strike out through the comma in line 17.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Florida yield?

Mr. GURNEY. I yield.

Mr. ROBERT C. BYRD. As I understand it, 2 hours have been allotted to the amendment, am I correct?

The PRESIDING OFFICER. The understanding of the Chair is that 2 hours have been allotted at least to one of the amendments. For the edification of the Chair, does that apply to both?

Mr. MAGNUSON. Mr. President, if the Senator from Florida will yield——

Mr. GURNEY. My understanding is that both amendments were to be considered in the 2 hours.

Mr. MAGNUSON. These are two separate amendments. We want to vote on them separately.

Mr. GURNEY. They are being considered en bloc.

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that the Senator from Florida (Mr. GURNEY) was granted unanimous consent to have 2 hours on one amendment.

Is it to be the interpretation of the Chair that this amendment is now to be considered en bloc and is one amendment that the Senator from Florida requested and received unanimous consent for earlier?

Mr. GURNEY. Mr. President, that is the understanding that I have.

The PRESIDING OFFICER. Two hours time limitation on this en bloc amendment then?

Mr. MAGNUSON. These are two different amendments. I did not know the Senator from Florida wanted to put them together and have one vote or two amendments which are two different things. I think we should vote on them separately.

Mr. GURNEY. If the Senator will yield——

Mr. MAGNUSON. The Senator has submitted two amendments. Let us take up one and then take up the other.

Mr. GURNEY. These are two amendments covering exactly the same thing.

The second amendment is a technical amendment to bring the rest of the bill into accord.

Mr. MAGNUSON. The second amendment enlarges on what the Senator is seeking to do by the first amendment?

Mr. GURNEY. No. The two amendments accomplish the same thing; that is the enforcement proceedings under the bill would be conducted by the Department of Justice.

Mr. MAGNUSON. That is right.

Mr. GURNEY. However, in order to carry out the import of the full amendment, it is necessary to make some technical corrections in other parts of the bill.

Mr. MAGNUSON. I understand. I had not read that amendment. I had read the other amendment.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, would the Senator be willing to cut the time in half on his amendments?

Mr. GURNEY. Mr. President, I would say to the distinguished acting majority leader that I think it could be considered in 1 hour easily.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Florida.

May I inquire of the distinguished manager of the bill if it would be agreeable with him to cut the time limit on the amendments to 1 hour, rather than 2 hours. The distinguished Senator from Florida has already indicated that it would be agreeable with him.

Mr. MAGNUSON. It is all right with me if it is all right with the Senator from New Hampshire. I will oppose both amendments. I do not think it will take too much time. Several Senators have asked all of us, including the distinguished acting majority leader, whether the Senator is going to ask for a rollcall vote.

Mr. GURNEY. Mr. President, I will ask for a rollcall vote.

Mr. MAGNUSON. Let us get it now, then.

Mr. GURNEY. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on the Gurney amendments be 1 hour rather than 2 hours.

The PRESIDING OFFICER (Mr. BAYH). For the edification of the Chair, the unanimous-consent request is that both amendments be considered en bloc, the time to be 1 hour.

Mr. ROBERT C. BYRD. The distinguished Presiding Officer is correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GURNEY. Mr. President, these two amendments to S. 3419, the Food, Drug, and Consumer Product Safety Act of 1972, would bring this legislation into line with previous congressional enactments on similar issues and longstanding Government policy.

Briefly, the net effect of these two amendments would be to eliminate any duplication in enforcement procedure while, at the same time, making it possible for the new Food, Drug and Consumer Product Agency—FDCPA—to act quickly in an emergency situation involving an imminent health or safety danger to the consumer.

The first amendment, entitled the emergency protection amendment, permits the Administrator of the FDCPA to apply to the courts for an injunction whenever a product appears to constitute a real and imminent threat to the buying public. Furthermore, during the preliminary injunction period, the products in question will be kept off the market, giving FDCPA time to take proper administrative action without any risk to purchasers. This represents an effective compromise between the need for speedy remedial action and the desirability of having the enforcement function separate from that of the investigative.

Obviously, the American public deserves protection from products that might present an immediate threat to consumer health and/or safety. That is not the question here. What is at stake is whether we are going to compromise the separation of powers—so essential to due process—in order to provide this protection. In my opinion, this amendment helps balance the rights of consumers and producers and, at the same time, provides a highly acceptable alternative which avoids the necessity of compromising a right so basic as due process.

The second amendment, known as the efficient administration amendment, consists of a series of changes that would remove from the FDCPA any enforcement powers, other than those provided for in this emergency protection amendment, now vested in the Department of Justice. Instead of having a single agency interpret and enforce the law on consumer protection cases, the Department of Justice would prosecute the cases and the courts would decide them. This method of operating is both cheaper and more efficient. This approach is fairer to all concerned. Just as the interests of consumers must be protected, so too must the overall public interest in a workable economy.

Now, with this bill, the question is not the desirability of consumer product safety, but whether the enforcement power of FDCPA should be different from that of other agencies. The Justice Department and the courts should enforce consumer protection decisions as they do in the case of other agencies rather than the Food, Drug and Consumer Protection Agency.

Fifty years ago, when Americans went to buy something they went to the corner grocery or the local dry goods store. There were no supermarkets, no radio, no television, no mass advertising campaigns, no huge shopping centers and far fewer goods than there are today. If somebody bought something, he could generally see what he was getting and

if he was not satisfied, he could go back and get a refund or replacement without too much difficulty. A merchant just couldn't afford to alienate too many customers or he would soon be out of business.

But now, the technological revolution, bringing with it all the conveniences of modern day to day living, has changed all that. Products have proliferated as transportation has improved and the demand for additional goods and services has increased. But, wonderful as such progress has been, it has not come without a pricetag; in the changeover to the mass consumerism of the 1970's, something important has been lost—the personal relationship between producer and consumer that helped promote a mutally beneficial exchange of quality goods for a fair price. What we are seeing now, in this concern for consumer protection, is the search for a satisfactory substitute. And we are all interested in that. This measure does that.

However, this search, like the progress that has spawned it, is not new. The first Pure Food and Drugs Act was passed in 1906, the first meat inspection act a year later, and the Federal Trade Commission has been in business since 1914. What is new about this proposal and some others like it that will probably be before us soon is that it contradicts the constitutionally rooted and time-tested principle of separation of legislative, executive and judicial functions.

The American consumer must be provided with an adequate means of protection against dangerous or harmful products—and my amendment in the way interferes with that. But I see no reason for duplicating enforcement functions, adding to the bureaucratic tangle, or casting aside the best means of assuring fair treatment for all parties concerned. By giving the FDCPA administrator the right to seek a preliminary injunction, during which time the product in question would not be available for purchase, the consumers are well protected. If the injunction has merit, the courts will so rule; if not, efficiency and fairness will still have been served.

There is another aspect to this issue, one to which I have briefly alluded, and that is this business of adding to the bureaucratic tangle. If we begin with giving separate enforcement functions to this Agency, where will we stop? In the months ahead, we will be considering the formation of numerous new Federal agencies, in connection with the reorganization of the executive branch.

Another consumer product bill will come before us shortly. Shall we give each Federal agency a complete set of huge legal offices throughout the country, all of them suing and being sued by each other and the public? The inefficient bureaucratic tangle which would result can well be imagined.

No one questions the need for attention to product safety. The figures given in the final report of the National Commission on Product Safety are reason enough for concern; each year 30,000 deaths, 20 million injuries and $5.5 billion worth of expense result from incidents connected with consumer products. This is a high price to pay—unnecessarily high—but certainly with a reasonable legislative approach and with the realization, by producers and consumers alike, that greater care must be exercised in the production and utilization of goods, these figures can be reduced.

In conclusion, I believe that the amendments I have offered provide the reasonable, balanced legislative approach that is necessary to bring about greater safety for all without discriminating against either producers or consumers. I, therefore, urge adoption of these amendments.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. GURNEY. I am pleased to yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I have read the Senator's amendment and have also read section 311(a) that it seeks to amend. What is the distinction between the language of the amendment and section 311(a), not merely the language of the amendment, but its effect?

Section 311(a) and the amendment seem to be similar.

Mr. GURNEY. The distinction is this. My amendment to the bill limits the legal procedures available to the new agency to obtaining a preliminary injunction. If the Administrator thinks a product coming on the market is unsafe and hazardous he can go to court with his lawyers and get an injunction.

In the bill section 311(a) is much broader. It allows him to go to the full extent, as stated in the bill, insofar as enforcing penalties under it with his own legal staff.

For example, he could bring several actions and penalties under the bill. He could apply for permanent injunction or apply to stop the manufacture of hazardous products with his own legal staff.

Under the time-honored system we have in the Government of the United States under the Constitution, we have all kinds of agencies that have powers much like this but they cannot go into court with their own attorneys and do these things.

They go to the Department of Justice and say that there has been a violation of procedures under the act. They say, "This person is violating the procedures of the act and, Mr. Attorney General, please bring action against him." That is the way we do things. They do things in most departments and agencies of Government. But this bill would place all those legal duties and prerogatives in the new agency, and this is what I seek to prevent.

Mr. COOPER. I thank the Senator. I note that section 311(a) provides as follows: "The Administrator or the Attorney General may file, in a district court of the United States having venue thereof, an action."

The amendment also gives authority to both the Administrator and the Attorney General to institute a civil action. The Senator has stated that under his amendment only preliminary injunctive relief could be granted.

Aside from the question of such a limitation, it appears fairer that the court consider the case as a whole, with whatever determinations are necessary.

I am trying to find the distinction. Under the bills' section 311(c) either the Administrator or the Attorney General may file an action and secure injunctive relief. What is the difference?

Mr. GURNEY. Perhaps I was not able to explain to the distinguished Senator from Kentucky the difference between my section and that section 311 which is in the bill now. In my amendment the Administrator would be permitted to file for preliminary injunction, but not a permanent injunction. During the time the preliminary injunction was in effect the Administrator would go through his administrative proceedings and procedures set out in other parts of the bill to determine with his own hearings, which are rather extensive in most cases, if a product is hazardous or unsafe, rather than to burden the court with that. My amendment would seek to avoid getting the court tied up in those things the Administrator should do.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. COTTON. Mr. President, as I read the language on page 72 of the bill, the new agency is authorized through its own attorneys not only to seek injunctions and civil penalties, but also criminal penalties.

Mr. GURNEY. It does exactly that, and the legal staff of the administrator would have all those powers shown on page 27.

Mr. COTTON. And it would carry a penalty of imprisonment?

Mr. GURNEY. That is correct.

Mr. COTTON. I wish to ask one more question. The Senator from Florida is aware of the fact that a bill is about to be reported by the Committee on Government Operations, according to the Senator from Illinois who is on that committee. The subcommittee already has acted favorably on it. So we will surely have on the heels of this bill another bill called the "Consumer Protection Agency" bill, which creates yet another independent agency

As I understand the bill presently, and probably as it will be reported to the committee, the agency will have an advocacy role. It is not a prosecuting agency. But if I know the temper of the Senate, as I have observed it today, and knowing of the power of the magic word of "consumer," before it passes the Senate there will be a second agency with powers to prosecute. Does the Senator feel this makes it doubly necessary to take this provision out of the bill? My amendment would have taken it out of the bill.

Mr. GURNEY. The Senator from New Hampshire has made the precise point I was making just a moment ago: That if we go ahead with this one now, then we are going ahead with other independent agencies and doing the same thing. As the Senator pointed out, perhaps there will be an amendment on the floor to give the Consumer Protection Agency, when it comes before us, the broad legal powers that are in this bill. It seems to me that we are tampering with the structure of the Government we have. The Department of Justice was set up in the beginning under the Constitution to be

the legal enforcement part of the U.S. Government. When a department or an agency has a legal problem and has enforcement which it wishes to be carried out, it goes to the Department of Justice under the law of the land and has it done. This completely departs from that procedure and changes the structure of the Government and sets up in this agency a great big new law firm so they can hire a lot of lawyers and after the investigation is done by the administrative section, then the lawyers can swing into action and file a lot of lawsuits. I do not think that is a good precedent. I have not heard any complaints about the Department of Justice so far as to the way they carry out the legal obligations of Government with respect to any other department or agency. I think we should continue to do it that way.

Mr. COOPER. Mr. President, will the Senator yield for another question?

Mr. GURNEY. I yield to the distinguished Senator from Kentucky.

Mr. COOPER. The Senator has made a good argument about the separation of the authority to prosecute criminal actions from the investigative authority. It is a proper argument accepted by statute and reason.

But again, I do not see where the Senator's amendment separates such authority. It deals with civil action.

Mr. GURNEY. That is only for the preliminary injunction. As far as all other actions are concerned that now can be done by the agencies. As was pointed out in the colloquy between the Senator from New Hampshire and me, under the amendment the agency would not be able to do these things, but only the Department of Justice in behalf of the agency.

Mr. COOPER. Are you referring to the language on page 2? Would that be an effect of the Senator's second amendment? Would that be the consequence of the second amendment?

Mr. GURNEY. The Senator is correct. That would be the consequence of my second amendment.

Mr. COOPER. If the Senator's amendment were adopted, would authority for criminal action be retained by the Department of Justice?

Mr. GURNEY. The Senator is correct.

Mr. COOPER. The Senator is attempting to separate criminal action from the investigating and civil action.

Mr. GURNEY. That is exactly right, although at the same time I have preserved the needed, and I think it is needed, power in the administrator for a preliminary injunction. If he believes a product is hazardous to the safety of people he has the right to go into court, with his own people and get a preliminary injunction. I think it is important to preserve that right, and I have done that under the amendment, but all the other legal enforcement procedures that are in the bill are lodged in the Department of Justice.

Mr. PERCY. Mr. President, will the Senator yield for a point of clarification?

Mr. GURNEY. I yield.

Mr. PERCY. The distinguished Senator from Florida is a valued member of the Government Operations Committee, and I think he will certify that in the Consumer Protection Agency bill we will totally delete any regulatory responsibility and jurisdiction over consumer safety. That agency has an advocacy function only. In the bill we are considering right now, the committee specifically deleted the subsection which provided for appointment of private attorneys to represent people before the Food, Drug, and Consumer Product Agency. As explained in the report, the committee took this action to avoid potential conflict with the Consumer Protection Agency bill's provisions. Thus, we did take into account the obvious need, to avoid possible duplication and overlap, and we took preventive action in that area.

I hope that answers satisfactorily the comments of the Senator from New Hampshire.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. COTTON. I thank the Senator from Illinois, and I certainly take that as a complete answer as far as the committee is concerned. As far as the Senate is concerned, I would not want to guarantee anything.

I requested from the Department of Justice an analysis of this prosecution power of this bill and received a memorandum on this point. The appendix to the memorandum cites the following from section 519 of title 28, United States Code:

> Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

I repeat the words "Except as otherwise authorized by law." Clearly the word "otherwise" authorizes separate enforcement by the new agency proposed in S. 3419.

If the Senator will forgive me, I ask unanimous consent that the memorandum may be inserted in the RECORD at the close of the remarks of the Senator from Florida.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GURNEY. I thank the Senator from New Hampshire, and amplifying what he just said, I inquired of the Department of Justice how much law enforcing of this kind it did for the Federal Government. The Senator from New Hampshire may be interested to learn that all of the criminal proceedings done under any of the agencies or departments are done by the Department of Justice now. This is a completely new departure here. This is criminal procedure, where this agency may bring criminal prosecution. So far as the civil end is concerned, the amount of business done by the Department of Justice for the rest of the government in proceedings like this amounts to about 95 percent. There are a few special cases here and there where agencies have been given legal power of their own, but these are rare exceptions. About 95 percent of the legal business of the United States is done by the Department of Justice. For the life of me, I do not see why we should give this new agency all kinds of broad new legal power.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. COTTON. The memorandum I have just introduced confirms what the Senator said. It recites in great detail the precedents.

Let me make it clear that the memorandum does not comment on this particular bill. I did not ask for that kind of comment. I asked for a memorandum of the law on this subject from the Department of Justice and it clearly indicates that this bill constitutes, in the criminal enforcement angle of it, a real departure from precedent.

Mr. GURNEY. I thank the Senator. That is my understanding. May I inquire of the Chair how much time I have remaining?

The PRESIDING OFFICER. The Senator from Florida has 5 minutes.

Mr. GURNEY. In summary, then, let me say that here we are singling out for special treatment this bureau. We are duplicating in this field of law enforcement. We are providing added expense. It is a deviation from the structure of Government, as we know it now under the Constitution, so far as the duties of the Justice Department are concerned, and I think it would set an exceedingly bad precedent.

I would hope the Senate would adopt my amendment which, I again say, in no way weakens this bill in any fashion so far as the protection of consumers is concerned.

EXHIBIT 1

SUMMARY BY DEPARTMENT OF JUSTICE

At the beginning of our national government, three Departments (War, Treasury, and Post Office) were created. In addition, the President was authorized to appoint, with the advice and consent of the Senate, an Attorney General. For the first 80 years of that office, the Attorney General lacked staff, permanent offices, and control over most of the legal affairs of the Government of the United States.

In 1870, primarily because of the high cost of retaining competent outside counsel to handle the Government's litigation, the Department of Justice was established with the Attorney General as its head. Under this Act, law officers in other Departments were transferred to the Department of Justice and the Attorney General was given supervisory authority over the conduct of all litigation involving the interests of the United States.

The Act did not put to rest the problem of achieving unified control over the Government's litigating efforts because the Attorney General still lacked permanent office space, forcing the agency attorneys placed under his supervision to remain in their agency offices. Further, the statutes authorizing agencies to hire their own attorneys were not repealed. Hence, two sets of Government attorneys continued to operate.

In addition, Congress has from time to time carved out exceptions to its directive that supervisory authority over all litigation involving the United States be lodged in the Department of Justice, by giving some agencies control over their own litigation or leaving the statute silent with respect to the control of litigation. In other instances the statutes are not clear on this point, giving agencies the right to conduct litigation under the "supervision and control of the Attorney General". In the last situation, the Department has worked out agreements with the

agencies on the handling of litigation but these have not been entirely satisfactory. The need for uniformity in the litigating positions of the United States, the desirability of informed selectivity in the filing and presentation of cases, and the demonstrated preference of the Federal judiciary for unified litigation control under the Department of Justice all provide substantial reasons for continuing the current practice.

I. THE HISTORICAL DEVELOPMENT OF UNIFIED CONTROL

The Attorney General started out as a lawyer for the President and the chief law officer of the Executive Branch only to the extent of giving advice when asked and arguing cases on behalf of the United States in the Supreme Court. 1 *Stat.* 93 (September 24, 1789). He had no control over legal proceedings in the lower Federal courts or over the men who did—the district attorneys. Nor was he given any resources to strengthen his position, such as an adequate salary, clerical help, permanent offices, or a library.

Complaints over these shortcomings began in 1790 with the report of the first Attorney General, Edmund Randolph. They were to be reiterated by all of his successors for the next 80 years. During this period, the legal affairs of the Government were fragmented, with each executive department handling its own business by outside counsel and by its own legal officers.

Following the Civil War, there was a great expansion in the Government's legal business, due mostly to claims arising out of the war and its aftermath. By 1870, the Congress was ready to establish a Department of Justice and did so. 16 *Stat.* 162 (June 22, 1870). Section 3 of that Act transferred law officers of all other departments to the Department of Justice, to exercise "their functions under the supervision and control of the head of the Department of Justice."

Section 5 gave the Attorney General the power to send any officer of the Department of Justice to conduct and argue any case in which the United States is interested in any court of the United States as well as to "attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State[.]" By virtue of Section 16, the Attorney General was given "supervision of the conduct and proceedings of the various attorneys for the United States in the respective judicial districts . . . [and] of all other attorneys and counsel[l]ors employed in any cases or business in which the United States may be concerned." Section 17 prohibited the heads of the existing departments from employing attorneys or counsel "at the expense of the United States [.]" These provisions are currently codified with minor revisions in 28 U.S.C. §§ 516–519 (See Appendix).

The debate preceding the enactment of this statute makes clear that its primary purpose was the elimination of highly paid outside counsel, and the substitution of qualified government attorneys, capable of representing the interests of the United States in all sections of the country. Other objectives were to insure uniform interpretation of the laws of the United States, and to give the Attorney General some authority over proceedings in the lower courts involving the United States, so that he would be better able represent the Government's interests effectively before the Supreme Court, if the matter came before that Court.

The objectives of the 1870 statute were sound, but the results left much room for improvement. The Attorney General still was not given sufficient office space to accommodate the necessary staff, and the laws authorizing the employment by various government agencies of their own legal staffs were not repealed. Hence, the desired unified control and responsibility was not achieved.

The next significant effort to centralize responsibility for the legal affairs of the Government was achieved through Executive Order No. 2877 (May 31, 1918), issued by President Wilson. The President stated that in order to avoid confusion in policies, duplication of effort, and conflicting interpretations of the law, unity of control in the administration of the legal affairs of the Federal Government was essential. Accordingly, he placed all law officers and all governmental litigation under the supervision and control of the head of the Department of Justice, and further directed that opinions of the Attorney General were to be binding upon various government agencies. This order expired six months after the Armistice, however.

In 1928, the Attorney General recommended legislation to Congress to consolidate all the legal activities of the Government under the supervision of the Attorney General. The objectives were again to secure uniformity of interpretation of the laws and to establish unified responsibility and control of all the litigation of the United States and its departments. The bill was never enacted. Pursuant to powers granted to him to reorganize executive agencies by the Treasury and Post Office Appropriations Act of 1933, 47 *Stat.* 1517, President Roosevelt issued Executive Order No. 6166 on June 10, 1933. Section 5 of the Order provided:

Claims by or against the United States. The functions of prosecuting in the courts of the United States claims and demands by, or offenses against the Government of the United States and of defending claims and demands against the Government, and of supervising the work of the United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.

As to any claim referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.

Thus, by statute and by Presidential order, control over all litigation involving the United States has been entrusted to the Department of Justice.

And when the issue has arisen, the courts have given effect to this grant of supervisory authority to the Department of Justice. In *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273 (1888), the Supreme Court declared the impact of the 1870 statute to be that:

He [the Attorney General] is undoubtedly the officer who has charge of the institution and conduct of the pleas of the United States, and of the litigation which is necessary to establish the rights of the government, 125 U.S. at 279.

See also Perry v. *United States*, 28 Ct. Cl. 483, 491 (1893); *cf. Kern River Co.* v. *United States*, 257 U.S. 147, 155 (1921).

Judge Learned Hand, in *Sutherland* v. *International Insurance Co.*, 43 F. 2d 969 (2d Cir. 1930), emphasized the importance of lodging unified litigation control in the office of the Attorney General, and the necessity for clear evidence of contrary Congressional intent before it could be presumed that litigation involving the interests of the United States could properly be conducted by someone other than the Attorney General:

The government has provided legal officers, presumably competent, charged with the duty of protecting its rights in its courts . . . . Congress, having so provided for the prosecution of civil suits, can scarcely be supposed to have contemplated a possible duplication in legal personnel. The cost of this is one consideration, but far more important is the centering of responsibility for the conduct of public litigation. The Attorney General has powers of "general superintendence and direction" over district attorneys . . . . and may directly intervene to "conduct and argue any case in any court of the United States". . . . Thus he may displace district attorneys in their own suits, dismiss or compromise them, institute those which they decline to press. No such system is capable of operation unless his powers are exclusive, or if the Departments may institute suits which he cannot control. His powers must be co-extensive with his duties. And so, quite aside from the respectable authority that confirms our view, we should have no doubt that no suit can be brought except the Attorney General, his subordinate, or a district attorney under his "superintendence and direction," appears for the United States. 43 F. 2d at 970–71.

In 1955, after an extensive survey of the organizational needs of the Executive Branch, the Hoover Commission concluded and so recommended to the Congress that:

The Department of Justice should be recognized as the chief law office of the Government. It should conduct all litigation before the courts on behalf of the Government and its executive departments and agencies, except as Congress authorizes otherwise.[1]

II. STATUTORY EXCEPTIONS TO THE ATTORNEY GENERAL'S SUPERVISORY AUTHORITY OVER ALL LITIGATION INVOLVING THE UNITED STATES

Even though it has exclusive control over Federal criminal litigation, the Department of Justice does not supervise the conduct of all litigation involving the interests of the United States. There are many areas of civil litigation outside the Attorney General's supervisory authority.

For example, there are two courts of the United States in which the Attorney General has no authority to designate who shall represent the United States—the Tax Court and the Court of Military Appeals. Prior to December 30, 1969, the Tax Court was an independent agency in the Executive Branch of the Government (26 U.S.C. § 7441). By 26 U.S.C. § 7452, the Secretary of the Treasury was represented before the Tax Court by the Chief Counsel of the Internal Revenue Service. By Section 951 of the Tax Reform Act of 1969, P.L. 91–172 (December 20, 1969), the Tax Court was raised to the status of an Article I court. Since this change in status was accomplished by an amendment to 26 U.S.C. § 7441 with no mention of 26 U.S.C. § 7452, the Chief Counsel of the Internal Revenue Service continues to represent the United States in this court. The Court of Military Appeals is an Article I court (10 U.S.C. § 867(a)(1)). Appellate counsel selected and detailed by the Judge Advocate General of each military service represent the interests of the Government before this court. 10 U.S.C. § 870.

In addition, on occasion Congress has expressly given certain agencies the authority to control litigation arising out of their activities. For example, Congress has authorized the Interstate Commerce Commission, the National Labor Relations Board, the Federal Home Loan Bank Board, the Equal Employment Opportunity Commission and the Federal Power Commission to employ attorneys to represent the agency in litigation involving such agencies.[2]

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[1] *Legal Services and Procedure*, Report to the Congress by the Commission on Organization of the Executive Branch of the Government 6 (March, 1955).

[2] I.C.C.—49 U.S.C. § 16(11)—The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission . . . or for proper representation of the public interests in investigations made by it . . . or to appear for or represent the commission in any case in court.

F.P.C.—16 U.S.C. § 825m(c)—Substantially similar language as Interstate Commerce Commission's grant of authority.

Federal Home Loan Bank Board—12 U.S.C. § 1464(d)(1)—The Board shall have power

Where the statute has been silent as to agency legal representation, it has been the Department's position that the Attorney General controls the litigation. For example, many statutes authorize an *agency* to invoke the aid of a court in requiring the attendance of witnesses and the production of documentary evidence.[3] In such cases, the Department of Justice has claimed the right to represent the agency involved in the court proceedings, and that claim has most often been upheld in the courts. *Federal Trade Commission* v. *Guignon*, 390 F.2d 323 (8th Cir. 1969); *cf. Federal Trade Commission* v. *Continental Can Co.*, 267 F. Supp. 713 (S.D. N.Y. 1967) *But see Securities and Exchange Commission* v *Collier*, 76 F.2d 939 (2d Cir. 1935) (legislative history indicates that SEC can properly conduct and control civil actions in district courts to enjoin practices violative of its statute or its rules or regulations).

There are also some instances where government agencies, despite the absence of express authority in the statute to do so, have assumed full responsibility for the conduct of litigation. The Attorney General has not contested the assumption of such control over litigation by the Tennessee Valley Authority or the Federal Deposit Insurance Corporation, for example, for the following reasons. Both agencies are independently financed. Neither depend upon government funds for continued operation. They are truly independent agencies engaged in commercial enterprise, and as such, appear to be entitled to manage their own legal affairs.[4]

Some statutes fail to make clear, however, the extent to which agency litigation is to be subject to the Attorney General's actual control. For example, the Fair Labor Standards Act of 1938 created a Wage and Hour Division of the Department of Labor, and provided:

Attorneys appointed under this Section may appear for and represent the [Wage and Hour] Administrator in any litigation, but all such litigation shall be subject to the direction and control of the Attorney General. 52 *Stat.* 1060, 29 U.S.C. § 204(b).

A question soon arose as to whether the Department of Labor or the Department of Justice was in charge of litigation stemming from the Act. The two Departments agreed to divide the responsibility for the Fair Labor Standards Act's enforcement, with the Department of Labor taking the responsibility for handling litigation arising under the Act at the trial level, and the Justice Department handling all appeals to federal Courts of Appeals or the state supreme courts. This agreement is expressed in a letter dated January 18, 1939 from Attorney General Frank Murphy to Elmer Andrews, Administrator, Wage and Hour Division.

In *Lowell Sun Co.* v. *Fleming*, 120 F.2d 213 (1st Cir. 1941), the court held that the statutory expression "under the direction and control of the Attorney General" was permissive and not mandatory, and, therefore, that the Attorney General had the option of delegating responsibility in this fashion to the Department of Labor. This allocation of enforcement resources was approved in another case, in which the court observed:

"If the consent of the Attorney General to file this petition was necessary, which this court does not hold that it was, consent was clearly given by the Attorney General to the Administrator. It was the evident intention and purpose of Congress to place the ultimate responsibility with the Department of Justice. The advantages of placing litigation under and subject to the control of the Attorney General lie in thus avoiding a conflict of policy between various commissions and administrative offices, and placing the ultimate responsibility in the proper Department of the Government." *Fleming* v. *Cudahy Packing Co.*, F. Supp. 910, 913 (S.D. Cal. 1941).

Supplementary agreements between the Department of Justice and the Department of Labor have similarly allocated litigating responsibility between the two departments in cases brought under the Age Discrimination in Employment Act of 1967, 81 *Stat.* 602 (see letter dated March 29, 1968 from Assistant Attorney General Weisl to the Solicitor of the Department of Labor), and under the Equal Pay Act of 1963, 77 *Stat.* 56 (by agreement of Assistant Attorney General Douglas and the Solicitor). Although the agreement set forth in Attorney General Murphy's letter called for the Department of Justice to control litigation at the appellate levels, the Department of Labor developed such manifest expertise in the field involved that, by mutual and unwritten consent, Labor Department attorneys have written the briefs and argued cases in the various courts of appeals and in the Supreme Court.

The Congress, with respect to all final orders of the Atomic Energy Commission and the Federal Communications Commission, and with respect to certain designated final orders of the Secretary of Agriculture, the Federal Maritime Commission and the Federal Maritime Administration, has authorized the agencies to appear and be represented in any proceedings to review such orders in the appropriate court of appeals, but provided that the Attorney General "is responsible for and has control of the interests of the Government in all court proceedings under this chapter." (28 U.S.C. §§ 2342, 2348, 2350) The Department has not contested the right of any of these agencies or the Department of Agriculture to handle appeals from their final orders, either at the apellate or the Sureme Court level, since the United States is a separate statutory respondent in such review proceedings, and is thus represented by the Department of Justice.

III. CONCLUSION

The foregoing history demonstrates that there were several sound reasons for lodging supervisory authority and control over all litigation involving the interests of the United States in the Department of Justice. These reasons have equally compelling validity today. First, unified control of all litigation would insure that the United States speaks with one voice in the courtroom. Effective enforcement policy requires that significant differences on important legal issues be resolved prior to the courtroom stage so that inconsistent or contradictory positions do not arise to confuse the public and hamper enforcement efforts. Second, centralized decision making permits greater objectivity and selectivity in the filing and handling of cases, as well as the more effective use of test cases as devices to clarify or modify existing law. Finally, unified control of litigation stimulates greater rapport with Federal judges, many of whom have openly and candidly expressed their desire to have government cases presented by Department of Justice attorneys. A former Attorney General has provided an excellent summary of the case for unified control of all litigation involving the Government of the United States:

Many considerations require this result. Uniformity of interpretation of the laws, the necessity of centralized responsibility for the contacts of the executive with the judicial department, and economy, among others, have forced an organized administration of federal justice. Moreover, attorneys of the Department of Justice, because of their very detachment from the business of administration, are equipped to interpret the laws and gauge the temper of the courts. There are also many objections often made to a system whereby an administrative agency with the aid of its own attorneys first acts in a semi-judicial capacity in deciding the scope of its authority and then becomes a litigant in the courts to maintain the validity of its own proceedings.

Greater variety of experience, increased resources, more numerous assistants, and the nation-wide network of district attorneys, marshals, and special agents versed in the local practice before the courts and local conditions have been made available to all government agencies through the Department of Justice.

These, plus a tradition dating from the foundation of the government itself, could not be duplicated by single departments or agencies of the government. Without them no large program of law enforcement could succeed. Cummings and McFarland, *Federal Justice* 490–91 (1937).

These reasons are as persuasive today in the light of the Government's current litigating needs as they were when written in 1937.

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to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder . . . the Board is authorized to act in its own name and through its own attorneys. . . .

Equal Employment Opportunity Commission—42 U.S.C. § 2000a–4(g)—Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

NLRB—29 U.S.C. § 154(a)—Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court.

[3] Federal Trade Commission, 15 U.S.C. § 49.

Civil Aeronautics Board, 49 U.S.C. § 1484 (c), (d).

Federal Aviation Administration, 49 U.S.C. § 1487(a), (b).

Federal Communications Commission, 47 U.S.C. §§ 401, 409(f).

Federal Maritime Commission, 46 U.S.C. §1124(b)

National Mediation Board, 45 U.S.C. § 157 (h).

Secretary of Health, Education and Welfare (Social Security investigations), 42 U.S.C. § 405(e).

Small Business Administration, 15 U.S.C. §§ 687a(d), 687b(a)

Subversive Activities Control Board, 50 U.S.C. § 792(c).

[4] In 1939 and again in 1954 the Department determined that it would be inappropriate to contest the right of government owned agencies such as the various farm credit corporations and the FDIC to be represented by their own counsel.

APPENDIX

28 U.S.C. § 516. CONDUCT OF LITIGATION RESERVED TO DEPARTMENT OF JUSTICE

Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice, under the direction of the Attorney General.

28 U.S.C. § 517. INTERESTS OF UNITED STATES IN PENDING SUITS

The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

28 U.S.C. § 518. CONDUCT AND ARGUMENT OF CASES

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall

conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested.

(b) When the Attorney General considers it in the interests of the United States, he may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct the Solicitor General or any officer of the Department of Justice to do so.

28 U.S.C. § 519. SUPERVISION OF LITIGATION

Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the United States, an agency, or officer thereof is a party, and shall direct all United States attorneys, assistant United States attorneys, and special attorneys appointed under section 543 of this title in the discharge of their respective duties.

Mr. MAGNUSON. Mr. President, I listened with great interest to the colloquy. Of course this is a departure. That is exactly what we want to do with this bill. We want to give authority to this agency to act quickly. We did it with the Federal Trade Commission. It was a pretty substantial departure when we did it for the Federal Trade Commission, so it could go in and get some action. Under this proposal the agency could go to the Attorney General. It is an alternate method. But if we require the agency to go through the Attorney General, it may be a long, long time before anything happens, and when we are dealing with dangerous substances, we have to have some place where we can get quick action and allow these people to go into court, as we do with the Federal Trade Commission, where there might be some reason to hold something up.

In another part of the amendment, the amendment denies any court the right to order a recall of dangerous products on the market. This is not the intent of the bill, and it is not the intent of the committee. We were unanimous on this. Of course it is a departure. That is exactly what we want it to be, so we can get some action in this particular field.

They may use the Attorney General for 90 percent of their cases, but sometime they will want to go into court, just as the Federal Trade Commission and other agencies do. That is the purpose of it.

Mr. GURNEY. Mr. President, will the Senator yield?

Mr. MAGNUSON. They may have to go into court quickly to take some dangerous product off the market. That is the exact purpose of the bill. I know the Senator from Florida objects to that, but I do not want to suggest that we are saying this is not a departure in this field. It is, and that is what we want it to be. Otherwise we will never get anything done.

Mr. GURNEY. Mr. President, will the Senator yield on that point?

Mr. MAGNUSON. Well, all right, I yield, but I am going to yield back the remainder of my time.

Mr. GURNEY. I would like to point out to the distinguished manager of the bill that my amendment takes care of exactly what the Senator wants so far as quick action is concerned, because it still retains within the agency and its administrator the power to go into court at once if it wants to get a preliminary injunction against a hazardous product.

Mr. MAGNUSON. I understand that.

Mr. GURNEY. So it does exactly what the Senator wants it to do. The only thing it does not do is permit the administrator to get a permanent injunction or to do the other things that can later be done by the Justice Department, which have absolutely nothing whatever to do with immediate urgency of doing something then.

So my amendment in no way militates against what the Senator wants.

Mr. MAGNUSON. I think the Senator's amendment does. It stops quick action. If they went in for a preliminary injunction, they could hang around for days, and we are dealing with hazardous substances. They have got to go to court; the court has to order this, no matter what we do. But they have a right to go in and get quick action. That is the purpose of this.

Mr. GURNEY. That is exactly my point.

Mr. MAGNUSON. If they have some big cases that can hang around, the court would probably say, "Mr. Attorney General, nobody has a privilege of immediate hearing on routine matters in this court, not even the Attorney General's Office." We want them to be able to move fast, and this is exactly what we did in the Federal Trade Commission.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. COTTON. I find myself halfway between my two friends here. It was my understanding that the amendment of the Senator from Florida permitted only preliminary injunctions. I thought he was striking out of this bill all power for the attorneys in this new agency to handle criminal prosecutions.

Mr. MAGNUSON. The agency cannot do that.

Mr. COTTON. Yes, it can, under this——

Mr. MAGNUSON. The agency has got to go to court.

Mr. COTTON. The agency goes to court for the injunction, certainly.

Mr. MAGNUSON. Or for the imposition of any fines or anything like that.

Mr. COTTON. But the agency can directly invoke criminal penalties, which is really——

Mr. MAGNUSON. If the court agrees with them.

Mr. COTTON. Well, criminal prosecution, to my mind, should be left for the Department of Justice. As to the temporary and permanent injunctions, I would like to see this amendment permit the use of injunctions to stop dangerous products. But, when it comes to going to Federal court to send a businessman to a Federal penitentiary, I do not think that should be in the hands of attorneys hired by the proposed new agency.

Mr. MAGNUSON. Well, that may be true. I hope they would be of the same caliber as the attorneys hired in the Attorney General's office. They would be Government attorneys in this particular field, like the fine attorneys we have down at the Federal Trade Commission.

This does not allow an order to get a product recalled, does it?

Mr. GURNEY. What was the question?

Mr. MAGNUSON. We cannot get an unsafe product off the market, under the Senator's amendment.

Mr. GURNEY. Sure we can.

The PRESIDING OFFICER. Who yields time?

Mr. GURNEY. Mr. President, if I may answer——

Mr. MAGNUSON. I have no more to say about it. I have studied the two amendments—not the second one, but the first one. The danger of it is that you cannot get swift action; and as to the fact that it is a departure, of course it is a departure. That is what we intended to have, a departure.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. MAGNUSON. We voted this for the Federal Trade Commission, the same thing. But in dealing with dangerous products, if they are to get a product off the market that involves fraud or things like that, we have said they can go into court. This deals with dangerous products, and it may be a serious matter. I suppose they will use the Attorney General for many, many of their cases, where they have a lot of appeals and the case does not require immediate attention.

Mr. COOPER. Will the Senator yield?

Mr. MAGNUSON. I have no more to add to it. I yield to the Senator from Kentucky.

Mr. COOPER. Mr. President, I do not want to turn attention away from the question raised by the Senator from Florida, but I want to ask about section 316(a), which is related to it.

Mr. MAGNUSON. Oh, excuse me. Let me add to the record a more complete statement about the amendment of the Senator from Florida.

Mr. President, quite a bit has been said today with respect to the merits of an independent consumer product safety function within the Federal Government. Achieving the goal of an independent agency, however, involves more than the creation of a new regulatory body. The new agency must also be equipped with procedures and safeguards which will be out of the reach of any particular corporate or political pressure.

One provision of S. 3419 designed to insure both independence and the expeditious handling of the enforcement function of the agency would be eliminated by the amendment proposed by my colleague from the State of Florida (Mr. GURNEY). Section 104(c)(1) of the bill now authorizes the administrator of the agency to initiate, prosecute, defend, or appeal any court action in the name of the agency to enforce any laws subject to his jurisdiction, through his own legal representatives or through the Attorney General. The proposed Gurney amendment would allow the agency to perform this similar function only through the Attorney General.

An effective compliance and enforcement mechanism is absolutely essential. It does little good to equip an agency with the authority and personnel to locate defective or nonconforming products and then not equip it with the ability to take action against manufactur-

ers or processors of those products. This amendment would not only wipe out the ability of the agency to go to court to seize products, obtain injunctions or enforce regulations, but also destroy the agency's ability to criminally prosecute offenders.

Adoption of the Gurney amendment would add another layer of review to any agency court proceeding and result in delayed proceedings. The need for quick action is obvious: If an adulterated food is located in a warehouse, then it is crucial that the agency be able to obtain a seizure order before that food is introduced in interstate commerce. Requiring the agency to utilize Justice Department lawyers oftentimes results in delay. In fact, almost one-tenth of all seizure orders obtained by FDA since 1968 have been meaningless because Justice Department delay resulted in the defective foods or drugs being introduced in interstate commerce and beyond the reach of seizure.

But the need for quick action is not the only argument in opposition to the amendment offered by my colleague from Florida (Mr. GURNEY). In a recent letter to Congressman PAUL ROGERS, William W. Goodrich who was FDA's chief counsel for well over two decades, endorsed the concept of direct agency action and outlined several other convincing arguments in support of his views. Among other things, Goodrich noted that the area of food and drug law and technology is exceedingly complex. Needless to say, this description is also applicable to product safety law. It requires an advocate for the Government's position who is equipped with the necessary expertise to match wits with the highly paid and qualified representatives of the defendants. Obviously, a Justice Department lawyer cannot be expected to possess this degree of specialization and in fact, FDA attorneys themselves are the only ones within Government who possess this knowledge.

Accordingly, to put the Government on an equal par with those who are being prosecuted, it is often necessary for the Justice Department to allow FDA lawyers to argue the cases themselves, under the supervision of the U.S. attorneys. This is particularly true in situations where agency action is required on short notice such as a temporary injunction.

The waste in resources and manpower due to this duplication of effort is obvious. But of even more concern to me is the question of what possible function the Justice Department attorney can play in a Food and Drug case? I am afraid that the answer to this question is that the presence of such lawyers from Justice presents a unique opportunity for making political decisions about the prosecution proceeding. It enables political manipulation or influence of Agency enforcement actions by administration representatives—the very influence that this legislation was designed to prevent. As currently structured, Justice can refuse to file or even dismiss a case without FDA approval. It can even drop parties or accept settlements without the presence of the FDA legal staff.

Those who endorse the Gurney amendment argue that since 1870, the Justice Department has been the sole representative of the United States in the court rooms throughout the land and should remain in that position. In 1870 however, we were not involved in the highly technical litigation to which a Food, Drug, and Consumer Product Agency is forced to address itself. At present, FDA prepares all of its own cases for court including brief writing, evidence gathering and arranging for witnesses; since it is most intimately involved in the case, it should also argue it.

Moreover, the Congress holds FDA and its Commissioner responsible for the efficient administration of laws under its jurisdiction. Yet, the Department of Justice is charged with the role of deciding when and whom to prosecute and how to settle cases once they have been initiated. To be perfectly frank, the record of the Justice Department in the last few years has not only been outrageous, but also the most effective argument against this amendment that I can muster.

Let's look at the record:

Thus far in 1972, the Food and Drug Administration submitted to the Department of Justice a total of 32 cases for criminal prosecution for violation of the Food and Drug Act. Justice declined outwardly to prosecute four of the cases. In addition, a total of 10 cases were not filed by the U.S. Attorney in the District where the action was to be commenced. This is in spite of the fact that the case was completely prepared by the FDA attorneys and all that was necessitated was walking the papers over to the courthouse. Hence, over 40 percent of the cases for criminal prosecution that FDA requested to be filed were blocked by Justice.

It must be remembered in considering this statistic that FDA inspectors discover almost 5,000 potential criminal prosecutions per year and it is only through a screening process from the inspector to a Food and Drug Officer; to a bureau within the administration; and finally through the General Counsel's office that a case finally goes to Justice. Only about 60 cases per year are recommended for criminal prosecution; the point of this being that FDA itself is quite selective in the cases it chooses to prosecute. In view of the fact that the most recent critical GAO report recommended an increased number of criminal prosecutions by FDA, Justice seems to be substantially mitigating the effectiveness of FDA enforcement activities.

But statistics alone do not tell the story. Let me cite for you some of the cases that the Department of Justice refused to prosecute or file in the last 6 months.

Case No. 1: FDA action 57724 against Delchamps, Inc. The offenses complained of occurred in late 1970 and early 1971 and involved quantities of popcorn, kidney beans, flour, blackeye peas and sugar held in the defendants' warehouse which were contaminated by rodents. To be specific the foods were contaminated with rodent hairs, rodent urine, excreta pellets, and were being held under insanitary conditions. To be even more explicit, the FDA inspector was able to photograph mice scampering about in the warehouse, a mouse carcass found on a case of frosting mix, mice tracks in spilled flour, baby mice nesting in packaging materials, excreta pellets, and rodent gnawed food packaging. Those who are not convinced by my description are free to come forward and view the photographs of the rodent infestation of the Delchamps warehouse. In this instance, FDA had done its job but the Department of Justice refused to prosecute.

Case No. 2: United States against Wendt Laboratories, Inc. The case was filed by the U.S. attorney but later dismissed by Justice. The defendant was accused by the FDA of processing, packaging, and labeling an injectable for animals which was unsafe since no approval of an application for use of the drug was ever issued by FDA. Further, the methods used for manufacture and facilities and controls for processing, packing and holding did not conform with current good manufacturing principles. This is of particular concern in view of the fact that there are indications that harmful tissue residues resulting from use of the drug may be ingested by humans. It should also be added that this case was dismissed by the Justice Department without even first consulting the FDA.

Case No. 3: FDC No. 57320 involving the Rala Singh Farms. Rala Singh was cited by FDA for shipping in interstate commerce, lettuce which exceeded the HEW tolerance levels for pesticides. Although a seizure was effected, the Justice Department refused to file the criminal charges despite FDA advice to the contrary.

There are other cases. One where the U.S. attorney failed to move against a company and it was later discovered that the father of the wife of the attorney owned the company. In two districts: the Eastern District of Missouri and the Northern District of Texas, the U.S. attorney refused to file any FDA cases submitted to them. I could cite more cases, but the point has been made. The current situation is intolerable. It is hard enough to get the Food and Drug Administration to act at all. But when they finally do act and their inspectors do discover situations such as the ones outlined above, they should not have their hands tied. To insure that this recent Justice Department record is never again duplicated, I emphasize the importance of defeating the amendment and adopting the proposal of S. 3419.

Frankly, I am somewhat confused as to where the administration stands on this issue. On the one hand, in hearings before the Rogers subcommittee in the House, Steve Kurzman, Assistant Secretary of Health, Education, and Welfare for legislation stated unequivocally, that authorizing the FDA Administrator to prosecute his own cases would be duplicative and disruptive. On the other hand, the Secretary of Health, Education, and Welfare, Mr. Richardson stated before Senator PERCY at Government Operations Committee hearings, and I quote:

I think it would be useful for the Commissioner to have the authority (to bring his own cases). I am not sure he would want to exercise it in every case, nor does the legislation propose so.

The provision in S. 3419 fulfills the authority that Secretary Richardson has endorsed: granting the Product Safety Agency the authority to bring its own cases or allow Justice to handle them itself.

For these reasons, Mr. President, I respectfully urge the Members of this body to defeat the amendment proposed by my colleague from Florida.

Mr. COOPER. Mr. President, will the Senator from Washington yield so that I may ask a couple of questions?

As I have said, I do not want to turn the interest of the Senate away from the question raised by the Senator from Florida, but reference was made to section 316(a), and it does have pertinence to this question, because the administrator would be able to take both civil and criminal action under section 316(a).

More and more we are legislating the imposition of civil penalties. Section 316(a) provides a civil penalty of not more than $10,000 for each such act which shall accrue to the United States and may be recovered in a civil action.

This may seem a specious question, but does not mean a $10,000 civil penalty can be imposed by the administrator, and then that the burden of proof against its imposition would be upon the defendant?

Mr. MAGNUSON. No; the administrator has to go to court and say to a judge——

Mr. COOPER. This is what I want to know.

Mr. MAGNUSON. "We think this man should be subject to a penalty because," and the judge will say, "Tell me the becauses," and then, after a hearing, he may waive a penalty, or he may not. The Administrator cannot fine anyone, send anyone to jail, or either, unless he goes to court and the judge says, "This is a good case; I will grant it."

Mr. COOPER. That is what I wanted to find out about and have interpreted. We have passed a number of acts in the last 3 years giving authority to agencies to impose civil penalties, with only a subsequent hearing. It is a proceeding without due process.

Mr. MAGNUSON. Yes.

Mr. COOPER. I want to know if there is due process in section 316 A1.

Mr. MAGNUSON. Well, the Administrator cannot place a fine on anyone. He has got to go to court and make the suggestion to the judge, and tell the judge why.

Mr. COOPER. He has to prove it?

Mr. MAGNUSON. Of course he does.

Mr. COOPER. He has the burden of proof?

Mr. MAGNUSON. I do not think a Federal judge would grant it willy-nilly. Of course, they might, but he would have to prove it.

Mr. COOPER. I am not just bringing up a frivolous question. The section goes to due process and justice?

Mr. MAGNUSON. I might say most Federal judges I know would not.

Mr. COOPER. We have passed several acts in the last 3 years which give to agencies a power to impose a civil penalty and only a subsequent hearing. As an example, the Coal Mine Safety Act. I am very familiar with it.

Mr. MAGNUSON. The Senator from New Hampshire and I will give the Senator another example. The Senator from Colorado was there also. The Occupational Safety and Health law.

Mr. COOPER. Yes; that is another one.

Mr. MAGNUSON. Yes; you could go out and fine a man. The investigator can fine him, not the Administrator but the investigator.

Mr. COOPER. And without the due process.

Mr. MAGNUSON. Yes. And the review board down here, or the Department of Labor, can fine the guy.

Mr. COOPER. There have been some cases in the past on this issue——

Mr. MAGNUSON. And the Senator is correct that in most safety measures we have gone much farther than this bill.

Mr. COOPER. I want to be sure we are not following the two acts to which we have alluded, in this bill, because it is a failure of due process.

Mr. MAGNUSON. Yes.

Mr. COOPER. The Supreme Court will probably finally rule on the two acts. There have been some cases in the past which have suggested that the imposition of a civil penalty of size, is in fact a criminal penalty, and would require a criminal trial; and I assume it is still true that in Federal courts a unanimous verdict by all the members of a jury would be required. But I wanted to raise the question.

Mr. MAGNUSON. The court must approve it, and the lawyer who comes in for the agency will have to do like I used to do when I used to be a U.S. attorney: We would recommend to the judge, "Put this fellow away and throw the key away," or "Let him go," or somewhere in between on a lot of them. But that is all these lawyers would do, is the same thing. The judge has to approve it.

Mr. COOPER. I am glad the Senator has made this very clear. I have been concerned about this imposition of civil penalties without a hearing, without due process, and I must say this: There are people in our country who express very liberal and correct views for justice, but who seem to have no feeling at all about due process in such cases as I have cited.

Mr. MAGNUSON. That is not contained in this bill, I assure the Senator of that.

Mr. COTTON. And, if the Senator will yield, I want to join the Senator from Washington in assuring the Senator from Kentucky that there is no such thing in this bill. The only thing in the bill I find objectionable—and it is no departure as far as the injunctive powers or civil penalties are concerned. I agree with my distinguished chairman that there is no departure.

The only departure I am talking about is the departure of starting the custom of having the attorneys retained by these departments pursuing criminal prosecutions in the Federal courts. I think that criminal prosecutions have been and should continue to be confined to the Department of Justice.

Mr. GURNEY. Mr. President, again I want to make clear to the Senate, because of the colloquy I had with the distinguished manager of the bill, that my amendment gives just as much power as the bill presently does to the Administrator to go into court and stop by injunction, right now, any hazardous product. It says:

> To enjoin any person from engaging in the manufacture for sale, sale, offering for sale, or otherwise offering for public consumption . . . an imminently hazardous consumer product.

If that does not take it off the market, I do not know what does.

After that preliminary injunction has been issued, the administration is going through the administrative process. Sometimes that takes a year or two. Some of the Federal Trade Commission actions, when the hearings are printed, occupy whole shelves. We do not want the Federal district court to do that. We want that to be done by the Administrator.

But so far as setting up a legal department within this new agency is concerned and giving it special treatment and allowing it to duplicate what the Justice Department is now doing at extra expense, a complete deviation from the enforcement procedures we now have, that is a mistake and a bad precedent. That is what my amendment would seek to stop, and it should stop.

One other comment, with respect to what the Senator from New Hampshire was talking about. Section 316(a) does give to the Administrator, the agency, or his lawyers acting on his behalf, the right to go into court and seek a conviction of somebody. It says that it would be guilty of a misdemeanor or, upon conviction, fined not more than $10,000 for each such act, or imprisoned not more than 1 year, or both.

If the Senate is going to permit an agency to do that and take that criminal procedure away from the Department of Justice, we are making a very bad mistake. I hope the Senate adopts my amendment, which puts the procedures in the proper perspective, as we always have done.

Mr. ALLOTT. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

Mr. ALLOTT. Mr. President, being present on the floor during this discussion, I cannot let the discussion take place without stating my own stand upon these very important issues.

The Senator from Kentucky and the Senator from Florida have stated a position which the Senator from Colorado believes in very firmly and very thoroughly.

The Senator from Washington, the manager of this bill, spoke of the Occupational Safety and Hazard Act. In my opinion, one of the greatest mistakes the Senate has made in the last few years was to permit that department to go in and exercise the right of fine upon the people who violate that act. If we want to do anything really great, one of the things we ought to do is to bring this back.

The purpose for the formation of the Department of Justice was to file and proceed with criminal procedures against people who violate Federal laws. Regardless of any power that has been put into the Federal Trade Commission—I was for writing their powers in the field of injunction—I still believe that any time we permit this to go on, we are making a great error.

The PRESIDING OFFICER. All time of the Senator from Florida has expired.

Mr. ALLOTT. Mr. President, will the Senator from Washington yield me 2 minutes?

Mr. MAGNUSON. I yield.

Mr. ALLOTT. The prosecuting powers of this Government should lie with the Attorney General and no one else. I do not believe, as the Senator from New Hampshire said, that we should permit the Government lawyers hired by an individual agency to pursue the right of prosecution of people for criminal acts. In that respect, I am particularly and wholly opposed to the law as it is proposed in section 316.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield 5 minutes to the Senator.

Mr. PERCY. Mr. President, I would submit as evidence that we need go no further than an article published this morning in the Washington Post, written by Mr. Morton Mintz, whom I consider one of the Nation's most knowledgeable and capable reporters in the field of consumer protection. This article very carefully documents a single case that occurred last year.

A Food and Drug Administration inspector, Lewis R. Sikes, began an inspection at a wholesale grocery warehouse in Alabama that stores beans, flour, peas, popcorn, sugar, and other foods. I read from the article:

> The inspection showed evidence of heavy rodent habitation . . . throughout the food storage area which is not only unsanitary and obnoxious, but a possible source of disease.
>
> Twenty-five live adult mice were seen and four nests were found containing a total of 19 live baby mice," Hutt continued. "One live mouse ran out of a bag of kidney beans while the lot was being examined.
>
> Twenty-five lots of human food were found to be defiled by rodents in varying degrees; and at least 15 of these lots were rodent-gnawed or were in rodent gnawed containers.
>
> Fifteen lots were found to have rodent excreta pellets or urine stains on the immediate product container or the shipping containers.

I read this simply because it is not an isolated case but because we have taken testimony time after time after time indicating that there are the conditions that frequently are found.

What do you do with an injunction? Do you issue an injunction to enjoin the mice from coming in, the rats from excreting on food, the rodents from depositing urine strains all over the kidney beans and flour and whatever else? How do you operate? What do you do under the law as it now exists or as this amendment would provide.

You go to the U.S. attorney—and they did. They did not go once or twice. They went several times. The FDA lawyer told the prosecutor of the conditions that were found, and his belief that a criminal action was clearly warranted. But the U.S. attorney wrote that he did not feel that action was appropriate at that particular time.

I wish the RECORD was capable of printing pictures. Certainly, as the former head of a camera company, I would like to see the RECORD in color. I now submit pictures of actual conditions that existed in that warehouse, which were submitted to the U.S. attorney. If these pictures do not cause anyone not to have a good appetite for dinner this evening after they peruse them, I would like to know what would. But the U.S. attorney, after these facts were stated and these pictures presented, simply said:

> I continue to be of the same opinion, that prosecution is not appropriate.

What do you have to do to break the law in a food warehouse? This is not an isolated case. It has been documented many times over that these conditions exist. The hearings held before the Committee on Government Operations are filled with instances of this kind.

I maintain that we must do something more than we are now doing if we intend merely to fulfill our public responsibility.

In connection with this amendment, Mr. President, I ask unanimous consent that the closing excerpts from Mr. Mintz's outstanding investigative article to be printed in the RECORD:

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

> The FDA says it recommends only the most serious cases for prosecution—about 60 per year—to the 93 U.S. attorneys around the country.
>
> In about 30 to 35 per cent of the cases, Hutt told a House commerce subcommittee on June 9, the prosecutors refuse to prosecute, dismiss the case over the FDA's objection, or, also over its objection, dismiss one or more of the individuals named in the complaint.
>
> Subcommittee Chairman Paul G. Rogers (D-Fla.) said he had information on an unidentified U.S. attorney who rejected an FDA recommendation to prosecute a firm that, it later developed, "his wife's father owned." In another case, Rogers said, a former prosecutor turned up representing a client "he refused to file against."
>
> Rogers has introduced a bill that, like Magnuson's, would let the FDA prosecute its own cases but that would keep the agency in the Department of Health, Education, and Welfare.
>
> At a recent Senate hearing on the Magnuson bill, HEW Secretary Elliot L. Richardson said, "I think it would be useful for the Commissioner of the FDA to take at least some of his own cases to court.
>
> But Richardson's assistant secretary for legislation, Stephen Kurzman, disputed at a hearing on the Rogers bill on June 9. Warning against the "fragmentation" and "helter-skelter enforcement" that would result if each agency were to set up "satellite U.S. Attorney offices," Kurzman said:
>
> "The Administration strongly believes that the United States should continue to speak with one voice in the courtroom, as it has done since 1870. In this way, consistency can be maintained in the handling of government cases. In addition, because of its broad experience in courts throughout the country, the Justice Department has the responsibility and the unique capacity to judge the likelihood of the government's prevailing in a particular case. . ."
>
> Rogers produced a direct challenge to this from Hutt's predecessor, William W. Goodrich. The former FDA counsel, in a letter to Rogers, said that the FDA's relationship with the Justice Department generally worked tolerably during the 30 years that responsibility lay in the criminal division, but the recent transfer of representation of the FDA to the antitrust division has made the situation "more difficult, and in many cases impossible."

The PRESIDING OFFICER. Who yields time?

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

Mr. COTTON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The Senator will state it.

Mr. COTTON. Is it in order to offer a substitute to the amendment of the Senator from Florida?

The PRESIDING OFFICER. The amendments offered by the Senator from Florida are open to amendment but it would be difficult, in the opinion of the Chair, to draft one as a substitute for the amendments.

Mr. COTTON. It is proposed to amend the amendment.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The amendment of the Senator from Florida is open to amendment.

Mr. COTTON. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

> Commencing on page 72, line 16, insert a period after "purpose" and strike out all thereafter through page 73, line 2.

Mr. COTTON. Mr. President, this amendment simply leaves everything in the bill. It leaves in the injunction authority. It leaves in the enforcement of civil penalties up to $10,000. It merely takes from the bill the authority for the attorneys of the new agency to prosecute criminally in the courts. That is all it does. It leaves everything else intact which, in my opinion, would give the new agency all the power it needs, including the situation outlined by the distinguished Senator from Illinois (Mr. PERCY). But it does not start the precedent of having the attorneys employed by the various agencies becoming criminal prosecutors in the Federal courts.

Mr. MAGNUSON. I want to ask one question. I oppose the amendment because that is exactly what the Senator from Florida is trying to do, to take away from the agencies and do it through the U.S. attorneys.

Mr. COTTON. It would do much more than that——

Mr. MAGNUSON. It would not take care of certain things, such as the matter the Senator from Illinois raised, because the U.S. attorneys would not act.

Mr. COTTON. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). If the Senator will withhold his request, the Chair would advise the Senator that the amendment

offered by the Senator from New Hampshire as drafted is not in order because it seeks to strike a section of the bill to which the amendment of the Senator from Florida does not touch.

Mr. COTTON. But it will be in order after his amendment is voted on; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. COTTON. Mr. President, may I have 1 minute to say to my friend from Washington (Mr. MAGNUSON), that the amendment of the Senator from Florida goes much further. It would strike out the civil penalties in the case of the rats the Senator from Illinois talked about. If my amendment is adopted they could still go ahead with their own attorneys regardless of the district attorneys and they could seek to impose the $10,000 penalty.

Mr. MAGNUSON. As to the civil penalties, I understand that, but it takes away from the agency to bring the action into the Federal court—routes it through the Attorney General—and that is what I would not like to see happen. I think many members of the committee and members of the other two committees feel the same way about it. I have a feeling about cases like that going through any Attorney General's office. They take too long. It is too much trouble. But we are talking about emergencies like this one example. There are many, many others, I can think of, where they find some fish in a warehouse, say, it is supposed to be fresh fish, but it might make thousands of people sick, and we have to act immediately and we cannot find a U.S. attorney, perhaps, that will say that they will do it. That is what the bill intended. We may have been wrong in our contention but I do not think we are.

I believe that the bill would not have any force or effect on hazardous substances if we routed this through the U.S. attorney's office. They can go there anyway. On a particular case, they may go out and want the U.S. attorney to handle it and they would, but we have to have some emergency measures. We are not going to get the people by just saying, "Mr. Judge, I hope you will fine them," when there are some criminal acts involved somewhere along the line. Toys are an example.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Florida (Mr. GURNEY).

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from New Mexico (Mr. ANDERSON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oklahoma (Mr. HARRIS), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from Georgia (Mr. GAMBRELL), would each vote "nay."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD) and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

If present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "nay."

The result was announced—yeas 31, nays 51, as follows:

[No. 233 Leg.]

YEAS—31

Allen	Curtis	Jordan, Idaho
Allott	Dole	Miller
Baker	Dominick	Saxbe
Beall	Eastland	Scott
Bellmon	Ervin	Smith
Bennett	Fannin	Stennis
Brock	Fong	Taft
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Hansen	Tower
Cotton	Hruska	Young
	Jordan, N.C.	

NAYS—51

Aiken	Hartke	Pearson
Bayh	Hollings	Pell
Bentsen	Humphrey	Percy
Bible	Jackson	Proxmire
Boggs	Javits	Randolph
Brooke	Kennedy	Ribicoff
Burdick	Long	Roth
Byrd, Robert C.	Magnuson	Schweiker
Cannon	Mathias	Sparkman
Case	McGee	Spong
Church	McGovern	Stafford
Cook	Mondale	Stevens
Cooper	Montoya	Stevenson
Cranston	Moss	Symington
Eagleton	Nelson	Talmadge
Ellender	Packwood	Tunney
Hart	Pastore	Williams

NOT VOTING—18

Anderson	Griffin	McClellan
Chiles	Harris	McIntyre
Fulbright	Hatfield	Metcalf
Gambrell	Hughes	Mundt
Goldwater	Inouye	Muskie
Gravel	Mansfield	Weicker

So Mr. GURNEY's amendments were rejected.

Mr. COTTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. COTTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with and that the amendment may be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

On page 72, line 6, strike "and Criminal".

On page 72, line 16, insert a period after "purpose"; strike the comma and all through "both." on line 20.

Mr. COTTON. Mr. President, this amendment simply would eliminate from the bill the authority for attorneys for the new agency to bring criminal prosecution. It takes out criminal fines and prison sentences, but would leave them free for temporary injunctions and permanent injunctions. That is all it would do.

The PRESIDING OFFICER. Who yields time?

Mr. MAGNUSON. Mr. President, the Senator from Washington opposes the amendment. The committee discussed part of this amendment and decided against it. I think it seriously weakens the bill.

Mr. COTTON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. COOPER. Mr. President, will the Senator yield?

Mr. COTTON. I yield.

Mr. COOPER. Mr. President, this is a complex bill.

Under the bill, as I understand, the Administrator would have vast powers, as the Senator from New Hampshire said, to proceed to secure the imposition of civil penalties up to $10,000 and wide emergency powers in securing preliminary and permanent injunctions, and to do all these things necessary to prevent distribution of these products on the market.

I think it is correct that in the case of criminal actions, jurisdiction has always been held by the Department of Justice, and I think it should remain there. We have been giving more and more power to the Administrators of agencies, and the very fact that their lawyers can go into court and prosecute, if they choose, and the suggestion of such powers provides too great authority—the power to investigate, to bring charges, to prosecute criminal action.

I have had some complaints about other acts, and agencies which have been given these powers. I have been told when civil penalties are imposed these agencies suggest, "Well, if you do not take this civil penalty we can impose a larger one or prosecute you." That is a veiled threat which is unjust. I hope that with the vast powers given the Administrator in this bill, we would leave jurisdiction of criminal action to the Department of Justice.

Mr. COTTON. I yield back the remainder of my time.

Mr. MAGNUSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from New Hampshire. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Louisiana (Mr. ELLENDER), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Iowa (Mr.

HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), and the Senator from California (Mr. TUNNEY), are necessarily absent.

On this vote, the Senator from Louisiana (Mr. ELLENDER) is paired with the Senator from Iowa (Mr. HUGHES).

If present and voting, the Senator from Louisiana would vote "yea" and the Senator from Iowa would vote "nay."

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL) would vote "yea."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

If present and voting, the Senator of Oregon (Mr. HATFIELD) would vote "nay."

The result was announced—yeas 39, nays 41, as follows:

[No. 234 Leg.]

YEAS—39

Aiken	Curtis	Saxbe
Allen	Dole	Scott
Allott	Dominick	Smith
Baker	Eastland	Spong
Beall	Ervin	Stafford
Bellmon	Fannin	Stennis
Bennett	Fong	Stevens
Boggs	Gurney	Taft
Brock	Hansen	Talmadge
Buckley	Hruska	Thurmond
Byrd, Harry F., Jr.	Jordan, N.C.	Tower
	Jordan, Idaho	Young
Cooper	Miller	
Cotton	Roth	

NAYS—41

Bayh	Hartke	Packwood
Bentsen	Humphrey	Pastore
Bible	Jackson	Pearson
Brooke	Javits	Pell
Burdick	Kennedy	Percy
Byrd, Robert C.	Long	Proxmire
Cannon	Magnuson	Randolph
Case	Mathias	Ribicoff
Church	McGee	Schweiker
Cook	McGovern	Sparkman
Cranston	Mondale	Stevenson
Eagleton	Montoya	Symington
Fulbright	Moss	Williams
Hart	Nelson	

NOT VOTING—20

Anderson	Harris	McIntyre
Chiles	Hatfield	Metcalf
Ellender	Hollings	Mundt
Gambrell	Hughes	Muskie
Goldwater	Inouye	Tunney
Gravel	Mansfield	Weicker
Griffin	McClellan	

So Mr. COTTON'S amendment was rejected.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MONTOYA. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

TITLE V—FEDERAL HAZARDOUS SUBSTANCES ACT AMENDMENTS

SEC. 500. This title may be cited as the "Hazardous Substances Registration Act of 1972."

SEC. 501. Section 2(a) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) is amended by adding at the end thereof the following new paragraph:

"The term 'misbranded hazardous substance' also includes any hazardous substance required to be registered under section 16 of this Act if such substance fails to bear prominently and conspicuously on the label, in accordance with regulations issued by the Secretary, a registration number issued by the Secretary for the substance pursuant to section 16."

SEC. 502. The Federal Hazardous Substances Act is further amended by redesignating sections 16, 17, and 18 as sections 17, 18, and 19, respectively, and adding after section 15 the following new section 16:

REGISTRATION OF CERTAIN SUBSTANCES

"SEC. 16(a). Before beginning commercial distribution of any substance intended, or packaged in a form suitable, for use in or around the household or by children that may be 'toxic' or 'corrosive' a manufacturer or distributor shall conduct all screening tests prescribed by the Secretary, or, where applicable, the Administrator of the Environmental Protection Agency, by regulation to determine whether the substance is toxic or corrosive. A copy of the results of such screening tests shall be maintained by the manufacturer or distributor for two years after the last shipment of the substance, and shall be available upon request by the Secretary.

"(b) The manufacturer or distributor of a substance which falls within any such screening level for a toxic or corrosive substance shall register such substance with the Secretary in accordance with regulations promulgated by the Secretary. The registration shall include the formulation of the product, a brief summary of the results of all screening tests," and the proper antidote or treatment for the substance.

"(c) If the Secretary determines that the substance is a hazardous substance, he shall issue a registration number for the substance, which number shall appear on the label of the substance prominently and conspicuously in accordance with regulations promulgated by the Secretary. Such a registration number shall be the same as any registration number for such substance that is required to appear on the label under any other provision of Federal law. Such registration number for any drug shall be the same as that assigned pursuant to the National Drug Code.

"(d) The Secretary shall establish a central office through which information contained in the registrations submitted under this section (except for trade secret information referred to in section 1905 of Title 18, United States Code) shall be immediately available to any physician, hospital, clinic, poison control center, or other person requesting such information to provide treatment to any person injured, or who may be injured, as a result of the ingestion of, contact with, or exposure to any such substance. The Secretary shall notify physicians, hospitals, clinics, poison control centers, and other persons who may have use for such information, of the availability of such information and the methods by which it may be obtained at any time.

"(e) The Secretary may exempt from any requirement of this section any substance for which he determines such requirement is unnecessary to protect the public health."

SEC. 503. Subsection 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by deleting "nor to foods, drugs, and cosmetics subject to the Federal Food, Drug," and Cosmetic Act, nor to substance intended for use as fuels when stored in containers and used in the heating, cooling or refrigeration system of a house,".

SEC. 504. (a) Section 19(a) of the Federal Hazardous Substances Act, as redesignated by section 502 of this Act (15 U.S.C. 1277(a)) is amended by striking out "except as specified in section 19" and replacing the comma after "Congress" with a period.

(b) Section 19 of such Act is hereby repealed.

SEC. 505. Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) is amended by adding at the end thereof the following new subsection:

"(i) The failure to conduct screening testing, maintain a copy of the results of such testing, or to provide the results of such screening testing, or to register, or to label a hazardous substance with a registration number, as required by section 16."

SEC. 506. Subsection 11(b) of the Federal Hazardous Substances Act (15 U.S.C. 1270(b)) is amended by deleting "and" immediately before "(3)" in the first sentence, changing the period to a semicolon, and adding the following:

"and (4) to inspect and copy the results of screening tests as required pursuant to section 16."

SEC. 507. The Federal Caustic Poison Act (44 Stat. 1406) is hereby repealed.

SEC. 508. Title V shall become effective 180 days after the date of enactment of this Act except that the Secretary may postpone the applicability in the case of persons who were engaged on the date of enactment of this Act in the manufacture, compounding, or processing of a substance subject to these amendments if he determines such action is necessary to afford sufficient time for the proper and orderly testing and registration of such substances.

The PRESIDING OFFICER. How much time does the Senator yield himself?

Mr. MONTOYA. I yield myself 4 minutes.

Mr. President, the amendment is designed to provide a registration mechanism for products which have caustic components or which are hazardous and injurious to the health of human beings.

The amendment provides as follows:

Title V amends the Federal Hazardous Substances Act—FHSA—which is transferred to the new Food, Drug, and Consumer Product Agency under title II of the act, "to strengthen it by requiring submission of product formulas, the results of screening tests for hazards, and antidote and treatment information," by the manufacturer or distributor of a household product to the new Agency. The Agency will then be in a position to furnish this information upon request to any poison control center or other organization or individual who requests it in order to provide immediate treatment when any household product is misused.

Section 501 amends the definition of "misbranded hazardous substance" to include a hazardous substance that is required to be registered under the new provisions but which fails to bear the registration number prominently and conspicuously.

Section 502 redesignates certain sections and adds a new section 16 providing for registration of substances intended for use in or around the household which fall within the screening levels as "toxic" or "corrosive" under tests prescribed by the agency. Since the definition of "toxic" includes "highly toxic," the lat-

ter is automatically included wherever the former term is used. All manufacturers or distributors are required to conduct such screening tests if they are potentially applicable, but only those substances which fall within the screening levels must be the subject of registrations submitted to the Agency. Manufacturers of substances which fall outside the screening levels must nevertheless retain the results of the screening tests and make them available to the Agency upon request. The registration submitted to the Agency shall include—but not be limited to—the formulation, the results of the screening tests, and proper antidote or treatment information.

The agency shall then determine whether the substance is a "hazardous substance" as that term is defined in the FHSA. In addition to meeting the screening levels, this requires a finding under section 2(f)(1)(A) of the act that the substance may cause substantial personal injury or illness. Information relevant to that question may well be requested as part of the registration. If that determination is made, the agency will then issue a registration number which must be carried on the product label. Should the manufacturer disagree with the agency's determination under this section that the substance is a hazardous substance, he would have recourse to the courts to contest this final agency action under the Administrative Procedure Act.

To avoid proliferation of label registration numbers, it is required that the registration number be the same as is required to be labeled under any other Federal law. Specific provision is also included for using the same number as under the voluntary National Drug Code. Under the existing preemption provisions in section 18(b), this would preclude any additional State or local requirement for labeling registration numbers.

The agency will then compile all of the information in the registrations submitted to it in a central office, in such a manner as will permit immediate reference thereto for purposes of communicating it to any physician, hospital, clinic, poison control center, or other person requesting it for treatment purposes throughout the country. The agency will be obligated to make the availability of this information widely known.

Section 503 deletes the present exemption from the FHSA for foods, drugs, cosmetics, and certain fuels. This exemption has meant that hazards presented by these products that are identical to hazards presented by other household products either have been labeled in quite different ways, or have not been labeled at all, to the vast confusion of the public and to the detriment of consumers. The aerosol warning on a cosmetic aerosol container should be identical with the aerosol warning on any other aerosol container that presents the same hazard. The provisions of the Federal Food, Drug, and Cosmetic Act have apparently been inadequate to impose this requirement. Similarly, there is no excuse for failing to require adequate warnings on all fuel containers in or around the household. This provision will therefore guarantee uniformity of labeling for hazardous substances, which is a major objective of the FHSA.

Deletion of this exemption will also subject foods, drugs, and cosmetics to the premarket screening and registration requirements of new section 16. It is at least as important that poison control centers have immediately available to them toxicity data and antidote and treatment information for drugs and cosmetics as it is for any other household substance.

Section 504 contains technical amendments redesignating the references to certain sections in the other provisions of the act. Combined with section 507—discussed below—it also repeals what remains of the obsolete Federal Caustic Poison Act.

Section 505 amends section 4 of the FHSA to add, as new prohibited acts, the failure to comply with the requirements of new section 16.

Section 506 amends the present factory inspection provisions of the FHSA to include the right to obtain a copy of the results of screening tests required under section 16. Such results could also be obtained by the Agency upon direct request by mail or through a Federal Register notice.

Section 507 repeals the Federal Caustic Poison Act (44 Stat. 1406) by deleting section 19 of the FHSA. Section 19 of the FHSA had repealed that act except insofar as it pertained to foods, drugs, and cosmetics. In view of the deletion of the exemption from the FHSA for foods, drugs, and cosmetics, the repeal of section 19 of the FHSA and the full repeal of the Federal Caustic Poison Act is now appropriate.

Section 508 provides that these amendments shall become effective 180 days after the date of enactment except that the agency may postpone the effective date if necessary to afford sufficient time for testing and registration.

In recent years, due largely to efforts of modern consumer advocates such as my colleagues WARREN MAGNUSON and FRANK MOSS, we have become aware of a plethora of hazards confronting shoppers.

America is familiar with this catalog of grievances. Guarantees guaranteeing nothing. Warranties that warrant nothing. Lack of service on purchases. Shoddy workmanship deliberately designed into an item. False advertising. Bait and switch tactics. Extortion camouflaged as credit extension and collection. Deceptive packaging. Deliberately scrambled contracts, replete with legalese a Justice of the Supreme Court would find difficulty interpreting.

There is an even more serious category of consumer ills. As a result of prevailing corporate philosophy in some industries, hazardous products are marketed with a complete disregard of consequences to consumers. Power lawnmowers are one example. The ongoing horror story of Detroit's recalling of automobiles to correct dangerous defects is very well known. Drug combinations are often dumped into the marketplace with minimal attention to fully investigating side effects.

So the shopper is painfully vulnerable to calculated deceit, which lightens his wallet, guarantees loss of faith in our system, and exhibits calculated corporate contempt for the shopper.

Government agencies charged with consumer protection have been notable for past inaction, ineptitude and cozy relationships with industry. Corporate enterprise can afford to maintain full-time, highly paid lobbyists year round in Washington. The consumer cannot.

Consumer protection laws have been vigorously resisted by industry and laxly enforced by Government. Voluntarism is useless. Congress must fill the breach.

One final element must be added to the equation; a constant growth in the quantity of new products being placed on the market.

A decade ago, any new product was a novelty, attracting attention because such a happening was rare. Today, a bewildering variety of concoctions, attractively packaged and promoted, shower on us from every corporate direction. They are here today and gone next week, as product and promotions flash across our bewildered consciousness like a motion picture projector gone wild.

Any glance at packaging periodicals reveals a cross section of frenzied activity. Manufacturers are engaged in a violent, vicious daily grapple.

Advertising claims that each product is best, biggest, finest, greatest, and most wonderful. It will cure bunions, aches, acne, bad breath, and hallucinations. Plus, you can win 4 days in Hawaii, a boat, a car and 11 pairs of old shoes donated by the company president.

But has anyone thought to ask what is really in these dandy little wonders being peddled?

Many items contain hazardous ingredients, including many that, once ingested by an unsuspecting person, especially a child, mean either agonizing death or crippling injuries.

Over the past year and a half, I have been deeply concerned by nonenforcement of existing consumer protection laws. One such is the Poison Prevention Packaging Act of 1970, requiring child-proof safety packaging for products containing substances potentially harmful to children.

While seeking strict enforcement, I discovered that thousands of products are sold without anyone, beside the actual manufacturer, fully knowing their composition.

Today any manufacturer with a factory, laboratory, and marketing facilities can create, make, test market, and sell a product everywhere—without revealing its true contents.

An unsuspecting public, attracted by packaging and enticed by often deceptive advertising, purchases an item, bringing it into millions of homes without knowing what the consequences are if it is ingested.

Entire new categories of products appear, such as liquid lye bowl cleaners, oven cleaners, and the like. Vast quantities of highly toxic substances are sold as household conveniences.

It is vital to every consumer that all such products and their composition be made known to a central agency of Government.

Such knowledge is available today to

our Government only on a purely voluntary basis. If a manufacturer decides to register toxic contents of his product, with the exception of drugs, it is done as an afterthought.

Consequences of this gap in consumer protection laws emerged during work on the Poison Prevention Packaging Act. It was common to encounter instances of child poisonings by new products. One case involved ingestion by a child of Clorox II. Immediately after ingesting it, he became severely ill.

His parents rushed him to Walter Reed Hospital in minutes. Located there is a poison control center, supposed to control such happenings by swiftly providing vital product information. According to the report, the Walter Reed Center had no listing on the product. No knowledge was available on its makeup. So no projection could be made by physicians on reactions going on inside the child. No meaningful effort could be mounted then to save him.

They could not proceed with treatment, even though he was in the midst of one of the world's most sophisticated medical facilities. No help was forthcoming from the label of Clorox II because of lack of legal requirement on labeling of contents—still another commentary on our state of consumer protection.

The physician placed an emergency call to the Clorox Co. Yet it was almost 3 hours before he finally received required information. It seems, to quote the child's mother, that, "Everyone who knew anything about Clorox II was out to lunch."

Conclusions? This child could easily have expired while parents and medical staff stood by helplessly. He was lucky that immediate action and administering of an antidote was not essential.

Our need is to insure that the Federal Government is able to keep tabs on hazardous ingredients of such new products, plus those already on the market.

For this reason, I am offering my previous measure, the Poisonous Substances Registration Act, as title V of the Consumer Safety Act of 1972. It reads as follows:

TITLE V—FEDERAL HAZARDOUS SUBSTANCES ACT AMENDMENTS

SEC. 500. This title may be cited as the "Hazardous Substances Registration Act of 1972."

SEC. 501. Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (p)) is amended by adding at the end thereof the following new paragraph:

"The term 'misbranded hazardous substance' also includes any hazardous substance required to be registered under section 16 of this Act if such substance fails to bear prominently and conspicuously on the label, in accordance with regulations issued by the Secretary, a registration number issued by the Secretary for the substance pursuant to section 16."

SEC. 502. The Federal Hazardous Substances Act is further amended by redesignating sections 16, 17, and 18 as sections 17, 18, and 19, respectively, and adding after section 15 the following new section 16:

REGISTRATION OF CERTAIN SUBSTANCES

"SEC. 16(a). Before beginning commercial distribution of any substance intended, or packaged in a form suitable, for use in or around the household or by children that may be 'toxic' or 'corrosive' a manufacturer or distributor shall conduct all screening tests prescribed by the Secretary or where applicable, the Administrator of the Environmental Protection Agency by regulation to determine whether the substance is toxic or corrosive. A copy of the results of such screening tests shall be maintained by the manufacturer or distributor for two years after the last shipment of the substance, and shall be available upon request by the Secretary.

"(b) The manufacturer or distributor of a substance which falls within any such screening level for a toxic or corrosive substance shall register such substance with the Secretary in accordance with regulations promulgated by the Secretary. The registration shall include the formulation of the product, a brief summary of the results of all screening tests", and the proper antidote or treatment for the substance.

"(c) If the Secretary determines that the substance is a hazardous substance, he shall issue a registration number for the substance, which number shall appear on the label of the substance prominently and conspicuously in accordance with regulations promulgated by the Secretary. Such a registration number shall be the same as any registration number for such substance that is required to appear on the label under any other provision of Federal law. Such registration number for any drug shall be the same as that assigned pursuant to the National Drug Code.

"(d) The Secretary shall establish a central office through which information contained in the registrations submitted under this section (except for trade secret information referred to in section 1905 of Title 18, United States Code) shall be immediately available to any physician, hospital, clinic, poison control center, or other person requesting such information to provide treatment to any person injured, or who may be injured, as a result of the ingestion of, contact with, or exposure to any such substance. The Secretary shall notify physicians, hospitals, clinics, poison control centers, and other persons who may have use for such information, of the availability of such information and the methods by which it may be obtained at any time.

"(e) The Secretary may exempt from any requirement of this section any substance for which he determines such requirement is unnecessary to protect the public health."

SEC. 503. Subsection 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by deleting "nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooling or refrigeration system of a house,".

SEC. 504. (a) Section 19(a) of the Federal Hazardous Substances Act, as redesignated by section 502 of this Act (15 U.S.C. 1277(a)) is amended by striking out "except as specified in section 19" and replacing the comma after "Congress" with a period.

(b) Section 19 of such Act is hereby repealed.

SEC. 505. Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) is amended by adding at the end thereof the following new subsection:

"(i) The failure to conduct screening testing, maintain a copy of the results of such testing, or to provide the results of such screening testing, or to register, or to label a hazardous substance with a registration number, as required by section 16."

SEC. 506. Subsection 11(b) of the Federal Hazardous Substances Act (15 U.S.C. 1270(b)) is amended by deleting "and" immediately before "(3)" in the first sentence, changing the period to a semicolon, and adding the following:

"and (4) to inspect and copy the results of screening tests as required pursuant to section 16."

SEC. 507. The Federal Caustic Poison Act (44 Stat. 1406) is hereby repealed.

SEC. 508. Title V shall become effective 180 days after the date of enactment of this Act except that the Secretary may postpone the applicability in the case of persons who were engaged on the date of enactment of this Act in the manufacture, compounding, or processing of a substance subject to these amendments if he determines such action is necessary to afford sufficient time for the proper and orderly testing and registration of such substances.

Presently, any manufacturer goes through a series of elementary processes before marketing any new item. Under this proposal, he would have to insure that his scientific personnel notified an appropriate Federal agency of potential hazards posed by a given ingredient of his product.

No major new cost is involved for industry or Government in complying with this proposal. A central data center and round-the-clock access to it is all that would be required. We throw away more money daily on ordinary waste in a single department of Government.

Industry benefits. Physicians gain knowledge. Lives will be saved.

Mr. MAGNUSON. Mr. President, we will be glad to take that amendment to the bill, because it further carries out a good program that should be expanded.

Mr. JORDAN of North Carolina. Mr. President, will the Senator yield?

Mr. MONTOYA. I yield.

Mr. JORDAN of North Carolina. Does the Senator know that table salt is highly corrosive? It will rust anything that gets close to it.

Mr. MONTOYA. Yes, but under the criteria provided in the act, the substance must be injurious to the health of human beings.

Mr. JORDAN of North Carolina. I think that word "corrosive" should be left out of it.

Mr. MONTOYA. It is already in the act.

Mr. JORDAN of North Carolina. The act is bad enough without it in there.

Mr. MAGNUSON. I yield back my time.

Mr. COTTON. Mr. President, on my own time, I would like to ask a question of my good friend, the Senator from New Mexico.

Only a few short weeks ago the Senate passed the bill, S. 1478—the so-called Toxic Substance Control Act. It was well and fairly considered in the Committee on Commerce. It was sponsored by our distinguished chairman.

What effect will this amendment have on that act—and call attention to the fact that this amendment constitutes new legislation which has never been before any committee, and has never been the subject of hearings. It is a complete new proposal in the form of an amendment on this bill.

Mr. MONTOYA. Mr. President, if the Senator from New Hampshire will permit me, that matter was brought up a few minutes ago, and I have a provision in this bill. The Toxic Substances Control Act (S. 1478) recently passed by this body did require the registration with EPA of certain chemicals that may be contained in certain pesticides.

I have made an insertion to this effect: "or, where applicable, the Administra-

tor of the Environmental Protection Agency." We bring him into this by virtue of the specific act which the Senator mentions, that was passed 2 weeks ago.

So this amendment is complementary to that act, and in no way in derogation of it.

Mr. MAGNUSON. I yield back the remainder of my time.

Mr. MONTOYA. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. BROCK. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 22, line 7; page 30, line 7; and page 43, line 17, strike the phrase:

"referred to" and substitute therefore the phrase "or other confidential business information; not related to a consumer product in such a way as to indicate the presence of an unreasonable risk of injury or death, described".

Mr. BROCK. Mr. President, I yield myself such time as I may consume.

My amendment is designed to give greater protection to confidential business information, the release of which would be to the competitive disadvantage and detriment of domestic corporations, particularly with respect to international competition. The amendment does not restrict the specific authority of the Agency to release confidential information to committee of Congress, to courts and Federal agencies, or to the public when necessary to protect health or safety as provided by the bill.

This amendment is necessary to make it clear that the Agency is not intended to be free to disclose, without any limitations, the kinds of confidential business information—including confidential processes, cost and pricing statistics, confidential statistical data, and other similar business information—the disclosure of which, absent statutory authority, would constitute a criminal act under section 1905 of title 18 of the United States Code.

The present language of section 301 (c)(1), referring only to "trade secrets" is not adequate to insure that this critical information will not be regularly disclosed in a manner by which it would be readily available to competitors, both domestic and foreign. As a matter of statutory construction, it is highly possible that a court would conclude that because section 301(c)(1) refers only to "trade secrets" in section 1905, it was not intended to protect the other confidential data referred to in section 1905.

Moreover, there is considerable precedent for a narrow reading of the term "trade secrets" which would exclude from its protection some formulas (*e.g., Drew Chemical Corp.* v. *Star Chemical Co.*, 258 F. Supp. 827, 836 (W.D. Mo. 1966); *cf. Venn.* v. *Goedert*, 319 F. 2d 812 (8th Cir. 1963)), cost and pricing information (*e.g., Cudahy Co.* v. *American Laboratories, Inc.*, 313 F. Supp. 1339 (D. Neb. 1970)), and other information protected by section 1905.

The amendment will insure confidential treatment of such information except as it is necessary for the Agency to disclose it in carrying out its functions under the bill.

The same question arose under the language in section 208(c) of S. 1177, the Consumer Protection Organization Act of 1972, when that bill was being considered by the Subcommittee on Executive Reorganization of the Senate Committee on Government Operations. I was pleased that that subcommittee amended section 208(c) to provide protection not only of "trade secrets" but also of "other confidential business information" described by section 1905 of title 18, United States Code. It would appear to me that this has been a drafting oversight which can and should be curbed by my proposed amendment.

I have discussed this amendment with the distinguished floor manager of the bill and with the Senator from New Hampshire. They have suggested amendments which I think would improve the effect of the amendment, and their suggestions have been incorporated.

The simple purpose of the amendment is to protect businessmen against the release of confidential information, statistical data, cost data, and related information which has no relevance to health and safety, and to prevent the agency from wantonly abusing American industry and creating a competitive disadvantage, particularly with international competition.

My amendment, very simply, prohibits the unwarranted disclosure of confidential business information.

I am prepared to yield back the remainder of my time, if the manager of the bill is.

Mr. MAGNUSON. I am prepared to yield my time back, too. The committee is willing to accept the amendment. We intended to discuss this matter in conference, anyway.

I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Tennessee.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 1256

Mr. ALLEN. Mr. President, I call up my amendment No. 1256, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 7, line 24, after the comma, insert the words "a Commission of Veterinary Medicine,".

On page 38, beginning at line 19, insert the following:

"(3) the Commission of Veterinary Medicine with respect to functions relating to food and drugs for use in animals other than man, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), and".

On page 8, line 13, after "Drugs," insert the words "Veterinary Medicine,".

On page 14, line 4, after "Drugs," insert the words "Veterinary Medicine,".

On page 16, line 7, after "Drugs," insert the words "a Commissioner of Veterinary Medicine,".

On page 37, line 14, after "relating to", insert the word "human".

On page 38, line 7, after "relating to", insert the word "human".

On page 38, line 18, strike the last word, "and".

On page 38, line 19, substitute "(4)" for "(3)" and renumber lines 19 onward, beginning "the Commissioner of Consumer Products. . .".

Mr. ALLEN. Mr. President, this amendment would add a Commission of Veterinary Medicine to the three—Food and Nutrition, Drugs, and Consumer Products—which would be established in the "Food, Drug, and Consumer Product Agency" under S. 3419. As you know, the present Food and Drug Administration in the Department of Health, Education, and Welfare has five bureaus, each at the same administrative level. These present FDA subdivisions are the Bureau of Foods, the Bureau of Drugs, the Bureau of Veterinary Medicine, the Bureau of Product Safety, and the Bureau of Radiological Health. Although they vary in size, budget and public attention, these FDA bureaus have equal access to the FDA Commissioner.

If a new independent agency—FDCPA—is to be created by an act of Congress, it is essential that the legislation make it clear that direct jurisdiction over veterinary medicine will be vested in a separate commission. The desire of Congress for such a separation was expressed emphatically when it enacted the Animal Drug Amendments of 1968—Public Law 90-399—consolidating into one section—512—of the Federal Food, Drug, and Cosmetic Act all provisions dealing with animal drugs. In its report on that legislation—Senate Report No. 1308, 90th Congress—the Senate Committee on Labor and Public Welfare said:

By consolidating into one place in the law all of the provisions providing for regulation of these (animal) drugs, clearances (of new products) should be expedited, with resulting decreases in costs, consequent encouragement for the development by manufacturers of new drugs for use in animals.

The Senate committee report also said that, at congressional hearings on the legislation:

There was ample testimony that the existing provisions of the Federal Food, Drug, and Cosmetic Act, because they were designed primarily to be applicable to drugs and food additives for human consumption, created problems in the administration of the act with respect to animal health products . . . it seems quite apparent that . . . coordination should be fostered legislatively by consolidating into one section of the act, in a coordinated fashion under a simplified procedure, the various provisions and requirements applicable to animal-health products.

Furthermore, the Senate committee report said the animal drug amendments were intended to—

Coordinate and consolidate the applicable provisions (of the FD&C Act) governing drugs, feed additives, and antibiotics for animal use into one logical coordinated system that, without removing any of the stringent requirements for premarketing clearances, would assist this clearance and the subsequent use of animal-health products.

In its 1968 enactment, Congress wisely recognized the many significant distinctions between drugs administered to humans and drugs administered to animals, while recognizing the necessity for humane treatment of animals and for constant surveillance of the effect on human health of drugs administered to food animals. It would be inconsistent for Congress to ignore these distinctions by enacting a new law which could be construed to assign responsibility for veterinary medicine to a Commission of (Human) Drugs.

Mr. President, I recognize that S. 3419, as reported to the Senate by the Committee on Labor and Public Welfare, gives the FDCPA Administrator the organizational option to retain authority outside of the three Commissions created by the bill—referring to sec. 202(a)—page 37, lines 9–12.

I am apprehensive, however, that in working out the detailed organizational structure of FDCPA in the absence of explicit congressional instructions to the contrary, the Administrator might feel compelled to delegate animal drug authority to the Commissioner of Drugs, even though long FDA experience, plus the 1968 congressional enactment, mitigate for separation of human medicine from animal medicine.

In the animal production aspect of American agriculture as it has been revolutionized in the past two decades, no factor is more important than the availability of drugs and feed additives which permit the farmer to produce clean and healthy cattle, sheep, swine, and poultry at prices the American consumer can afford.

The Bureau of Veterinary Medicine in the present FDA structure receives and considers new animal drug applications, which must be checked out thoroughly and approved before any new veterinary pharmaceutical can be marketed. It is BVM also which makes certain that medicated animal feeds are safe and effective for their intended uses, and that they pose no health hazards for the human consumers of meat and poultry products.

As our scientists learn more about these substances, we may discover that some now in use must be replaced by safer products which accomplish the same objectives—therapy, disease prevention, or heightened feed efficiency, for example. Such new products must be developed in an atmosphere of understanding which can only come under a Government agency which is fully cognizant of the unique character of veterinary medicine. They must be proven safe and effective, then approved expeditiously for farm use if the American consumer is to continue to have the benefits of a bountiful supply of wholesome, healthful animal protein.

Although it is not in the limelight nearly as often as its sister bureaus dealing with human foods and drugs, the present Bureau of Veterinary Medicine plays an equally essential role in protecting the public health, and it merits equal status as a separate commission in the new "Food, Drug, and Consumer Product Agency" which will be created if the Congress enacts S. 3419.

U.S. agriculture is feeling the combined impact of "consumerism" and "environmentalism" from all directions as public concern, some of it justified but much of it ill-founded, is exemplified by multiple congressional enactments and the myriad actions of State legislatures and Federal and State regulatory agencies.

The American consumer is understandably disturbed at rising food prices, and at every turn we see accusing fingers pointing out the alleged villains. Unfortunately, the consumer hears little about the technological advances which have kept agricultural costs as low as they are today. And the consumer has no way of knowing—indeed, our best economists can only guess—what the food price impact would be if our farmers were deprived of the tools they now employ to assure us of a bountiful supply of wholesome, nutritious foodstuffs.

In this amendment, I am addressing one small but significant portion of this technology, the veterinary pharmaceuticals which make possible our phenominal production of animal protein. The self-appointed protectors of our environment can rant and rave endlessly about the chemical hazards they envision as imperiling survival of mankind. Such diatribes make sensational copy for the newspapers and the television networks. But have our "protectors" any idea of what would happen if these chemicals were suddenly not available? Do they know how much painstaking research, costing tens if not hundreds of thousands of dollars, must be conducted, checked and cross-checked before a single animal drug can be marketed for use in food-producing animals?

No, I am afraid these considerations are not sensational enough to capture the critics' attention—or the public imagination. Quietly and, I understand, rather efficiently FDA's present Bureau of Veterinary Medicine processes a workload of paperwork that boggles the mind. Headed by a dedicated Director, Dr. C. Don Van Houweling, this Bureau has less than 160 employees, most of them highly trained scientists in specialized fields that escape public attention.

I am told that the workload of this BVM staff has accelerated tremendously in the past few years. It is estimated that in fiscal 1973 BVM will receive 2,800 investigational new drug applications—these are for experimental products which must be proved safe and effective before they can be marketed—and more than 2,000 applications for marketing of drugs which have purportedly passed all of the tests. In fiscal 1970 the comparable numbers were 1,883 investigational applications and 1,185 marketing applications.

These dull figures illustrate what one American industry is doing constructively to confront the so-called chemical pollution "crisis"; its scientists are working diligently to discover substitute products which are even safer than those now in use. Without overly belaboring my argument, I would just like to point out that these drugs cannot be expeditiously studied and cleared for introduction in the marketplace by a small subdivision of a "Commission" whose primary function is the regulation of drugs used in human medicine. I am not belittling human medicine; it is supremely important. But the study and scrutiny of veterinary medicines, while it will never call for the budget dollars and numbers of personnel required by the human drug sub-agency, is vitally important to all of us in an entirely different way.

If American farmers' herds and flocks of food-producing animals cannot be kept free of disease, there will be no more meat or poultry products on the tables of anyone except the very wealthy. The modern, integrated broiler production plant will go by the wayside, the beef cattle feedlot will cease to exist, and animal protein will become a luxury product out of reach for the average consumer. That, Mr. President, is why I urge all my colleagues, consumerists, environmentalists, or agriculturists alike, to vote for this simple amendment which retains veterinary medicine where it belongs in the Federal regulatory apparatus.

Therefore I urge, Mr. President, that the Senate accept this amendment to authorize establishment of a Commission of Veterinary Medicine as a coequal branch of the new Agency with the Commissions designed to deal with human foods, human drugs, and consumer product safety

Before closing, I should explain som technicalities of my major amendment to page 38 of S. 3419, which spells out what authority the Agency Administrator should delegate to the Commissioner of Veterinary Medicine. This paragraph is intended to cover the existing authority, now vested in the Secretary of Health, Education, and Welfare, to establish tolerances and standards for residues in edible byproducts of animals which are intended for human food, including contaminants, drug residues, byproducts or metabolites found in the edible portions or products of such animals.

Mr. President, the Subcommittee on Health has reported a bill with the identical language of this amendment. All it would do would be to carry forward into the new agency the same structure as now exists in FDA, of which the Bureau of Veterinary Medicine is now a part. It would continue to separate the Department of Drugs for Human Use from the Drugs for Animal Use.

The amendment has been discussed with the manager of the bill, the distinguished Senator from Washington (Mr. MAGNUSON), and with the distinguished Senator from New Hampshire (Mr. COTTON). It is my understanding that they have no objection to the amendment.

Mr. MAGNUSON. We have no objection to it. It merely extends the whole matter in the veterinary field, and I think that is a good extension of the bill.

Mr. ALLEN. Mr. President, I ask unanimous consent to have printed in

the RECORD certain communications endorsing the amendment.

There being no objection, the communications were ordered to be printed in the RECORD, as follows:

ANIMAL HEALTH INSTITUTE,
Washington, D.C., June 20, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR ALLEN: The Animal Health Institute is a national trade association whose member companies produce about 90 percent of the animal health and nutrition products marketed in the United States. This letter relates to S. 3419, a bill "to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes," which is cited as the "Food, Drug, and Consumer Product Safety Act of 1972."

AHI does not intend herein to endorse or oppose S. 3419, but rather to express its wholehearted support of your Amendment, which would bring the bill into conformity with a previous Congressional enactment, as is explained below. As we understand it, your Amendment would establish a Commission of Veterinary Medicine in addition to the three Commissions contained in the bill. By adopting your Amendment, the Congress would merely be expressing its intention that, in the "Food, Drug, and Consumer Product Agency" proposed to be created, the present Food and Drug Administration structure—with its Bureau of Foods, Bureau of Drugs, Bureau of Veterinary Medicine, and Bureau of Product Safety—be paralleled. It would assure the continued execution of the will of Congress, as expressed in the Animal Drug Amendments of 1968 (Public Law 90-399) which separated veterinary medicine from human medicine.

We realize that S. 3419 would enable the new agency's Administrator to retain authority over veterinary medicine in a subdivision outside of the statutory Commission dealing with drugs administered to humans. Our concern, however, is that—in the absence of clear Congressional instructions to the contrary—some future Administrator might decide to place jurisdiction over veterinary products in the Commission of Drugs. Such placement would thwart the separation of jurisdiction approved by the 90th Congress and return the regulation of animal health and nutrition products to its pre-1968 status.

We applaud your decision to sponsor an Amendment to preserve this little-recognized but highly important separation of regulatory authority, and we will render every assistance possible to insure its adoption.

Very truly yours,

FRED H. HOLT,
Executive Vice President.

NATIONAL GRAIN & FEED ASSOCIATION,
June 20, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: I have been informed that you are contemplating the introduction of an amendment to S. 3419 which would provide for the appointment of a Commissioner of Veterinary Medicine. This is to advise you that the National Grain and Feed Association supports such an amendment.

As you know, the membership of the National Grain and Feed Association covers the wide spectrum of grain and feed installations throughout the Nation, including food processors and exporters. We congratulate you on your wisdom in sponsoring the amendment and wish you every success.

Sincerely yours,

ALVIN E. OLIVER,
Executive Vice President.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,
Denever, Colo., June 20, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR ALLEN: The American National Cattlemen's Association feels strongly that S. 3419, Food, Drug and Consumer Product Safety Act, should be amended so as to provide for a Commission of Veterinary Medicine. Such an amendment would maintain equal status for veterinary drug usage as currently exists in the Bureau of Veterinary Medicine of the Food and Drug Administration.

Our Association feels that if animal drugs are made a part of an agency also dealing with human drugs, priority consideration will not be given to register certain new animal drugs, for example. The ability to incorporate new animal drugs into beef cattle production is vital for efficiencies needed in order to continue to provide ample quantities of wholesome beef at reasonable consumer prices. We feel strongly that a direct line to the proposed new Administrator of the Food, Drug and Consumer Product Agency is needed for veterinary drugs to help maintain the priorities, just as that which is being provided for human drugs.

Your assistance in providing this very important change which we feel so necessary to domestic cattle production will be most sincerely appreciated.

Cordially,

C. W. MCMILLAN.

AMERICAN VETERINARY MEDICAL ASSOCIATION,
Washington, D.C., June 21, 1972.

Hon. JAMES B. ALLEN,
New Senate Office Building, U.S. Senate, Washington, D.C.

DEAR SENATOR ALLEN: The American Veterinary Medical Association, a professional organization representing over 21,000 veterinarians, is pleased to learn that you are sponsoring an amendment to require establishment of a separate "Commission of Veterinary Medicine" in the agency which would be created by enactment of S. 3419, the consumer protection measure currently before the Senate.

As you undoubtedly know, AVMA has throughout its 109 years of existence striven to elevate the status of the veterinary medical profession, by enhancing the quality of education and improving the scientific stature of its membership. A highly significant aspect of our activity deals with the administration of veterinary pharmaceuticals to food animals—cattle, sheep, swine, and poultry whose meat and daily products are destined for human consumption.

The continued use of these vital tools, particularly veterinary pharmaceuticals for disease prevention and therapy, is absolutely essential if our country is to maintain and improve upon its present high standard of nutrition. Wholesome animal protein is undoubtedly the most significant single component of the American diet, and there is no question that costs and prices would rise significantly if our herds and flocks were deprived of the benefits of such products, judiciously administered by, or under the supervision of, licensed veterinarians.

The separation of veterinary medicine from human medicine is not just a whim to satisfy our profession's aspiration for prestige. FDA learned through long experience that a separation of regulatory standards was necessary to expedite the processing of applications for clearance to market new and innovative animal drugs. In these times when all of us are concerned about long-range effects of chemicals on the environment, we must be certain that the governmental apparatus for screening veterinary preparations, while always giving top priority to human health considerations, does not obstruct the marketing of new chemical entities once they are proven to be safe and effective.

FDA first officially recognized this need for separation of jurisdiction in 1965, when the Commissioner established the Bureau of Veterinary Medicine as a subdivision separate from the Bureau of (human) Medicine. The separation of regulatory jurisdiction and standards for clearance of veterinary products was solidified in 1968 when the Congress re-codified and consolidated the laws relating to animal pharmaceuticals by enacting the Animal Drug Amendments. These amendments, incidentally, had the wholehearted support of the Departments of Agriculture and Health, Education, and Welfare.

We find no evidence that the three Senate Committtees which considered S. 3419 gave any thought to the issues discussed above, and our apprehension is that the intent of the Senate if it passes this legislation without your amendment might be construed as favoring subordination of veterinary medicine to human medicine.

Again, AVMA sincerely applauds your wisdom in sponsoring this perfecting amendment, and we assure you that our profession favors its adoption.

Sincerely,

FRANK A. TODD, D.V.M.,
Washington Representative.

MONTGOMERY, ALA.,
June 20, 1972.

Senator JAMES ALLEN,
New Senate Office Building,
Washington, D.C.:

The cattlemen of Alabama deeply appreciate your introducing the amendment to S. 3419 creating a Commission of Veterinary Medicine. This amendment is vital to the continued growth and development of the cattle industry in Alabama. Keep up the good work.

HAM WILSON,
Alabama Cattlemen's Association.

AMERICAN FEED MANUFACTURERS ASSOCIATION, INC.,
Washington, D.C., June 20, 1972.

Hon. JAMES ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: The American Feed Manufacturers Association is the national trade association of the feed manufacturing industry. Our customers are the livestock and poultry farmers of the country. Thus, we are vitally interested in the health of animals. All consumers of meat, milk and eggs also have an important stake in the same subject, as healthy animals produce higher quality products at lower cost.

We support your proposed Amendment to S. 3419 which would provide for a Commission of Veterinary Medicine within the Food and Drug Administration. Your Amendment would help carry out the objectives of the Animal Drug Amendments of 1968 (Public Law 98-399) which recognized that animal health is a singificant and specialized field. Three years of experience since the passage of the Animal Drug Amendments have indicated that the legislation was soundly based, and was in the public interest.

U.S. farmers last year produced about three billion broilers, more than 120 million turkeys, about 100 million hogs, kept an average of more than 320 million laying hens, kept an average of more than 100 million cattle and calves, etc. Comparable numbers are being produced or maintained this year. Even larger numbers will be needed in the future if current rates of per capita consumption of meat, milk and eggs are to be maintained.

The task of protecting the health of the animals which provide much of our food supply is obviously a major undertaking. It

is also a specialized assignment. Doctors of human medicine have little or no training in veterinary medicine. In almost all cases doctors of human medicine do not have the time to give serious consideration to animal disease problems. Veterinary medicine is a major profession and is vitally important to everyone who consumes animal products.

Your Amendment would continue the present policy of recognizing the important and specialized needs of animal health. It would help assure health animals which is clearly in the public interest.

Sincerely yours,

OAKLEY M. RAY,
President.

NATIONAL BROILER COUNCIL,
Washington, D.C., June 21, 1972.

HON. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: The National Broiler Council represents the producers of more than 70 percent of the nation's approximately three billion broilers marketed annually. This letter expresses our support of your efforts to amend S. 3419, the "Food, Drug, and Consumer Product Safety Act of 1972," to authorize establishment of a Commission of Veterinary Medicine.

We appreciate your demonstrated awareness of the broiler industry and its dramatic growth which has occurred since the early 1940s. During a period when nearly every aspect of our society has undergone skyrocketing price increases, poultry costs have actually been lowered due to the application of modern technology. Among the most significant tools employed in today's poultry-production technology are the veterinary health and nutrition products subject to the jurisdiction of the Food and Drug Administration.

Up until about seven years ago, direct authority over the regulation of veterinary products was vested in a subdivision of FDA's Bureau of Medicine, the bureau whose primary responsibility was for drugs administered to the human population. At that time, FDA wisely recognized the many significant distinctions between the two classes of pharmaceuticals, and it established the Bureau of Veterinary Medicine as a branch at the same level as, although smaller than, the Bureau dealing with medications and foods for human use.

These distinctions were further recognized in 1968, when the 90th Congress, after long and detailed consideration, enacted the Animal Drug Amendments, consolidating all of the scattered laws dealing with regulation of veterinary products.

Now it appears that the Senate may approve S. 3419, a bill which would dismantle FDA and establish an independent agency with jurisdiction over foods, drugs, and consumer products. The National Broiler Council has taken no position on S. 3419, and we do not propose to endorse or oppose it.

To summarize, our endorsement of your proposed amendment is an indication that any Federal agency—whether it is within the present Department of Health, Education, and Welfare, in a new Department of Health, or independent, as proposed in S. 3419—which exercises primary regulatory jurisdiction over pharmaceutical products should maintain the present separation of animal drugs from human drugs. The necessity for this separation has been verified by executive and legislative decisions, and it would indeed be retrogression to again bury veterinary medicine in a Commission primarily concerned with human medicine.

NBC therefore endorses the objective of your amendment and hopes the Congress, however it ultimately deals with the broad issues of consumer protection, will not overlook the necessity for separate subdivisions to regulate these distinct classes of pharmaceutical products.

Sincerely,

JOHN PARISH,
Executive Director.

Mr. MAGNUSON. Mr. President, I yield back the remainder of my time.

Mr. ALLEN. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alabama.

The amendment was agreed to.

Mr. NELSON. Mr. President, I send to the desk two amendments, and I ask unanimous consent that they be acted upon en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendments will be printed in the RECORD.

The amendments are as follows:

On page 50, delete lines 17 and 18, and substitute in lieu thereof the following:

"(3) that the offeror, where the Commissioner has accepted an offer or offers under section 303, provide opportunity for all interested persons including consumers to participate in the offeror's development of a proposed consumer safety standard in accordance with accepted standards of due process, including adequate notice to all participants and access to all relevant records and documents;"

On page 49, between lines 3 and 4, insert the following:

"(C) the offeror, including any person assisting the offeror in the development of the proposal, is not a manufacturer, distributor or retailer or the employee of a manufacturer, distributor or retailer of a consumer product proposed to be included in the consumer product safety standard to which the offer applies."

On page 48, line 22 delete the word "and"; on page 48, line 25 delete the period, add a semi-colon, and the word "and".

Mr. NELSON. Mr. President, these amendments are designed to insure that, whenever the Consumer Agency delegates to a nongovernment group the responsibilities for suggesting proposed consumer product safety standards, that group or any of its members does not have an economic stake in the manufacture or sale of the products involved.

The amendments also insure that such groups outside the Government follow fair procedures in their standard making so that all interested parties, including consumers, are afforded due process participation in the standard making.

These amendments apply only to the development of suggested standards, which are offered to the Agency for consideration. The Agency, in seeking to develop a standard, first promulgates a notice of need for a standard. Outside groups may offer to suggest such standards. In promulgating standards, the Agency must follow administrative procedures, and may include in its own proposed standards—as published in the Federal Register—whatever it chooses from the suggestions developed by outside expertise.

The proposals drawn up under these amendments do not give outside groups legal authority to set standards—only to propose standards for consideration by the Agency.

The provision in the bill, to allow suggested standard making outside of the Government agency, is designed to enable the Agency to take advantage of technical competence existing in the scientific and engineering communities, including independent testing laboratories, university connected experts, professional societies, and such consumer organizations as Consumers Union.

The amendments prevent a conflict of interest between companies setting standards for, and marketing, the same product, and insure that fair procedures are followed in the proposed standard making.

The most serious condemnation of the voluntary standards system which emerged from the studies of the Product Safety Commission and others—upon whose recommendations this entire bill is based—was the chronic tendency of the standards committees to be dominated by companies with an economic stake in the product. The result was that standards generally met the lowest common denominator in the marketplace.

Because consumers have had little or no voice in these voluntary standard-making procedures, the standards have been industry dominated.

I would like to quote from the Product Safety Commission report:

We have studied this system (of voluntary safety standard-setting) and found it is valuable in marshalling technical competence but has certain inherent limitation. . . .

In no standards procedure can it be said that consumers have a substantial voice. Rarely have they an effective veto. . . . The need for a consensus commonly waters down a proposed standard until it is little more than an affirmation of the status quo. . . .

At the same time, voluntary safety programs, with due regard for the public interest, need and warrant Federal technical and financial assistance and oversight.

These amendments are offered to strengthen the voluntary standard-making procedure, if such suggested standards are offered to the Agency for consideration.

They require:

First. That anyone offering to suggest proposed standards not be a manufacturer, distributor, or retailer, or the employee of a manufacturer, distributor, or retailer, of a consumer product proposed to be included in the consumer product safety standard; and

Second. That anyone drawing up such suggested standards follow fair procedures, by providing an opportunity for all interested persons, including consumers, to participate in the standard-making procedure in accordance with accepted standards of due process, including adequate notice to all participants and access to all relevant records and documents.

Mr. President, these two amendments clarify at least what I think is the intent

of the bill. The bill provides that the Administrator may contract with an outside organization for the purpose of developing proposed safety standards.

One amendment provides that the private contractor must guarantee the opportunity for all interested persons, including consumers, "to participate in the offeror's development of a proposed consumer safety standard in accordance with accepted standards of due process."

The other amendment provides that the independent contractor must be one who is not manufacturing or selling the product.

The objective of the proposals is to permit the Administrator to contract with such independent organizations as the Underwriters Laboratories, American Society for Testing Materials, American National Standards Institute, and so forth.

Mr. MAGNUSON. Mr. President, the Senator from Wisconsin and I have discussed this matter with the staffs, and we think it is a good amendment. It clarifies what we all probably wanted to do, anyway, but it nails it down.

I accept the amendment.

Mr. COTTON. Mr. President, I could not hear what the chairman said, and I am not familiar with these amendments. I heard the second amendment, and I can see no objection to it. I did not quite get the first amendment, but I have a feeling that it raised havoc with the "instant action" about which the chairman has been talking.

Mr. MAGNUSON. No; it does not do that.

Mr. COTTON. What is the first one?

Mr. NELSON. The first amendment provides that, when an outside agency, outside the Government, or a university has a contract to propose standards—they cannot establish them—they must afford the opportunity for all interested persons, including consumers, "to participate in the offeror's development of a proposed consumer safety standard in accordance with accepted standards of due process."

In other words, if a university or the American Society of Testing Materials is going to contract to propose some safety standards, the manufacturer and the consumers have the right to submit their arguments before the proposed standard is sent up to the Agency.

Mr. COTTON. Must all this take place before any product can be placed on the market?

Mr. NELSON. That takes place during the course of the independent agency, outside the government—whatever it is—proposing standards that go back to the Administrator, who then does with them what he wishes and follows the regular Administrative Procedure Act.

Mr. COTTON. Is this prior to or after the product is on the market?

Mr. NELSON. I am assuming that standards will be established for products that are already on the market under the act as well as prior to.

Mr. COTTON. But after that, nothing new can come on the market until the process has been gone through?

Mr. MAGNUSON. Not necessarily. It is just that they ask for a review and they get the independent agency—the agencies which businesses use now—so that everybody can participate. It may be a product on the market. There may be some change in it. Or it could be a new product, too.

Mr. NELSON. This only relates to the authority of the Administrator to establish minimum safety standards. He can do that himself within the Department and file in the Federal Register, or he can contract outside the agency.

They would develop a proposed standard and would come back to the administrator. They would modify it, reject it, accept it—whatever they please—and then file the Federal Register, according to the regular procedure.

Mr. President, I yield back the remainder of my time.

Mr. MAGNUSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendments has been yielded back.

The question is on agreeing to the amendments of the Senator from Wisconsin.

The amendments were agreed to.

Mr. EAGLETON. Mr. President, I send to the desk an amendment which is in the nature of a technical amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. EAGLETON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 80, line 7, insert "(a)" after "SEC. 401.".

On page 80, line 9, strike out "(a)" and insert in lieu thereof "(1)".

On page 80, strike out line 11, and insert in lieu thereof the following:

"(g) If in package form unless its label, or labeling affixed to or within the package, bears conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase, (1) the".

On page 80, line 15, strike out the words "and color" both times they appear in such line, and insert in lieu thereof a comma and the following: "color, and flavor" in both places.

On page 80, line 21, strike out "(b)" and insert in lieu thereof "(2)".

On page 81, line 3, strike out "(c)" and insert in lieu thereof "(3)".

On page 81, after line 5, insert the following new subsection:

"(b) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect one year after the date of enactment of this Act."

Mr. EAGLETON. Mr. President, these amendments reflect a number of changes in title IV of the act, including renumbering and relettering sections thereunder to conform with the act.

One amendment permits the required ingredient disclosure for cosmetics to appear either on a label affixed to the product, or on labeling within the package that is conspicuous to the purchaser at the point of sale. This amendment is consistent with the intention of the Committee on Labor and Public Welfare. Ingredients could thus properly be disclosed, for example, by a package insert held against a small decorative bottle by a cellophane over-wrap, or on a display card holding a small item like an eyebrow pencil. There is no requirement that the label or labeling be prominent and conspicuous under customary conditions of use. Thus, a tear off label is permitted.

Another amendment permits flavor in such cosmetics as lipstick and mouthwash to be labeled as such, as has already been provided for fragrance and color. This amendment corrects an oversight and conforms this provision to the food labeling provisions contained in the act.

The final amendment adds effective dates for the title. The ingredient and cautionary labeling requirements would become effective 1 year from the date of enactment of these amendments. The repeal of the soap exemption is effective upon enactment of this act.

Mr. COTTON. Mr. President, will the Senator yield for a question?

Mr. EAGLETON. I yield.

Mr. COTTON. Does the Senator's amendment contemplate that a mobile home——

Mr. EAGLETON. This is not the mobile home amendment. That is my next one. This is in the nature of a technical amendment relating to cosmetics, which was an item added on by the Committee on Labor and Public Welfare.

Mr. MAGNUSON. Mr. President, we can accept the first amendment. So that Senators will understand, the second amendment would extend this act to mobile homes.

Is that correct?

Mr. EAGLETON. That will be the next amendment.

Mr. President, I yield back the remainder of my time.

Mr. MAGNUSON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Missouri.

The amendment was agreed to.

Mr. EAGLETON. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 3, line 22, before the word "but" insert the following: "and includes any mobile home;".

Mr. EAGLETON. Mr. President, I rise to offer a clarifying amendment to the Food, Drug and Consumer Product Safety Act. This amendment places mobile homes specifically within the definition of "consumer product" to eliminate any doubt as to the Commissioner of Product Safety's authority over them.

My amendment is consistent with the report of the Commerce Committee, which states:

It is the committee's intent to include mobile homes under the definition of "consumer product."

It is intended only to clarify that intent, as the language of S. 3419 as pres-

ently written may be subject to misinterpretation on this point.

Over 7 million Americans now live in mobile homes. Half the one-family houses built in this country today are mobile homes and 95 percent of the houses sold for under $15,000 are mobile homes. In this day of high costs for real property and housing, mobile homes with a median price of $6,000 to $7,000 provide an affordable alternative for many—including a significant number of young married people and elderly people—who want homes of their own.

Unfortunately, there remains a crying need for stricter regulation of the mobile home industry. Each year, defects in mobile homes result in an inexcusably high toll in property damage, personal injury, and death. There are now far too many complaints of defective electrical wiring, inadequate mooring, insufficient exits and window construction that inhibits emergency escape.

The greatest threats to property and life for mobile homeowners are the likelihood of fire and damage by high winds. Because mobile homes are so susceptible to damage by fire and wind under current law, insurance rates for mobile homeowners have skyrocketed.

Mobile homes are now regulated neither as motor vehicles under the Motor Vehicles Safety Act nor as housing under local housing codes of most communities. They are subject only to minimal standards which the mobile home industry itself has promulgated. These standards were prepared under the aegis of the American National Standards Institute—ANSI—with the participation of the Mobile Homes Manufacturers Association as required guidelines for MHMA members.

While some States have incorporated some or all of the ANSI standards into their law, enforcement is generally poor. These standards thus form the basis of what is essentially a voluntary compliance program, with manufacturers self-certifying that their vehicles meet ANSI standards. Even where ANSI standards are met, mobile homeowners may not be adequately protected. The National Commission on Product Safety found serious deficiencies in these standards at the time of their report in 1970. It is my understanding that these standards have been upgraded to some extent since that report, but it is apparent that they should be subjected to a systematic review by the Federal Government and stricter standards promulgated where they are needed.

I believe that the hazards to property and life presented by defective mobile homes require the promulgation of stringent, uniform standards coupled with effective enforcement authority. The question now is not whether such standards are necessary, but how most effectively to accomplish this end. I share the view of the members of the Commerce Committee that the bill before us provides the most effective vehicle.

Mr. President, the essence of the amendment is to clarify the language of the statute itself by adding to it mobile homes so as to conform with the statement in the committee report that certain mobile homes are included under the aegis of the act.

I reserve the remainder of my time.

Mr. COTTON. Mr. President, will the Senator from Missouri yield?

Mr. EAGLETON. I yield.

Mr. COTTON. I gather that the Senator from Missouri had this brought to his attention because it was in the committee report?

Mr. EAGLETON. Yes, sir.

Mr. COTTON. Does the Senator from Missouri consider a mobile home to be a hazardous substance, impure food, or an appliance?

Mr. EAGLETON. I believe it is a product manufactured under the act.

Mr. COTTON. Would the Senator include submarines and battleships in this bill then?

Mr. EAGLETON. No, no.

Mr. COTTON. They might be a little too big?

Mr. EAGLETON. That is correct.

Mr. COTTON. I merely want to say for myself, and I am not speaking for minority. But, I personally never knew that this was in the report.

The report was, naturally, prepared by the staff. It is getting now so that the tail is wagging the dog. The staff is running the committee most of the time.

I did not know it was in there. I think it is utterly absurd and utterly ridiculous.

I made a statement early this afternoon that whether my amendments, which I thought were important, were adopted or rejected, I thought this was a good bill. I would vote for it. This has changed my mind. I am not going to vote for any monstrosity that carries any such silly amendments as this one.

In saying that, I am not reflecting on the distinguished Senator from Missouri (Mr. EAGLETON), because it was in the committee report. Some of us were not responsible for what went into that committee report.

Mr. SPARKMAN. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. I yield.

Mr. SPARKMAN. Mr. President, I strongly object to the amendment. First of all, housing comes under the jurisdiction of an entirely different committee. It has only been within the past couple of years that we have authorized the FHA to insure mobile homes. We have provided that the Secretary of Housing shall set standards, and I do not see why we have to go to any other committee bill or to any other piece of legislation with reference to mobile homes which are clearly within the jurisdiction of our committee. We might as well apply it to single-family dwellings or to apartment houses, or to anything else, if we are going to start here on mobile homes.

I strongly object to the amendment.

Mr. TOWER. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. I yield.

Mr. TOWER. Mr. President, as the ranking minority member on the Committee on Banking, Housing and Urban Affairs, I should like to second what our distinguished chairman, the Senator from Alabama (Mr. SPARKMAN) has just said, that if we are going to extend it to mobile homes, why not extend it to modular housing which has just become a breakthrough in construction in order to bring it within the reach of low-income families.

Our distinguished colleague from Tennessee (Mr. BROCK) already has a bill before the committee. It should be left to this committee which has the appropriate jurisdiction and not be dealt with on the Senate floor now in the form of an amendment to the pending bill.

Mr. MOSS. Mr. President, in dealing with this matter of ridiculing the amendment affecting mobile homes, that we might as well take some other kind of home, and so forth, the fact is, this was considered by the committee. There is testimony on it. We did consider it at length. So, it seems to me to be a logical amendment and I should like to support it.

I understood the Senator from Texas to say that there had been some bill or an amendment offered recently in which they intended to take it up in the Committee on Banking, Housing, and Urban Affairs; but a mobile home, under these circumstances, is quite different from any other living quarters which people occupy. A mobile home is a movable, transferable vehicle. It is a manufactured product. The deficiencies were outlined by Mr. Karl Herrmann, the State fire marshal of the State of Washington, so that there is little question about the need for safety regulation of mobile homes.

The mobile home industry has experienced phenomenal growth in a short period of time. The concept of the mobile home has changed from that of portable, temporary living quarters for travelers and transient workers of limited means to that of semipermanent dwellings for a large portion of our population. The industry has not had the benefit of long years of experience in designing construction and voluntary standards have proved inadequate for insuring safety.

The inadequacy of the voluntary standard was documented in the final report of the National Commission on Product Safety. It noted that the standard does not provide exits opening out on either side at opposite ends, in the event of fire or upset. In addition, provisions for safety glazing were braking to prevent fishtailing are not included. Other deficiencies of the standard include permitting the use of gas-fired floor heaters which generate excessive grate surface temperatures and the lack of requirements that the heater be constructed to preclude blocking.

Similar deficiencies were outlined in testimony before the Commerce Committee during hearings on S. 3419 by Karl Hermann, State fire marshal of the State of Washington. He noted that private standards do not include combustibility provisions for all structural and finished materials, establish flame spread requirements that are too high, and do not include design requirements to provide for fire separation between sleeping areas and other portions of the mobile home.

In short, there is little question that there is a great need for Federal regulation of mobile homes. The Commission on Consumer Products is best qualified to perform this function, and for this reason I support adoption of the amendment

proposed by the Senator from Missouri (Mr. EAGLETON).

Mr. EAGLETON. Mr. President, I thank the Senator from Utah for his comments and his support of my amendment.

Mr. COTTON. Mr. President, what I am about to say is no reflection on the Senator from Missouri because this was in the committee report, although God knows why, but it seems to me that this simply shows how far afield we are getting.

Here we are trying to pass a bill to protect the consumer, and this is the first time I ever knew that one could consume a mobile home. If we are going to have mobile homes in the bill, we might as well put in bowling alleys, or dance halls, or make this a whole new and extraordinary department of government to maintain control over our whole society.

I have never heard of a more ridiculous thing in my life.

When we write into a committee report a provision for mobile homes in a bill that seeks to protect the consumer against improper food, medicine, and electrical appliances, then I think we are making monkeys of ourselves. It is not conducive to the dignity of the Senate.

I did not intend to speak so strongly, but this turn of events took me by surprise.

Mr. SPARKMAN. Mr. President, if the Senator will yield, I refer the Senator to the bottom of page 12 of the committee report and invite his attention to the following:

> Other products excluded from the definition of "consumer product" include products "subject to regulation" under the National Traffic and Motor Vehicle Safety Act of 1966, aircraft or other aeronautical products "subject to safety regulations" by the Federal Aviation Administration, foods, drugs, or devices subject to safety regulation under the Food, Drug and Cosmetic Act, . . .

This is subject to regulation under the laws that we passed authorizing the FHA to grant insurance. We do require standards. They are required already. The Senator from Tennessee (Mr. BROCK) has introduced a bill that strengthens those requirements. There is a bill before our committee now and we will have hearings on it.

Mr. COTTON. Mr. President, this is something I have never done in all my years of service in the Senate, but I move to lay the amendment on the table.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. COTTON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The motion to table is not in order until the Senators have yielded back their time.

Mr. COTTON. Mr. President, I withdraw my motion.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield me one-half a minute.

Mr. MAGNUSON. Mr. President, I yield to the distinguished Senator from West Virginia.

ORDER FOR LIMITATION OF TIME ON ROLLCALL VOTES TONIGHT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time on each rollcall through the rest of the evening take 10 minutes rather than the usual 15 and that the warning bell be sounded midway.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COTTON. Mr. President, I yield such time as desired to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BROCK. Mr. President, I rise in opposition to the amendment and in support of the statement of the Senator from Alabama, the chairman of the Committee on Banking, Housing and Urban Affairs.

I think this amendment really goes to the wrong point. The point is that we have statutes today. We have existing regulations and controls which have been established. We also have my bill which seeks to provide uniformity and improvement of existing standards before the Committee on Banking, Housing and Urban Affairs. Moreover, the Senator from Alabama (Mr. SPARKMAN) has graciously afforded my legislation the opportunity for hearings.

The fact of the matter is that the Senator's amendment tries to equate a waffle iron with a home. The Senator from Utah said that there is something different about a mobile home. I was always taught all my life that if something looks like a duck, waddles like a duck, and sounds like a duck, it is a duck. A mobile home looks like a house, functions as a house, sleeps as a house, it is a house.

There are 7 million Americans who live in these mobile homes. They call them homes. There is no possible way we could put them under this Agency in this bill without diminishing the effectiveness of the control and the opportunity for greater safety to the consumers, because they would be swept in with a hodgepodge of things like toasters and everything else.

Each piece of equipment in a mobile home, such as toasters, refrigerators, and other components, is covered under the present proposal. However, to try to say that a mobile home is not a house and should be covered under the Consumer Product Act is ridiculous and certainly is not logical.

This is a serious problem. I agree with all of the Senator's objectives of achieving greater safety for the homeowners. However, in this instance this is the wrong way to go about it.

The Senator from Utah mentioned the witnesses who testified. Three witnesses testified about this bill before the committee. Two of those witnesses endorse my bill to create standards. Two of the witnesses who testified before the Senate Commerce Committee. The National Association of Independent Insurers endorsed my bill. As a body, the mobile home manufacturers have not. However, the people who insure those homes have. They say that it costs as much per family to insure a mobile home costing $6,000 as it does to insure a $40,000 conventional home.

There is something very wrong here. The Senator from Missouri does not solve the problem. He creates a problem and compounds a felony by putting one more item and 7 million families under the Product Safety Act.

We have duplicate standards between FHA, DOT, VA, FHLB, and this agency. And nobody will win. We know that.

It makes a great deal more sense to treat it as a home under the jurisdiction of the Committee on Banking, Housing and Urban Affairs. Let us write the bill. We will do it and then we will respond to the actual need.

Mr. President, the distinguished junior Senator and I both agree standards are imperative for mobile homes. But to seek to place mobile homes under the jurisdiction of this new agency would be to dilute the effectiveness of what we are both attempting to achieve. If this new agency is designed to give the assurances of safety to consumers "of products for his use, consumption, or enjoyment in or around a household or residence, a school, in recreation," then to give its Commissioner authority over already regulated items such as minibikes, boats, automobiles, or mobile homes can only result in a dilution of competence and effectiveness of the Agency. This is particularly true in the case of mobile homes. For if this amendment were to be adopted the Consumer Product Safety Agency would be thrust into an area which relates solely to housing. A mobile home is a dwelling. These domiciliary units have become a vital and critical component of America's future housing capability. They are practically the only form of housing available to the home buyer for less than $15,000. To attempt to place mobile homes within the definition of a consumer product as envisioned by this act is tantamount to denying the consumer the protection which undeniably should be his when he purchases his home.

If this amendment were adopted, mobile homes would be the only form of housing contained in this legislation although presently modular homes also are not presently regulated by local building codes in most parts of the country. To bury mobile homes in an agency with jurisdiction over items such as irons, televisions, and diet pills is absurd when you think that nearly 7 million people occupy mobile homes as their place of residence.

Mr. President, separate regulation and treatment of mobile homes in an agency with the expertise is required. There is a severe safety problem. But it cannot be solved by an agency without the expertise and resources. Since there is no one agency with established authority over mobile homes today, the ability of the Consumer Product Safety Agency would place these dwellings in dubious priority at a time when action is imperative.

We cannot ignore the fact that the mobile home is the fastest growing sector of American housing and provides 95 percent of all single family dwellings under $15,000. For this reason, I have emphasized in my legislation that the per unit cost of a regulation be considered before promulgation of final standards. There is no such provision in the bill presently under consideration. We must realize that the mobile home is the only mode of housing within reach of the average American. Young people and

the elderly are the principal purchasers of mobile homes and we must consider the effects of regulations on their continued ability to own this type of home. Regulation of mobile homes under the Consumer Product Safety Act could push the cost of such a dwelling beyond the reach of these consumers and I believe factors of cost must be weighed.

Thus, regulation should be administered by HUD, not HEW or a new consumer agency. And the goal of such regulation should be to establish minimum uniform safety standards while at the same time promoting the use of the mobile home as a low-cost desirable form of housing.

Mr. President, the use of mobile homes have grown at an astounding rate. In 1967 the manufacturers of mobile homes produced 240,000 units. In less than 3 years in 1970 production was over 500,000. There can be little doubt that mobile homes are the wave of the future.

People are being killed everyday in mobile homes unnecessarily. To seek to relegate mobile homes to the status of toasters, waffle iron, diet pills and the like is to perpetrate the worst kind of injustice on the consumer. We are not talking about an item that is used once a year, once a month, or even once a day. We are talking about a home in use daily where many people, especially the elderly, spend literally thousands of hours. We cannot hope for adequate protection of the mobile homebuyer if we shove him to the side and tell him to wait behind the man with the broken toaster, waffle iron or whatever. These people need protection which is effective. They do not want their homes seized because of a failure to meet an administratively determined standard. This is not consumer protection. It is consumer be damned.

NEED FOR FURTHER EXAMINATION

Mr. President, during consideration of this bill the Senate Commerce Committee scheduled three witnesses on mobile homes. None were technical witnesses, but nevertheless their testimony was enlightening. During hearings on this Consumer Product Safety bill in the other body, now witnesses were heard on Mobile Home safety and it is my understanding that agreement has been reached to exclude mobile homes from their bill in favor of a hearing on specific legislation introduced by my former colleague, Lou Frey of Florida.

Mr. President, all this shows we need to examine this subject carefully before we act, so the result will have the desired effect. At present we have four Federal agencies with statutory authority over mobile home safety. We have 29 States with some sort of regulatory programs covering mobile homes.

Yet, after hearing from a grand total of three witnesses who state something is needed, we are being presented with an amendment which seeks to define a mobile home as a consumer product in the same category with a toaster.

What we need to do is gather representatives from the four Federal programs and the various States with existing safety legislation. Give them a hearing which will result in a reasonable, effective bill.

If we do not, if we pass this proposal we run the risk of establishing yet another unsynchronized federal program for mobile homes.

We risk diminishing the real priority status of mobile home safety.

We risk forcing prices on mobile homes to a level beyond the purchase power of average Americans.

We risk the establishment of standards which are ineffective and ill-conceived.

I urge my colleagues to reject this amendment. I urge them not to run these risks.

Mr. TAFT. Mr. President, I do not believe that mobile homes should be included under the purview of the Food, Drug, and Consumer Product Agency.

The need for establishing Federal safety standards for mobile homes cannot be overemphasized. Unlike conventional housing, mobile homes are not subject to local building ordinances. More than half of the States have adopted standards covering mobile home construction, but in most States that have such standards only those mobile homes manufactured and sold in the State are regulated. There is no control over mobile homes manufactured in a State without regulations. Even in States with adequate standards, the enforcement of such standards is often lackadaisical or hampered by a lack of funding and personnel.

In view of the fires and other tragedies involving mobile homes which have recently been reported, this situation is clearly unacceptable.

At the same time, however, it is clear that any standards for mobile homes should be promulgated with the full benefit of all the expertise available. Ninety-five percent of all homes sold for under $15,000 in America are mobile homes; 400,000 last year. For many Americans earning modest incomes, the only kind of new home which they can afford is a mobile home.

It would be a tragic blow to those low-income consumers if Federal mobile home standards were established which unnecessarily raised the price or complicated the financing of mobile homes.

For those reasons, I have agreed to cosponsor S. 3604, Senator BROCK's bill to establish a national safety standard for mobile homes. That bill calls for the establishment of these standards in consultation with a National Mobile Home Safety Advisory Council, consisting of representatives of the general public, the standards-setting research agencies and the mobile home industry. In promulgating any standard, HUD is directed to consider all relevant mobile home safety data, the advice of the States, the practicality of the standard and the possible financial burden which the standard may place on the manufacturers or dealers.

I feel strongly that this is a more fitting method for regulating mobile homes than allowing the Food, Drug, and Consumer Product Agency to establish the standards as it sees fit. Mobile homes are dwellings, and HUD has the technical expertise necessary to deal with complicated structural problems which may arise when evaluating a dwelling's safety. In addition, HUD is familiar with the financing arrangements which would be made for mobile homes but not for the other types of products which the Food, Drug, and Consumer Product Agency is to regulate.

I urge the Senate not to accept the Eagleton Amendment because of its impatience with the under-regulation of mobile homes. I look forward to hearings and subsequent action on S. 3604 in the near future. At that time, Congress will have an opportunity to determine in a more considered manner the way to regulate mobile homes which will be most beneficial to consumers.

Mr. EAGLETON. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 3 minutes.

Mr. EAGLETON. Mr. President, mobile homes are now regulated neither as motor vehicles under the Motor vehicles Safety Act, nor as housing under local housing codes of most communities. Mobile homes are subject only to minimal standards which the Mobile Home Association itself has promulgated. These standards were prepared under the aegis of the American National Standards Institute with the participation of the Mobile Homes Manufacturers Association.

Thus, they are a product, a sizable product to be sure. However, they are a manufactured product. They are risky. They cause death and injury to human beings and they are yet unregulated.

It seems to me that the vehicle before the Senate is an appropriate vehicle by which to bring some semblance of regulation and control to this otherwise unrelated and uncontrolled industry.

Mr. President, I yield back the remainder of my time.

Mr. COTTON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDNIG OFFICER. All time has expired or been yielded back. The question is on agreeing to the amendment of the Senator from Missouri. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

Mr. SPONG. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SPONG. Mr. President, are the yeas and nays on the amendment or on the motion to table?

Mr. COTTON. Mr. President, I withdrew my motion to table.

The PRESIDING OFFICER. The yeas and nays are on the amendment of the Senator from Missouri. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from California (Mr. TUNNEY), and the Senator from

South Dakota (Mr. McGOVERN), are necessarily absent.

I further announce that, if present and voting, the Senator from Georgia (Mr. GAMBRELL), would vote "nay."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), and the Senator from Connecticut (Mr. WEICKER), are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK), are detained on official business.

If present and voting, the Senator from Oregon (Mr. HATFIELD) would vote "nay."

The result was announced—yeas 16, nays 63, as follows:

[No. 235 Leg.]

YEAS—16

Cranston	Kennedy	Pell
Eagleton	Magnuson	Ribicoff
Fulbright	McGee	Stevenson
Hart	Montoya	Symington
Hollings	Moss	
Jackson	Pastore	

NAYS—63

Aiken	Cotton	Pearson
Allen	Curtis	Percy
Baker	Dole	Proxmire
Bayh	Eastland	Randolph
Beall	Ellender	Roth
Bellmon	Ervin	Saxbe
Bennett	Fannin	Schweiker
Bentsen	Fong	Scott
Bible	Gurney	Smith
Boggs	Hansen	Sparkman
Brock	Hartke	Spong
Brooke	Hruska	Stafford
Buckley	Humphrey	Stennis
Burdick	Javits	Stevens
Byrd, Harry F., Jr.	Jordan, N.C.	Taft
Byrd, Robert C.	Jordan, Idaho	Talmadge
Cannon	Long	Thurmond
Case	Mathias	Tower
Church	Miller	Williams
Cook	Mondale	Young
Cooper	Nelson	
	Packwood	

NOT VOTING—21

Allott	Griffin	McGovern
Anderson	Harris	McIntyre
Chiles	Hatfield	Metcalf
Dominick	Hughes	Mundt
Gambrell	Inouye	Muskie
Goldwater	Mansfield	Tunney
Gravel	McClellan	Weicker

So Mr. EAGLETON's amendment was rejected.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MAGNUSON. Mr. President, while everyone is here I will ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. EAGLETON. Mr. President, I nervously rise to offer another amendment.

The PRESIDING OFFICER. The amendment will be stated.

The amendment was read as follows:

On page 67, lines 12 and 13, strike "manufacturing".

Mr. EAGLETON. Mr. President, I offer an amendment to section 313(b) of the Food, Drug, and Consumer Product Safety Act. This section, as currently drafted, provides the Product Safety Commissioner with strong remedial authority when he finds that a product is either substandard or has a manufacturing defect which presents an unreasonable risk of injury or death. Under this section, he may require manufacturers or others in the distribution chain to give public notice of such defects or to repair the defect without charge or refund the purchase price.

As reported by the Commerce Committee, this section applies only to "manufacturing defects," that is, defects which occur as a result of an oversight or error on the production line or during the inspection process or use of materials not up to design specifications. It does not apply where the defect is so-called design defect. Design defects are those which occur when a product is constructed according to a plan, without production error, but the plan itself results in a product which presents a risk to safety.

We need only look to our recent experience with safety-related defects in automobiles to see that any effective product safety program must provide adequate remedies for all safety-related defects, whether they are technically deemed "manufacturing" or "defect" related. Some of the most serious safety defects found in cars have related to design—including, for example, the recall of 7 million Chevrolets for faulty engine mounts and the recall of all Corvairs manufactured in the 1960's for faulty heaters which propelled noxious fumes into the car interior.

There are countless examples of dangerous designs in the kinds of products that would be covered by the Product Safety Act. For example, Consumer Reports recently rated some of the following products "unacceptable" for purchase:

A $40 washing machine which has neither 3-wire grounding cord nor double insulation to protect the user against the possibility of a shock hazard;

An $80 humidifier which has large openings in the motor housing at the back of the unit making it possible to touch electrical windings accidentally, causing shock;

A $9 portable electric drill with a trigger which locks too easily in the "on" position;

A $25 bench grinder with a ¼ inch gap between the work rest and the grinding wheels, posing the chance of jamming the work between the wheel and the housing; and

A $40 electric hair setter in which terminal pins on rollers go through holes in plate to make contact with conductors. Severe shock could result from attempting to retrieve a hairpin while the electricity is alive.

Moreover, the Commission on Product Safety Report refers to design defects in floor furnaces, high-rise bicycles, infant furniture, power tools, and other products likely to be found around the average household.

Consumers need protection against design defects even more than they need protection against manufacturing defects. A manufacturing defect may affect a day's run on the assembly line. But a design defect, unless caught and rectified, will affect an entire production run of a product—all the 1972 models, say, of a particular bicycle or toaster.

We must keep in mind that the legislation before us does not deal simply with esthetic complaints, but with safety-related defects—those which pose an unreasonable risk to health and safety. I think it is fair to say that anyone stuck with a product which poses a threat to him or his family does not care whether the danger results from the failure of someone on the line to use the proper bolt, or from the fact that the master plans called for an improper bolt in the first place.

I would also stress the fact that no other product safety legislation of which I am aware—including the statutes which now regulate automobile safety and the safety of products with a potential radiation hazard—make a distinction between manufacturing and design defects. These laws go to any safety defect when it presents a sufficient danger to justify action. Nor does the proposed legislation of the Commission on Product Safety, after which the pending legislation is modeled, make such a distinction.

The Commerce Committee report refers only briefly to this point, stating that—

If a design defect were to present an unreasonable risk of injury or death, the Commissioner could proceed under authority of section 311 to remove immediately the product from the marketplace or could resort to the standard-setting procedures contained in the bill.

It is clear to me, however, that more attention should be focused on this point. For the reasons I am about to set out, neither the standard setting procedure nor the emergency injunctive authority under section 311 provide an effective alternative for defectively designed products which are already on the market.

Turning first to the standard-setting alternative proposed by the committee, the most obvious drawback in relying on standards is delay. Realistically, we cannot expect that the Commissioner of Product Safety will turn to standard setting for a defectively designed product on the day he learns about the defect. There will be many competing demands. Moreover, even when he determines that standards should be set, promulgating of final standards can be expected to take at least 240 days—180 days for development, 60 days for Commissioner action—with an effective date at least 6 months later in most instances. During this period, defective products will be sold at the risk of injury to consumers.

Furthermore, even where standards are eventually promulgated, they have only prospective effect. Thus, those who have been buying defective products until the effective date of the standard are simply out of luck. The standards afford them no remedy whatever.

Nor does section 311 provide an effective remedy in the case of a defective product already on the market. This section provides for emergency power to seek injunctive relief through the courts for products deemed to be "imminently hazardous." These are products for which no safety standards can be fashioned which would adequately protect consumers. These products are by their very nature dangerous.

Moreover, the section presumes that some administrative proceeding is underway at the time of the court action—a presumption that would not be met in the case of a design defect just discovered by the Commissioner of Product Safety.

The importance of the notification and recall provisions of section 313(b) is that

they provide a relatively quick, effective mode of action for the Commissioner when he knows that a product already in the hands of consumers is potentially dangerous. Neither the standard setting procedure nor the emergency injunctive remedy if defects relating to design are excluded from its scope.

Mr. MAGNUSON. Mr. President, I have just conferred with my colleague from New Hampshire. I think we can accept the amendment. It clarifies the difference between design and manufacture. Some of it I do not understand but there is a difference in the question of safety. The testimony was to that effect. We accept the amendment.

I yield back the remainder of our time.

Mr. EAGLETON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment of the Senator from Missouri.

The amendment was agreed to.

Mr. MOSS. Mr. President, I send to the desk two amendments that are really technical amendments clarifying the numbering, and I ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. MOSS. I ask unanimous consent that further reading of the amendments be dispensed with and that they be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendments will be printed in the RECORD.

The amendments, ordered to be printed in the RECORD are as follows:

On page 22, line 4, insert after the word "any" the word "claim or".

On page 8, line 2, strike out "106" and insert "107".

On page 8, line 22, strike out "108" and insert "109".

On page 9, line 18, strike out "(4)" and insert "(3)".

On page 10, line 19, strike out the period and insert a semicolon.

On page 13, line 15, strike out the period and insert a semicolon.

On page 14, line 11, strike out "108" and insert "109".

On page 16, line 1, strike out "103(c)(9)" and insert "104(c)(8)".

On page 17, line 20, after "practicable" insert a comma.

On page 31, line 21, after "Commerce" insert a comma.

On page 32, line 2, strike out the semicolon and insert a period.

On page 33, line 15, strike out "(58)" and insert "(59)".

On page 33, line 21, strike out "(95)" and insert "(96)".

On page 33, line 23, strike out "(96)" and insert "(97)".

Mr. MOSS. Mr. President, this is really a renumbering of sections to conform the bill after the amendments made by the Committee on Labor and Public Welfare. One renumbering was picked up by the staff. It makes the bill technically correct. I do not think any explanation is needed. This is to make the bill technically correct.

Mr. COTTON. Mr. President, the Senator was kind enough to bring the amendments over to us and we agree.

Mr. MAGNUSON. Mr. President, I yield back my time.

Mr. MOSS. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendments has been yielded back. The question is on agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. MAGNUSON. Mr. President, I would like to clarify three matters which have been raised in discussions of the text of S. 3419. They are as follows:

First. Section 306(d) provides that the Commissioner may set a later effective date for a standard beyond the 6-month norm, but that the Commissioner must publish his reasons therefore. It is of course contemplated that, in accordance with the provisions of the Freedom of Information Act, all of the documents upon which the Commissioner has relied in making such determination will be made public.

Second. In regard to section 315(b) which authorizes the Commission to inspect records, in accordance with normal practice it is contemplated that the right to inspect includes the authority to make appropriate copies of such records.

Third. Section 305(4), providing for the maintenance of records of the development of proposed standards requires that "comments and other information submitted by any person in connection with such development" be disclosed. This provision contemplates that any dissenting views submitted to the person or persons developing a proposed standard will be made public in a timely manner.

RADIATION SAFETY

Mr. President, S. 3419 meets the recommendations of the National Product Safety Commission in the key area of electronic product radiation safety by transferring the administration of the Radiation Control for Health and Safety Act from the Food and Drug Administration to the new agency. Under the authority of this consumer protection legislation, over 34,000 products have been repaired at no cost to the purchaser. S. 3419 carefully preserves this effective consumer protection measure and, in the process, avoids duplication of effort. Today, there are over 116 Federal employees—of whom 70 are engineers and physicists—working on radiation hazards to the public from television receivers, microwave ovens, lasers, ultrasonic products, and X-ray equipment. However, as noted by the National Product Safety Commission—

> Legislation for a single hazard often fails to cover other serious hazards. . . . The Radiation Control for Health and Safety Act authorized inspection of television sets for radiation but not for fire hazards.

It is prudent, therefore, that these highly competent and trained persons be permitted to work on the solution of the full range of problems associated with electronic products—whether it be radiation, fire, or electrical shock. Furthermore, over 33,000 square feet of electronic laboratories now exist, and these should also be made available to the new agency. Otherwise, these facilities will have to be duplicated at a cost of over $3 million.

The progress that has been made under the Radiation Control for Health and Safety Act has been almost solely oriented toward product safety: Radiation safety standards for demonstration tubes used in high schools, television receivers, microwave ovens, and medical X-ray equipment. Each of these standards deals specifically with the engineering and physical principles of how the product is to perform. As noted in the June 12 issue of Product Safety Letter—

> Despite the Buck Rogers aura that surrounds lasers, a number of products could move quickly from the R&D stage to the marketplace. Their future depends on radiation limits that will be set by the government.

The new agency to be established by S. 3419 will need expertise in this area, because lasers not only present a potential radiation hazard, but also have potential problems in electrical shock.

It is the full intent of S. 3419 to draw together into one agency the existing Federal authority and expertise which is needed to provide the fullest possible protection to the consumer from hazardous products. We should not place an unneeded burden on a manufacturer to have to report to separate safety agencies on the same products and thus require the Congress to fund two groups when one could do it. Failure to place the administration of the Radiation Control for Health and Safety Act with the new agency proposed by S. 3419 would deny to the agency, and to the consumer, an immediate and demonstrated ability to respond to the complex engineering problems involved in product safety.

The PRESIDING OFFICER. Is all time yielded back on the bill itself?

Mr. MAGNUSON. Mr. President, I yield back my time.

Mr. COTTON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the bill has been yielded back.

The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator

from Hawaii (Mr. INOUYE), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), and the Senator from California (Mr. TUNNEY) are necessarily absent.

I further announce that, if present and voting, the Senator from Florida (Mr. CHILES), the Senator from Georgia (Mr. GAMBRELL), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), and the Senator from California (Mr. TUNNEY) would each vote "yea."

Mr. SCOTT. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from Oregon (Mr. HATFIELD), and the Senator from Connecticut (Mr. WEICKER) are necessarily absent.

The Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. MUNDT) are absent because of illness.

The Senators from Colorado (Mr. ALLOTT and Mr. DOMINICK) are detained on official business.

If present and voting, the Senator from Michigan (Mr. GRIFFIN) and the Senator from Oregon (Mr. HATFIELD), would each vote "yea."

The result was announced—yeas 69, nays 10, as follows:

[No. 236 Leg.]

YEAS—69

Aiken	Ellender	Pearson
Allen	Fong	Pell
Baker	Fulbright	Percy
Bayh	Gurney	Proxmire
Beall	Hart	Randolph
Bellmon	Hartke	Ribicoff
Bennett	Hollings	Roth
Bentsen	Humphrey	Saxbe
Bible	Jackson	Schweiker
Boggs	Javits	Scott
Brock	Jordan, N.C.	Smith
Brooke	Jordan, Idaho	Sparkman
Burdick	Kennedy	Spong
Byrd, Harry F., Jr.	Long	Stafford
	Magnuson	Stevens
Byrd, Robert C.	Mathias	Stevenson
Cannon	McGee	Symington
Case	Miller	Taft
Church	Mondale	Talmadge
Cook	Montoya	Thurmond
Cooper	Moss	Williams
Cranston	Nelson	Young
Dole	Packwood	
Eagleton	Pastore	

NAYS—10

Buckley	Ervin	Stennis
Cotton	Fannin	Tower
Curtis	Hansen	
Eastland	Hruska	

NOT VOTING—21

Allott	Griffin	McGovern
Anderson	Harris	McIntyre
Chiles	Hatfield	Metcalf
Dominick	Hughes	Mundt
Gambrell	Inouye	Muskie
Goldwater	Mansfield	Tunney
Gravel	McClellan	Weicker

So the bill (S. 3419) was passed, as follows:

S. 3419

An act to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Food, Drug, and Consumer Product Safety Act of 1972".

TITLE I—CREATION OF FOOD, DRUG, AND CONSUMER PRODUCT AGENCY

FINDINGS AND DECLARATION OF POLICY

SEC. 101. The Congress hereby finds and declares—

(1) that the regulation of foods, drugs, and consumer products is scattered widely throughout several Federal departments and agencies, and that inconsistent policies and incomplete regulation has resulted from this diffusion of regulatory efforts within the Federal Government;

(2) that effective consumer product regulation requires creation of a new independent agency with the power to take all action necessary to enforce food, drug, and consumer product safety laws, including the power to promulgate regulations, prosecute court actions, and make legislative and budgetary recommendations;

(3) that each year many Americans are needlessly injured in their homes because present Federal law inadequately regulates most consumer products;

(4) that in addition to consolidating present food, drug, and product safety regulation in a new independent regulatory agency, new statutory authority is needed to protect consumers against the hazards of many household products not covered by present Federal safety regulation;

(5) that because intrastate and interstate commerce in consumer products are closely intertwined and directly affect each other, Federal control over intrastate commerce in consumer products is essential to the effective control of the interstate commerce in such products;

(6) that unacceptable numbers of hazardous consumer products now affect interstate commerce, and their increasing number and complexity make it imperative that the Federal Government act promptly to eliminate unnecessary death and injury in the future; and

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

DEFINITIONS

SEC. 102. As used in this Act—

(a) "Consumer product" means a product, or a component thereof, produced for or distributed to an individual for his personal use, consumption, or enjoyment in or around a household or residence, a school, in recreation, or otherwise, but, except to the extent provided in section 104(c)(17), it does not include—

(1) tobacco and tobacco products;

(2) products subject to safety regulation under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.);

(3) aircraft or other aeronautical products subject to safety regulation by the Federal Aviation Administration;

(4) food or drugs as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 et seq.);

(5) products subject to safety regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.);

(6) products subject to safety regulation under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) insofar as such products are regulated for use in employment;

(7) products subject to safety regulation under the Gas Pipeline Safety Act (49 U.S.C. 1671 et seq.);

(8) products subject to safety regulation under authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); and

(9) vessels, appurtenances, and equipment subject to safety regulation under title 52 of the Revised Statutes, as amended, the Federal Boat Safety Act of 1971 (46 U.S.C. 1451 et seq.), or other marine safety statutes administered by the Department in which the Coast Guard is operating.

(b) "Commerce" means commerce among, between, or within the several States.

(c) "Consumer product safety standard" means a minimum standard promulgated under this Act which prevents such product from presenting an unreasonable risk of injury or death.

(d) "Subject to safety regulation" means authorized to be regulated for the purpose of eliminating any unreasonable risk of injury or death, as determined by the Administrator through communication and consultation with appropriate department or agency officials.

(e) "Injury" means harm (including adverse reactions and illness) produced by biologic, chemical, thermal, mechanical, electrical, radiological, or other natural or man-made agents.

(f) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, Midway Island, Kingman Reef, Johnston Island, the Trust Territory of the Pacific Islands, or the Canal Zone.

(g) "Unreasonable risk of injury presented by a consumer product" means that degree of risk which the Commissioner determines is incompatible with the public health and safety either because the degree of anticipated injury or the frequency of such injury, or both, is unwarranted because—

(A) the degree of anticipated injury or the frequency of such injury can be reduced without affecting the performance or availability of the consumer product, or

(B) the degree of anticipated injury or the frequency of such injury cannot be reduced without affecting the performance or availability of the consumer product but the effect on such performance or availability is justified when measured against the degree of anticipated injury or the frequency of such injury.

(h) "Use" means: (A) exposure to, and (B) normal use or reasonably foreseeable misuse.

(i) "Risk-based analysis" means analysis which (A) identifies hazardous elements, conditions of use, and potential accidents, (B) determines the significance of their potential effect, and (C) provides the bases for limitations on use and design and procedural safety requirements to eliminate, control, or minimize hazards and to promote health and safety.

ESTABLISHMENT OF AGENCY

SEC. 103. There is hereby created an independent Food, Drug, and Consumer Product Agency (hereinafter referred to as the "Agency") whose function it is to promote the public health, safety, and welfare by protecting consumers against adulteration, misbranding, and illegal distribution of food, drugs, devises, and cosmetics, and against injury resulting from the use of consumer products. Within such Agency there shall be established a Commission of Food and Nutrition, a Commission of Drugs, a Commission of Veterinary Medicine, and a Commission of Consumer Products, each to be headed by a Commissioner as provided in section 107 of this Act.

ADMINISTRATOR

SEC. 104. (a) APPOINTMENT.—The President shall appoint, with the advice and consent of the Senate, an Administrator of the Agency.

(b) TERM OF OFFICE.—The Administrator shall serve for a term of five years. He may be reappointed to the position of Administrator only once in succession.

(c) POWERS.—In order to fulfill his duties under this title, the Administrator is empowered to—

(1) direct and coordinate the activities of the Commissions of Food and Nutrition, Drugs, Veterinary Medicine, and Consumer Products;

(2) direct and supervise all personnel of the agency;

(3) employ experts and consultants (including such experts as provided for in section 109 of this title) in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and, while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(4) appoint advisory committees composed of such private citizens and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and to pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees, or otherwise serving at the request of the Administrator, compensation and travel expenses at the rate provided for in paragraph (3) of this subsection with respect to experts and consultants;

(5) promulgate such regulations as may be necessary to carry out the functions vested in him and for the efficient enforcement of the laws subject to the jurisdiction of the Agency;

(6) issue subpenas to require the attendance and testimony of witnesses and the production of documentary evidence relating to any matter within his statutory authority which is the subject of a public hearing, have access for the purpose of examining and copying any documentary evidence relating to any matter within his statutory authority, and require by general or special orders signed by him the submission of annual or special reports or answers in writing to specific questions containing such data and information relating to any matter within his statutory authority as will enable him to enforce the laws subject to his jurisdiction. The district courts of the United States shall have jurisdiction to enforce such subpenas or general or special orders or to require access to such documentary evidence upon application of the Attorney General or the Administrator. An action for such enforcement may be brought in any district court of the United States for the district wherein the person involved is found or transacts business;

(7) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State and private agencies and instrumentalities with or without reimbursement therefor;

(8) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Agency and on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory, or possession, or any political subdivision thereof, or with any public or private person, firm, association, corporation, independent testing laboratory, or institution;

(9) accept gifts and voluntary and uncompensated services, notwithstanding the provisions of section 665(b) of title 31, United States Code;

(10) designate representatives to serve or assist on such committees as the Administrator may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies and independent standard-setting bodies carrying out programs and activities related to the protection of consumers against injury resulting from the use of foods, drugs, and consumer products;

(11) construct such research or test facilities as may be necessary to carry out the purposes of this Act, (A) after fully utilizing the personnel, facilities, and other technical support available in other Federal agencies, (B) when authorized by the Congress to plan, design, and construct such facilities, and (C) subject to the appropriation of funds for this purpose by the Congress;

(12) conduct public hearings anywhere in the United States to consider the safety of foods, drugs, or consumer products;

(13) prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate for the administration and enforcement of the laws subject to his jurisdiction, and receive from the President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Agency;

(14) prescribe personnel policies for the Agency including selecting, appointing, fixing compensation of, hiring, firing, promoting, and transferring of employees without prior approval or clearance, subject to the civil service and classification laws;

(15) submit legislative recommendations and testimony to Congress without prior approval or clearance;

(16) initiate, prosecute, defend, or appeal any court action in the name of the Agency to enforce the laws subject to his jurisdiction, through his own legal representative or through the Attorney General, and direct the course of all litigation involving the Agency;

(17)(A) petition any Federal department or agency which has jurisdiction over products included within the definition of consumer product in section 102(a) but exempt under paragraphs (1)–(9) to establish and enforce appropriate safety regulations for any such product;

(B) participate in the establishment of such regulations; and

(C) upon request of such department or agency, establish and enforce such regulations in accordance with title III of this Act. Upon such request, such product shall be deemed to be a consumer product under section 102(a);

(18) undertake such other activities as are necessary to carry out his duties under this Act, including those enumerated in other sections of this Act; and

(19) delegate any of his functions and duties under this Act, including functions and duties transferred to him pursuant to title II, other than subpena powers, to the Commissioners or other officers or employees of the Agency.

DUTIES OF THE ADMINISTRATOR

SEC. 105. The Administrator shall—

(a) direct and coordinate the activities of the Commissions of Food and Nutrition, Drugs, Veterinary Medicine, and Product Safety;

(b) attempt to secure levels of funding for the Agency that will permit it to carry out its mission on behalf of the public;

(c) establish an Office of Consumer Information in accordance with the provisions of section 109 of this title;

(d) establish a National Injury Information Clearinghouse which shall systematically monitor and report injuries or deaths associated with foods, drugs, and consumer products and identify the agent or agents associated with such injuries or deaths;

(e) establish and supervise the activities of the Joint Scientific Committee;

(f) appoint a General Counsel for the Agency and an Assistant General Counsel for each Commission, to assist him as his legal representative in carrying out his duties under this Act;

(g) enforce the laws which he is required under title II of this Act to administer; and

(h) publish notice of any proposed public hearing in the Federal Register, and afford a reasonable opportunity for interested persons, including consumers, to present relevant testimony and data.

OBLIGATIONS OF AGENCY CONTRACTORS

SEC. 106. (a) MAINTENANCE OF RECORDS.—Each recipient of assistance under this Act pursuant to grants or contracts entered into under other than competitive bidding procedures shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project undertaken in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) ACCESS TO RECORDS.—The Administrator and the Comptroller General of the United States or their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the grants or contracts entered into under section 104(c)(8) under other than competitive bidding procedures.

COMMISSIONERS

SEC. 107. (a) APPOINTMENT.—The Administrator shall appoint a Commissioner of Food and Nutrition, a Commissioner of Drugs, a Commissioner of Veterinary Medicine, and a Commissioner of Consumer Products.

(b) POWERS.—In order to fulfill his duties under this title, a Commissioner is empowered to—

(1) undertake such activities as are authorized and necessary to carry out his duties under this title, including those delegated to him by the Administrator and those enumerated in other sections; and

(2) conduct public hearings anywhere in the United States to consider the safety of foods, drugs, or consumer products.

DUTIES OF THE COMMISSIONERS

SEC. 108. Each Commissioner, in cooperation with the other Commissioners and as directed and coordinated by the Administrator, shall—

(1) attempt to eliminate products presenting unreasonable risk of injury;

(2) establish a capability within his Commission to engage in risk-based analysis;

(3) establish an interdisciplinary epidemiology capability and undertaken investigations in coordination with the National Injury Information Clearinghouse to facilitate regulation-making and to assist in risk-based analysis;

(4) establish a scientific capability within the Commission to assist in hazard detection, test method development, and quality control requirements;

(5) utilize where practicable, and establish where necessary, field operations as authorized by the Administrator to facilitate detection of conditions which might lead to injury or death, to monitor compliance with required levels of safety performance, to report violations, and to assist the Administrator in any enforcement action taken by him; and

(6) publish notice of any proposed public hearing in the Federal Register, and afford a reasonable opportunity for interested persons, including consumers, to present relevant testimony and data.

OFFICE OF CONSUMER INFORMATION

SEC. 109. (a) DIRECTOR.—The Administrator shall appoint a Director of the Office of Consumer Information.

(b) DUTIES OF DIRECTOR.—The Director shall—

(1) establish a Consumer Information

Center which can respond to written inquires from consumers;

(2) conduct consumer education programs so as to inform the public about certain specified hazards and thereby reduce the risk of those hazards. Such consumer education programs shall not be relied upon by the Administrator or any Commissioner as a substitute for action designed to minimize any hazard unless the Director publishes in the Federal Register a finding that such reliance would sufficiently reduce the risk of such product so that its use would not present an unreasonable risk of injury or death; and

(3) insure public access to information concerning pending or completed actions of the Administrator in accordance with section 114 of this title.

(c) PUBLIC INFORMATION ROOM.—In addition to publishing information in the form and manner best adopted for widespread distribution, information available for public disclosure shall be made available in a "Public Information Room" within the Director's office, equipped with a self-help copying machine, from which the public can make copies at the cost of the production of the copy. The Agency shall charge the public the minimum practicable amount for the search for and production of documents, shall take all reasonable measures to reduce or waive, where appropriate, any charge to persons to whom such charge would be financially burdensome, and in no event shall charge any amount which exceeds the actual cost of such search and production. All funds collected for copying and for search for and production of documents shall be paid to the Administrator and shall be obligated and expended by him to finance the Agency's consumer information program.

(d) The Director shall establish a Consumer Information Library.

NATIONAL INJURY INFORMATION CLEARINGHOUSE

SEC. 110. (a) DIRECTOR.—The Administrator shall appoint a Director of the National Injury Information Clearinghouse.

(b) DUTIES OF DIRECTOR.—The Director shall establish a system of nationwide reporting centers to monitor injury associated with food, drugs, and consumer products, to identify any natural or man-made biologic, chemical, mechanical, electrical, thermal, radiological, or other agents that caused such injury, to describe the way in which such agents came into contact with the victim, and to ascertain the severity of the injury.

(c) POWERS OF DIRECTOR.—(1) The Director may—

(A) obtain injury data from other governmental and nongovernmental sources; and

(B) require manufacturers, importers, processors, distributors, retailers or assemblers of food, drugs, or consumer products, and their insurers, to submit information concerning injuries associated with such food, drugs, and consumer products that have come to their attention in accordance with regulations promulgated by the Administrator, which ensure that such persons providing such information are not compromised in any claim or pending litigation.

(d) LIMITATIONS.—(1) The Director shall not disclose information obtained by him under this section which concerns or relates to a trade secret or other confidential business information, not related to a consumer product in such a way as to indicate the presence of an unreasonable risk of injury or death, described in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, in a manner designed to preserve confidentiality to the greatest practicable extent; and

(E) to the public in order to protect their health and safety after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons or person treating them be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 522, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

JOINT SCIENTIFIC COMMITTEE

SEC. 111. (a) DESIGNATION.—After consultation with the Commissioners, the Administrator shall establish and appoint the members of a Joint Scientific Committee which shall be composed of at least one representative of each Commission and chaired by an Associate Administrator for Science appointed by the Administrator.

(b) MEETINGS.—Such Committee shall meet at least once a month.

(c) DUTIES.—

(1) The Associate Administrator and members of the Committee shall insure that there is an exchange of scientific information between the Commissions and shall report to the Administrator on the needs of the scientific personnel in each of the Commission.

(2) The Committee shall advise the Administrator or any of the Commissioners on technical matters and shall make recommendations for the soliciting of expert scientific opinion on particular issues.

AGENCY RESPONSIBILITY

SEC. 112. (a) PETITION OF THE AGENCY.—Any individual or class of individuals who alleges that he or they have been exposed by an act or omission of the Agency to a food, drug, or consumer product presenting an unreasonable risk of injury or death, shall first petition the Agency to take specific action sufficient to eliminate the alleged unreasonable risk of injury or death. After opportunity for interested parties to comment on the petition not to exceed thirty days, the Agency shall determine whether an unreasonable risk of injury or death exists as a result of an act or omission of the Agency and issue a decision either refusing to take any action or taking action designed to eliminate any unreasonable risk of injury or death. The Agency shall make such determination and issue such decision within a reasonable period of time, but in no event more than one hundred and twenty days following the presentation of the petition to the Agency.

(b) CIVIL ACTION AGAINST THE AGENCY.—If the Agency refuses to take any action in response to the petition or if the Agency action taken in response to the petition is regarded by the petitioner or petitioners as insufficient to eliminate the alleged unreasonable risk of injury or death, a petitioner or petitioners may commence a civil action in a United States court of appeals. Any such action shall be filed within sixty days after the decision of the Agency pursuant to subsection (a) to take or refuse to take any action. If a petitioner or petitioners apply to the court to adduce additional evidence and show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure of the petitioner or petitioners to adduce such evidence in the proceeding before the Agency the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Agency in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper.

(c) POWERS OF THE COURT.—(1) If the court finds, based upon a preponderance of the evidence which constitutes the record of the Agency, that the Agency, by an act or omission, has exposed such petitioner or petitioners to a food, drug, or consumer product presenting unreasonable risk of injury or death, the court shall remand the matter to the Agency for appropriate action. The "record of the Agency" means the information upon which the Agency based its decision, including the petition and any information submitted by the petitioner or petitioners and all other information identified in the decision of the Agency as part of the record, and any additional evidence adduced in accordance with procedures established in subsection (b) of this section.

(2) No action pursuant to any section may be filed for the purpose of requiring the Agency to permit the sale, distribution, use, or shipment in commerce of any food, drug, or consumer product, and no award of money damages may be made in any court action pursuant to this section.

(d) COSTS OF PETITION AND CIVIL ACTION.—Costs of the petition and civil action (including reasonable attorney's fees) may be apportioned to the parties as the interests of justice require.

ANNUAL REPORTS

SEC. 113. (a) TIME OF REPORT.—Within one hundred and twenty days following the convening of each regular session of each Congress, the Administrator shall prepare and submit directly to Congress and the President a report on the activities of the Agency and its recommendation for legislative action.

(b) CONTENTS.—Such reports shall contain the following—

(1) budget information containing the budget requests of the President and the Administrator, the budget recommendations of each of the Commissioners, the appropriation of the Congress, and the distribution of appropriated funds for the fiscal year following the year of the report, for the fiscal year of the report, and for the preceding three fiscal years;

(2) a detailed summary of the activities of the Agency, including but not limited to an account of the activities of the National Injury Information Clearinghouse, the Office of Consumer Information, and the Joint Scientific Committee detailing the number and type of personnel employed and the moneys expended by each;

(3) a detailed summary of the activities of each Commission prepared by its Commissioner which presents information as to its epidemiology efforts, risk-based analysis activities, regulation-making efforts (including a brief description of final regulations promulgated), certification programs, scientific activities (including basic research and test methods development) undertaken by the Commission or by other Government agencies or private persons under contract with the Agency, and its field operations;

(4) a detailed summary of the enforcement activities of the Agency including violations reported to the Administrator by each Commissioner, a summary of the disposition of violations including but not limited to voluntary agreements, seizures, recalls, civil fines, and criminal prosecutions; and

(5) legislative recommendations of each Commissioner, the Administrator, and the Director of the Office of Consumer Information.

PUBLIC ACCESS TO INFORMATION

SEC. 114. (a) AVAILABILITY.—Copies of any communications, documents, reports, or other information received or sent by the Administrator or any Commissioner shall be made available to the public, upon identifiable request, and at reasonable cost, through the Office of Consumer Information unless such information may not be publicly released under the terms of subsection (b) of this section.

(b)(1) LIMITATIONS.—The Administrator, Commissioner, or any officer or employee of the Agency shall not disclose information obtained by him under this section which concerns or relates to a trade secret or other confidential business information, not related to a consumer product in such a way as to indicate the presence of an unreasonable risk of injury or death, described in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, in a manner designed to preserve confidentiality to the greatest practicable extent; and

(E) to the public in order to protect their health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons or persons treating them be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) PROCEEDING COMMUNICATIONS—Any communication from a person outside the Agency to the Administrator, the Commissioners, or any other employee of the Agency concerning a matter presently under consideration in a rulemaking or adjudicatory proceeding in the Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

COOPERATION OF FEDERAL AGENCIES

SEC. 115. (a) The Administrator is authorized to utilize the resources and facilities of the National Bureau of Standards in the Department of Commerce, with or without reimbursement, for the purpose of developing food, drug, or consumer product safety standards, testing, enforcing compliance or for other purposes related to carrying out the authorities of the Administrator under the Act. The Administrator shall report to the Congress each year on his implementation of this section.

(b) Upon request by the Administrator, each Federal agency is authorized—

(1) to make its services, personnel, and facilities available with or without reimbursement to the greatest practicable extent within its capability to the Agency to assist it in the performance of its functions; and

(2) to furnish to the Agency such information, data, estimates, and statistics, and to allow the Agency access to all information in its possession, as the Administrator may reasonably determine to be necessary for the performance of the functions of the Agency as provided by this Act.

SEPARABILITY

SEC. 116. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORIZATION OF APPROPRIATIONS

SEC. 117. There are authorized to be appropriated for the purpose of carrying out the provisions of this Act not to exceed $250,000,000 for the fiscal year beginning July 1, 1972, not to exceed $300,000,000 for the fiscal year beginning July 1, 1973, not to exceed $350,000,000 for the fiscal year beginning July 1, 1974, and for succeeding fiscal years only such sums as the Congress may specifically authorize by law. No part of the funds appropriated to carry out this Act may be used to plan, design, or construct any research or test facilities unless specifically authorized by the Congress by other law.

SEC. 118. (a) EXECUTIVE SCHEDULE LEVEL OF ADMINISTRATOR.—Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(59) Administrator, Food, Drug, and Consumer Product Agency."

(b) EXECUTIVE SCHEDULE LEVEL OF COMMISSIONERS.—Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(96) Commissioners, Food, Drug, and Consumer Product Agency.

"(97) General Counsel, Food, Drug, and Consumer Product Agency."

(c) ADDITIONAL POSITIONS.—Section 5108(c) of title 5, United States Code, is amended by:

(1) striking out the word "and" at the end of paragraph (9);

(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding immediately at the end of such subsection the following new paragraph:

"(11) The Administrator of the Food, Drug, and Consumer Product Agency, without regard to this chapter (except section 5114), may place twenty-five positions in the Food, Drug, and Consumer Product Agency in GS-16, 17, and 18 for the purposes of carrying out his responsibilities under the Food, Drug, and Consumer Product Safety Act of 1972.".

EFFECTIVE DATE; INITIAL APPOINTMENT OF OFFICERS

SEC. 119. (a) This Act shall take effect ninety days after the Administrator first takes office, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

(b) Any officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Agency pursuant to this Act.

TITLE II—TRANSFERS OF FUNCTION

SEC. 201. (a) All functions of the Secretary of Health, Education, and Welfare administered through the Food and Drug Administration are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(b) All functions of the Secretary of Health, Education, and Welfare under the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263(a)) and under sections 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263) are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(c) All functions of the Secretary of Commerce and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) and under the Act of August 2, 1956 (15 U.S.C. 1211) are transferred to the Administrator of the Food, Drug, and Consumer Product Agency.

(d)(1) All personnel, property, records, obligations, commitments, and unexpended balances of appropriations, allocations, and other funds, which are used primarily with respect to any office, agency, bureau, or function transferred under the provisions of this section are transferred to the Administrator of the Food, Drug, and Consumer Product Agency. The transfer of personnel pursuant to this subsection shall be without reduction in classification or compensation for one year after such transfer, and this provision shall not be construed to impair the authority of the Administrator to assign personnel during this period to carry out the functions of the Agency most effectively.

(e) The Civil Service Commission shall establish criteria, in consultation with the Administrator, when preparing competitive examinations for positions in the Agency.

(2) Any commissioned officer of the Public Health Service who, upon the day before the effective date of this Act, is serving as such officer primarily in the performance of functions transferred by this Act to the Agency or the Administrator may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency subject to paragraph (1) of this subsection, under the terms prescribed in section 15(b)(3)-(8)(A) of the Clean Air Amendments of 1970 (84 Stat. 1676; 42 U.S.C. 215 nt).

SEC. 202. (a) The Administrator shall, insofar as practicable and consistent with sound administration of the laws subject to his jurisdiction, delegate all or part of the authority transferred to him to—

(1) the Commissioner of Food and Nutrition with respect to functions relating to human food, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), the Federal Import Milk Act (21 U.S.C. 141 et seq.), the Filled Milk Act (21 U.S.C. 61 et seq.), the Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), and the provisions relating to pesticides, interstate travel sanitation, milk and food service sanitation, and shellfish sanitation under the Public Health Service Act (42 U.S.C. 241, 243, 246, and 264);

(2) the Commissioner of Drugs with respect to functions relating to human drugs, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), sections 351 and 352 of the Public Health Service Act (42 U.S.C. 262, 263), the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. 263a), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat 1236);

(3) the Commission of Veterinary Medicine with respect to functions relating to food and drugs for use in animals other than man, including but not limited to functions under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Caustic Poison Act (44 Stat. 1406), and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236); and

(4) the Commissioner of Consumer Products with respect to functions relating to other consumer products over which the Administrator has jurisdiction, including but

not limited to functions under title III of this Act, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Fair Packaging and Labeling Act (21 U.S.C. 1451 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Poison Prevention Packaging Act (15 U.S.C. 1471 et seq.), the Radiation Control for Health and Safety Act (42 U.S.C. 263b et seq.), the Federal Caustic Poison Act (44 Stat. 1406), the Flammable Fabrics Act (15 U.S.C. 1191 et seq.), the Act of August 2, 1956 (15 U.S.C. 1211), and the provisions relating to product safety under the Public Health Service Act (42 U.S.C. 241, 244, 246, and 264).

(b) The Administrator shall annually present to Congress as part of his annual report under section 113 a detailed statement of delegation.

SEC. 203. All laws relating to any office, agency, bureau, or function transfered under this Act shall, insofar as such laws are applicable, remain in full force and effect. And orders, rules, regulations, permits, or other privileges made, issued, or granted by any office, agency, or bureau or in connection with any function transferred by this Act, and in effect at the time of the transfer, shall continue in effect to the same extent as if such transfer had not occurred until modified, superseded, or repealed. No suit, action, or other proceeding lawfully commenced by or against any office, agency, or bureau or any officer of the United States acting in his official capacity shall abate by reason of any transfer made pursuant to this Act, but the court, on motion or supplemental petition filed at any time within twelve months after such transfer takes effect, showing a necessity for a survival of such suit, action, or other proceedings to obtain a settlement of the questions involved, may allow the same to be maintained by or against the appropriate office, agency, bureau, or officer of the United States.

TITLE III—CONSUMER PRODUCT SAFETY

COLLECTION AND DISCLOSURE OF INFORMATION ON CONSUMER PRODUCT RISKS

SEC. 301. (a) The Commissioner of Product Safety (hereinafter referred to as the "Commissioner") shall collect, evaluate, and disseminate, on a continuing basis in conjunction with the National Injury Information Clearinghouse, information on the types, frequency, severity, and causes of injury associated with the use of consumer products, and on means to test, measure, or evaluate the risks of such injury. In carrying out his functions under this section the Commissioner in addition to or in aid of the foregoing—

(1) shall collect data or perform research or studies to facilitate the establishment of consumer product safety standards and to evaluate their efficacy in reducing risks associated with consumer products;

(2) shall use interdisciplinary epidemiological teams where appropriate to ascertain the details and causation of injury resulting from the use of a consumer product;

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

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

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

(6) shall obtain (by negotiation or otherwise) consumer products for research and testing purposes, and sell or otherwise dispose of such products.

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

(c)(1) The Commissioner shall not disclose information obtained by him under this section which concerns or relates to a trade secret or other confidential business information, not related to a consumer product in such a way as to indicate the presence of an unreasonable risk of injury or death, described in section 1905 of title 18, United States Code, except that such information may be disclosed—

(A) to other Federal Government departments, agencies, and officials for official use upon request;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act; and

(E) to the public in order to protect their health and safety, after notice and opportunity for comment in writing or for discussion in closed session not to within 15 days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

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

(e) Whenever the Commissioner finds, on the basis of information available to him, that exposure to an aspect of the household environment other than a consumer product presents an unreasonable risk of personal injury or death and that a recognized building, electrical, or other code covers that aspect of the household environment, he may recommend to the appropriate code-making authority, and to those authorities responsible for enforcing the code having jurisdiction over that aspect, the code changes he considers warranted to reduce the risk to a reasonable level.

AUTHORITY TO PROMULGATE STANDARDS FOR CONSUMER PRODUCTS

SEC. 302. Whenever the Commissioner finds a need for action to eliminate unreasonable risk of injury or death associated with the use of a consumer product, or any type or class of such products, he may by regulation, in accordance with the requirements of this Act, promulgate for such product, or type or class of such products, a consumer product safety standard or amend any standard previously established. Such standard or amendment to a standard, insofar as practicable, shall be compatible with any environmental standards established for any consumer product by the Federal Government.

INITIATION OF PROCEEDING TO PROMULGATE A CONSUMER PRODUCT SAFETY STANDARD

Notice of Proceeding

SEC. 303. (a) A proceeding to promulgate a consumer product safety standard shall be initiated by the Commissioner by publication in the Federal Register of a notice of proceeding. Such notice shall invite public comment with respect to the initiation of such proceeding and shall include—

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

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

(3) a summary description of the information upon which the Commissioner has found a need to initiate the proceeding, and the manner, consistent with subsection (c) of section 301, in which interested persons may examine such information;

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

(5) an invitation for any person, including any Federal agency, within thirty days after the date of publication of the notice—

(A) to submit information challenging the need to control any risk or risks presented by the consumer product, or type or class of such products, with respect to which the proceeding is initiated;

(B) to submit to the Commissioner an existing standard as such proposed consumer product safety standard; or

(C) to offer to develop such proposed consumer product safety standard in accordance with regulations of the Commissioner prescribing procedures for such development.

Petititon by Interested Party

(b) Any consumer or other interested party may petition the Commissioner to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety standard or other action. Such petition shall set forth with particularity the reasons for such petition. The Commissioner shall publish petitions in the Federal Register and allow opportunity for comment. If the Commissioner denies such petition he shall publish his reasons for such denial.

Decision To Proceed

(c) If the Commissioner determines, after receiving and evaluating any information to the contrary, that there exists a need to control a risk or risks presented by the designated consumer product, or type or class of such products with respect to which the proceeding to promulgate a consumer product safety standard was initiated, then he shall proceed toward the publishing of a proposed consumer product safety standard.

Use of Existing Standard

(d) If the Commissioner—

(1) finds that there exists a standard which has been published by any Federal agency or other qualified agency, organization, or institution;

(2) has made reference to such standard (unless it is a standard submitted pursuant to section 303(a)(5)(B)) in his notice pursuant to subsection (a)(4); and

(3) determines that such standard may be acceptable to him as a consumer product safety standard, then he may, in lieu of accepting an offer pursuant to this section, publish such standard as a proposed consumer product safety standard pursuant to section 306.

Acceptance of Offers To Develop Proposed Consumer Product Safety Standards

(e)(1) Except as provided by subsection (b), the Commissioner may accept one, or more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (a)(5)(C), upon his determination that—

(A) the offeror is technically competent and is likely to develop an appropriate standard within one hundred and fifty days of the notice of proceeding or such longer period of time not to exceed three hundred and sixty days from the date of such notice;

(B) the offeror has the capacity to comply with regulations of the Commissioner prescribed pursuant to section 305; and

(C) the offeror, including any person assisting the offeror in the development of the proposal, is not a manufacturer, distributor or retailer or the employee of a manufacturer, distributor or retailer of a consumer product proposed to be included in the consumer product safety standard to which the offer applies.

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

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

DEVELOPMENT OF A PROPOSED CONSUMER PRODUCT SAFETY STANDARD BY THE COMMISSIONER

SEC. 304. If the Commissioner has published a notice of proceeding as provided by section 303(a), and he has not accepted an existing standard pursuant to section 303(d) then the Commissioner shall proceed to develop a proposed consumer product safety standard whether or not he has accepted offers to develop a proposed standard if he has determined that his own development will be of benefit to the public.

REGULATIONS GOVERNING DEVELOPMENT OF STANDARDS

SEC. 305. The Commissioner shall prescribe regulations governing the development of proposed consumer product safety standards under sections 303 and 304 of this Act, which regulations shall not be considered rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code. Such regulations shall include requirements—

(1) that standards recommended for promulgation be supported by test data or such other documents or materials as the Commissioner may reasonably require to be developed, and be suitable for promulgation pursuant to section 306;

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

(3) that the offeror, where the Commissioner has accepted an offer or offers under section 303, provide opportunity for all interested persons including consumers to participate in the offeror's development of a proposed consumer safety standard in accordance with accepted standards of due process, including adequate notice to all participants and access to all relevant records and documents;

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

(5) that the Commissioner, the Administrator, and the Comptroller General of the United States, or any of their duly authorized representatives, have access for the purpose of audit and examination to any books, documents, papers, and records, relevant to the expenditure of any contribution of the Commissioner, pursuant to section 303(e), to the development of such recommended standards.

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

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

SEC. 306. (a)(1) Not more than one hundred and eighty days after his publication of a notice of proceeding pursuant to subsection (a) of section 303 (which time may be extended by the Commissioner by a notice published in the Federal Register stating good cause therefor), the Commissioner shall publish in the Federal Register either a notice withdrawing such prior notice or a proposal to promulgate a consumer product safety standard applicable to any consumer product subject to such notice, or a proposal to declare any such subject product a banned hazardous consumer product. A proposal to promulgate a consumer product safety standard and a proposal to declare a product a banned hazardous consumer product may be published in the alternative with respect to any consumer product subject to such notice.

(2) A proposal to promulgate a consumer product safety standard shall contain only one such proposed standard formulated by the Commissioner on the basis of the proposed standard developed by an offeror under section 303(e) of this title or by the Commissioner, or both.

(3) A proposal to promulgate a consumer product safety standard, or to declare a product a banned hazardous consumer product, shall set forth such proposed standard, or the reason for such declaration, the manner in which interested persons may examine data and other information upon which such proposed standard or declaration, or need therefor, is based (consistent with subsection (c) of section 301), and the period within which all interested persons may present their comments on such standard or declaration, or the need therefor, orally or in writing.

Disputes of Fact

(b) The Commissioner may conduct a hearing in accordance with such conditions or limitations as he may make applicable thereto, for the purpose of resolving any issue of material fact raised by any person when presenting comments in accordance with paragraph (3) of subsection (a) of this section.

Findings

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

(A) data and comments submitted in the course of any proceeding under section 303 relevant to such order;

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

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

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

(E) any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.

(2) The Commissioner shall include in any order promulgating a consumer product safety standard or banning a hazardous consumer product, a determination that his findings pursuant to paragraph (1), upon which such order shall be based, show that such standard or declaration is reasonably necessary to carry out the purposes for which such standard or declaration is authorized.

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

(d) Within sixty days after the publication of a proposal to promulgate a consumer product safety standard, or to declare a consumer product a banned hazardous consumer product, the Commissioner shall, by order published in the Federal Register, act upon such proposed standard or declaration, or withdraw the applicable notice of proceeding. The order shall set forth the consumer product safety standard or declaration, if any, the reasons for the Commissioner's action (including reasons for the promulgation of a consumer product safety standard materially different than that set forth in the proposal or for his failure to promulgate any standard), and the date or dates upon which such standard or declaration, or portions thereof, shall become effective. If such effective date is later than six months after publication of an order setting forth a consumer product safety standard, the Commissioner shall publish his reasons therefor.

Characteristics of Consumer Product Safety Standards

(e)(1) Consumer product safety standards shall, where feasible, pertain to the safety performance characteristics (including safe packaging characteristics) of a consumer product, or type or class of such products, and shall to the extent practicable set forth test procedures (including instrumentation) capable of producing reproducible results to measure such performance characteristics, except that any such standard may apply to the composition, design, construction, or finish of a consumer product (or any component thereof), or type or class of such products, if the Commissioner determines that it is not feasible to protect the public health or safety by development of a consumer product safety standard pertaining to safety performance characteristics or any other consumer product safety standard authorized by this subsection.

(2) A consumer product safety standard may require that a consumer product (or any component thereof), or type or class of such products, (1) be marked, tagged, or accompanied by clear and adequate warnings or instructions, or (2) be subject to safety precautions related to physical distribution, as may be reasonably necessary for the protection of the public health or safety.

Ban of Product

(f)(1) The Commissioner may declare a consumer product to be a "banned hazardous consumer product", in accordance with the procedures of this section, only upon his finding, to be included in the Commissioner's order pursuant to subsection (d), that no feasible consumer product safety standard will adequately protect the public from unreasonable risk of injury or death presented by such product. A firearm or ammu-

nition may not be declared a banned hazardous consumer product.

(2) Any banned hazardous consumer product sold after the date on which notice was published of the proposal to declare such product a banned hazardous consumer product shall, in accordance with regulations promulgated by the Administrator, be repurchased as follows:

(A) The manufacturer of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

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

(ii) except as provided in subsection (g), if that person has repurchased such consumer product pursuant to subparagraph (B) or (C), reimburse him for any amounts paid in accordance with that paragraph for the return of such consumer product, and

(iii) if the manufacturer requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(B) The distributor of any such consumer product shall repurchase it from the person to whom he sold it, and shall—

(i) refund that person the purchase price paid for such consumer product, upon tender of the product, less a reasonable allowance for ues if such product has been in the possession of the consumer for one year or more at the time of such tender.

(ii) except as provided in subsection g, if that person has repurchased such consumer product pursuant to subparagraph (C), reimburse him for any amounts paid in accordance with the subparagraph for the return of such consumer product in connection with its repurchase, and

(iii) if the distributor requires the return of such consumer product in connection with his repurchase of it in accordance with this subparagraph, reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(C) In the case of any such consumer product sold at retail by a dealer, if the person who purchased it from the dealer or a subsequent owner returns it to him, the dealer shall refund that person the purchase price upon tender of such product, less a reasonable allowance for use if such product has been in the possession of the consumer for one year or more at the time of such tender and reimburse him for any reasonable and necessary transportation charges incurred in its return.

Notice by Manufacturer or Distributor

(g) If any manufacturer of a product which has been declared a banned hazardous consumer product under this Act furnishes notice by registered mail to a distributor or retail dealer of that product, his liability to reimburse that distributor or retail dealer under subsection (f) (2) (A) (ii) of this section with respect to the refunded purchase price of any such product sold by that distributor or retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that distributor or retail dealer. If any distributor of such a product furnishes notice by registered mail to a retail dealer of that product, his liability to reimburse that retail dealer under subsection (f) (2) (B) (ii) of this section with respect to the refunded purchase price of any such product sold by that retail dealer after the day on which he receives notice shall be limited to the price paid for the product by that retail dealer.

SAFETY ANALYSIS STUDY

SEC. 307. In order to insure that a manufacturer gives adequate consideration to the safety aspects of a consumer product, so as to prevent an unreasonable risk of injury or death from such consumer product, the Commissioner, where applicable, may require by regulation that a consumer product (or component thereof), or type or class of consumer products, be subjected to a detailed safety analysis, if such consumer product is not subject to a consumer product safety standard under this Act. Such safety analysis shall be conducted in conformity with criteria set forth in such regulations promulgated by the Commissioner and may be conducted by the manufacturer, an independent testing laboratory, or any other person who the Commissioner may designate. If such consumer product is later subject to a proceeding under section 303 of this Act, then the Commissioner may take into consideration such safety analysis when considering the need for a consumer product safety standard on such consumer product. The Commissioner may demand of the manufacturer a copy of any required safety analysis report.

REVOCATION OR AMENDMENT OF STANDARD

SEC. 308. (a) The Commissioner may revoke, in whole or in part, any consumer product safety standard, upon the ground that there no longer exists a need therefor or that such standard is no longer in the public interest. Such revocation shall be published as a proposal in the Federal Register and shall set forth such standard or portion thereof to be revoked, a summary of the reasons for his determination that there may no longer be a need therefor or that such standard (or any part thereof) may no longer be in the public interest, the manner (consistent with subsection (c) of section 301) in which interested persons may examine data and other information relevant to the Commissioner's determination, and the period within which all interested persons may present their views, orally or in writing, with respect to such revocation. As soon as practicable thereafter, the Commissioner shall by order act upon such proposal and shall publish such order in the Federal Register. The order shall include the reasons for the Commissioner's action, and the date or dates upon which such revocation shall become effective.

(b) The requirements of sections 303, 304, 305, and 306 of this title for the promulgation of a consumer product safety standard shall apply to the promulgation of a material amendment of a consumer product safety standard. The Commissioner may promulgate an amendment of a consumer product safety standard, other than a material amendment, without regard to section 303, 304, or 305, but shall comply with the procedures set forth in subsections (a) and (b) of section 306, and shall set forth, in his order promulgating such amendment, such findings as he may deem appropriate in explanation thereof. As used in this subsection, the term "material amendment" means an amendment that would substantially increase any performance standard applicable to a consumer product, or substantially after the composition, design, finish, or packaging of such product.

COMPLIANCE

SEC. 309. (a) QUALITY CONTROL PROCEDURES.—Whenever the Commissioner has good cause to believe that a particular manufacturer is producing a consumer product with a significant incidence of noncompliance with a particular consumer product safety standard—

(1) he may require such manufacturer to submit to the Commissioner a description of the relevant quality control procedures followed in the manufacture of such product; and

(2) if the Commissioner thereafter determines that such noncompliance is attributable to the inadequacy of the manufacturer's control procedures, he may, after notice and opportunity for hearing pursuant to section 554 of title 5, United States Code, order the manufacturer to revise such quality control procedures to the extent necessary to remedy such inadequacy.

(b) NAMES OF FIRST PURCHASERS.—(1) The Commissioner may establish, by order at any time, procedures to be followed by manufacturers or importers, including procedures to be followed by distributors, dealers and consumers to assist manufacturers or importers in securing and maintaining the names and addresses of the first purchasers (other than dealers or distributors) of consumer products for which consumer product safety standards have been promulgated. Such procedures shall be reasonable for the particular type or class of consumer products for which they are prescribed.

(2) In determining whether to require the maintenance of the names and addresses of the first purchasers, the Commissioner shall consider—

(A) the severity of the injury that could result if a consumer product were not manufactured in compliance with an applicable consumer product safety standard;

(B) the likelihood that a particular type or class of consumer products would be manufactured not in compliance with an applicable consumer product safety standard; and

(C) the burden imposed upon the manufacturer or importer by requiring the maintenance of the names and addresses of the first purchasers (including the cost to consumers of such maintenance).

(c) COMPLIANCE TESTING.—(1) The Commissioner shall conduct or contract pursuant to section 104(c)(8) for compliance testing of consumer products subject to consumer product safety standards in order to insure that such products are in compliance with applicable consumer product safety standards pursuant to regulations promulgated in accordance with section 553 of title 5, United States Code.

(2)(A) Any person who manufactures or imports a consumer product for which a consumer product safety standard is in effect shall furnish a reasonable number of such products without cost to the Commissioner upon request. Consumer products furnished to the Commissioner under this subsection shall be drawn from regular production runs of such product.

(B) Upon the completion of any compliance testing, the Commissioner shall return or cause to be returned the consumer product in compliance with any applicable consumer product safety standard to the manufacturer or importer from whom he obtained it, and such manufacturer or importer, in any subsequent sale or lease of such product, shall disclose that it has been subjected to compliance testing and shall indicate the extent of damage, if any, prior to repair.

(d) CERTIFICATION.—Any manufacturer, importer, or distributor of a consumer product subject to a consumer product safety standard shall furnish to the distributor or dealer at the time of delivery of such consumer product certification

(a) by said manufacturer, or importer, or distributor; or

(b) by an independent testing laboratory qualified to perform such tests or testing program,

that each such consumer product conforms to all applicable consumer product safety standards. Any certification under this subsection shall be based upon test procedures in conformance with subsection 306(e)(1) or, where no procedures are prescribed, upon a reasonable testing program approved by the Commissioner.

JUDICIAL REVIEW

SEC. 310. (a) Any interested person affected by a final order or regulation of the Commissioner promulgated pursuant to sec-

tions 305, 306(d), 307, 308, or 309 may, at any time after such order is published by the Commissioner, file a petition with the United States Court of Appeals for the District of Columbia, or any circuit in which such person resides or has his principal place of business for a judicial review of such order. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner or other officer designated by him for that purpose and to the Administrator. The Commissioner shall transmit to the Administrator, who shall file in the court, the record of the proceedings on which the Commissioner based his order, as provided in section 2112 of title 28, United States Code. Such record shall include such order of the Commissioner and, if issued, held, or obtained in connection therewith, the notice of proceeding published pursuant to subsection (a) of section 303; any notice or proposal published pursuant to sections 350, 306(a), 307, 308, or 309; the transcript or summary of any proceedings and the findings arising therefrom; and any other information, including comments of interested persons, required to be considered by the Commissioner in the promulgation of such order.

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

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

(d)(1) Any manufacturer of a product declared a banned hazardous consumer product under this Act, who seeks judicial review under this section, may be awarded at the discretion of the court, damages, interest, and the cost of suit, including reasonable attorney fees, for actual damages suffered by him due to any order of the Commissioner declaring a product to be a banned hazardous substance determined by the court to constitute an abuse of the discretion granted to the Commissioner under this Act.

(2) The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated the amount of damages, interest, and costs awarded by the court under paragraph (1).

EMERGENCY ACTION

SEC. 311. (a) The Administrator or the Attorney General may file, in a district court of the United States having venue thereof, an action against a consumer product to have such product described an imminently hazardous consumer product, or against any person who manufactures for sale, sells, or offers for sale, in commerce, or imports into the United States, such product. Such an action may be filed, notwithstanding the existence of a consumer product safety standard applicable to such product, or the pendency of proceedings initiated pursuant to section 303. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product presenting an unreasonable risk of injury or death which requires action to protect adequately the public health and safety prior to the completion of administrative proceedings held pursuant to this Act.

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

(c) Concurrently with the declaration of an imminent hazard, the Commissioner shall initiate a proceeding, pursuant to section 303, to promulgate a consumer product safety standard applicable, to the consumer product with respect to which such declaration is made, or, if the initiation of such proceeding is not feasible, shall initiate a proceeding, pursuant to section 306, to declare such product a banned hazardous consumer product.

STOCKPILING

SEC. 312. Between the time a final order establishing a consumer product safety standard is issued and the time such order becomes effective, no manufacturer or importer, in an effort to stockpile that consumer product, shall produce or import such product in quantities significantly greater than quantities he had produced for a base period established by the Commissioner prior to the promulgation of a final order establishing a consumer product safety standard.

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

SEC. 313. (a) Every manufacturer, importer, or distributor of, or dealer in, a consumer product who discovers that such product has a defect which relates to the safety of use of such product or that such product fails to comply with an applicable consumer safety standard shall immediately notify the Commissioner of such defect or failure to comply if such product has left the place of manufacture. The notification required by this subsection shall contain (1) a clear description of such defect or failure to comply with an applicable consumer product safety standard, (2) an evaluation of the hazard reasonable related to such defect or failure to comply, and (3) a statement of the measures to be taken to effect repair to such defect or failure to comply.

(b) If any consumer product fails to comply with any applicable order issued pursuant to this title and thereby presents an unreasonable risk of injury or death or has a defect which causes it to present an unreasonable risk of injury or death, the manufacturer, importer, or distributor of, or dealer in, such product may be required by the Administrator (by order after opportunity for hearing pursuant to the provisions of section 554 of title 5, United States Code) to give public notice (including notice through electronic media when necessary to protect the public health and safety) and—

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

(2) to bring such product into conformity with the requirements of such order without charge to the consumer, or

(3) to either replace such product with a like or equivalent consumer product which complies with such order without charge to the consumer or to refund the purchase price of such product upon its tender, whichever option is elected by the manufacturer, importer, distributor, or dealer whose product fails to comply. If an election is made to refund the purchase price, the price shall be less a reasonable allowance for use, if such product has been in the possession of the consumer for more than one year at the time of tender.

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

INSPECTION AND RECORDKEEPING

SEC. 314. (a) For purposes of carrying out regulations, standards, or orders promulgated under this Act, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, any factory, warehouse, or establishment in which consumer products are manufactured, assembled, or held for introduction into commerce or are held for sale after such introduction; or to enter any vehicle being used to transport consumer products in interstate commerce; and

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

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

(b) Every person who manufactures, assembles, distributes, or sells in commerce, or imports, a consumer product required to conform to a consumer product safety standard shall establish and maintain such records, and make such reports, and provide such information as the Commissioner may by regulation reasonably require with respect to the safety of such product. Upon request of an officer or employee duly designated by the Commissioner every such person shall permit the inspection of such records and other books, records, and papers relevant to determining whether such person is in compliance with this Act and regulations, standards, and orders prescribed thereunder.

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

PROHIBITED ACTS

SEC. 315. It shall be unlawful for any person engaged in the business of making consumer products available to consumers, either directly or indirectly, to—

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

safety standard; or (D) manufacture for sale or lease, sell or lease, or offer for sale or lease, in commerce, or import into the United States, any consumer product which has been declared a banned or imminently hazardous consumer product;

(2) fail or refuse to comply with any order of the Commissioner pursuant to section 313;

(3) fail or refuse to comply with any requirement of sections 309, 312, and 314;

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

(5) fail to provide to the Director of the National Injury Information Clearinghouse the information concerning injuries as required in section 109(c)(1)(B); or

(6) fail to provide, pursuant to section 307, any required safety analysis.

ENFORCEMENT

Civil and Criminal Penalties

SEC. 316. (a) Whoever knowingly commits any act prohibited by section 315, or, in case of commission of any such act by a corporation, the corporation and any individual director, officer, or agent of such corporation who knowingly caused in whole or in part the corporation to commit such act, shall be subject to a civil penalty of not more than $10,000 for each such act which shall accrue to the United States and may be recovered in a civil action brought by the United States or the Agency in its own name by any of its attorneys designated by the Administrator for such purpose, and, if such act was willfully committed, shall be guilty of a misdemeanor and, upon conviction, fined not more than $10,000 for each such act or imprisoned not more than one year or both. As used in this subsection, the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including (A) knowledge obtainable upon the exercise of due care to ascertain the truth of representations, and (B) knowledge of the probable consequences of action taken in disregard of reasonable safeguards.

Injunctions

(b) Upon application by the Administrator or the Attorney General, the district courts of the United States shall have jurisdiction to enjoin the commission of acts prohibited by section 315, and to compel the taking of any action required by this Act.

Seizure

(c) Any consumer product which is not manufactured in compliance with an applicable consumer product safety standard, or which is not in compliance with such a standard as the result of an action made unlawful by clause (4) of section 315, or which is declared a banned or imminently hazardous consumer product, shall be liable to be proceeded against while in commerce or at any time thereafter, on complaint for forfeiture by the Administrator, and condemned in any district court of the United States within whose district the consumer product is found.

Private Suits

(d)(1) Any person who may be exposed to unreasonable risk of injury or death presented by a consumer product may bring an action in any district court for the district in which the defendant is found or transacts business to enforce a consumer product safety standard, or to enforce any order under subsection (f) of section 306, or under section 311, and to obtain appropriate injunctive relief. Not less than thirty days prior to the commencement of such action, such interested person shall give notice by registered mail to the Commissioner, to the Administrator, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this subsection if the same alleged violation is the subject of a pending action by the United States under this title. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award reasonable attorney's fees to the prevailing party.

(2) Any person who shall sustain injury by reason of any knowing (including willful) violation of a consumer product safety standard, regulation, or order issued by the Commissioner may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, subject to the provisions of section 1331 of title 28, United States Code, and shall recover damages sustained, and the cost of suit, including a reasonable attorney's fee, if considered appropriate in the discretion of the court.

(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

IMPORTS

SEC. 317. (a) Any consumer product imported into the United States to which a consumer product safety standard applies (except insofar as the Commissioner may otherwise provide with respect to a consumer product accompanied by a certification of compliance with such standard in a form prescribed by the Commissioner) or which is declared a banned or imminently hazardous consumer product, shall not be delivered from Customs custody except as provided in section 499 of the Tariff Act of 1930. In the event an imported consumer product is delivered from Customs custody under bond, as provided in section 499 of the Tariff Act of 1930, and is declared a banned or imminently hazardous consumer product or fails to conform with a consumer product safety standard in effect on the date of entry of such merchandise, the Administrator shall so inform the Secretary of the Treasury, and unless it appears to the Administrator that the product can be brought into compliance with all applicable requirements under this title shall request the Secretary of the Treasury to demand redelivery. Upon a failure to redeliver, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

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

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

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

EXPORTS

SEC. 318. This title shall not apply to any consumer product manufactured, sold, or held for sale for export from the United States (or to any consumer product imported for export), if such consumer product, and any container in which it is enclosed, bears a stamp or label stating that such consumer product is intended for export and such consumer product is in fact exported from the United States; except that this title shall apply to any consumer product manufactured for sale, offered for sale, or sold for shipment to any installation of the United States located outside of the United States.

EFFECT ON STATE LAW

SEC. 319. (a) No State or political subdivision thereof shall establish or continue in effect, with respect to any consumer product, any standard or similar regulation prescribing requirements applicable to any aspect of health or safety of such consumer product, if such aspect is required to conform to a consumer product safety standard under this title unless that standard or similar regulation is identical to a consumer product safety standard established pursuant to this title. Nothing in this section shall be construed to prevent any State or political subdivision thereof from establishing or continuing a health or safety requirement applicable to a consumer product for its own use, if such requirement imposes a higher standard of health or safety than that required to comply with the applicable consumer product safety standard under this title.

(b) The Administrator may, upon application of a State or political subdivision thereof, exempt such State or political subdivision from the limitation of subsection (a) if a consumer product safety standard proposed by such application (1) imposes a higher level of health or safety than the Federal consumer product safety standard with respect to consumer products to be manufactured, sold, held for sale, or used in such State or political subdivision thereof, (2) is required by compelling local conditions, (3) does not unduly burden commerce, and (4)

is adopted by such State or political subdivision pursuant to procedures and requirements which in the judgment of the Administrator are substantially comparable to those prescribed for consumer product safety standards under this title.

(d) Compliance with any consumer product safety standard issued under this title does not exempt any person from any liability under common law.

UTILIZATION OF OTHER FEDERAL AGENCIES

SEC. 320. (a) In carrying out their duties under this Act, the Administrator and the Commissioner shall, to the maximum practical extent, utilize the personnel, facilities, and other technical support available in other Federal agencies.

(b) Technical research support for fire safety projects undertaken by the Administrator or the Commissioner shall be provided by the National Bureau of Standards on a reimbursable basis.

TITLE IV—FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

SEC. 401. (a) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended as follows:

(1) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(g) If in package form unless its label, or labeling affixed to or within the package, bears conspicuously and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase, (1) the common or usual name of the cosmetic, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that fragrance, color, and flavor may be designated as fragrance, color, and flavor without naming each ingredient: *Provided*, That to the extent that compliance with the requirements of clause (2) is impracticable, or results in deception or unfair competition, exemptions may be established by regulations promulgated by the Secretary."

(2) Section 602 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Unless its labeling bears adequate warnings against use where it may be dangerous to health."

(3) Section 201(i) of such Act is amended by striking "articles; except that such terms shall not include soap.", and inserting in lieu thereof "articles.".

(b) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect one year after the date of enactment of this Act.

TITLE V—FEDERAL HAZARDOUS SUBSTANCES ACT AMENDMENTS

SEC. 500. This title may be cited as the "Hazardous Substances Registration Act of 1972".

SEC. 501. Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261 (p)) is amended by adding at the end thereof the following new paragraph:

"The term 'misbranded hazardous substance' also includes any hazardous substance required to be registered under section 16 of this Act if such substance fails to bear prominently and conspicuously on the label, in accordance with regulations issued by the Secretary, a registration number issued by the Secretary for the substance pursuant to section 16."

SEC. 502. The Federal Hazardous Substances Act is further amended by redesignating sections 16, 17, and 18 as sections 17, 18, and 19, respectively, and adding after section 15 the following new section 16:

"REGISTRATION OF CERTAIN SUBSTANCES

"SEC. 16. (a) Before beginning commercial distribution of any substance intended, or packaged in a form suitable, for use in or around the household or by children that may be 'toxic' or 'corrosive' a manufacturer or distributor shall conduct all screening tests prescribed by the Secretary or, where applicable, the Administrator of the Environmental Protection Agency, by regulation to determine whether the substance is toxic or corrosive. A copy of the results of such screening tests shall be maintained by the manufacturer or distributor for two years after the last shipment of the substance, and shall be available upon request by the Secretary.

"(b) The manufacturer or distributor of a substance which falls within any such screening level for a toxic or corrosive substance shall register such substance with the Secretary in accordance with regulations promulgated by the Secretary. The registration shall include the formulation of the product, a brief summary of the results of all screening tests, and the proper antidote or treatment for the substance.

"(c) If the Secretary determines that the substance is a hazardous substance, he shall issue a registration number for the substance, which number shall appear on the label of the substance prominently and conspicuously in accordance with regulations promulgated by the Secretary. Such a registration number shall be the same as any registration number for such substance that is required to appear on the label under any other provision of Federal law. Such registration number for any drug shall be the same as that assigned pursuant to the National Drug Code.

"(d) The Secretary shall establish a central office through which information contained in the registrations submitted under this section (except for trade secret information referred to in section 1905 of title 18, United States Code) shall be immediately available to any physician, hospital, clinic, poison control center, or other person requesting such information to provide treatment to any person injured, or who may be injured, as a result of the ingestion of, contact with, or exposure to any such substance. The Secretary shall notify physicians, hospitals, clinics, poison control centers and other persons who may have use for such information, of the availability of such information and the methods by which it may be obtained at any time.

"(e) The Secretary may exempt from any requirement of this section any substance for which he determines such requirement is unnecessary to protect the public health."

"SEC. 503. Subsection 2(f)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f)(2)) is amended by deleting "nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooling or refrigeration system of a house,".

SEC. 504. (a) Section 19(a) of the Federal Hazardous Substances Act, as redesignated by section 502 of this Act (15 U.S.C. 1277(a)) is amended by striking out "except as specified in section 19" and replacing the comma after "Congress" with a period.

(b) Section 19 of such Act is hereby repealed.

SEC. 505. Section 4 of the Federal Hazardous Substances Act (15 U.S.C. 1263) is amended by adding at the end thereof the following new subsection:

"(i) The failure to conduct screening testing, maintain a copy of the results of such testing, or to provide the results of such screening testing, or to register, or to label a hazardous substance with a registration number, as required by section 16."

SEC. 506. Subsection 11(b) of the Federal Hazardous Substances Act (15 U.S.C. 1270 (b)) is amended by deleting "and" immediately before "(3)" in the first sentence, changing the period to a semicolon, and adding the following: "and (4) to inspect and copy the results of screening tests as required pursuant to section 16."

SEC. 507. The Federal Caustic Poison Act (44 Stat. 1406) is hereby repealed.

SEC. 508. Title V shall become effective one hundred and eighty days after the date of enactment of this Act except that the Secretary may postpone the applicability in the case of persons who were engaged on the date of enactment of this Act in the manufacture, compounding, or processing of a substance subject to these amendments if he determines such action is necessary to afford sufficient time for the proper and orderly testing and registration of such substances.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MAGNUSON. I ask unanimous consent that the bill as passed be reprinted.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, the period not to extend beyond 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT REFERENCE OF DRUG ABUSE PROPOSALS

Mr. MOSS. Mr. President, I ask unanimous consent that a letter addressed to the President pro tempore of the Senate proposing certain legislation on drug abuse be jointly referred to the Committee on Labor and Public Welfare and the Committee on the Judiciary. I also ask unanimous consent that the letter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The letter is as follows:

STATE OF CALIFORNIA,
Sacramento, Calif., June 12, 1972.

Hon. ALLEN J. ELLENDER,
President pro tempore of the Senate, Washington, D.C.

DEAR SENATOR ELLENDER: As Lieutenant Governor, one of my constitutional duties is that of Chairman of the California delegation to the Commission of the Californias. The Commission was established in 1964 by the Legislatures of California and the State of Baja California, Republic of Mexico, to further and develop economic and cultural relations between the two states. The Territory of Baja California Sur joined in 1967. Work is carried on by committees composed of legislators, government officials and private citizens of the three entities.

One of our major concerns has been in the area of drug abuse. In 1970, the Commission sponsored a conference attended by American and Mexican experts in the educational, public health, and legal and law enforcement aspects of the drug abuse problem. From this frank and earnest exchange of views came an intensified cooperation among the authorities of the several jurisdictions. The State of Baja California enacted a new and stringent law with regard to dangerous drugs and im-

pressive quantities of drugs have been seized and destroyed on the Mexican side of the border.

A second Conference was held recently, resulting in a compendium of the laws of the two countries, in both English and Spanish, which will soon be distributed to law enforcement agencies and other appropriate groups in California and Mexico, and an exchange drug education program is being instituted.

During the second Conference, the Senate of the United States was singled out for its outstanding endeavors in the field of drug abuse education, prevention, and treatment, specifically following unanimous passage of the Drug Abuse Office and Treatment Act of 1972. A genuine expression of appreciation is herewith conveyed to you and all members of the Senate.

Additionally, the Delegates to the Conference ask the following recommendations be forwarded to the Senate of the United States of America for consideration:

Provide funds for medical and psychological treatment facilities for the cure and control of narcotic addiction as an alternative to the incarceration of drug and narcotic addicts.

Enact legislation requiring all drug tablets and capsules to be marked by the manufacturer so as to identify the chemical composition of the contents. Such legislation would materially assist physicians treating an unconscious patient for drug over-dose in emergency situations.

Enact legislation requiring each governmental agency responsible for the custody of persons accused of the use or possession of illegal narcotics or dangerous drugs be housed in a separate facility or portion of the jail from that used for persons held for crimes of violence.

Enact legislation to provide for adequate civil damages for violation of the Fourth Amendment by law enforcement officers. Enactment of such legislation would make it unnecessary for a court-made rule excluding evidence because of the inadequacy of legal remedies for the victims of illegal searches and seizures.

Enact legislation to insure effective controls on pharmaceutical laboratories to regulate and limit the delivery or sale of narcotic or drug products only to authorized pharmacies, drug stores, and distributors who should appear on an official list issued by the health authorities.

Enact the strongest possible punitive laws aimed at the nonusing trafficker in narcotics and dangerous drugs.

Review with the Republic of Mexico the problem of jurisdiction between both countries in dealing with narcotic investigation, prosecution, and seizure of the products in possession of American or Mexican nationals who cross the international boundaries to escape from the law and prosecution.

Insure adequate funds for educational programs to inform youth of the seriousness and consequences of drugs.

Similar requests are being directed to the government of Mexico, and we respectfully request these measures be introduced and enacted in the most expeditious manner to fight this very grave problem facing our nation.

Very sincerely,

ED REINECKE.

EXTENSION AND RENEWAL OF INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Mr. MOSS. Mr. President, in behalf of the Senator from Washington (Mr. JACKSON), I ask the Chair to lay before the Senate a message from the House of Representatives on Senate Joint Resolution 72.

The PRESIDING OFFICER (Mr. ALLEN) laid before the Senate the amendments of the House of Representatives to the joint resolution (S.J. Res. 72) consenting to an extension and renewal of the interstate compact to conserve oil and gas which were, on page 11, line 4, after "the" where it appears the first time, insert "Interstate Oil Compact Commission and the".

On page 11, line 6, after "compact" insert ", and have been limited to activities related directly to the immediate purpose of such compact as set out in article II of such compact".

Mr. MOSS. Mr. President, the amendments of the House to this measure, consenting to an extension and renewal of the interstate compact to conserve oil and gas, are clarifying in nature and do not change in any way the intent of the Senate-passed version. The House amendments are intended to make certain that the activities of the Commission and the States are consistent with the primary purpose of the compact which is to insure good conservation practices.

I move that the Senate concur in the amendments of the House.

The motion was agreed to.

EQUAL EXPORT OPPORTUNITY ACT

Mr. MOSS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 851, S. 3726.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Thereupon, the Senate proceeded to consider the bill (S. 3726) to extend and amend the Export Administration Act of 1969 to afford more equal export opportunity, to establish a Council on International Economic Policy, and for other purposes. which was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3726

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AMENDMENTS TO THE EXPORT ADMINISTRATION ACT OF 1969

SEC. 101. This title may be cited as the "Equal Export Opportunity Act".

SEC. 102. Section 2(3) of the Export Administration Act of 1969 is amended by inserting before the period at the end thereof a comma and the following: "particularly when export restrictions applied by the United States are more extensive than export restrictions imposed by countries with which the United States has defense treaty commitments".

SEC. 103. Section 3 of the Export Administration Act of 1969 is amended by adding at the end thereof the following:

"(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular articles, materials, or supplies, including technical data or other information, to United States export controls should be determined after review by and consultation with representatives of appropriate United States Government agencies and qualified experts from private industry."

SEC. 104. Section 4(b) of the Export Administration Act of 1969 is amended—

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

(2) by adding at the end thereof the following new paragraphs:

"(2) The Secretary of Commerce, in cooperation with appropriate United States Government departments and agencies and the appropriate technical advisory committees established under section 5(c), shall undertake an investigation to determine which articles, materials, and supplies, including technical data and other information, should no longer be subject to export controls because of their significance to the national security of the United States. Notwithstanding the provisions of paragraph (1), the Secretary of Commerce shall remove unilateral export controls on the export from the United States of articles, materials, or supplies, including technical data or other information, which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, except that any such control may remain in effect if the Secretary of Commerce determines that adequate evidence has been presented to him demonstrating that the absence of such a control would constitute a threat to the national security of the United States. The nature of such evidence shall be included in the special report required by paragraph (4).

"(3) In conducting the investigation referred to in paragraph (2) and in taking the action required under such paragraph, the Secretary of Commerce shall give priority to those controls which apply to articles, materials, and supplies, including technical data and other information, for which there are significant potential export markets.

"(4) Not later than six months after the date of enactment of the Equal Export Opportunity Act, the Secretary of Commerce shall submit to the President and to the Congress a special report of actions taken under paragraphs (2) and (3). Such report shall contain—

"(A) a list of any articles, materials, and supplies, including technical data and other information, which are subject under this Act to export controls greater than those imposed by nations with which the United States has defense treaty commitments, and the reasons for such greater controls; and

"(B) a list of any procedures applicable to export licensing in the United States which are more burdensome than similar procedures utilized in nations with which the United States has defense treaty commitments, and the reasons for retaining such procedures in their present form.".

SEC. 105. Section 5 of the Export Administration Act of 1969 is amended by adding at the end thereof the following:

"(c)(1) The Secretary of Commerce shall appoint a technical advisory committee for each group of articles, materials, and supplies, including technical data and other information, which—

"(A) is or may be made subject to export controls because of its significance to the national security of the United States; and

"(B) is difficult to evaluate for technical or strategic reasons.

Each such committee shall consist of representatives of United States industry and government who may be appointed for terms of not more than two years. No person serving on any such committee who is representative of industry shall serve on such committee for more than two consecutive years.

"(2) It shall be the duty and function of the technical advisory committees established under paragraph (1) to advise and assist the Secretary of Commerce and any other department, agency, or official of the Government of the United States to which the President has delegated power, authority, and discretion under section 4(d) with respect to actions designed to carry out the policy set forth in section 3 of this Act. Such committees shall be consulted with respect to the level of United States export controls applicable to all articles, materials, or supplies, including technical data or other information,

and including those whose export is subject to multilateral controls undertaken in cooperation with nations with which the United States has defense treaty commitments. Such committees shall also be consulted and kept fully informed of progress with respect to the investigation required by section 4(b)(2) of this Act. Nothing in this subsection shall prevent the Secretary from consulting, at any time, with any person representing industry or the general public regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary of Commerce, to present evidence to such committees.

"(3) Any member of any such committee who is not an officer or employee of the United States shall be entitled to receive compensation at not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of title 5, United States Code, during such time as he is engaged in the performance of his duties as a member. Each member may be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with his duties as a member.

"(4) Each such committee shall elect a chairman, and shall meet at the call of the Chairman but not less often than four times each year."

SEC. 106. Section 14 of the Export Administration Act of 1969 is amended by striking out "August 1, 1972" and inserting in lieu thereof "June 30, 1974".

SEC. 107. Nothing in this title shall be construed to require the release or publication of information which is classified pursuant to Executive order or to affect the confidentiality safeguard provided in section 7(c) of the Export Administration Act of 1969.

TITLE II—COUNCIL ON INTERNATIONAL ECONOMIC POLICY

SHORT TITLE

SEC. 201. This title may be cited as the "International Economic Policy Act of 1972".

STATEMENT OF PURPOSES

SEC. 202. It is the purpose of this title to provide for closer Federal interagency coordination in the development of a more rational and orderly international economic policy for the United States.

FINDINGS AND POLICY

SEC. 203. The Congress finds that there are many activities undertaken by various departments, agencies, and instrumentalities of the Federal Government which, in the aggregate, constitute the domestic and international economic policy of the United States. The Congress further finds that the objectives of the United States with respect to a sound and purposeful international economic policy can be better accomplished through the closer coordination of (1) domestic and foreign economic activity, and (2) in particular, that economic behavior which, taken together, constitutes United States international economic policy. Therefore this Act establishes a Council on International Economic Policy which will provide for—

(A) a clear top level focus for the full range of international economic issues; deal with international economic policies including trade, investment, balance of payments, and finance as a coherent whole;

(B) consistency between domestic and foreign economic policy; and

(C) close coordination with basic foreign policy objectives.

The Congress intends that the Council shall be provided with the opportunity to (i) investiagte problems with respect to the coordination, implementation, and long-range development of international economic policy, and (ii) make appropriate findings and recommendations for the purpose of assisting in the development of a rational and orderly international economic policy for the United States.

CREATION OF COUNCIL ON INTERNATIONAL ECONOMIC POLICY

SEC. 204. There is created in the Executive Office of the President a Council on International Economic Policy (hereinafter refererd to in this title as the "Council").

MEMBERSHIP

SEC. 205. The Council shall be composed of the following members and such additional members as the President may designate:

(1) The President.
(2) The Secretary of State.
(3) The Secretary of the Treasury.
(4) The Secretary of Defense.
(5) The Secretary of Agriculture.
(6) The Secretary of Commerce.
(7) The Secretary of Labor.
(8) The Director of the Office of Management and Budget.
(9) The Chairman of the Council of Economic Advisers.
(10) The Special Representative for Trade Negotiations.

The President shall be the Chairman of the Council and shall preside over the meetings of the Council; in his absence he may designate a member of the Council to preside in his place.

DUTIES OF THE COUNCIL

SEC. 206. Subject to the direction of the President, and in addition to performing such other functions as he may direct, it shall be the duty of the Council to—

(1) assist and advise the President in the preparation of the International Economic Report required under section 207;

(2) review the activities and the policies of the United States Government which indirectly or directly relate to international economics and, for the purpose of making recommendations to the President in connection therewith, consider with some degree of specificity the substance and scope of the international economic policy of the United States, which consideration shall include examination of the economic activities of (A) the various agencies, departments, and instrumentalities of the Federal Government, (B) the several States, and (C) private industry;

(3) collect, analyze, and evaluate authoritative information, current and prospective, concerning international economic matters;

(4) consider policies and programs for coordinating the activities of all the departments and agencies of the United States with one another for the purpose of accomplishing a more consistent international economic policy, and make recommendations to the President in connection therewith;

(5) continually assess the progress and effectiveness of Federal efforts to carry out a consistent international economic policy; and

(6) make recommendations to the President for domestic and foreign programs which will promote a more consistent international economic policy on the part of the United States and private industry. Recommendations under this paragraph shall include, but shall not be limited to, policy proposals relating to monetary mechanisms, foreign investment, trade, the balance of payments, foreign aid, taxes, international tourism and aviation, and international treaties and agreements relating to all such matters. In addition to other appropriate objectives, such policy proposals should be developed with a view toward—

(A) strengthening the United States competitive position in world trade;

(B) achieving equilibrium in international payment accounts to the United States;

(C) increasing exports of goods and services;

(D protecting and improving the earnings of foreign investments;

(E) achieving freedom of movement of people, goods, capital, information, and technology on a reciprocal and worldwide basis; and

(F) increasing the real employment and income of workers and consumers on the basis of international economic actiivty.

REPORT

SEC. 207. (a) The President shall transmit to the Committee on Banking, Housing and Urban Affairs of the Senate, the Committee on Banking and Currency of the House of Representatives, and the Joint Economic Committee an annual report on the international economic position of the United States. Such report (hereinafter referred to as the "International Economic Report") shall be submitted not later than sixty days after the beginning of each regular session of the Congress, and shall include—

(1) information and statistics describing characteristics of international economic activity and identifying significant current and foreseeable trends and developments;

(2) a review of the international economic program of the Federal Government and a review of domestic and foreign economic conditions and other significant matters affecting the balance of international payments of the United States and of their effect on the international trade, investment, financial, and monetary position of the United States; and

(3) a program for carrying out the policy objectives of this title, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President may transmit from time to time to the Congress reports supplementary to the International Economic Report, each of which may include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the purposes and policy objectives set forth in this title.

EXECUTIVE DIRECTOR AND STAFF OF THE COUNCIL

SEC. 208. (a) The staff of the Council shall be headed by an Executive Director who shall be appointed by the President. It shall be the duty of the Executive Director to—

(1) direct the activities of the Council staff,

(2) develop the agenda and supporting materials for Council meetings and review all matters before the Council, and

(3) establish a work program, including topics and the selection of individuals to carry out particular assignments.

(b)(1) With the approval of the Council, the Executive Director may appoint and fix the compensation of such staff personnel as he deems necessary. Except as provided in paragraph (2), the staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) With the approval of the Council, the Executive Director may appoint and fix the compensation of one officer at a rate of basic compensation not to exceed the rate provided for level IV of the Federal Executive Salary Schedule, and appoint and fix the compensation of two officers at rates of basic compensation not to exceed the rate provided for level V of the Federal Executive Salary Schedule.

(c) With the approval of the Council, the Executive Director may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily equivalent of the rate provided for GS–18.

(d) Upon request of the Executive Direc-

tor, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Council to assist it in carrying out its duties under this title.

(e) Section 5313 of title 5, United States Code (relating to positions at level II of the Executive Schedule), is amended by adding at the end thereof the following:

(22) Executive Director, Council on International Economic Policy."

AUTHORIZATION FOR APPROPRIATIONS

SEC. 209. For the purpose of carrying out the provisions of this title, there are authorized to be appropriated not to exceed $1,400,000 for fiscal year 1973, and not to exceed $1,600,000 for fiscal year 1974.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-890), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE LEGISLATION

The purpose of Title I is to facilitate prompt removal of United States unilateral export controls which are not necessary to protect our national security, to insure that the commercial and technical expertise of private industry is utilized as effectively as possible in the administration of export controls, and to extend until June 30, 1974 the President's authority to control exports under the Export Administration Act.

The purpose of Title II is to provide a mechanism for the coordination of all the many departments and agencies of the U.S. Government engaged in actions affecting U.S. international economic policy.

Title I contains the following key provisions:

1. It requires the Secretary of Commerce (hereafter "the Secretary") to direct a study to determine which goods and technology should no longer be subject to export control because of their significance to the national security of the United States.

2. It directs the Secretary to remove export controls from any item now controlled unilaterally by the United States, which is freely available from foreign sources, unless adequate evidence is presented that decontrolling the item would threaten the national security. (Unilaterally controlled in this case means subject to United States export controls covering items which are not subject to an agreed level of control within the framework of COCOM. COCOM controls are applied by the NATO countries plus Japan but not including Iceland.)

3. It requires the Secretary to report on his actions in six months by listing the reasons for retaining unilateral controls on any item and the reasons for retaining any procedures concerning the licensing process which are more burdensome than the procedures used by our Allies.

4. It requires the Secretary to create industry-government technical advisory committees for each group of goods and technology which could be subject to export controls and is difficult to evaluate for technical and strategic reasons.

5. It extends the Export Administration Act to June 30, 1974.

Title II contains the following key provisions:

1. It establishes a Council on International Economic Policy responsible to the President. Members of the Council shall include: the President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Special Representative for Trade Negotiations.

2. It creates the office of Executive Director of the Council on International Economic Policy who is to be appointed by the President.

3. It gives the Council authority to advise the President concerning various aspects of U.S. international economic policy, and the responsibility for assisting him in coordinating policy in this area.

4. It requires the President to transmit to the Congress each year a Report on International Economic Policy, which is to be prepared with the assistance of the Council.

5. It authorizes an appropriation not to exceed $1,400,000 in FY 1973, and $1,600,000 in FY 1974 for the Council.

NEED FOR LEGISLATION

The Committee believes that Title I of this legislation is needed because the United States is handicapping itself by continuing to control the export of many items which are not of strategic value and are not controlled by our foreign competitors. While it is essential to the national security that the government continue to restrict the export of some items to Communist countries, the Committee believes that restricting the export of items which can be bought freely from our Western European or Japanese competitors does not benefit the national security. Excessive restrictions result in a worsened balance of payments situation, fewer export sales for American industries, and fewer jobs for American workers. In 1970 the United States share of the World market was 16%, but the U.S. share of the Eastern European market was only 3%. It will be difficult to improve the export performance of United States industries in Eastern Europe unless unnecessary restrictions which prevent them from competing on an equal footing with foreign competitors are eliminated.

Representatives of the Administration pointed out in testimony that much progress has been made in decontrolling non-military exports since the enactment of the Export Administration Act in 1969. It is true that the number of items which have been decontrolled is substantial. Decontrol actions have varied a great deal, however, from industry to industry. Some industries have seen very few of their products decontrolled, while others have witnessed decontrol only of low technology items for which foreign demand is limited. For example, some time ago, the machine tool industry submitted extensive data to the Office of Export Control, showing that many non-strategic machine tools were readily available from European and Japanese sources. Today, virtually all machine tools, including general purpose tools such as grinders, transfer machines, milling machines, and lathes, are still subject to unilateral United States export control.

At this time the United States controls 495 classifications of goods and technology by multilateral (COCOM) agreement with our Allies. In addition, the United States chooses to retain unilateral controls on 461 classifications of goods and technology. The United States is the only COCOM country which controls the export of a significantly greater number of items than those which the COCOM agree to control multilaterally. Some of the items under unilateral control are eventually granted export licenses, but the delay and uncertainty in the licensing process often costs American exporters sales even when this happens. Twenty-six percent of the applications for export licenses to Eastern Europe, involving many of the high technology items in which the Eastern Europeans are most interested, took more than 15 working days to process.

Some of the groups of items which are now subject to unilateral controls that may not be necessary to protect the national security are chemicals, electrical machinery, other types of machinery including machine tools, and certain types of fabrics and materials.

To help alleviate these problems the legislation mandates that items which are available in comparable quality and quantity from foreign sources shall be removed from unilateral controls unless the Secretary gives adequate evidence that such decontrol would threaten the national security. Present law requires that the President report his reasons to Congress whenever he decides to require export licenses on an item because "considerations of national security override considerations of foreign availability." The Committee finds, however, that such reports have not been detailed enough to be of assistance in evaluating the President's decisions. Such explanation should contain more information in the future, to the extent considerations of national security permit.

The legislation directs the Secretary's attention to items under unilateral control which are available from foreign sources. There may be other types of items, however, which are unnecessarily controlled. For example, some items may be controlled because of an overly cautious interpretation of what constitutes "significant military applicability". The Committee would welcome the decontrol of such items.

Several industry witnesses testified before the Committee that U.S. exporters face licensing procedures which are more burdensome than those faced by exporters in other COCOM countries. They alleged that processing time for licensing applications is longer in the United States than abroad. It has also been reported that our COCOM competitors provide advantages to their exporters by giving them a better idea of which licensing applications will receive favorable action, referring their applications for exceptions to COCOM regulations to the COCOM with less preliminary screening, requiring less documentation regarding the end use of the item to be exported, imposing less stringent requirements for ensuring that an item is never diverted for strategic use, granting more liberal licensing provisions for supply spare parts, and in several other ways. The Committee does not have enough evidence to take a position on these allegations. It believes, however, that procedures and licensing requirements which are more burdensome than those used by our Allies would severely handicap American exporters. Therefore, the Committee urges the Secretary to scrutinize carefully these procedures and requirements.

The establishment of industry-government technical advisory committees will enable the government to utilize more effectively the technical and commercial expertise which only representatives of industry affected by export controls can provide. Industry witnesses testified that decisions concerning export controls are sometimes based on inadequate or inaccurate information. The government officials making these decisions are responsible for applying export controls to many types of items. They are necessarily generalists, and it is impossible for them to become familiar with the intricacies of each product which must be regulated. Yet that is exactly what is necessary, for example, to give the definitions of items on the export control list the needed precision and uniformity. These decisions are technical, but they are also important business decisions. The technical advisory committee can help make them. These committees can also be of assistance in discussing more general questions of export control; for example, in defining the level of technology in their industry which is advanced enough so that the exportation of items reaching that level of technology could be a significant addition to a country's military capacity. In addition, the Committee would serve the vital function of keeping industry informed with regard to the latest developments in the administration of export controls.

Several members of the Committee expressed concern that the technical advisory committees' work would be severely hampered by the necessity to refrain from discussing classified information or information that industry does not want to divulge in the

presence of its competitors. The Committee believes that the technical advisory committees can serve a valuable function without having access to such information. Industry representatives would be willing to discuss the functions of their products in detail at the committee meetings, just as they would have to discuss such functions with any potential buyer. Such information is essential in determining whether an item is strategic. In addition, it is expected that many of the meetings will concern the basic policies underlying the export control program in the light of changing international and technological conditions. Such discussions need not involve classified information or trade secrets.

The Committee hopes that technical advisory committees can be established and operated in a manner which will avoid creating delays in the export licensing process. Because technical advisory committees are only to be created for groups of items that are difficult to evaluate from a technical and strategic standpoint the number of such committees should not become excessive. The Committee does not expect these committees to be involved in the licensing process on a case-by-case basis. Their involvement will instead be principally in the decisions affecting groups of items. In addition, the legislation recognizes that the administrators of export controls may need to consult a specific expert on some particular problem even though that expert is not a member of a technical advisory committee. It expressly gives the administrators the flexibility to engage in such consultations.

The Committee does not intend that any section of this Title should be construed to require any action which is detrimental to the national security, or the divulgence of any classified information or confidential industry information protected in section 7(c) of the Export Administration Act to unauthorized parties. Nor does the Committee intend the provisions of Title I to be used as a basis for legal action by exporters. In the Committee's opinion, Title I will help to increase East-West trade without threatening our national security. This will be beneficial for all nations involved.

QUORUM CALL

Mr. MOSS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR BAKER TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, immediately following the recognition of the two leaders or their designees under the standing order, the distinguished Senator from Tennessee (Mr. BAKER) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

REDUCTION OF TIME LIMITATION ON TREASURY AND POST OFFICE APPROPRIATION BILL

Mr. ROBERT C. BYRD. I ask unanimous consent, having cleared this request with the distinguished Senator from Delaware (Mr. BOGGS) and the distinguished Senator from New Mexico (Mr. MONTOYA), that time on H.R. 15545, the bill making appropriations for the Treasury Department and the Postal Service, be reduced from 2 hours to 1 hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9 a.m., following a recess. Hence, there will be no morning business.

After the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Tennessee (Mr. BAKER) will be recognized for not to exceed 15 minutes, after which the Senate will take up Senate Resolution 299, dealing with confidential American documents, on which there is a time limitation. There will be one or more rollcall votes in relation thereto.

Following Senate Resolution 299, the Senate will take up S. 3722, dealing with foreign service grievance procedures, under a very short time limitation, and with a rollcall vote on passage.

Next, the Senate will proceed to the consideration of H.R. 13918, the Corporation for Public Broadcasting bill. There is a time limitation on that bill, and one or more rollcall votes will occur.

Next, S. 3001, the Federal Financing Bank bill, will be called up, with a time limitation thereon. A rollcall vote may occur.

S. 3010, the Economic Opportunity Act, will then be laid down and made the second track. Let it be understood that S. 3390, the unfinished business, remains the unfinished business before the Senate and, therefore, is entitled to the main track daily.

Mr. President, I ask unanimous consent—if I have not done so already—that S. 3390, the unfinished business, be temporarily laid aside immediately following the remarks of Senator BAKER on tomorrow; that it be considered temporarily laid aside throughout the afternoon until the final disposition of S. 3001, at which time the order would be in effect for the second track to begin, with S. 3010, the Economic Opportunity Act, being at that time made the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. In other words, Mr. President, I know of no amendment to S. 3390 which would be called up tomorrow. This does not preclude such an amendment from being called up. But I know of none at this point. The unfinished business would remain in a temporarily laid aside status, under the program I have announced, throughout the day tomorrow.

I ask unanimous consent that at the close of business tomorrow, S. 3390, the unfinished business, be again laid before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, for the further information of the Senate, on Friday the Senate will convene at 9 a.m. The first order of business on Friday, following the recognition of any Senators who may be speaking under 15-minute orders, will be the Treasury-Post Office appropriation bill, under a time limitation, and there will be a rollcall vote on final passage of that bill.

Next, the Senate will proceed to the consideration of amendment No. 1265, by Senator SCOTT, to S. 3390, the Foreign Assistance Act, and there is a time limitation on that amendment. A rollcall vote will occur thereon.

Following the disposition of the amendment by Mr. SCOTT, the distinguished Senator from Colorado (Mr. DOMINICK) will offer his amendment—which I understand is called the "third country" amendment—to S. 3390. That will be disposed of with a rollcall vote thereon, although there is no time limit thereon at the present moment.

The Senate will continue consideration of S. 3390 if there are other amendments called up following the Dominick amendment. If there are no further amendments to that bill, the Senate then will return to the consideration of the second track item, S. 3010, the Economic Opportunity Act.

There will be no session on Saturday, in view of the fact that the Senate has been in session from 9 o'clock in the morning until late in the evening on almost every day this week. No unanimous-consent agreements can presently be reached with respect to the no-fault insurance bill or the minimum wage bill, and no further unanimous-consent agreements have been reached with respect to remaining amendments to S. 3390. It is the feeling of the leadership that in view of that situation, and in view of the fact that the calendar is in generally good condition otherwise, it would not be profitable to come in on Saturday. Saturday sessions are normally productive when consent agreements will insure progress. Hence, the decision that there will be no session on Saturday. But there will be several rollcall votes, as I have indicated, and reasonably long days on tomorrow and on Friday.

RECESS UNTIL 9 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until 9 a.m. tomorrow.

The motion was agreed to; and at 7:55 p.m. the Senate took a recess until tomorrow, Thursday, June 22, 1972, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 21 (legislative day of June 19), 1972:

U.S. COURT OF CUSTOMS AND PATENT APPEALS

Howard T. Markey, of Illinois, to be chief judge of the U.S. Court of Customs and Patent Appeals.

DEPARTMENT OF JUSTICE

John T. Elfvin, of New York, to be U.S. attorney for the western district of New York for the term of 4 years.

Douglas M. Gonzales, of Louisiana, to be U.S. attorney for the middle district of Louisiana for the term of 4 years.

William C. Smitherman, of Arizona, to be U.S. attorney for the district of Arizona for the term of 4 years.

Thomas A. Grace, Jr., of Louisiana, to be U.S. marshal for the middle district of Louisiana for the term of 4 years.

Everett R. Langford, of Oregon, to be U.S. marshal for the district of Oregon for the term of 4 years.

BOARD OF PAROLE

Maurice H. Sigler, of Nebraska, to be a member of the Board of Parole for the term expiring September 30, 1978.

FOREIGN CLAIMS SETTLEMENT COMMISSION

Kieran O'Doherty, of New York, to be a member of the Foreign Claims Settlement Commission of the United States for a term of 3 years from October 22, 1970.

IN THE COAST GUARD

Coast Guard nominations beginning Robert M. Bissey, to be captain, and ending Marion L. Weiss, to be captain, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on June 15, 1972.

EXTENSIONS OF REMARKS

TRIBUTE TO A DEDICATED TEACHER

HON. BILL CHAPPELL, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 21, 1972

Mr. CHAPPELL. Mr. Speaker, one of the most extraordinary and exciting classrooms I have ever visited is that of Mrs. Nellie Spinks, who is chairman of the Social Studies Department at Vanguard High School in Ocala, Fla.

Stepping into her classroom is like entering an imaginative cyclorama. On every side, a colorful mural depicts the basic tenets of the free enterprise system and in the center is a group of informed, knowledgeable ninth graders, who have spent weeks studying and designing it.

Pictured at the beginning of the mural is a man surrounded by various tools. A summary of the three factors of production is illustrated in the formula: MMW=NR+HE×T; or "man's mechanical welfare is conditioned by his multiplying human energy and natural resources with tools."

Adjacent to the tools is pictured a house, land, and in the foreground a large key looms toward us with the inscription: "Private Property." The class felt that the right of private property in a democracy is the incentive which provides and encourages competition as a discipline along with customer choice.

Most intriguing in the mural is a huge wheel—with every part—hub, rim, spokes, all labeled to show the interchange and interdependency of our economic system.

Spokes shooting out from the hub—labeled "freedom"—support the rim, which stands for the individuality of man. The spokes include important truths which the class learned in its study: The customer is the boss; private property is the key; productivity brings prosperity; competition is a discipline; tools do the work; and costs must be tied to productivity.

Further explanation by the class of their work, included these thoughts:

The wheel has individual responsibility as its rim because man must assume individual responsibility in a free society. Individuality is illustrated on the rim, at intervals, with pictures of citizens as farmers, educators, housewives, producers, investors, and managers.

The wheel of economics progress must run on the road of respect for law and order. Laws encourage competition, prevent unregulated monopoly, protect private property, make possible investments and private savings, assure rights of individual choices in work experiences and other aspects of life.

The driving force of the hub is economic-freedom illustrated with the eagle for strength and durability. Directly contingent upon the driving force of the hub is the work of each spoke. These represent the five costs of production. Surrounding the wheel are illustrations of the affluent society in America with private property dominating wealth in many form. There is an American citizen with freedom of choice of a multiplicity of goods.

Lastly, on the mural is a painting of the justice figure, blindfolded and holding balanced scales of law and order, while pointing toward those factors which support law and order: a police car, a responsible private citizen, Uncle Sam, the President of the United States, a court and a prison.

The mural was completed by the students—a committee studied, planned, discussed, and painted it.

Mrs. Spinks has inspired students to study about our system of government, to analyze the factors involved and to convey what they have learned to others. In a discussion with the students, I was amazed and deeply impressed at their knowledge and depth of understanding.

Neither Mrs. Spinks nor her students stopped in their studies. Before the close of school, they painted another mural depicting various vocations available to the students. What meaningful knowledge she is imparting to these students.

SALUTE TO EDUCATION

HON. ROBERT P. GRIFFIN

OF MICHIGAN

IN THE SENATE OF THE UNITED STATES

Wednesday, June 21, 1972

Mr. GRIFFIN. Mr. President, from the earliest days of our Republic, Americans have demonstrated a great faith in education as the basis of our democratic system of government.

They have realized, James A. Garfield once wrote, that—

Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained.

These words are of particular significance as we pause today to salute education.

This is an occasion for taking stock of where we stand and where we are going in the field of education. In recent years, we have seen one crisis after another in our educational system from financial and other reasons. They are the symptoms of change and not the failure of education itself.

On this occasion it is well to remember just how much our schools have accomplished and what they are continuing to accomplish.

This year more than 45 million children are enrolled in elementary and secondary schools.

More than 2 million men and women are employed as teachers, translating in dedicated fashion their ideals into the reality of education for our young people.

I am especially proud of my own State of Michigan. Its schools have 2 million children enrolled and the average expenditure per pupil is the sixth highest in the Nation.

Undeniably, there are serious problems confronting the schools especially in providing the necessary financial support. In Michigan, I am glad to say, Governor Millikin has been in the forefront in seeking some solution to this problem. Two years ago he called for a complete overhaul of school financing—and this was long before the Serrano decision in California challenging the traditional method of financing schools through local property taxes.

We have every reason to be proud of our educational system, and particularly the dedicated men and women in the teaching field.

While there are many problems, there is every reason to believe they will be solved as they have been in the past.

D–Q UNIVERSITY

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 21, 1972

Mr. ROYBAL. Mr. Speaker, recently I introduced a bill to provide Federal grants to D–Q University in California for the next 5 years. I am pleased to have Senators CRANSTON and TUNNEY introduce my bill on the Senate side.

The bill, H.R. 14988, authorizes the U.S. Commissioner of Education to provide $35 million in grants to D–Q University for the purpose of becoming "a national learning and cultural center for Indian and Chicano students, as well as