92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 92-1153

CONSUMER PRODUCT SAFETY ACT

JUNE 20, 1972.—Committed to the Committee of the Whole House and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 15003]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 15003) to protect consumers against unreasonable product hazards, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Consumer Product Safety Act".

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65-006

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) an unacceptable number of consumer products which contain unreasonable hazards are distributed in commerce;

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

(3) the public should be protected against unreasonable hazards associated with consumer products;

(4) control by State and local governments of unreasonable hazards associated with consumer products is inadequate and may be burdensome to manufacturers; and

(5) regulation of consumer products the distribution or use of which affects interstate or foreign commerce is necessary to carry out this Act.

(b) The purposes of this Act are—

(1) to protect the public against unreasonable hazards associated with consumer products;

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

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

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

DEFINITIONS

SEC. 3. (a) For purposes of this Act:

(1) The term "consumer product" means any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise; but such term does not include (A) any article which is not customarily produced or distributed for sale to or use, consumption, or enjoyment of a consumer; (B) tobacco and tobacco products, (C) motor vehicles or motor vehicle equipment (as defined by sections 102 (3) and (4) of the National Traffic and Motor Vehicle Safety Act of 1966), (D) economic poisons (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act), (E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article, (F) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act), or (G) food. The term "food", as used in this paragraph, means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in sections 4 (e) and (f) of the Poultry Products Inspection Act), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(2) The term "consumer product safety rule" means a consumer product safety standard described in section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product.

(3) The term "hazard" means a risk of death, personal injury, or serious or frequent illness.

(4) The term "manufacturer" means any person who manufactures or imports a consumer product.

(5) The term "distributor" means a person to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product.

(6) The term "retailer" means a person to whom a consumer product is delivered or sold for purposes of sale or distribution by such person to a consumer.

(7)(A) The term "private labeler" means an owner of a brand or trademark on the label of a consumer product which bears a private label.

(B) A consumer product bears a private label if (i) the product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of the product, (ii) the person with whose brand or trademark the product (or container) is labeled has authorized or caused the product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

(8) The term "manufacture" means to manufacture, produce, or assemble.

(9) The term "Commission" means the Consumer Product Safety Commission, established by section 4.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(11) The terms "to distribute in commerce" and "distribution in commerce" mean to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(13) The terms "import" and "importation" include reimporting a consumer product manufactured or processed, in whole or in part, in the United States.

(14) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) A common carrier, contract carrier, or freight forwarder shall not, for purposes of this Act, be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business as such a carrier or forwarder.

CONSUMER PRODUCT SAFETY COMMISSION

SEC. 4. (a) An independent regulatory commission is hereby established, to be known as the Consumer Product Safety Commission, consisting of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as Chairman. The Chairman, when so designated, shall act as Chairman until the expiration of his term of office as Commissioner. Any member of the Commission may be removed by the President for neglect of duty or malfeasance in office but for no other cause.

(b)(1) Except as provided in paragraph (2), (A) the Commissioners first appointed under this section shall be appointed for terms ending three, four, five, six, and seven years, respectively, after the date of the enactment of this Act, the term of each to be designated by the President at the time of nomination; and (B) each of their successors shall be appointed for a term of seven years from the date of the expiration of the term for which his predecessor was appointed.

(2) Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c) Not more than three of the Commissioners shall be appointed from the same political party. No individual in the employ of, or holding any official relation to, any person, engaged in selling or manufacturing consumer products or owning stock or bonds of substantial value in a person so engaged or who is in any other manner pecuniarily interested in such a person, or in a substantial sup-

plier of such a person, shall hold the office of Commissioner. A Commissioner may not engage in any other business, vocation, or employment.

(d) No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission, but three members of the Commission shall constitute a quorum for the transaction of business. The Commission shall have an official seal of which judicial notice shall be taken. The Commission shall annually elect a Vice Chairman to act in the absence or disability of the Chairman or in case of a vacancy in the office of the Chairman.

(e) The Commission shall maintain a principal office and such field offices as it deems necessary and may meet and exercise any of its powers at any other place.

(f) (1) The Chairman of the Commission shall be the principal executive officer of the Commission, and he shall exercise all of the executive and administrative functions of the Commission, including functions of the Commission with respect to (A) the appointment and supervision of personnel employed under the Commission (other than personnel employed regularly and full time in the immediate offices of commissioners other than the Chairman), (B) the distribution of business among personnel appointed and supervised by the Chairman and among administrative units of the Commission, and (C) the use and expenditure of funds.

(2) In carrying out any of his functions under the provisions of this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make.

(g) (1) The Chairman, subject to the approval of the Commission, shall appoint an Executive Director, a General Counsel, a Director of Engineering Sciences, a Director of Epidemiology, and a Director of Information. Individuals may be appointed under this paragraph without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(2) The Chairman, subject to subsection (f)(2), may employ such other officers and employees (including attorneys) as are necessary in the execution of the Commission's functions. No full-time officer or employee of the Commission who was at any time during the 12 months preceding the termination of his employment with the Commission compensated at a rate in excess of the annual rate of basic pay in effect for grade GS–14 of the General Schedule, shall accept employment or compensation from any manufacturer subject to this Act, for a period of 12 months after terminating employment with the Commission.

(h) (1) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(59) Chairman, Consumer Product Safety Commission."

(2) Section 5315 of such title is amended by adding at the end thereof the following new paragraph:

"(96) Members, Consumer Product Safety Commission (4)."

PRODUCT SAFETY INFORMATION AND RESEARCH

SEC. 5. (a) The Commission shall—

(1) maintain an Injury Information Clearinghouse to collect, investigate, analyze, and disseminate information relating to the causes and prevention of death, injury, and illness associated with consumer products; and

(2) conduct such continuing studies and investigations of deaths, injuries, diseases, other health impairments, and economic losses resulting from accidents involving consumer products as it deems necessary.

(b) The Commission may—

(1) conduct research, studies, and investigations on the safety of consumer products and on improving the safety of such products;

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

(3) offer training in product safety investigation and test methods, and assist public and private organizations, administratively and technically, in the development of safety standards and test methods.

(c) In carrying out its functions under this section, the Commission may make grants or enter into contracts for the conduct of such functions with any person (including a governmental entity).

(d) Whenever the Federal contribution for any information, research, or development activity authorized by this Act is more than minimal, the Commission shall include in any contract, grant, or other arrangement for such activity, provisions effective to insure that the rights to all information, uses, processes, patents, and other developments resulting from that activity will be made available to the public without charge on a nonexclusive basis. Nothing in this subsection shall be construed to deprive any person of any right which he may have had, prior to entering into any arrangement referred to in this subsection, to any patent, patent application, or invention.

PUBLIC DISCLOSURE OF INFORMATION

SEC. 6. (a)(1) Nothing contained in this Act shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(2) All information reported to or otherwise obtained by the Commission or its representative under this Act which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18 of the United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this Act shall authorize the withholding of information by the Commission or any officer or employee under its control from the duly authorized committees of the Congress.

(b)(1) Except as provided by paragraph (2) of this subsection, not less than 30 days prior to its public disclosure of any information obtained under this Act, or to be disclosed to the public in connection therewith, the Commission shall provide such information to each manufacturer or private labeler of any consumer product to which such information pertains, if the manner in which such consumer product is to be designated or described in such information will permit the public to ascertain readily the identity of such manufacturer or private labeler, and shall provide such manufacturer or private labeler with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof, that information from which the identity of such manufacturer or private labeler may be readily ascertained is accurate, and that such disclosure is fair in the circumstances and reasonably related to effectuating the purposes of this Act. If the Commission finds that, in the administration of this Act, it has made public disclosure of inaccurate or misleading information which reflects adversely upon the safety of any consumer product, or the practices of any manufacturer, private labeler, distributor, or retailer of consumer products, it shall, in a manner similar to that in which such disclosure was made, publish a retraction of such inaccurate or misleading information.

(2) Paragraph (1) (except for the last sentence thereof) shall not apply to the public disclosure of (A) information about any consumer product with respect to which product the Commission has filed an action under section 12 (relating to imminently hazardous products), or which the Commission has reasonable cause to believe is in violation of section 19 (relating to prohibited acts), or (B) information in the course of or concerning any administrative or judicial proceeding under this Act.

(c) The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant hazard associated with such product.

CONSUMER PRODUCT SAFETY STANDARDS

SEC. 7. (a) The Commission may by rule, in accordance with this section and section 9, promulgate consumer product safety standards. A consumer product safety standard shall consist of one or more of any of the following types of requirements:

(1) Requirements as to performance, composition, contents, design, construction, finish, or packaging of a consumer product.

(2) Requirements that a consumer product be marked with or accompanied by clear and adequate warnings or instructions, or requirements respecting the form of warnings or instructions.

Any requirement of such a standard shall be reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with such product. The requirements of such a standard (other than requirements relating to labeling, warnings, or instructions) shall, whenever feasible, be expressed in terms of performance requirements.

(b) A proceeding for the development of a consumer product safety standard under this Act shall be commenced by the publication in the Federal Register of a notice which shall—

(1) identify the product and the nature of the hazard associated with the product;

(2) state the Commission's determination that a consumer product safety standard is necessary to prevent or reduce the hazard;

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceeding; and

(4) include an invitation for any person, including any State or Federal agency (other than the Commission), within 30 days after the date of publication of the notice (A) to submit to the Commission an existing standard as the proposed consumer product safety standard or (B) to offer to develop the proposed consumer product safety standard.

An invitation under paragraph (4)(B) shall specify a period of time, during which the standard is to be developed, which shall be a period ending 150 days after the publication of the notice, unless the Commission for good cause finds (and includes such finding in the notice) that a different period is appropriate.

(c) If the Commission determines that (1) there exists a standard which has been issued or adopted by any Federal agency or by any other qualified agency, organization, or institution, and (2) such standard if promulgated under this Act would prevent or reduce the unreasonable hazard associated with the product, then it may, in lieu of accepting an offer pursuant to subsection (d) of this section, publish such standard as a proposed consumer product safety rule.

(d)(1) Except as provided by subsection (c), the Commission shall accept one, and may accept more than one, offer to develop a proposed consumer product safety standard pursuant to the invitation prescribed by subsection (b)(4)(B), if it determines that the offeror is technically competent, is likely to develop an appropriate standard within the period specified in the invitation under subsection (b), and will comply with regulations of the Commission under paragraph (3). The Commission shall publish in the Federal Register the name and address of each person whose offer it accepts, and a summary of the terms of such offer as accepted.

(2) If an offer is accepted under this subsection, the Commission may agree to contribute to the offeror's cost in developing a proposed consumer product safety standard, in any case in which the Commission determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution, and that the offeror is financially responsible. Regulations of the Commission shall set forth the items of cost in which it may participate, and shall exclude any contribution to the acquisition of land or buildings.

(3) The Commission shall prescribe regulations governing the development of proposed consumer product safety standards by persons whose offers are accepted under paragraph (1). Such regulations shall include requirements—

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

(B) for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standards;

(C) for the maintenance of records, which shall be available to the public, 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 dissenting views and 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

(D) that the Commission 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 development of such recommended standards or to the expenditure of any contribution of the Commission for the development of such standards.

(e) (1) If the Commission has published a notice of proceeding as provided by subsection (b) and has not, within 30 days after the date of publication of such notice, accepted an offer to develop a proposed consumer product safety standard, the Commission may develop a proposed consumer product safety rule and publish such proposed rule.

(2) If the Commission accepts an offer to develop a proposed consumer product safety standard, the Commission may not, during the development period (specified in paragraph (3)) for such standard—

(A) publish a proposed rule applicable to the same hazard associated with such product, or

(B) develop proposals for such standard or contract with third parties for such development, unless the Commission determines that no offeror whose offer was accepted is making satisfactory progress in the development of such standard.

(3) For purposes of paragraph (2), the development period for any standard is a period (A) beginning on the date on which the Commission first accepts an offer under subsection (d) (1) for the development of a proposed standard, and (B) ending on the earlier of—

(i) the end of the period specified in the notice of proceeding (except that the period specified in the notice may be extended if good cause is shown and the reasons for such extension are published in the Federal Register), or

(ii) the date on which it determines (in accordance with such procedures as it may by rule prescribe) that no offeror whose offer was accepted is able and willing to continue satisfactorily the development of the proposed standard which was the subject of the offer, or

(iii) the date on which an offeror whose offer was accepted submits such a recommended standard to the Commission.

(f) Not more than 210 days after its publication of a notice of proceeding pursuant to subsection (b) (which time may be extended by the Commission by a notice published in the Federal Register stating good cause therefor), the Commission shall publish in the Federal Register a notice withdrawing such notice of proceeding or publish a proposed rule which either proposes a product safety standard applicable to any consumer product subject to such notice, or proposes to declare any such subject product a banned hazardous consumer product.

BANNED HAZARDOUS PRODUCTS

SEC. 8. Whenever the Commission finds that—

(1) a consumer product is being, or will be, distributed in commerce and such consumer product presents an unreasonable hazard to the public; and

(2) no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable hazard associated with such product,

the Commission may propose and, in accordance with section 9, promulgate a rule declaring such product a banned hazardous product.

ADMINISTRATIVE PROCEDURE APPLICABLE TO PROMULGATION OF CONSUMER PRODUCT SAFETY RULES

SEC. 9. (a) (1) Within sixty days after the publication under section 7 (c), (e) (1), or (f) or section 8 of a proposed consumer product safety rule respecting a hazard associated with a consumer product, the Commission shall—

(A) promulgate a consumer product safety rule respecting the hazard associated with such product if it makes the findings required under subsection (c), or

(B) withdraw by rule the applicable notice of proceeding if it determines that such rule is not (i) reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with the product, or (ii) in the public interest;

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

(2) Consumer product safety rules which have been proposed under section 7 (c), (e) (1), or (f) or section 8 shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(b) A consumer product safety rule shall express in the rule itself the hazard which the standard is designed to prevent or reduce. In promulgating such a rule the Commission shall consider relevant available product data including the results of research, development, testing, and investigation activities conducted generally and pursuant to this Act.

(c) (1) Prior to promulgating a consumer product safety rule, the Commission shall consider, and shall make appropriate findings for inclusion in such rule with respect to—

(A) the degree and nature of the hazard the rule is designed to prevent or reduce, and

(B) the approximate number of consumer products, or types or classes thereof, subject to such rule; and

(C) the need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need.

(2) The Commission shall not promulgate a consumer product safety rule unless it finds (and includes such finding in the rule)—

(A) that the rule (including its effective date) is reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with such product;

(B) that the promulgation of the rule is in the public interest; and

(C) in the case of a rule declaring the product a banned hazardous product, that no feasible consumer product safety standard under this Act would adequately protect the public from the unreasonable hazard associated with such product.

(d) Each consumer product safety rule shall specify the date such rule is to take effect not exceeding 180 days from the date promulgated, unless the Commission finds, for good cause shown, that a later effective date is in the public interest and publishes its reasons for such finding. A consumer product safety standard under this Act shall be applicable only to consumer products manufactured after the date of promulgation of the standard.

(e) The Commission may by rule amend or revoke any consumer product safety rule. Such amendment or revocation shall specify the date on which it is to take effect which shall not exceed 180 days from the date the amendment or revocation is published unless the Commission finds for good cause shown that a later effective date is in the public interest and publishes its reasons for such finding. Where an amendment involves a material change in a consumer product safety rule, sections 7 and 8, and subsections (a) through (d) of this section shall apply. In order to revoke a consumer product safety rule, the Commission shall publish a proposal to revoke such rule in the Federal Register, and allow oral and written presentations in accordance with subsection (a) (2) of this section. It may revoke such rule only if it determines that the rule is not reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with the product. Section 11 shall apply to any amendment of a consumer product safety rule which involves a material change and to any revocation of a consumer product safety rule, in the same manner and to the same extent as such section applies to the Commission's action in promulgating such a rule.

PETITION BY INTERESTED PARTY FOR CONSUMER PRODUCT SAFETY RULE

SEC. 10. (a) Any interested person, including a consumer or consumer organization, may petition the Commission to commence a proceeding for the issuance, amendment, or revocation of a consumer product safety rule.

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

(1) facts which it is claimed establish that a consumer product safety rule or an amendment or revocation thereof is necessary; and

(2) a brief description of the substance of the consumer product safety rule or amendment thereof which it is claimed should be issued by the Commission.

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

(d) If the Commission grants such petition, it shall promptly commence an appropriate proceeding to prescribe a consumer product safety rule, or take such other action as it deems appropriate. If the Commission denies such petition it shall publish in the Federal Register its reasons for such denial.

JUDICIAL REVIEW OF CONSUMER PRODUCT SAFETY RULES

SEC. 11. (a) Not later than 60 days after a consumer product safety rule is promulgated by the Commission, any person adversely affected by such rule, or any consumer or consumer organization, may file a petition with the United States court of appeals for the District of Columbia or for the circuit in which such person, consumer, or organization resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him for that purpose and to the Attorney General. The Commission shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Commission based its rule, as provided in section 2112 of title 28 of the United States Code. For purposes of this section, the term "record" means such consumer product safety rule; any notice or proposal published pursuant to section 7, 8, or 9; the transcript required by section 9(a)(2) of any oral presentation; any written submission of interested parties; and any other information, which the Commission considers relevant to such rule.

(b) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there were reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Commission, the court may order the Commission to provide additional opportunity for the oral presentation of data, views, or arguments and for written submissions. The Commission may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Upon the filing of the petition under subsection (a) of this section the court shall have jurisdiction to review the consumer product safety rule in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. The consumer product safety rule shall not be affirmed unless the Commission's findings under section 9(c) are supported by substantial evidence on the record taken as a whole.

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

(e) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by law.

IMMINENT HAZARDS

SEC. 12. (a) The Commission may file in a United States district court an action (1) against an imminently hazardous consumer product for seizure of such product under subsection (b)(2), or (2) against any person who is a manufacturer, or distributor, or retailer of such product, or (3) against both. Such an action may be filed notwithstanding the existence of a consumer product safety rule applicable to such product, or the pendency of any administrative or judicial proceedings under any other provision of this Act. As used in this section, and hereinafter in this Act, the term "imminently hazardous consumer product" means a consumer product which presents imminent and unreasonable risk of death, serious illness, or severe personal injury.

(b)(1) The district court in which such action is filed shall have jurisdiction to declare such product an imminently hazardous consumer product, and (in the

case of an action under subsection (a)(2)) to grant (as ancillary to such declaration or in lieu thereof) such temporary or permanent relief as may be necessary to protect the public from such risk. Such relief may include a mandatory order requiring the notification of such risk to purchasers of such product known to the defendant, public notice, the recall, the repair or the replacement of, or refund for, such product.

(2) In the case of an action under subsection (a)(1), the consumer product may be proceeded against by process of libel for the seizure and condemnation of such product in any United States district court within the jurisdiction of which such consumer product is found. Proceedings and cases instituted under the authority of the preceding sentence shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Where appropriate, concurrently with the filing of such action or as soon thereafter as may be practicable, the Commission shall initiate a proceeding to promulgate a consumer product safety rule applicable to the consumer product with respect to which such action is filed.

(d)(1) Prior to commencing an action under subsection (a), the Commission may consult the Product Safety Advisory Council (established under section 28) with respect to its determination to commence such action, and request the Council's recommendations as to the type of temporary or permanent relief which may be necessary to protect the public.

(2) The Council shall submit its recommendations to the Commission within one week of such request.

(3) Subject to paragraph (2), the Council may conduct such hearing or offer such opportunity for the presentation of views as it may consider necessary or appropriate.

(e)(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Commission shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving identical consumer products are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all other parties in interest.

(f) Notwithstanding any other provision of law, in any action under this section, the Commission may direct attorneys employed by it to appear and represent it.

NEW PRODUCTS

SEC. 13. (a) The Commission may, by rule, prescribe procedures for the purpose of insuring that the manufacturer of any new consumer product furnish notice and a description of such product to the Commission before its distribution in commerce.

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

PRODUCT CERTIFICATION AND LABELING

SEC. 14. (a)(1) Every manufacturer of a product which is subject to a consumer product safety standard under this Act and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable. Such certificate shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. Any certificate under this subsection shall be based on a test of each product or upon a reasonable testing program; shall state the name of the manufacturer or

private labeler issuing the certificate; and shall include the date and place of manufacture.

(2) In the case of a consumer product for which there is more than one manufacturer or more than one private labeler, the Commission may by rule designate one or more of such manufacturers or one or more of such private labelers (as the case may be) as the persons who shall issue the certificate required by paragraph (1) of this subsection, and may exempt all other manufacturers of such product or all other private labelers of the product (as the case may be) from the requirement under paragraph (1) to issue a certificate with respect to such product.

(b) The Commission may by rule prescribe reasonable testing programs for consumer products which are subject to consumer product safety standards under this Act and for which a certificate is required under subsection (a). Any test or testing program on the basis of which a certificate is issued under subsection (a) may, at the option of the person required to certify the product, be conducted by an independent third party qualified to perform such tests or testing programs.

(c) The Commission may by rule require the use and prescribe the form and content of labels which contain the following information (or that portion of it specified in the rule)—

(1) The date and place of manufacture of any consumer product.

(2) A suitable identification of the manufacturer of the consumer product, unless the product bears a private label in which case it shall identify the private labeler and shall also contain a code mark which would permit the seller of such product to identify the manufacturer thereof to the purchaser upon his request.

(3) In the case of a consumer product subject to a consumer product safety rule, a certification that the product meets all applicable consumer product safety standards and a specification of the standards which are applicable.

Such labels, where practicable, may be required by the Commission to be permanently marked on or affixed to any such consumer product.

NOTIFICATION AND REPAIR, REPLACEMENT, OR REFUND

SEC. 15. (a) For purposes of this section, the term "substantial product hazard" means—

(1) a failure to comply with an applicable consumer product safety rule which creates a substantial hazard to the public, or

(2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial hazard to the public

(b) Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—

(1) fails to comply with an applicable consumer product safety rule; or

(2) contains a defect which could create a substantial product hazard described in subsection (a)(2),

shall immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

(c) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for the oral presentation of views as well as for written presentations) that a product distributed in commerce presents a substantial product hazard and that notification is required in order to adequately protect the public from such substantial product hazard, the Commission may order the manufacturer or any distributor or retailer of the product to take any one or more of the following actions:

(1) to give public notice of the defect or failure to comply;

(2) to mail notice to each person who is a manufacturer, distributor, or retailer of such product; or

(3) to mail notice to every person to whom the person required to give notice knows such product was delivered or sold.

Any such order shall specify the form and content of any notice required to be given under such order.

(d) If the Commission determines (after affording interested parties, including consumers and consumer organizations, an opportunity for a hearing in accordance with section 554 of title 5, United States Code) that a product distributed in commerce presents a substantial product hazard and that action under this subsection is in the public interest, it may order the manufacturer or any distributor or retailer of such product to take whichever of the following actions the person to whom the order is directed elects—

(1) to bring such product into conformity with the requirements of the applicable consumer product safety rule or to repair the defect in such product;

(2) to replace such product with a like or equivalent product which complies with the applicable consumer product safety rule or which does not contain the defect; or

(3) to refund the purchase price of such product (less a reasonable allowance for use, if such product has been in the possession of a consumer for one year or more (A) at the time of public notice under subsection (c), or (B) at the time the consumer receives actual notice of the defect or noncompliance, whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking action under whichever of the preceding paragraphs of this subsection under which such person has elected to act. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection.

(e)(1) No charge shall be made to any person (other than a manufacturer, distributor, or retailer) who avails himself of any remedy provided under an order issued under subsection (d), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or retailer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (c) or (d) with respect to a product may require any person who is a manufacturer, distributor, or retailer of the product to reimburse any other person who is a manufacturer, distributor, or retailer of such product for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

INSPECTION AND RECORDKEEPING

SEC. 16. (a) For purposes of implementing this Act, or rules or orders prescribed under this Act, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice from the Commission to the owner, operator, or agent in charge, are authorized—

(1) to enter, at reasonable times, (A) any factory, warehouse, or establishment in which consumer products are manufactured or held, in connection with distribution in commerce, or (B) any conveyance being used to transport consumer products in connection with distribution in commerce; and

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

(b) Every person who is a manufacturer, private labeler, or distributor of a consumer product shall establish and maintain such records, make such reports, and provide such information as the Commission may, by rule, reasonably require for the purposes of implementing this Act, or to determine compliance with rules or orders prescribed under this Act. Upon request of an officer or employee duly designated by the Commission, every such manufacturer, private labeler, or distributor shall permit the inspection of appropriate books, records, and papers relevant to determining whether such manufacturer, private labeler, or distributor has acted or is acting in compliance with this Act and rules under this Act.

IMPORTED PRODUCTS

SEC. 17. (a) Any consumer product offered for importation into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) shall be refused admission into such customs territory if such product—

(1) fails to comply with an applicable consumer product safety rule;

(2) is not accompanied by a certificate required by section 14, or is not labeled in accordance with regulations under section 14(c);

(3) is or has been determined to be an imminently hazardous consumer product in a proceeding brought under section 12;

(4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); or

(5) is a product which was manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g).

(b) The Secretary of the Treasury shall obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. Except for those owners or consignees who are or have been afforded an opportunity for a hearing in a proceeding under section 12 with respect to an imminently hazardous product, the owner or consignee of the product shall be afforded an opportunity by the Commission for a hearing in accordance with section 554 of title 5 of the United States Code with respect to the importation of such products into the customs territory of the United States. If it appears from examination of such samples or otherwise that a product must be refused admission under the terms of subsection (a), such product shall be refused admission, unless subsection (c) of this section applies and is complied with.

(c) If it appears to the Commission that any consumer product which may be refused admission pursuant to subsection (a) of this section can be so modified that it need not (under the terms of paragraphs (1) through (4) of subsection (a)) be refused admission, the Commission may defer final determination as to the admission of such product and, in accordance with such regulations as the Commission and the Secretary of the Treasury shall jointly agree to, permit such product to be delivered from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

(d) All actions taken by an owner or consignee to modify such product under subsection (c) shall be subject to the supervision of an officer or employee of the Commission and of the Department of the Treasury. If it appears to the Commission that the product cannot be so modified or that the owner or consignee is not proceeding satisfactorily to modify such product it shall be refused admission into the customs territory of the United States, and the Commission may direct the Secretary to demand redelivery of the product into customs custody, and to seize the product in accordance with section 22(b) if it is not so redelivered.

(e) Products refused admission into the customs territory of the United States under this section must be exported, except that upon application, the Secretary of the Treasury may permit the destruction of the product in lieu of exportation. If the owner or consignee does not export the product within a reasonable time, the Department of the Treasury may destroy the product.

(f) 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.

(g) The Commission may, by rule, condition the importation of a consumer product on the manufacturer's compliance with the inspection and recordkeeping requirements of this Act and the Commission's rules with respect to such requirements.

EXPORTS

SEC. 18. This Act shall not apply to any consumer product if (1) it can be shown that such product is manufactured, sold, or held for sale for export from the United States (or that such product was imported for export), unless such

consumer product is in fact distributed in commerce for use in the United States, and (2) such consumer product when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such consumer product is intended for export; 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.

PROHIBITED ACTS

SEC. 19. (a) It shall be unlawful for any person to—

(1) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which is not in conformity with an applicable consumer product safety standard under this Act;

(2) manufacture for sale, offer for sale, distribute in commerce, or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this Act;

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

(4) fail to furnish information respecting a substantial product defect, as required by section 15(b);

(5) fail to comply with an order issued under section 15 (c) or (d) (relating to notification, and to repair, replacement, and refund);

(6) fail to furnish a certificate required by section 14 or issue a false certificate if such person in the exercise of due care has reason to know that such certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c) (relating to labeling).

(b) Paragraphs (1) and (2) of section (a) shall not apply to any person (1) who holds a certificate issued in accordance with section 14(a) to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform, or (2) who relies in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to an applicable product safety rule.

CIVIL PENALTIES

SEC. 20. (a) (1) Any person who knowingly violates section 19 of this Act shall be subject to a civil penalty not to exceed $2,000 for each such violation. Subject to paragraph (2), a violation of section 19(a) (1), (2), (4), (5), or (6) shall constitute a separate violation with respect to each consumer product involved, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations. A violation of section 19(a)(3) shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required thereby; and, such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of paragraph (1) or (2) of section 19(a)—

(A) if the person who violated such paragraphs is not the manufacturer or private labeler or a distributor of the product involved, and

(B) if such person did not have either (i) actual knowledge that his distribution or sale of the product violated such paragraphs or (ii) notice from the Commission that such distribution or sale would be a violation of such paragraphs.

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

(c) As used in the first sentence of subsection (a)(1) of this section, 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 knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

CRIMINAL PENALTIES

SEC. 21. (a) Any person who knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission shall be fined not more than $50,000 or be imprisoned not more than one year, or both.

(b) Whenever any corporation knowingly and willfully violates section 19 of this Act after having received notice of noncompliance from the Commission, any individual director, officer, or agent of such corporation who knowingly and willfully authorized, ordered, or performed any of the acts or practices constituting in whole or in part such violation and who had knowledge of such notice from the Commission shall be subject to penalties under this section in addition to the corporation.

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 22. (a) The United States district courts shall have jurisdiction to restrain any violation of section 19, or to restrain any person from distributing in commerce a product which does not comply with a consumer product safety rule, or both. Such actions may be brought by the Attorney General, on request of the Commission, in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section process may be served on a defendant in any other district in which the defendant resides or may be found.

(b) Any consumer product which fails to conform to an applicable consumer product safety rule when introduced into or while in commerce or while held for sale after shipment in commerce shall be liable to be proceeded against on libel of information and condemned in any United States district court within the jurisdiction of which such consumer product is found. Proceedings in cases instituted under the authority of this subsection shall conform as nearly as possible to proceedings in rem in admiralty. Whenever such proceedings involving identical consumer products are pending in courts of two or more judicial districts they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest upon notice to all other parties in interest.

SUITS FOR DAMAGES BY PERSONS INJURED

SEC. 23. (a)(1) If any person dies or sustains personal injury or illness by reason of the failure of a consumer product to comply with an applicable consumer product safety rule under this Act, then such person (or his survivors or legal representative) may sue any manufacturer, distributor, or retailer of such noncomplying product, and may recover any damages sustained as a result of such failure to comply.

(2) If any person dies or sustains personal injury or illness by reason of a failure to comply with an order under section 15(c) or section 15(d), then such person (or his survivors or legal representative) may sue any person who failed to comply with such order under section 15, and may recover any damages sustained as a result of such failure to comply.

(3) An action under this section may be brought in any United States district court in the district in which the defendant resides or is found or has an agent, without regard to the amount in controversy. In any action under this section, whenever a plaintiff shall prevail the court may award the plaintiff the costs of the suit, including a reasonable attorney's fee.

(b) In the case of an action brought for noncompliance with an applicable consumer product safety rule, no liability shall be imposed under this section upon any manufacturer, distributor, or retailer who establishes (1) that he did not have reason to know in the exercise of due care that such product did not comply with such consumer product safety rule, and (2) in the case of a manufacturer or a distributor or retailer who is a private labeler of such noncomplying product, that the product was designed so as to comply with all applicable consumer product safety rules and that due care was used in the manufacture of the product so as to assure that the product complied with such rule. In the case of an action for noncompliance with an order under section 15, no liability shall be imposed under this section upon any manufacturer, distributor, or retailer who establishes that he took all steps as may be reasonable in the exercise of due care to comply with such order.

(c) The remedies provided for in this section shall be in addition to and not in lieu of any other remedies provided by common law or under Federal or State statutory law.

PRIVATE ENFORCEMENT OF PRODUCT SAFETY RULES AND OF SECTION 15 ORDERS

SEC. 24. Any interested person may bring an action in any United States district court for the district in which the defendant is found or transacts business to enforce a consumer product safety rule or an order under section 15, 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 Commission, to the Attorney General, and to the person against whom such action is directed. Such notice shall state the nature of the alleged violation of any such standard or order, the relief to be requested, and the court in which the action will be brought. No separate suit shall be brought under this section if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under this Act. In any action under this section, such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing party.

EFFECT ON PRIVATE REMEDIES

SEC. 25. (a) Compliance with consumer product safety rules or other rules or orders under this Act shall not relieve any person from liability at common law or under State statutory law to any other person.

(b) The failure of the Commission to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

(c)(1) Subject to section 6(a)(2) but notwithstanding section 6(a)(1), (A) accident and investigation reports made under this Act by any officer, employee, or agent of the Commission shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident, and (B) any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations.

(2) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (A) any accident or investigation report made under this Act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and (B) all reports on research projects, demonstration projects, and other related activities shall be public information.

EFFECT ON STATE STANDARDS

SEC. 26. (a) Whenever a consumer product safety standard under this Act is in effect and applies to a hazard associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same hazard associated with such consumer product; unless such requirements are identical to the requirements of the Federal standard.

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

(c) Upon application of a State or political subdivision thereof, the Commission may by rule, after notice and opportunity for oral presentation of views, exempt from the provisions of subsection (a) (under such conditions as it may impose) a proposed safety standard or regulation described in such application, where the proposed standard or regulation (1) imposes a higher level of performance than the Federal standard, (2) is required by compelling local conditions, and (3) does not unduly burden interstate commerce.

ADDITIONAL FUNCTIONS OF COMMISSION

SEC. 27. (a) The Commission may, by one or more of its members or by such agents or agency as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions anywhere in the United States. A Commissioner who participates in such a hearing or other inquiry shall not be disqualified solely by reason of such participation from subsequently participating in a decision of the Commission in the same matter. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data.

(b) The Commission shall also have the power—

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

(2) to administer oaths;

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

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection; and

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

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

(d) The Commission may by rule require any manufacturer of consumer products to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the Act, and to give such notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of this Act.

(e) For purposes of carrying out this Act, the Commission may purchase any consumer product and it may require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost.

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

(g) The Commission may plan, construct, and operate a facility or facilities suitable for research, development, and testing of consumer products in order to carry out this Act.

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

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

(2) a list of consumer product safety rules prescribed or in effect during such year;

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

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

(5) an analysis and evaluation of public and private consumer product safety research activities;

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

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

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

(9) an appraisal of significant actions of State and local governments relating to the responsibilities of the Commission; and

(10) such recommendations for additional legislation as the Commission deems necessary to carry out the purposes of this Act.

PRODUCT SAFETY ADVISORY COUNCIL

SEC. 28. (a) The Commission shall establish a Product Safety Advisory Council which it may consult before prescribing a consumer product safety rule or taking other action under this Act. The Council shall be appointed by the Commission and shall be composed of fifteen members, each of whom shall be qualified by training and experience in one or more of the fields applicable to the safety of products within the jurisdiction of the Commission. The Council shall be constituted as follows:

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

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

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

(b) The Council shall meet at the call of the Commission, but not less often than four times during each calendar year.

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

(d) Members of the Council who are not officers or employees of the United States shall, while attending meetings or conferences of the Council or while otherwise engaged in the business of the Council, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Payments under this subsection shall not render members of the Council officers or employees of the United States for any purpose.

COOPERATION WITH STATES AND WITH OTHER FEDERAL AGENCIES

SEC. 29. (a) The Commission shall establish a program to promote Federal-State cooperation for the purposes of carrying out this Act. In implementing such program the Commission may—

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

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

(b) In determining whether such proposed State and local programs are appropriate in implementing the purposes of this Act the Commission shall give favorable consideration to programs which establish separate State and local

agencies to consolidate functions relating to product safety and other consumer protection activities.

(c) The Commission may obtain from any Federal department or agency such statistics, data, program reports, and other materials as it may deem necessary to carry out its functions under this Act. Each such department or agency may cooperate with the Commission and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies engaged in administering programs related to product safety shall, to the maximum extent practicable, cooperate and consult in order to insure fully coordinated efforts.

TRANSFERS OF FUNCTIONS

SEC. 30. (a) The functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the Poison Prevention Packaging Act of 1970 are transferred to the Commission. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the Acts amended by subsections (b) through (f) of section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are transferred to the Commission.

(b) The functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) are transferred to the Commission. The functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

(c) A hazard which is associated with consumer products and which could be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those Acts.

(d) (1) All personnel, property, records, obligations, and commitments, which are used primarily with respect to any function transferred under the provisions of subsections (a) and (b) of this section shall be transferred to the Commission. The transfer of personnel pursuant to this paragraph shall be without reduction in classification or compensation for one year after such transfer, except that the Chairman of the Commission shall have full authority to assign personnel during such one-year period in order to efficiently carry out functions transferred to the Commission under this section.

(2) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges (A) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this section by any department or agency, any functions of which are transferred by this section, and (B) which are in effect at the time this section takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by any court of competent jurisdiction, or by operation of law.

(3) The provisions of this section shall not affect any proceedings pending at the time this section takes effect before any department or agency, functions of which are transferred by this section; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Commission. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this section had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Commission, by a court of competent jurisdiction, or by operation of law.

(4) The provisions of this section shall not affect suits commenced prior to the date this section takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this section had not been enacted; except that if before the date on which this section takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Commission, then such suit shall be continued by the Commission. No cause of action, and no suit, action, or other proceeding, by or against any department or agency (or officer thereof in his official capacity) functions of which are transferred by this section, shall

abate by reason of the enactment of this section. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Commission as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(e) For purposes of this section, (1) the term "function" includes power and duty, and (2) the transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

LIMITATION ON JURISDICTION

SEC. 31. The Commission shall have no authority under this Act to regulate hazards associated with consumer products which could be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Act of August 2, 1956 (70 Stat. 953); the Atomic Energy Act of 1954; or the Clean Air Act. The Commission shall have no authority under this Act to regulate any hazard associated with electronic product radiation emitted from an electronic product (as such terms are defined by sections 355 (1) and (2) of the Public Health Service Act) if such hazard of such product may be subjected to regulation under subpart 3 of part F of title III of the Public Health Service Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 32. (a) There are hereby authorized to be appropriated for the purpose of carrying out the provisions of this Act (other than the provisions of section 27(g) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the functions, powers, and duties transferred to the Commission under section 30—

(1) $55,000,000 for the fiscal year ending June 30, 1973;

(2) $59,000,000 for the fiscal year ending June 30, 1974; and

(3) $64,000,000 for the fiscal year ending June 30, 1975.

(b) (1) There are authorized to be appropriated such sums as may be necessary for the planning and construction of research, development and testing facilities described in section 27(g); except that no appropriation shall be made for any such planning or construction involving an expenditure in excess of $100,000 if such planning or construction has not been approved by resolutions adopted in substantially the same form by the Committee on Interstate and Foreign Commerce of the House of Representatives, and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission shall transmit to Congress a prospectus of the proposed facility including (but not limited to)—

(A) a brief description of the facility to be planned or constructed;

(B) the location of the facility, and an estimate of the maximum cost of the facility;

(C) a statement of those agencies, private and public, which will use such facility, together with the contribution to be made by each such agency toward the cost of such facility; and

(D) a statement of justification of the need for such facility.

(2) The estimated maximum cost of any facility approved under this subsection as set forth in the prospectus may be increased by the amount equal to the percentage increase, if any, as determined by the Commission, in construction costs, from the date of the transmittal of such prospectus to Congress, but in no event shall the increase authorized by this paragraph exceed 10 per centum of such estimated maximum cost.

EFFECTIVE DATE

SEC. 33. This Act shall take effect on the sixtieth day following the date of its enactment, except—

(1) sections 4 and 32 shall take effect on the date of enactment of this Act, and

(2) section 30 shall take effect on the later of (A) 150 days after the date of enactment of this Act, or (B) the date on which at least three members of the Commission first take office.

Purpose and Summary of This Legislation

This legislation proposes that the Federal Government assume a major role in protecting the consumers from unreasonable risks of death, injury, or serious or frequent illness associated with the use or exposure to consumer products. To carry out that objective, this bill would create a new, independent regulatory commission with comprehensive authority to take action across the full range of consumer products to reduce or prevent product-related injuries. The powers and procedural requirements contained in this legislation, for the most part, draw and improve upon concepts and practices which the Congress has previously employed in other safety laws.

In its barest terms this bill would vest in the independent regulatory commission, which it establishes, authority to:

(1) collect and disseminate information on consumer product related injuries;

(2) establish mandatory safety standards where necessary to prevent or reduce unreasonable product hazards, or—where such standards are not feasible—to ban the product from the marketplace;

(3) obtain equitable relief in the courts to protect the public from products which pose imminent hazards to health and safety; and

(4) administratively order the notification and remedy of products which fail to comply with Commission safety rules or which contain safety related defects.

The bill would also provide a system of product certification and permit the Commission to compel inclusion of certain safety-related information in product labels. The Commission would be given broad inspection and record keeping powers. Enforcement of the bill may be obtained through court injunctive process or through imposition of criminal and civil penalties. Also, private suits for damages are allowed to be brought in Federal courts and consumer suits are permitted to compel compliance with safety rules and certain Commission orders.

Basis for Legislation

It is considered self-evident that the public is entitled to purchase products without subjecting themselves to unreasonable risk of injury or death. At the present time, however, consumers are not able to confidently rely on the safety of products which are distributed for their use or enjoyment.

The National Center for Health Statistics estimates that each year 20 million Americans are injured in and around the home. Of this total, 110,000 injuries result in permanent disability and 30,000 in death. One estimate has placed the annual dollar cost to the economy of product-related injuries at over $5 billion. Moreover, home accidents reap a death toll among children under the age of 15 which is higher than that of cancer and heart disease combined. Yet, despite the public's widely held assumption that the Federal government exercises

broad authority in the interest of their safety, existing federal authority to curb hazards in a majority of consumer products is virtually non-existent.

Within the last six years, the Congress has exhibited an increasing concern with the safety of the products which consumers encounter in their daily lives. This concern has been manifested in the passing of a series of acts designed to deal with specific hazards and categories of products for which a substantial regulatory need had been established. These acts include the National Traffic and Motor Vehicle Safety Act of 1966, the Gas Pipeline Safety Act of 1968, the Flammable Fabrics Act Amendments of 1967, the Radiation Control for Health and Safety Act of 1968, the Child Prevention and Toy Safety Act of 1969, and the Poison Prevention Packaging Act of 1970.

While each of these acts is meritorious in its own right and deserving of enactment, this legislative program has resulted in a patchwork pattern of laws which, in combiantion, extend to only a small portion of the multitude of products produced for consumers. Moreover, the technological revolution and ever-increasing public demand for consumer products has produced over the last several years thousands of new products whose applications are not easily understood by consumers and whose use may pose great potential for harm.

Recognizing this problem, Congress created in 1967 the National Commission on Product Safety with a mandate to "conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risks of injuries which may be caused by household products." The work of the Commission extended over a period of two years. Much of the Commission's investigative effort was concentrated in a series of widely publicized informational hearings which were held at different locations throughout the country. In the course of these proceedings, the Commission was presented with evidence from over 225 witnesses whose testimony contributed to a hearing record in excess of 7,000 pages. The Commission's final report was transmitted to both the President and the Congress in July 1970.

In general terms, the Commission confirmed both the absence of and the need for a strong, vigorous Federal presence to protect the public from hazardous consumer products. The Commission's findings set out in sharp terms the shortcomings of past Federal safety efforts.

> Federal products safety legislation consists of a series of isolated acts treating specific hazards in narrow product categories. No Government agency possesses general authority to ban products which harbor unreasonable risks or to require that consumer products conform to minimum safety standards.
>
> Such limited Federal authority as does exist is scattered among many agencies. Jurisdiction over a single category of products may be shared by as many as four different departments or agencies. Moreover, where it exists, Federal product safety regulation is burdened by unnecessary procedural obstacles, circumscribed investigative powers, inadequate and ill-fitting sanctions, bureaucratic lassitude, timid administra-

tion, bargain-basement budgets, distorted priorities, and misdirected technical resources.

In addition, the Commission found State and local laws to be a "hodgepodge of tragedy-inspired responses to challenges which cannot be met by restricted geographical entities."

Perhaps even more significant, however, are the Commission's findings that self-interest and competitive forces are not of themselves sufficient to influence manufacturers to produce safe products. Attempts at self-regulation through industry trade associtaions and standards groups was found "patently inadequate." Here, the Commission's findings bear repeating in some detail:

> "Competitive forces may require management to subordinate safety factors to cost consideration, styling, and other marketing imperatives.
>
> "There is a dearth of factors motivating producers toward safety. Only a few of the largest manufacturers have coherent, articulated safety engineering programs. Manufacturers' efforts to obtain data on injuries and on the costs and benefits of design changes that will reduce unreasonable hazards can be charitable described as sketchy and sporadic.
>
> "The consensus principle, which is at the heart of all voluntary standards making, is not effective for elevating safety standards. It permits the least responsible segment of an industry to retard progress in reducing hazards.
>
> "The protection afforded by various seals of approval is no better than the technical competence, product-testing protocols, and independence of the certifier. When an industry association awards the seal, or when it is awarded in return for paid advertising, the seal may convey a deceptive implication of third-party independence. Consumers appear to attribute to such endorsements a significance beyond their specific meaning."

There is today no central facility for the systematic collection and evaluation of injury data. And, for this reason, it is impossible to measure the true magnitude of product-related injuries or to determine with confidence what portion of the annual toll of 30,000 deaths or 20 million injuries which are estimated to occur around the American home are actually caused by unsafe products.

Innumerable individual reports, nevertheless, persuaded the Commission—and have persuaded your Committee—that a significant number of deaths and injuries are directly attributable in whole or in part to unsafe consumer products. The Commission's report catalogs a large number of products which it found, on an ad hoc basis, to present unreasonable hazards to consumers. These included various makes, models, or types of: architectural glass, color television sets, fireworks, floor furnaces, glass bottles, high-rise bicycles, hot water vaporizers, household chemicals, infant furniture, ladders, power tools, protective headgear, rotary lawnmowers, toys, unvented gas heaters, and wringer washing machines. In a section of its report entitled "Unfinished Business", the Commission went on to list an additional sixteen products which it believed warranted further safety investigation. By any standard of measurement, the Commission concluded

"the exposure of consumers to unreasonable consumer product hazards is excessive."

Rather than propose individual legislation designed to deal with the product hazards which it had identified, however, the Commission decided that the Federal Government should abandon its traditional case by case approach to product safety and consolidate in a single agency authority sufficient to regulate the full spectrum of products which are sold to or used by consumers. To this end, the Commission submitted with its final report legislative proposals to create a new independent regulatory commission with comprehensive powers to minimize or eliminate unreasonably hazardous products.

Committee Consideration

In the first session of this Congress, the Chairman of the committee's Subcommittee on Commerce and Finance, John E. Moss of California, introduced a bill which substantially embodied the Product Safety Commission's legislative recommendations. Also, drawing upon the Commission's report, the President transmitted legislation to the Congress which proposed the establishment of omnibus product safety authority in the Federal government.

These two proposals formed the focus of 13 days of hearings before the Subcommittee on Commerce and Finance which extended over a four-month period. After 8 meetings in executive session, the Subcommittee unanimously reported a clean bill which represented an accommodation between the legislative recommendations of the National Commission on Product Safety and those of the Administration. This bill, HR 15003, with certain amendments, was ordered favorably reported on voice vote by the full committee after 2 days in executive session.

Structure

All witnesses who testified on this legislation—including virtually every segment of the manufacturing industry—supported the proposition that the Federal government should assume a major role in assuring the safety of consumer products. Disagreement among witnesses primarily centered on the organizational structure for regulating product hazards and the procedures to be employed in the exercise of governmental authority. Indeed, the most fundamental difference between the recommendations of the National Commission on Product Safety and those submitted by the Administration relate to the form of the governmental agency which is to assume responsibility for protecting the public from hazardous products.

The Commission had recommended that a new independent federal agency be established; the Administration had asked that this authority be given to HEW. It was the Administration's plan to build on the activities, personnel and existing facilities of the Food & Drug Administration and to reorganize FDA for the purpose of assuming the additional responsibilities contained in this legislation.

Your committee has decided on the approach recommended by the National Commission on Product Safety, and, therefore, proposes to vest comprehensive authority to protect the public from hazardous products in an independent regulatory agency. This decision reflects the committee's belief that an independent agency can better carry

out the legislative and judicial functions contained in this bill with the cold neutrality that the public has a right to expect of regulatory agencies formed for its protection. Independent status, and bi-partisan commissioners with staggered and fixed terms, will tend to provide greater insulation from political and economic pressures than is possible or likely in a cabinet-level department. The Commission's decisions under this legislation will necessarily involve a careful meld of safety and economic considerations. This delicate balance, the committee believes, should be struck in a setting as far removed as possible from partisan influence. Also, the creation of a new independent agency, it is thought, will assure that the regulatory program contained in this bill will be highly visible to get off to a firm and vigorous start.

The committee's decision to delegate product safety responsibility to a new independent commission also stems, in part, from a reluctance to assign substantial additional responsibilities to FDA in the face of a series of studies in recent years which have been sharply critical of the agency's abilities to carry out effectively the responsibilities already assigned to it under existing law. Principal among these studies are internal analyses: beginning with the so-called Kinslow report in July 1969 (which offered an analysis of FDA's consumer protection objectives and programs); followed by a departmental review of FDA conducted by then Deputy Under Secretary Frederic V. Malek completed in December 1969; and ending with the Ritts Committee review of FDA's "total scientific effort" which was completed in May 1971.[1] Each of these studies identified structural shortcomings in FDA, citing inadequacies in internal procedures and organization. Following each study, the prescription has been for more money and manpower and for reorganization.

There is today evidence that FDA is beginning to take strong, positive steps to strengthen its regulatory capability. Moreover, the Department of HEW has recently taken long overdue action to increase the agency's budget.

There is no assurance, however, that the regulatory program for product safety envisioned in this legislation would be free from organizational and funding difficulties if the Congress were to assign this authority to FDA, as suggested. On the contrary, it has been the committee's experience that when regulatory programs are placed in Executive Departments which have broad and diverse responsibilities, the regulatory effort has typically suffered from a lack of adequate funding and staffing. This has often been the result of the regulatory program's inability to compete effectively with other deserving programs within the Department or to gain public attention and support. In this regard, it would be difficult to find another Department of the

[1] Copies of these studies were submitted in the committee's hearings on this legislation. The "Kinslow Report" entitled "Report from the Study Group on Food and Drug Administration Consumer Protection Objectives and Programs" appears in the published hearings at p. 1025; the "Malek Report" which is entitled "Analysis and Recommendations: The Food and Drug Administration Organizational Review. . . . December 10, 1969" appears at p. 982; and the Ritts Committee report which is entitled "Report to the Commissioner of Food and Drugs from the FDA Ad Hoc Science Advisory Committee, May 1971" appears at p. 986. These studies were repeatedly relied on by consumer groups participating in the subcommittee's hearings as evidence that FDA should not be assigned additional responsibilities for product safety. These critics also called the committee's attention to a recent report completed by GAO in April of this year which found a "serious problem of insanitary conditions" in food-manufacturing plants. In addition to placing fault on the manufacturers, it blamed inadequate resources of the FDA and the agency's "lack of timely and aggressive enforcement action" as contributing to the problem.

Executive branch whose responsibilities are more broad than HEW's, or where the internal competition for the Secretary's attention and for funds is more intense.

PROCEDURES GOVERNING THE EXERCISE OF FEDERAL REGULATORY AUTHORITY

In addition to the need to establish comprehensive and effective regulation over the safety of unreasonably hazardous consumer products, there is a need to insure that the procedures relating to consumer products are fair to both industry and consumers. The Committee heard extensive testimony from manufacturers and trade associations documenting some of the potential difficulties that might be faced in complying with the regulations of a product safety agency. This testimony convinces the Committee that it is essential to establish both an effective and fair product safety program, impacting to the minimum extent practicable on the manufacturing process. In addition, an effective consumer safety program must insure an adequate opportunity for participation and judicial review by consumers and regulated industries.

With these goals in mind the Committee has fashioned legislation which for the first time affords industry and consumer groups an opportunity to directly participate in the development of safety standards. In addition, the Consumer Product Safety Commission created under this bill may, where appropriate, agree to contribute to the cost of development of such standards.

Product safety standards or proposed banning rules must be issued pursuant to the procedures of the Administrative Procedure Act. In addition, the bill incorporates added requirements for an oral presentation of arguments and the keeping of a transcript in such proceedings. Review by the courts, where sought, would be on the basis of "substantial evidence" in support of the agency's action, rather than on the usual rule, which sustains the agency's rule-making action if it is neither arbitrary nor capricious.

While the Committee has determined that it is essential to include authority to recall substantially hazardous products and products which do not meet safety standards from the marketplace, it has provided for an informal hearing prior to public notification, and a formal hearing prior to repair, replacement or refund under these provisions. Whether to utilize either of the remedies of repair, replacement or refunds would be at the election of the manufacturer.

Through these procedures the Committee has sought to develop legislation which will afford effective protection to consumers and fairness to the industries of the nation.

EXPLANATION OF REPORTED BILL BY SECTION

Finding and Purposes

Section 2(a) contains congressional findings respecting the subject matter of the bill. These include a finding that—in order to effectively regulate products distributed in interstate commerce—it is necessary to regulate hazards associated with products the distribution or use of which affects interstate commerce. The committee's decision to extend the reach of this bill to hazards associated with products the distribution or use of which "affects" commerce has two bases:

First, that effective enforcement of consumer product safety standards would be impracticable if the standards applied only to products in interstate commerce; and second, that the very substantial economic effects of accidents involving consumer products are by themselves sufficient to justify Federal intervention without regard to whether the particular product crosses State lines.

Subsection (b) of section 2 states the purposes of the bill, which are to protect the public against unreasonable hazards associated with consumer products, to assist consumers in evaluating product safety, to develop uniform consumer product safety standards, and to promote product safety research.

Definitions

Section 3 defines 13 terms which are to have particular application under this bill. Several of these are definitions commonly found in Federal statutes; others are unique to this bill and require special mention.

The definition of the term "consumer product" delimits the jurisdictional reach of this bill. Because it is intended to vest omnibus product safety authority in a single Federal agency, the definition is broadly stated to include any article which is produced or distributed for sale to or for the use, consumption or enjoyment of a consumer in or around a household or residence, a school, in recreation, or otherwise. Special attention should be paid to the use of the phrase: "produced or distributed for sale to * * * or for the use of * * * a consumer." It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use. Thus products which are manufactured for lease and products distributed without charge (for promotional purposes or otherwise) are included within the definition and would be subject to regulation under this bill. Also, products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for *use* of consumers.

It is not intended that true "industrial products" be included within the ambit of the Product Safety Commission's authority. Thus, your committee has specifically excluded products which are not *customarily* produced or distributed for sale to or use of consumers. The occasional use of industrial products by consumers would not be sufficient to bring the product under the Commission's jurisdiction. The term "customarily" should not be interpreted as intending strict adherence to a quantum test, however. Your committee is aware that some products which were initially produced or sold solely for industrial application have often become broadly used by consumers. If the manufacturer or distributor of an industrial product fosters or facilitates its sale to or use by consumers, the product may lose its claim for exclusion if a significant number of consumers are thereby exposed to hazards associated with the product.

The committe has also excluded from the definition of consumer product certain product categories which are either regulated under other safety laws or which the Committee has yet to determine should be subjected to safety regulation of the type envisioned in this bill. In this grouping are: tobacco and tobacco products, motor vehicles and motor vehicle equipment, economic poisons, firearms and ammunition,

medical devices and cosmetics. So that there may be no uncertainty as to the committee's intent with respect to the exclusion of food from this bill, the term is separately defined to make clear that poultry, meats, and eggs, and poultry, meat, and egg products are meant to be excluded. The specific listing of these foods and the failure to list others should not be interpreted as an intention to exclude some foods or food products while including others. The committee intends to exclude from application of this bill all foods within the broad meaning given to that term in section 201 of the Food, Drug and Cosmetic Act.

There has been some confusion over the intended application of this bill to mobile homes and the increasingly important problem of mobile home safety. It is the committee's understanding that the definition of the term "consumer product" would include any component, equipment, or appliance sold with or used in or around a mobile home. It is not thought that the term is so broadly stated as to bring the basic structure of the mobile home within the reach of this legislation. It is the committee's intent that the Consumer Product Safety Commission to be created under this legislation would have full authority, however, to regulate all appliances and appurtenances of the household environment of the mobile home.

In several sections of this bill, private labelers are required to assume the same duties and responsibilities as manufacturers. This follows the committee's belief that, if a person holds himself out as manufacturing a product and as standing behind the product's quality or performance, it is reasonable to ask him to assume certain responsibilities for that product.

For the purposes of this bill, a "private labeler" is defined to mean an owner of a brand or trademark which is placed on a consumer product in lieu of that of the manufacturer's. A product is not considered to bear a private label, however, if the manufacturer's brand or trademark also appears on the label.

The term "consumer product safety rule" is defined to include both a rule which establishes a safety standard, and a rule which declares a consumer product a banned hazardous product.

The term "hazard" is defined to mean a risk of death, injury, or serious or frequent illness. The phrase "unreasonable hazard" is used throughout the bill as a short-form reference to unreasonable risk of death, personal injury, or serious or frequent illness.

The term "manufacturer" is defined to include any person who manufactures, assembles or imports a consumer product. As a result, those engaged in the assembly of a consumer product are subjected to the same regulatory control as producers of the product. Also, to assure parity of regulation, importers are made subject to the same responsibilities as domestic manufacturers.

Subsection (b) of section 3 provides that common carriers, contract carriers, or freight forwarders shall not be deemed manufacturers, distributors, or retailers under this bill if the sole reason they would be considered as such arises out of their receiving or transporting a consumer product in the ordinary course of their business as carriers or forwarders. Unless excluded, carriers and forwarders would be swept up in the broad definitions of the terms "manufacturer," "distributor," and "retailers."

Consumer Product Safety Commission

Section 4 of this bill establishes an independent regulatory commission to carry out the assigned duties and responsibilities to protect consumers from unreasonably hazardous products. This section implements the National Commission on Product Safety's recommendation to create a strong independent product safety authority. In using the term independent, the committee intends that the agency be independent of the executive department and to be removed as far as possible from the influence of partisan politics or political control.

Section 4 creates the Consumer Product Safety Commission in the image of other regulatory commissions which have been created by the Congress to regulate the essential industries of rail and air transportation, oil and gas production, communications, and the securities markets. As such, the Consumer Product Safety Commission is made subject to traditional requirements relating to the appointment and organization of independent regulatory agencies. For example, to promote evenhanded regulation, the Commission is to consist of 5 members selected on a bipartisan basis to serve for seven-year terms. In the interest of efficiency and good organization, however, staffing authority is concentrated in the office of the Chairman—subject only to the general guidance of the Commission.

The committee has incorporated several provisions which depart from and improve upon traditional agency practice. Because the Commission's Chairman is designated as the principal executive officer and assigned special powers to control the operation of the agency, the committee does not believe that the Chairman should serve at the pleasure of the President. As Mr. Justice Sutherland once noted in a case involving the attempted removal of a member of the Federal Trade Commission "[i]t is quite evident that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." Accordingly, section 4(a) qualifies the presidential appointment powers by requiring that the Chairman, when designated as such by the President, shall continue to serve as Chairman until the expiration of his term of office as a member of the Commission. Thus, if the President designates a member of the Commission to serve as Chairman at the time of his appointment to the Commission, that person shall continue in office as Chairman for his full seven-year term on the Commission. The President would not be empowered to designate some other Commissioner to serve as Chairman within this period. Also, if the seven-year term of office runs into another administration, the incumbent President would not be able to remove the Chairman and replace him with his own designee.

In order to properly isolate members of the Commission from removal from office at the whim of the executive, section 4(a) states that members of the Commission may be removed for neglect of duty or malfeasance in office, but for no other cause. By delineating the bases for removal, your committee intends to restrict the Preisdent's power to remove from office to these grounds alone.

Subsection 4(c) states that no person may hold office as a member of the Commission if he is a member of, or holds any official relation to, any person engaged in selling or manufacturing consumer products.

Commissioners are also disqualified if they own stocks or bonds in substantial valuation in a person engaged in selling or manufacturing consumer products or if they are in any way pecuniarily interested in such person or in a substantial supplier of such person. The committee recognizes that these restrictions are severe. It is intended by them to create a standard for members of the Commission which will assure that they are their own masters and are known to be such.

These requirements, of course, are in addition to conflict of interest codes contained in the criminal provisions of title 18 (see 18 U.S.C. 207). Also, to assure that Commissioners and principal agency employees carry out their responsibilities vigorously and without compromise, this section makes it unlawful for any member of the Commission or individual employee who receives compensation at a rate in excess of GS-14 to accept employment or compensation from any manufacturer subject to this act for a period of one year after terminating employment with the Commission. This restriction is intended to assure that persons will not seek employment with the agency or use their Federal office as a means of subsequently gaining employment in the regulated industry or as a means of acquiring members of industry as future clients.

Product Safety Information and Research

Section 5 directs the Commission to maintain an injury information clearing house to collect, investigate, analyze, and disseminate information relating to the causes and prevention of death, injury, and illness associated with consumer products. The Commission is also directed to conduct such accident investigations and studies as it considers necessary to this function.

The committee expects that, in the exercise of its responsibilities under this section, the Commission will develop the means to monitor accident occurrences throughout the United States, to determine whether they are product related and to measure the severity of the injury caused. Information which discloses that a product may be hazardous must be promptly transmitted to the manufacturer. In this regard it is expected that responsible manufacturers, once notified of the dangers attendant to their products, will act to correct the problem without requiring governmental action.

It is recognized, of course, that the powers given the Commission to collect and analyze injury data far exceed the abilities of any single manufacturer or industry association to acquire information concerning the accident experience associated with their products. Private industry however, should not rely totally on the Government to discover product hazards. Each manufacturer has today and should continue to have the responsibility to assure through testing and other independent means that his products are free from defect or hazard and are properly designed for the use for which they are intended or applied.

Section 5(b) authorizes the Commission to conduct research, studies, and investigations on the safety of consumer products; to test products and to develop safety testing methods and testing devices; and to offer training in product safety investigation; and to assist others in the development of safety standards and test procedures. This authority is designed to give the Commission the means of identifying

hazards before consumers are exposed to them. The application of modern technology makes possible sophisticated analysis of product design and testing for product degradation so that potential accidents may be foreseen and avoided. And such analyses may well provide a proper basis for regulatory action without awaiting an accumulation of accident statistics of the maimed and injured.

The Commission is given broad authority to make grants and enter into contracts to conduct any of these functions. Where the contribution of technical assistance or financial aid is more than minimal, such contracts, grants or other arrangements must provide that the rights to all information, processes, patents, and other developments resulting from any research and development activities must be available to the public without charge on a nonexclusive basis. Nothing in this section is intended to deprive the contracted party or grant recipient from any patent, patent application, or invention which he may have had prior to entering within the arrangement with the Commission. Subject to this qualification, it is intended that all information developed under these grants would be freely and fully available to the public.

Public Disclosure of Information

If the Commission is to act responsibly and with adequate basis, it must have complete and full access to information relevant to its statutory responsibilities. Accordingly, the committee has built into this bill broad information-gathering powers. It recognizes that in so doing it has recommended giving the Commission the means of gaining access to a great deal of information which would not otherwise be available to the public or to Government. Much of this relates to trade secrets or other sensitive cost and competitive information. Accordingly, the committee has written into section 6 of the bill detailed requirements and limitations relating to the Commission's authority to disclose information which it acquires in the conduct of its responsibilities under this act.

Subsection (a) makes clear that nothing in this act shall be deemed to compel the Commission to disclose information which would not otherwise be available to the public under the Freedom of Information Act (5 U.S.C. 552(b)). There is one exception to this requirement. The Freedom of Information Act would not require a Federal agency to permit public access to investigatory files compiled for law enforcement purposes. Section 25(c) of this bill qualifies the Commission's authority to deny access to investigatory files by making accident investigations specifically available to the public so long as they do not identify injured parties or attending physicians (unless a release is obtained from such persons).

Subsection (a)(2) contains an absolute prohibition against the Commission's disclosure of trade secrets and other information referred to in section 1905 of title 18—except to other officers or employees concerned with carrying out responsibilities under this act or when relevant in any proceeding under this act. The committee intends that the term "trade secrets" shall be given the same judicial construction as that term has acquired under 18 U.S.C. 1905. Accordingly, for the purposes of section 6 of this act, a trade secret means "an unpatented, secret, commercially valuable plan, appliance, formula, or process,

which is used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities."[1]

Before disseminating any information which identifies the manufacturer or private labeler of a product, the Commission is directed to give the manufacturer or private labeler 30 days in which to comment on the proposed disclosure of information. This procedure is intended to permit the manufacturer or private labeler an opportunity to come forward with explanatory data or other relevant information for the Commission's consideration. There is no intention that the Commission be required to include a manufacturer's or private labeler's explanation in the materials which it determines to disseminate at the end of the 30-day period. This was suggested to the committee and rejected

The committee recognizes that the Commission has a responsibiilty to assure that the information which it disseminates is truthful and accurate. Where it is discovered that the disclosure of information has been inaccurate or misleading and reflects adversely on the safety of a consumer product or the practices of any manufacturer, distributor, or retailer of the product. the Commission is directed to publish a retraction in a manner similar to that in which the original disclosure was made. It is intended that a retraction receive at least the same notoriety as the original disclosure. Accordingly, if the Commission had publicly released information to the news media which was inaccurate or misleading, the retraction must also be released to the news media and not simply placed in the Federal Register. By requiring that the Commission publish its retraction in a manner similar to that in which the original disclosure was made, the committee does not intend to limit the Commission to these means. There may be circumstances where equity requires fuller disclosure of the Commission's mistakes in order to repair the damage to any manufacturer, distributor, or retailer of the product which may have resulted from publication of the inaccurate information.

The Commission is not required to give prior notification to manufacturers of any information which may be disclosed with respect to a product for which an action has been brought under section 12 (relating to imminently hazardous products) or a product which the Commission has reasonable cause to believe is in violation of section 19. The Commission also need not notify manufacturers and await the tolling of the 30-day period prior to the disclosure of information in the course of or concerning an administrative or judicial proceeding under the act.

Consumer Product Safety Standards

Section 7 authorizes the Commission to promulgate mandatory consumer product safety standards where it finds that such standards are reasonably necessary to prevent or reduce an unreasonable hazard to the public associated with a consumer product. These standards may prescribe requirements relating to the performance, composition, content, design, construction, finish, or packaging of a product or prescribe requirements relating to the labeling of a product. Safety standards

[1] See *Consumers Union of United States* v. *Veterans Administration*, 301 F. Supp. 796 (1969), citing with approval *United States ex rel. Norwegian Nitrogen Products Co.* v. *United States Tariff Comm.*, 6 F. 2d 491, 495 (1925).

may contain any combination of these requirements which the Commission determines is necessary to prevent or reduce the hazard to the public.

Section 7(a) contains the statutory admonition that, wherever feasible, a standard must be expressed in terms of performance requirements. Your committee has expresed a strong preference for performance standards in the recognition that such standards permit industry to make the fullest use of its technological resources in meeting safety requirements. Mandatory standards which prescribe performance requirements can often be expected to foster rather than stifle competition. Your committee expects that the Commission will exercise its authority to establish standards relating to a product's composition, content, design, construction, finish, or packaging only in circumstances where it is persuaded that it would not be feasible to establish performance criteria.

It should be noted that the Commission's authority to promulgate standards under this bill is limited to instances where the hazard associated with a consumer product presents an unreasonable risk of death, injury, or serious or frequent illness. Your committee has not included a definition of "unreasonable hazards" within this bill. Protection against unreasonable risks is central to many Federal and State safety statutes and the courts have had broad experience in interpreting the term's meaning and application. It is generally expected that the determination of unreasonable hazard will involve the Commission in balancing the probability that risk will result in harm and the gravity of such harm against the effect on the product's utility, cost, and availability to the consumer. An unreasonable hazard is clearly one which can be prevented or reduced without affecting the product's utility, cost, or availability; or one which the effect on the product's utility, cost or availability is outweighed by the need to protect the public from the hazard associated with the product. There should be no implication, however, that in arriving at its determination the Commission would be required to conduct and complete a cost-benefit analysis prior to promulgating standards under this act. Of course, no standard would be expected to impose added costs or inconvenience to the consumer unless there is reasonable assurance that the frequency or severity of injuries or illnesses will be reduced.

Procedures for the Development of a Consumer Product Safety Standard

Section 7 contains detailed procedures for the development of consumer product safety standards. Briefly stated, your committee has attempted to outline a process which makes maximum use of the expertise available in the private sector and permits maximum participation by industry and consumer interests in the standard-setting process, while at the same time reserving to the Commission that measure of discretion and authority necessary to permit it to efficiently and effectively carry out its responsibilities.

Initiation of the Standard-Making Process

A proceeding to develop a consumer product safety standard is initiated by publication of notice in the *Federal Register* which: (1) identifies the product and the nature of the hazard associated with it; (2) states the Commission's determination that a consumer product

safety standard is necessary to prevent or reduce the hazard; (3) includes information respecting any existing standard which may be relevant; and (4) invites interested persons to come forward within 30 days with an existing standard suitable to be proposed as a consumer product safety standard under this act or to offer to develop a proposed consumer product safety standard to deal with the product hazard.

The notice is required to state a development period within which the Commission must receive final recommendations from any person whose offer to develop a standard is accepted. The Commission is to allow 150 days for the development of a recommended standard unless, for good cause, it finds a longer or shorter period is appropriate.

Subsection (c) would permit the Commission, in lieu of accepting an offer for the development of a standard to publish an existing standard which it finds would adequately prevent or reduce the hazard associated with the product if promulgated as a Federal consumer product safety standard under this act. There are, of course, many thousands of existing standards which have been issued by a multitude of public and private organizations and agencies. Many of these relate to consumer product safety. In some cases an existing voluntary standard may be entirely adequate to prevent or reduce an unreasonable hazard associated with a product, but is ineffective in protecting the public because it is not widely accepted by industry or because the promulgating agency or organization lacks authority to require adherence to its terms.

Except in circumstances where the Commission determines that an existing standard would satisfactorily prevent or reduce the hazard, the Commission is required to accept an offer for the development of a standard made by an offeror which it determines is technically competent; is likely to develop an appropriate standard within the required period; and is willing and able to comply with certain regulations relating to procedures for the development of the standard. The requirement of technical competence contemplates that an offeror may be called upon to demonstrate his expertise and capability to carry out the undertaking to develop the proposed standard. It is not intended to require that an offeror have past standards-writing experience or particular knowledge of the product for which the standard is to be developed. It is anticipated that universities and research laboratories could be found technically competent even though they may have had no experience relating to the product to be regulated.

Subsection (d) makes it mandatory that the Commission accept an offer to develop a proposed standard in order to assure that, in the first instance, private standard-making organizations or technical committees as well as consumer groups and other public and private agencies will have an opportunity to prepare a proposed solution to the problem. If the Commission accepts an offer for the development of a standard, it may agree to contribute to the offeror's cost. It is expected that the Commission will exercise its authority under this section to provide assistance to consumer organizations or groups which are less likely to be able to bear the costs of standards development than are industrial trade organizations. Also, in instances where an offer from a technical committee or standard-writing organization is accepted, it is contemplated that the Commission would have authority under this section to limit its contribution to such of the offeror's

costs as are attributable to assuring adequate participation by public representatives in the development process.

Subsection (d)(3) directs the Commission to adopt regulations to assure that offerors whose offers are accepted proceed fairly and openly in the development of the standard. To a large measure, these regulations parallel requirements which the Administrative Procedure Act (5 U.S.C. 551 et seq.) prescribes for Federal agencies. Accordingly, the regulations require the offeror to provide notice and opportunity for interested persons to participate in the development process; to keep public records showing the course of the standard's development and any information submitted to the offeror which relates to the development of the standard or other matter relevant to the evolution of the standard. Such regulations must also provide that the standards recommended for promulgation be suitable; be supported by test data or such other documentation as the Commission may reasonably require; and, in appropriate cases, that they contain suitable test methods for determining compliance with the standard. Each offeror must permit the Commission and the Comptroller General access to any books or records which are relevant to the development of the standard or to the expenditure of any contribution made by the Commission to the standard's development.

Commission Development of a Proposed Standard

Section 7(c) imposes restrictions on the ability of the Commission to proceed independently to develop a proposed standard once it has accepted an offer for its development. The committee has imposed these limitations in order to avoid duplication and to help assure that a proposed standard submitted by an offeror will be given serious consideration and will not be readily discarded by the Commission in favor of its own solutions to the problem.

Under subsection (c)(2), if the Commission accepts an offer to develop a standard, it may not, during the development period, develop proposals for such standard itself or contract with third parties for the development of such a standard. The Commission is also prohibited from publishing a proposed rule applicable to the same hazard associated with the product during this period. Subsection (c)(2) should not be interpreted, however, as preventing the Commission or its staff—while awaiting the submission of recommended standards—from developing or acquiring the technical capability necessary to properly evaluate the standards recommended to it.

If the Commission determines that no offeror is making satisfactory progress, it may proceed to develop its own proposals or contract with third parties for that purpose. It is hoped that this action will prompt an offeror to move more diligently to develop a recommended standard within the period allowed for its development. If, however, the Commission determines that no offeror is able or willing to continue satisfactorily to develop the standard, the Commission may end the development period and immediately publish a proposed product safety rule applicable to the product hazard with which the standard was to have dealt. This proposed rule may take the form either of a proposed standard or rule declaring the product a banned hazardous product.

Publication of Proposed Rule

Section 7(f) mandates that the Commission act within 210 days after publication of the original notice initiating a proceeding for the development of a standard to (1) withdraw the notice of proceeding, or (2) publish a proposed rule which either proposes a consumer product safety standard applicable to the product or proposes to declare the product a banned hazardous product. The Commission may extend the 210 day period for good cause shown.

Banned Hazardous Products

Section 8 grants authority to the Commission to administratively ban hazardous consumer products if it finds that the product presents an unreasonable hazard and that no feasible consumer safety standard would adequately protect the public from the hazard. Section 9(c)(2) requires that these findings must be affirmatively made and incorporated in any adopted rule which declares a product to be a banned hazardous consumer product. The Commission need not attempt to first develop a proposed standard to deal with the hazard under section 7, but may proceed directly to ban a hazardous product. Interested persons may obtain judicial review under section 11 of a banning rule and may thereby require the Commission to support with substantial evidence its finding that no feasible standard would adequately protect the public.

Administrative Procedures Applicable to Promulgation of Consumer Product Safety Rules

Section 9 requires the Commission to act to either adopt a final rule or withdraw the proposed rule within 60 days of publication of any proposed consumer product safety rule under this act. If the Commission determines to withdraw the proposed rule, it must find that withdrawal is in the public interest, or that the proposed rule is not reasonably necessary to prevent or reduce the hazard associated with the product. The 60-day period may be extended by the Commission for good cause shown.

Consumer product safety rules under this bill are to be promulgated pursuant to section 553 of title 5 of the United States Code. The committee has modified the informal rulemaking procedures of the Administrative Procedure Act by requiring that the Commission give interested persons an opportunity for the oral presentation of views, data, or arguments in addition to providing an opportunity for the submission of written comments. Also, a transcript must be kept of this proceeding to assure that the views of participating parties will be preserved and available to a reviewing court under section 11.

In traditional agency rulemaking, it is discretionary with the agency whether to provide an oral hearing under section 553 of title 5. Your committee has decided to remove that discretion and make mandatory that interested persons be afforded an opportunity to orally present arguments to the Commission. In so doing, the Committee sought to reach an accommodation between the informal requirements of section 553 and the formal trial type procedures of sections 556 and 557 of title 5. The informal procedures were not thought to provide the desired opportunity for interested parties to participate in the Commission's rulemaking proceeding; the formal, on the other hand, were thought to unduly involve the Commission

in adjudicatory procedures inappropriate to the essentially legislative nature of the rulemaking procedure. The committee has accordingly crafted an administrative procedure to be employed in this bill which it believes will maximize opportunities to participate in the rulemaking proceeding without unduly entangling the Commission in trial type procedures.

Consumer product safety rules are required to express the nature of the hazard the rule is designed to prevent or reduce and state the rule's effective date. Rules are required to take effect not more than 180 days from the date issued unless the Commission finds for good cause that a later effective date is in the public interest. Consumer product safety standards may be made applicable only to consumer products which are manufactured after the date a standard is promulgated. Thus the Commission could not establish a retroactive effective date for any consumer product safety rule which embodies a product safety standard. Rules declaring a product to be a banned hazardous consumer product, however, may apply to products of new manufacture or to products already distributed in commerce.

In determining whether to promulgate a final consumer product safety rule the Commission is directed to consider all relevant data available to it including the results of research, development, testing, and investigation activities. The Commission is instructed to make appropriate findings to be included in any final rule with respect to (1) the nature and degree of the hazard, (2) the approximate number of consumer products or types or classes of consumer products which are to be made subject to the rule, (3) the public need for the consumer products which are to be subject to the rule and (4) the probable effect of the rule upon the utility, cost, or availability of such product.

As a condition precedent to issuing a consumer product safety rule, the Commission must make findings that (1) the rule (including the effective date) is reasonably necessary to prevent or reduce an unreasonable hazard to the public and (2) the promulgation of the rule is in the public interest. In instances where the rule declares a product to be a banned hazardous product, the Commission must make an affirmative finding that no feasible consumer product safety standard would adequately protect the public.

Amendment and Revocation of Consumer Product Safety Rules

Under section 9(c) the Commission is permitted to adopt rules amending or revoking any consumer product safety rule which it has promulgated. An amendment or revocation must take effect within 180 days unless the Commission extends the period for good cause. If the amendment involves a material change in a consumer product safety rule, the Commission must observe the full procedures required for the promulgation of rules contained in sections 7, 8, and 9. For example, where the Commission proposes to make a material amendment in a rule which embodies a consumer product safety standard, it must publish notice under section 7 and invite interested persons to offer to develop an amended standard. In instances where the Commission proposes to revoke a rule, it must provide an opportunity for the oral presentation of views, data, and arguments and for written submissions in accordance with the provisions of section 9(a)(2). A rule may only be revoked if the Commission determines that the rule is no longer reasonably necessary to prevent or reduce the hazard.

Persons adversely affected or any consumer or consumer organization may obtain judicial review under section 11 of any rule which materially amends or revokes an existing consumer product safety rule.

Petition by Interested Parties for Consumer Product Safety Rules

Section 10 establishes a mechanism for interested persons to petition the Commission to commence a proceeding to issue, amend, or revoke a consumer product safety rule. The right to petition agency action is, of course, fundamental and already a part of the Administrative Procedure Act (5 U.S.C. 553(e)). This section would add to that privilege by requiring the Commission to explain its reasons if it determines to deny the petition. As a result, interested persons are given a means of requiring the Commission to explain the basis for inaction with respect to a particular product or class of consumer products.

Judicial Review of Consumer Product Safety Rules

Section 11 provides a procedure under which any person adversely affected by a consumer product safety rule or any consumer or consumer organization may obtain judicial review of the rule upon application to a U.S. court of appeals within 60 days following promulgation of the rule. The reviewing court, upon application of the petitioner, may order the Commission to adduce additional data, views, or arguments. Commission rules are to be overturned unless each of the findings which the Commission is required to make under section 9(c) is shown to be supported by "substantial evidence" on the record taken as a whole. Thus, although the Commission's rule-making proceeding is permitted to follow the informal procedures of section 553 of title 5 of the U.S. Code (subject to the further requirement that the Commission afford an opportunity for the oral presentation of views, data, and arguments) its determinations are subjected to the stricter standard of review that is normally reserved for formal agency proceedings under sections 556 and 557 of title 5.

Judicial review under this section is in addition to, not in lieu of, other legal rights or remedies. Accordingly, this section should not be interpreted as abridging in any way a person's right to collaterally attack a product safety rule to the extent otherwise provided by law in civil or criminal proceedings brought after the expiration of the 60-day period. Nor should the failure to subject other Commission rules or orders to review under this section be read as derogating from customary rights of judicial review of such rules and orders which are made available under applicable provisions of the Administrative Procedure Act (5 U.S.C. 701–06).

Imminent Hazards

Section 12 gives the Commission emergency authority to deal with hazardous products which present an imminent and unreasonable risk of death, serious illness, or severe personal injury. In such circumstances the Commission may file an action in U.S. district court to seize and condemn the offending product and may bring an action against any manufacturer, distributor, or retailer of the product for such equitable remedy as may be necessary to adequately protect the public from the hazard.

The district court is granted authority to issue mandatory orders requiring notification to purchasers known to the defendant, to require public notice, recall, repair, replacement, or repurchase of such product. The Commission may request and the court may order any combination of these remedies.

In determining whether to initiate an action and what type of equitable relief to request, the Commission may consult with the Product Safety Advisory Council which is established under section 28 of this bill. The Council is authorized to conduct such hearings or offer such opportunity for the presentation of views as it may consider necessary or appropriate. In light of the emergency nature of the proceeding, however, the Council is required to submit its recommendations to the Commission within one week. It is to be emphasized that the Commission has complete discretion whether to consult the Council and its failure to seek advice shall not in any way affect the validity of a proceeding under this section.

In appropriate cases, the Commission is required to initiate a proceeding to promulgate a consumer product safety rule applicable to the product concurrently with the filing of an action with the court under this section or as soon thereafter as may be practical. If the hazard is of a type which would not reasonably be corrected by a safety standard or by banning the product, the Commission would not be required to initiate such a proceeding.

New Products

Section 13 gives the Commission rulemaking authority to establish procedures requiring manufacturers of new consumer products to furnish notice and a description of the product to the Commission before its distribution in commerce. The term "new consumer product" is defined to mean any consumer product which incorporates a design, material, or form of energy exchange which (1) has not previously been used substantially in consumer products *and* (2) as to which there exists a lack of information adequate to determine the safety of the product.

This section is designed to provide the Commission with a means of keeping abreast of new products entering the market place so that it can head off imminently hazardous products in the courts or promptly institute a proceeding to ban or develop standards for products which it determines are unreasonably hazardous. It is not intended that the Commission's rulemaking powers under this section be used to require premarket clearance of new consumer products. Thus, the Commission would not have authority under this section to require a manufacturer to postpone distribution of a new product until the Commission has had an opportunity to run tests on the product or make an analysis of its potential for harm.

Product Certification and Labeling

Section 14 provides that manufacturers (including importers) and private labelers of products subject to safety standards shall issue certificates which certify that their products conform to all applicable consumer product safety rules. Your committee has determined to require private labelers who distribute a product as if it were their own, to assume the same responsibilities with respect to certification that this section would impose upon a manufacturer of the product.

Certificates are to be issued on the basis of actual tests conducted of each product or upon a reasonable testing program, and shall state the name of the manufacturer or private labeler issuing a certificate and include the date and place of manufacture. The certificate must accompany the product or be otherwise furnished to any distributor or retailer to whom the product is delivered. Your committee does not intend to require that the certificate accompany delivery of each item. Where it is reasonable and appropriate to certify an entire production run, or batch or group of products based upon a reasonable testing program, the certificate may apply to the entire production run, batch, or group of products and may be furnished to the distributor or retailer together with a bill of lading (or otherwise) at the time the first product from the production run, batch, or group is delivered to the distributor or retailer. For some products it may be possible to certify an entire model year; for others, testing results would be valid for only a single day's production.

The committee understands that an original shipment is frequently divided in the course of its distribution and portions of the shipment will end up in the possession of more than one retailer. In these circumstances, manufacturers, importers, or private labelers would not be expected to issue original certificates to each distributor or retailer. It would satisfy the requirements of this section to deliver a copy of the certification to any party within the distribution chain to whom the product is delivered.

Under subsection (b), the Commission is given rulemaking authority to prescribe reasonable testing programs upon which certification must be based. In this connection it is the committee's intention that the Commission would adopt rules which establish testing criteria or methods for testing products and the results to be achieved therefrom. Your committee does not intend that this rulemaking authority be used by the Commission to require manufacturers to observe specified production techniques or manufacturing practices in the manufacture or assembly of products.

Section 14(b)(2) gives the Commission authority to prescribe rules applicable to certification where there is more than one manufacturer of a consumer product. This was thought necessary because, in an attempt to reach the fullest range of persons engaged in the production of a consumer product, the bill defines the process of manufacture to include the assembly or production of a product or any of its component parts. In the case of certain electrical products, therefore, it would be common for several "manufacturers" to have participated in the production of the product. In such a case it is expected that the Commission could designate one or more such manufacturers as the manufacturer required to issue a certificate under paragraph (1) of this subsection and could provide that other manufacturers of the product would be relieved of the requirement of issuing a certificate or seeing to it that a certificate accompanied delivery of the product or component. The Commission would have the same authority in cases in which there is more than one private labeler of a product.

Subsection (c) of this section permits the Commission to prescribe rules which may require any consumer product to be labeled with the date and place of manufacture and contain suitable identification of the manufacturer or private labeler. The Commission is given author-

ity to specify the form and content of such labels and, where practicable, to require that they be permanently marked on or affixed to the consumer product. Where products are subject to applicable product safety standards under this act, the Commission also may require that labels certify that the product conforms to all standards and specify those standards which are applicable to the product.

The committee recognizes that there may be circumstances where open dating of particular types or classes of consumer products may create special economic hardships, or cause a restruction of marketing techniques which may unduly affect the cost and availability of the product. In appropriate cases, therefore, it is expected that the Commission would permit manufacturers and private labelers to express in code the date of manufacture and other labeling information. Information which may be required by the Commission under this section is intended among other things to facilitate product identification in connection with a notification and recall under section 16 or pursuant to court order under section 12. Accordingly, if the Commission permits the required information to be expressed in code it should make certain that consumers and persons within the distribution chain, once supplied with the key to the code, will have no difficulty in decifering its meaning. In this regard, manufacturers and private labelers who use coded information may be required to assume added responsibilities to assure that adequate notice is given in the event recall of their product proves necessary.

Notification and Repair, Replacement, or Refund

Section 15 would require that every manufacturer of a consumer product which is distributed in commerce and every distributor or retailer of the product notify the Commission on obtaining information which reasonably supports the conclusion that the product (1) fails to comply with an applicable consumer product safety rule, or (2) contains a defect that could create a substantial product hazard. A manufacturer, distributor, or retailer is relieved from this obligation if he has actual knowledge that the Commission has been adequately informed of the defect or failure to comply.

If the Commission, based upon information which it receives from manufacturers, distributors, or retailers or on any other information which it may independently acquire, determines that a product presents a substantial hazard and that notification is required in order to adequately protect the public, it may order the manufacturer or distributor or retailer of the product to give public notice of the defect or failure to comply and require that notice be mailed to known customers and persons within the distribution chain. The Commission may specify the form and content of any notice required.

It is contemplated that a Commission order requiring public notice may, in appropriate cases, include a requirement that the manufacturer, distributor, or retailer purchase broadcasting time or buy advertising space in magazines or newspapers. While broadcasters and other media may wish to make time and space available without charge, there is no compulsion that they do so. Nor is it intended that broadcasters or news media be required to sell time or space in order to facilitate public notice under this section. A manufacturer, retailer, or distributor who is ordered to purchase broadcasting time, but is unable to do so, would be deemed to have complied with the Commis-

sion's order so long as he exercised good faith in attempting to carry out the Commission's directive.

It should be noted that manufacturers, distributors, and retailers may only be required to mail notice to customers who are known to them. This is intended to mean customers of whom they have actual knowledge. Thus, the Commission would not have authority to require a manufacturer to comb the files of its retailers to learn the names of customers who have purchased the product.

In order to compel notification under this section, the Commission must afford interested persons an opportunity to orally present their views in addition to affording them the opportunity to make written presentations. Like the administrative procedures contained in section 9, this marks a departure from traditional informal rulemaking authority.

Section 15(a) defines the term "substantial product hazard" to mean a defect which because of the pattern of defect, the number of defective products distributed in commerce and the severity of the risk or otherwise, can be determined to pose a substantial hazard to the public. This definition looks to the extent of the public exposure to the hazard. A few defective products will not normally provide a proper basis for compelling notification under this section.

Section 15(d) permits the Commission to order a manufacturer, distributor, or retailer to take remedial action with respect to the product if the Commission finds both that the product presents a substantial hazard and that it is in the public interest to order such action. The Commission must afford interested persons an opportunity for a hearing in accordance with section 554 *et seq.* of title 5 of the United States Code before it may order remedy of the product defect or failure to comply. Thus, before being compelled to take remedial action, manufacturers, distributors, and retailers may avail themselves of the procedural safeguards available under the formal adjudicatory procedures of the Administrative Procedure Act.

If the Commission orders that remedial action be taken, the person to whom the order is directed may elect whether to (1) bring the product into conformity with the applicable rule or to repair the defect in such product; (2) replace such product, or (3) refund the purchase price of such product—less a reasonable allowance for use in certain cases. When the Commission orders more than one person to take action, it may specify which of those persons shall be entitled to elect the remedies listed above. It is expected that in the exercise of this authority the Commission give consideration to where the ultimate legal responsibility for the defect or failure to comply may lie. The authority to issue multiple orders under this section is designed to allow the Commission to order retailers of a product to take action to remedy the product defect or failure to comply, while permitting the manufacturer to determine whether remedy shall take the form of repair, replacement, or refund.

A manufacturer, retailer, or distributor ordered to take remedial action under this section may be required to submit a plan satisfactory to the Commission which sets forth the action he intends to take in compliance with the Commission order. This is intended to give the Commission authority to supervise the remedy of the hazard associated with the product so as to disallow intended repairs which do not in fact prevent or sufficiently reduce it.

The Commission is also authorized to specify which persons are to receive refunds where that remedy is elected. This would permit the Commission to control not only who will be entitled to refund but also what proof of claim must be made in order for a person to recover the purchase price. Accordingly, the Commission is intended to have authority to specify whether present owners or only first purchasers are entitled to refund and whether the product must be tendered or whether the sales slip or some other proof of purchase or ownership must be made. The Committee has decided against an absolute requirement that consumers must tender products in order to be entitled to the refund in favor of this more flexible approach. The Committee was concerned that, in some instances, to require the tender of the product might unduly expose consumers and persons within the distribution chain to the hazards associated with the product. Also, the offending product may no longer be in a form which would allow its tender.

Consumers who avail themselves of the remedy provided by Commission order shall not be charged and must be reimbursed for any reasonable and foreseeable expenses incurred in availing himself of the remedy. The Commission is given authority to require any manufacturer, distributor, or retailer to reimburse any other person in the distribution chain for his expenses in carrying out the Commission's order. While it is expected that the Commission in the exercise of this authority will most commonly order those at fault to reimburse others for their expenses, it is contemplated that the Commission would have the authority to place this obligation on the person most able to bear the cost where equitable and other considerations appear to warrant such action in the public interest. In this area, general rules are neither appropriate or feasible. The Commission would be expected to exercise this power on an ad hoc basis taking into account the individual circumstances of each case.

Inspection and Recordkeeping

In pursuance of the act's purpose of protecting the public health and safety, section 16 grants the Commission broad authority to conduct on-site inspections of any factory, warehouse, or establishment in which consumer products are manufactured or held in connection with their distribution in commerce, or to enter and inspect any conveyance being used to transport consumer products. Such inspections may extend to any portion of any premises or facility which may relate to the safety of such products.

Inspections under this section may be conducted of any factory, warehouse, establishment, or conveyance in which consumer products are manufactured or held whether or not those consumer products are subject to an applicable product safety rule. The Commission is intended to have authority under this section to conduct periodic or random inspections in addition to inspections for cause. In the early stages of this program, however, it is expected that the Commission in marshalling its resources will place primary emphasis on inspections to test for compliance with applicable standards and concentrate on instances where it has reason to believe that the methods, tests, or procedures related to the manufacture and storage of a product may not be adequate or reliable.

Inspections are required to be conducted at reasonable times, in a reasonable manner, and are to be completed with reasonable promptness. By so conditioning the time, scope, and length of inspections, the committee has sought to allay manufacturers' fears that the inspection process may be used as a harassing technique or otherwise abused.

Section 16(b) gives the Commission authority to require manufacturers, private labelers, or distributors of consumer products to establish and maintain such records, make such reports, and provide such information as the Commission may reasonably require for purposes of implementing this act or to determine compliance with applicable rules or orders. It should be noted that this authority does not extend to retailers who are not also manufacturers, private labelers, or distributors (as defined in section 3 of the bill). Such persons have been excluded by the committee in the belief that mandatory customer recordkeeping requirements could prove unduly burdensome for a large number of small retailers and could materially add to the costs of consumer products. Manufacturers, of course, are free to develop such arrangements with their retailers as they may believe are necessary to facilitate the efficient and economic recall and remedy of defective and nonconforming consumer products. Such arrangements will remain a matter of private agreement.

Records required to be established and maintained by the Commission must be made available for inspection upon request of a duly designated officer or employee of the Commission. In exercising its recordkeeping authority under this section, the committee expects that the Commission will take due consideration of the cost of establishing and maintaining the records and benefits to be achieved.

Imported Products

Section 17(a) requires that any consumer product offered for importation be refused admission into the United States customs territory if the product (1) fails to comply with an applicable consumer product safety rule; (2) does not meet the certification or labeling requirements of section 14; (3) is, or has been, determined to be an imminently hazardous consumer product under section 12; (4) has a product defect which constitutes a substantial product hazard (within the meaning of section 15(a)(2)); or (5) manufactured by a person who the Commission has informed the Secretary of the Treasury is in violation of subsection (g).

Subsection (b) directs the Secretary of the Treasury to obtain without charge and deliver to the Commission, upon the latter's request, a reasonable number of samples of consumer products being offered for import. If it appears from examination of these samples or otherwise that a product cannot be admitted under the terms of subsection (a), such product must be refused admission unless modified under subsection (c).

Owners and consignees are entitled to an adjudicatory type hearing with respect to importation of their products (unless an opportunity for such a hearing has already been afforded under section 12).

Subsections (c) and (d) permit the owner or consignee to modify any product so that it may be admitted under the terms of subsection (a). The modification would be subject to requirements respecting bonds and would be under the supervision of the Commission and the Treasury Department.

Subsection (e) requires that products refused admission under this section be exported or destroyed.

Subsection (f) requires that the owner or consignee pay expenses in connection with the destruction of, and storage, cartage, or labor with respect to any consumer product refused admission under this section. If the expenses are not paid, they will be a lien against any future importations made by such owner or consignee.

Subsection (g) authorizes the Commission by rule to condition the importation of a consumer product on the manufacturer's compliance with certain inspection and record-keeping requirements.

Exports

Section 18 excludes exported products from the provisions of this act. This provision has been drawn to exclude only products which are exported or those which can be shown to have been manufactured, sold or held for sale for export and which are marked with a stamp or label stating that the product is intended for export. If a consumer product is, in fact, distributed in commerce for the use in the United States, it will be subject to the act.

The committee wishes to point out that any person claiming exemption under this section for any product found within the United States has the burden of proving that the product was manufactured, sold, or held for sale for export. Also, it should be noted that in cases where such product has been distributed in commerce, in order to qualify for an exemption, the product (or its container) must bear a stamp or label stating that the product is intended for export.

Any person engaged in the distribution or sale of products which are not labeled "for export" must proceed on the premise that the product is subject to the act and must comply with applicable standards or rules and, in appropriate circumstances, be accompanied by a certificate.

Prohibited acts

Section 19 lists prohibited acts under this bill for which civil and criminal penalties may be imposed or injunctive action brought.

Paragraphs 1 and 2 of subsection (a) make it unlawful for any person to manufacture for sale, offer for sale, distribute in commerce, or import any consumer product which does not conform to an applicable consumer product safety standard or which has been declared a banned hazardous product by rule authorized by section 8. This language is intended to insure that the act may apply to each stage of the process followed in the manufacture and distribution of consumer products.

Several persons have expressed the fear that the broad sweep of this language, would hold in violation of the Act, a manufacturer whose product failed to comply with applicable standards as it came off the assembly line, even though the non-conformity was corrected prior to the products distribution in commerce. This would not be the intention of the committee. In interpreting the term "manufacture for sale" the Commission and the courts should look to whether the manufacturer evidenced an intention to distribute the product. Where the manufacturer could show his intention to correct a non-conforming product or where he has, in fact, made the required correction, this paragraph should not be read as permitting the manufacturer to be held in violation on the technical basis that the product as initially

produced or assembled did not comply with applicable standards or rules.

Paragraph 3 makes it unlawful for any person to fail or refuse to comply with inspection and record-keeping requirements or to furnish reports or other information required under this act or by Commission rule.

Paragraphs 4 and 5 make it unlawful to fail to give notice to the Commission as required by section 15(b) or to fail to comply with a Commission order under section 15 to give notice to or to repair, replace, or refund the purchase price of products which present substantial hazards.

Paragraph 6 would make it unlawful to fail to furnish a certificate required by section 14 or to issue a false certificate where such person, in the exercise of due care, would have reason to know is false or misleading in any material respect. It is also made a prohibited act to fail to comply with Commission rules issued under section 14(c) relating to the labeling of consumer products.

It would not be a prohibited act under this section for a distributor or retailer to distribute, sell, or offer for sale any product which does not conform to applicable standards or which has been declared a banned hazardous product if the retailer or distributor (1) holds a certificate certifying that the product conforms to all applicable consumer product safety rules (unless he knows that such consumer product does not so conform) or (2) relies in good faith on the representation of the manufacturer or distributor that the product is not subject to an applicable product safety rule. The representation that the product is not subject to an applicable product safety rule may be either expressed or implied. In some cases a retailer or distributor may properly assume that a product is not subject to safety rules. However, where the distributor or retailer relies on implied representations, he must be prepared to demonstrate his good faith in not pursuing further inquiry to determine whether a product was, in fact, subject to an applicable product safety rule.

Civil Penalties

Section 20 makes any person who knowingly commits a prohibited act under section 19 subject to a civil penalty of not more than $2,000 for each violation. The Commission may impose multiple penalties for any related series of violations not to exceed $500,000. In this respect a separate violation is committed with respect to each failure or refusal to perform a required act under section 19(a)(3). With respect to violations of paragraphs (1), (2), (4), (5), and (6) of section 19(a) it shall be considered a separate violation for each product involved.

A person who is not also a manufacturer, distributor, or private labeler (e.g. certain retailers) who knowingly violate section 19 may not be subjected to "multiple penalties" under this section unless he had actual knowledge that his sale or distribution of the product would violate the act or unless he received notice from the Commission that such action would constitute a violation of the act.

The Commission is given authority to compromise penalties which are imposed under this section.

It is to be noted that civil penalties may be imposed only for violations which are knowingly committed. In this regard the committee

has defined the term "knowingly" to mean (1) actual knowledge, or (2) knowledge presumed to be possessed by a reasonable man acting in the circumstances including knowledge obtainable upon the exercise of due care to ascertain the truth of representation.

Criminal Penalties

Under section 21, any person who knowingly and wilfully violates section 19 of the act after receiving notice of noncompliance from the Commission may be fined not more than $50,000 or imprisoned for not more than one year or both.

Where individual directors of corporations or their officers or agents knowingly and wilfully authorized, ordered, or performed acts which constituted a violation of the act with knowledge that the Commission had notified the corporation of its noncompliance, both the corporation and the individual director, officer, or agent may be subject to criminal penalties under this section.

Injunctive Enforcement and Seizure

Section 22(a) provides that the U.S. district courts shall have jurisdiction to restrain violations of section 19 or to restrain any person from distributing in commerce any product which does not comply with a consumer product safety rule. This section contains its own venue requirements and would permit process to be served on a defendant in any district in which he is resident or may be found.

Under subsection (b), any consumer product which fails to conform to an applicable safety rule or which is not promptly returned to customs custody upon the order of the Secretary of the Treasury, may be proceeded against in an action in U.S. district court, seized, and condemned. Proceedings under this section shall conform as nearly as possible to proceedings in rem in admiralty. To avoid a multiplicity of actions, this section provides that proceedings initiated against identical consumer products in two or more judicial destricts, may be consolidated by order of the court upon motion of any party in interest.

Suits for Damages by Persons Injured

Section 23 provides a private remedy for damages to persons injured by reason of noncompliance with certain provisions of the bill. If an individual dies or sustains personal injury or illness by reason of the failure of a consumer product to comply with an applicable consumer product safety rule under the bill, then he (or his survivors or legal representative) may sue any manufacturer, distributor, or retailer of the noncomplying product, and may recover any damages sustained as a result of such failure to comply. Likewise if a person dies or sustains personal injury or illness by reason of a failure to comply with an order under section 15(c) or section 15(d) (relating to notification respecting, and repair, etc., of products presenting substantial product hazards), then he (or his survivors or legal representative) may sue any person who failed to comply with such order under section 15, and may recover any damages sustained as a result of such failure to comply.

The committee anticipates, in cases in which it is established that death, personal injury, or illness occurred by reason of noncompliance with the consumer product safety rule or section 15 order, that the courts will in general apply State law as to questions of which types

of damages may be recovered and which parties in addition to the injured person can recover damages. The committee intends that any person who recovers damages by reason of personal injury, illness, or death, would also be able to recover for any property damage occurring by reason of the noncompliance giving rise to the injury, illness, or death.

Actions under this section may be brought without regard to the amount in controversy. In any action under this section, whenever a plaintiff prevails the court may award the plaintiff the costs of the suit, including a reasonable attorney's fee.

Section 27(b) contains affirmative defenses to actions under subsection (a). In the case of an action brought for noncompliance with an applicable consumer product safety rule, no liability will be imposed upon any manufacturer, distributor, or retailer who establishes (1) that he did not have reason to know in the exercise of due care that the product did not comply with the consumer product safety rule, and (2) in the case of a manufacturer or a private labeler of such noncomplying product, that the product was designed so as to comply with all applicable consumer product safety rules and that due care was used in the manufacture of the product so as to assure that the product complied with such rule. In the case of an action for noncompliance with a section 15 order, no liability will be imposed upon any manufacturer, distributor, or retailer who establishes that he took all steps as may be reasonable in the exercise of due care to comply with the order.

Subsection (c) makes it clear that remedies provided for in section 27 are in addition to and not in lieu of any other remedies provided by common law or under Federal or State statutory law.

Private Enforcement of Product Safety Rules and of Section 15 Orders

Section 24 permits any interested person to bring an action in the United States district court to enforce a consumer product safety rule or an order under section 15, and to obtain appropriate injunctive relief. Thirty days prior notice to the Commission, the Attorney General, and the defendant is required. A separate suit under this section is prohibited if at the time the suit is brought the same alleged violation is the subject of a pending civil or criminal action by the United States under the bill. In an action under this section, the plaintiff may elect at the time he files his complaint to recover reasonable attorney's fees. If he makes such an election, the court must award reasonable attorney's fees to the prevailing party. In determining which party is the "prevailing party" in multi-issue or multiparty litigation, the trial court should award attorney's fees in a manner which it determines will carry out the purpose of this section.

Effect on Private Remedies

Sections 25(a) and 25(b) provide that compliance with consumer product safety rules or other rules or orders under the bill will not relieve any person from liability at common law or under State statutory law to any other person; and that the Commission's failure to take any action or commence a proceeding with respect to the safety of a consumer product shall not be admissible in evidence in litigation at common law or under State statutory law relating to such consumer product.

Section 25(c)(1) provides accident and investigation reports by any officer, employee, or agent of the Commission will be available for use in any judicial proceeding arising out of such accident, and that any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. The availability of such reports and testimony is subject to the bill's restrictions on disclosure of trade secrets but not otherwise subject to the restrictions of section 6.

Section 25(c)(2) requires that any such accident or investigation report be made available to the public in a manner which will not identify any injured person or any person treating him, without the consent of the person so identified, and that all reports on research projects demonstration projects, and other related activities shall be public information. The availability of reports under this provision is subject to all of the restrictions of section 6 except those of section 6(a)(1) (providing that matter exempted from the disclosure requirements of the Freedom of Information Act need not be disclosed under the bill).

Effect on State Standards

Section 26 provides that at such time as the Commission prescribes a product safety standard under this act and such standard takes effect, no State or political subdivision shall have authority to establish or continue in effect any safety standard or regulation which prescribes any requirement as to the performance, composition, contents, design, construction, finish, packaging, or labeling of such product which is devised to protect the public from the same hazard associated with the product (unless such requirements are identical to the Federal standard). It is intended that Federal authority—once exercised—occupy the field and broadly preempt State authority to regulate the same product hazards. Accordingly, the Federal preemption is intended to extend not only to State authority to set standards on labeling requirements but also to prevent States from acting to ban products which conform to applicable Federal safety standards where the purpose of the ban is to protect the public from the same product hazard.

This section would, however, permit States to establish or to continue standards which are identical to the Federal standard. Also, under certain conditions, States may be permitted by the Commission to impose standards which call for a higher level of performance. In both instances it is intended that the State or political subdivision will maintain its own enforcement mechanisms and be able to establish its own criminal and civil penalties for violation of the standard. By permitting dual enforcement, it is not intended that this section will be used as a means of subjecting violators to double penalties. In instances where violators have already been adequately penalized under State law, it is expected that Federal civil and criminal penalties will not be sought by the Commission or will not be imposed in their full measure. Moreover, in instances where State action follows the imposition of Federal penalties, it is expected that the Commission will take this into consideration in determining whether to compromise any civil penalty already imposed under section 21.

Additional Functions of Commission

Section 27(a) authorizes the Commission, its members, or its designated agent or agency, to conduct any hearing or other inquiry neces-

sary or appropriate to its functions anywhere in the United States. Commissioners who participate in such a hearing or inquiry are not disqualified solely by reason of such participation from subsequently participating in Commission decisions in the same matter. The Commission is directed to give notice of any hearing, and an opportunity to participate therein.

Subsection (b) of section 27 authorizes the Commission to require any person to submit reports and answers to questions; to administer oaths; to require by subpena the attendance and testimony of witnesses and the production of documentary evidence; to take depositions; and to pay witnesses' fees. United States district courts are authorized under subsection (c) to enforce the Commission's subpenas.

Section 27(d) permits the Commission to require, for purposes of carrying out the legislation, that manufacturers provide to the Commission with performance and technical data related to performance and safety, and that they give notification of such performance and technical data at the time of original purchase to certain purchasers and prospective purchasers.

Subsection (e) authorizes the Commission, for purposes of carrying out the bill, to purchase any consumer product and to require any manufacturer, distributor, or retailer of a consumer product to sell the product to the Commission at manufacturer's, distributor's, or retailer's cost. Subsection (f) authorizes the Commission to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activities authorized by the bill.

The Commission, under section 27(g), may plan, construct, and operate facilities suitable for research, development, and testing of consumer products in order to carry out the bill; however, appropriations to plan or construct such facilities would not be authorized except as provided in section 32(b) of the bill.

Section 27(h) directs the Commission to prepare and submit to the President and the Congress an annual report which would contain information respecting the Commission's activities, legislative recommendations, and certain other matters, including a log or summary of meetings held between Commission officials and representatives of industry and other interested parties.

Product Safety Advisory Council

Section 28 directs the Commission to establish a Product Safety Advisory Council which it may consult before prescribing consumer product safety rules or taking other action under the bill. The Council is to be appointed by the Commission and to be composed of fifteen members qualified by training and experience in fields related to product safety. Five members are to be selected from governmental agencies; five members are to be selected from consumer product industries (including a small business representative); and five members are to be selected from consumer organizations, community organizations, and recognized consumer leaders. The Council is to meet at the call of the Commission, but not less often than four times during each calendar year. The Council may propose consumer product safety rules to the Commission and may function through subcommittees. Council proceedings (and a record thereof) are to be public. Council members (other than Federal officers or employees) will be compensated on a per diem basis,

and receive travel expenses; but such payments will not render Council members officers or employees of the United States for any purpose.

Cooperation With States and Other Federal Agencies

The Commission is directed by section 29(a) to establish a program to promote Federal-State cooperation for the purposes of carrying out the legislation, and it is authorized under such program to—

(1) accept from any State or local authorities assistance in carrying out the legislation, and to pay in advance or otherwise for the reasonable cost of such assistance, and

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

In carrying out subsection (a), the Commission is directed to give favorable consideration to programs which establish separate State and local agencies to consolidate functions relating to product safety and other consumer protection activities.

Section 29(c) authorizes the Commission to obtain from any Federal department or agency such statistics, data, program reports, and other materials it deems necessary to carry out its functions under the bill, and such departments and agencies are authorized to cooperate with the Commission, and, to the extent permitted by law, furnish such materials to it. The Commission and the heads of other departments and agencies which administer programs related to product safety are directed to cooperate to the maximum extent practicable.

Transfers of Functions

Subsections (a) and (b) of section 30 transfer to the Commission all functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act and the Poison Prevention Packaging Act of 1970 and all functions of the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the Federal Trade Commission under the Flammable Fabrics Act. The functions of the Administrator of the Environmental Protection Agency and of the Secretary of Health, Education, and Welfare under the certain acts amended by section 7 of the Poison Prevention Packaging Act of 1970, to the extent such functions relate to the administration and enforcement of the Poison Prevention Packaging Act of 1970, are also transferred to the Commission. In addition, the functions of the Federal Trade Commission under the Federal Trade Commission Act, to the extent such functions relate to the administration and enforcement of the Flammable Fabrics Act, are transferred to the Commission.

Section 30(c) provides that a hazard which is associated with a consumer product and which could be prevented or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be regulated by the Commission only in accordance with the provisions of those acts.

Paragraph (1) of section 30(d) provides that personnel, property, etc., which are used primarily with respect to any function transferred under section 30 (a) or (b) will be transferred to the Commission, but transfer of personnel will be without reduction in classification

or compensation for one year after such transfer. The Chairman of the Commission, however, can assign personnel during such one-year period in order to carry out the bill.

The remaining paragraphs of section 30(d) contain savings provisions the principal provisions of which are as follows: Orders, rules, etc., which took effect under functions transferred under section 30 are to continue in effect according to their terms until changed in accordance with law. Section 30 does not affect pending administrative proceedings, except that such proceedings (to the extent that they relate to transferred functions) will be continued before the Commission. Section 30 does not affect suits commenced prior to the date it takes effect, and such suits will proceed as if section 30 had not beeen enacted; except that if, before section 30's effective date, any department or agency (or officer thereof) was a party to a suit involving functions transferred to the Commission, the suit will be continued by the Commission.

Some question has been raised about the interrelationship of the Poison Prevention Packaging Act provisions authorizing special packaging standards for foods, drugs, and cosmetics, and the packaging requirements for these same products under the Food, Drug and Cosmetic Act. In particular, since a new drug application requires approval by FDA of all drug packaging, there would be dual regulation over this particular aspect of the product. The Committee intends that the Commission and the Food and Drug Administration will cooperate fully in coordinating any overlapping statutory requirements. For example, before exercising its authority under the Poison Prevention Packaging Act to prescribe safety closure standards for drugs which may have been the subject of a new drug application under the Food, Drug and Cosmetic Act, the Commission would be expected to coordinate its activities with FDA to preclude the possibility that a safety closure standard would be inconsistent with requirements imposed by FDA to assure the purity and effectiveness of the drug.

Limitation on Jurisdiction

Section 31 provides that the Commission has no authority under the bill to regulate hazards associated with consumer products which could be prevented or reduced to a sufficient extent by actions taken under the Occupational Safety and Health Act of 1970; the Act of August 2, 1956; the Atomic Energy Act of 1954; or the Clean Air Act. In addition, the Commission has no authority under the bill to regulate any electronic product radiation hazard which may be subjected to regulation under the electronic product radiation control provisions of the Public Health Service Act.

Authorization of Appropriations

Section 32(a) authorizes appropriations to carry out the provisions of the bill (other than the provisions of section 27(g) which authorize the planning and construction of research, development, and testing facilities) and for the purpose of carrying out the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, and the Flammable Fabrics Act. The authorizations are $55,000,000, $59,000,000, and $64,000,000 for fiscal years 1973, 1974, and 1975, respectively.

Appropriations are authorized, under section 32(b), to plan and construct research, development, and testing facilities described in section 27(g); but no appropriation for planning or construction involving an expenditure in excess of $100,000 may be made unless the planning or construction has been approved by the Committee on Interstate and Foreign Commerce of the House of Representatives and by the Committee on Commerce of the Senate. For the purpose of securing consideration of such approval the Commission is to transmit to Congress a prospectus which would include a description of the facility, its location, and estimated maximum cost. The estimated maximum cost of the facility could be increased in the manner set out in section 32(b)(2).

Effective date

Section 33 provides that the bill will take effect 60 days after the date of its enactment, except that sections 4 and 32 will take effect on the date of enactment of the bill, and section 30 will take effect on the later of (a) 150 days after date of enactment or (b) when at least three members of the Commission first take office.

Cost Estimates

In accordance with Section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), your committee estimates the following costs will be incurred in carrying out functions under H.R. 15003:

Five-Year Cost Estimate for the Proposed Consumer Product Safety Commission

Fiscal year:	*Millions*
1973	$55
1974	59
1975	64
1976	65
1977	65

Note.—Cost estimates do not include appropriations for amounts required in the planning, construction, or operation of research, development and testing facilities authorized under this bill.

AGENCY REPORTS

Department of Agriculture,
Office of the Secretary,
Washington, D.C., February 29, 1972.

Hon. Harley O. Staggers,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

Dear Mr. Chairman: This responds to your request of May 18, 1971, for a report on H.R. 8157, a bill "To protect consumers against unreasonable risk of injury from hazardous products, and for other purposes."

This bill is designed to protect consumers against unreasonable risk of injury from hazardous products through the establishment of a Consumer Product Safety Commission, issuance by the Commission and enforcement of consumer product safety standards, and other measures.

The Department much prefers H.R. 8110, a bill with similar intent which would vest responsibility in the Secretary of the Department of Health, Education, and Welfare.

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

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 20, 1971.

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

DEAR MR. CHAIRMAN: Reference is made to your letter of May 10, 1971, requesting our views on H.R. 8110, which, if enacted, would be cited as the "Consumer Product Safety Act of 1971." The stated purpose of the bill is to protect the public health and safety by reducing the risks of death, illness, and injury associated with the use of consumer products.

While we have no special information as to the advantages or disadvantages of the proposed legislation and therefore have no recommendations as to its merits, we offer the following technical comments on certain provisions of the bill.

Section 3(1) of the bill would define the term "consumer products" and would specifically exclude, among other items, food, drugs, and cosmetics from the definition. These three items, as well as devices, are regulated by the Food, Drug and Cosmetic Act, as amended. The committee may wish to consider adding devices to the list of the exclusions in this section.

Section 20 provides that the Secretary, in carrying out his duties, shall, to the maximum extent practicable, utilize the personnel, facilities, and other technical support available in other Federal agencies. The committee may wish to clarify whether this is to be done on a reimbursable or nonreimbursable basis.

We note that the bill does not authorize the appropriation of funds to implement the program. The committee may wish to add a section establishing specific authorization amounts for carrying out the provisions of the bill.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General of the United States.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.
Washington, D.C., June 23, 1971.

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

DEAR MR. CHAIRMAN: This is in response to your request of May 10, 1971, for a report on H.R. 8110, a bill "To protect the public health

and safety by reducing the risks of death, illness, and injury associated with the use of consumer products."

The bill embodies an Administration proposal transmitted to the Congress on April 20, 1971, and would carry out a recommendation in the President's February 24, 1971, consumer message for enactment of a consumer product safety bill. The proposal is designed to reduce or eliminate unreasonable risk of death or serious or frequent injury associated with exposure to or use of such products, by establishing within the Department of Health, Education, and Welfare a product safety program under which the Secretary would collect and disseminate information on consumer product safety hazards and promulgate mandatory standards for consumer products insofar as the need for such standards is supported by injury and other data.

Provision would also be made for the banning of imminently hazardous consumer products, or unreasonably hazardous consumer products for which adequate standards cannot be set.

A section-by-section summary of the bill is included for your convenience.

We would suggest a minor technical correction. On page 11 of the bill, line 12, "Sec. 9" should read "Sec. 8".

For the reasons stated in the President's message, we urge prompt enactment of this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of this bill would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
March 1, 1972.

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

DEAR MR. CHAIRMAN: This letter is in response to your requests for reports on H.R. 260 and H.R. 8157, bills "To protect consumers against unreasonable risk of injury from hazardous products and for other purposes."

Briefly stated, these bills would create an independent Consumer Product Safety Commission with authority to promulgate mandatory consumer product safety standards and regulations to protect consumers from unreasonable risks of death or injury. The Commission would be empowered to enforce compliance with such product safety standards through a broad range of civil and criminal sanctions and to ban unreasonably dangerous products for which feasible standards cannot be set. These bills would also create a Consumer Safety Advocate with specific responsibility to represent consumer interests before the Commission and an Injury Information Clearinghouse to collect, analyze and disseminate information relating to the causes and prevention of product-related injuries to consumers.

As you know there is a serious need to develop meaningful and practical legislation designed to assist in minimizing injuries and deaths associated with the use of and exposure to consumer products. The

President proposed comprehensive regulation of hazardous consumer products in his Consumer Message of February 24, 1971. This proposal is embodied in H.R. 8110, a bill which you have sponsored and which has been referred to your Committee. It encompasses five major responsibilities which would be assigned to a new Consumer Safety Administration within the Department of Health, Education, and Welfare. Through this organization we would:

(1) Gather data on injuries from consumer products;
(2) Make preliminary determinations of the need for particular standards;
(3) Develop and promulgate safety standards;
(4) Monitor industry compliance and enforce mandatory standards; and
(5) Ban unreasonably dangerous consumer products and use judicial action to move against products that are imminently hazardous.

Perhaps the foremost of the differences between H.R. 8110 and the instant bills is that of the organizational location assigned to the product safety function. H.R. 8110 would place it in our Department. H.R. 260 and H.R. 8157 would place it in an independent regulatory organization, a Consumer Product Safety Commission consisting of five Commissioners.

The reason for the organizational location proposed by H.R. 260 and H.R. 8157 is explained in the final report of the National Commission on Product Safety after whose recommendations the two bills are patterned. The Commission feared that if product safety regulation were subordinated to a larger agency administering other equally comprehensive programs, the emphasis on consumer safety would suffer. "Protection of the public interest will be strengthened," the Commission wrote, "if the agency has authority to make its own final decision, free of restriction by a parent agency, and if its funds are sufficient and its activities highly visible."

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

Beyond these issues, though, there are positive advantages to be gained by locating the product safety function in HEW. On a wholly practical level, the Department now has an extensive field enforcement staff engaged in product regulation, as well as medical and technical experts in the area, and scientific testing laboratories. It seems far more economical and efficient to expand this staff to meet the workload to be generated by H.R. 8110, than to require such a staff to be duplicated through enactment of either H.R. 260 or H.R. 8157.

In a larger sense, however, we see H.R. 8110 as a measure to protect the public health. Of the various concerns of the citizen as a consumer, that of his health—the freedom from hazards to his health and safety from the products he buys—must surely be paramount. It is more

important to him than the threat of economic loss from defective goods or deceptive practices.

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

The Administration, in a July 19, 1971, letter from the President to the Chairman of the Senate Commerce Committee, has also committed itself to strengthen the organizational structure for product safety within our Department, upon enactment of the Administration's proposal, so that we may bear our new responsibilities under it. We propose to fulfill this commitment in an orderly and practical manner by building upon existing competence, experience, and authorities within the Department.

In recognition of our expanding role in the consumer protection field, we have recently brought together within the Food and Drug Administration the previously scattered departmental authority to protect the health and safety of the consumer. Essentially all consumer protection authorities and resources of the Department are therefore now centered in FDA. In addition to long experience and a proven record of accomplishment, this agency possesses significant scientific competence; it maintains an extensive field investigational and enforcement staff; and it has strong laboratory and other technical capacity.

The Administration bill would substantially enlarge the Department's consumer protection responsibilities. Upon its enactment, therefore, we would build upon the FDA framework by establishing a new Consumer Safety Administration to be composed of three major Offices:

—the Office of Product Safety Regulation;
—the Office of Drug Regulation; and
—the Office of Food Regulation.

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

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

For these reasons, and for the additional reasons discussed in the appended staff memorandum, we strongly recommend enactment of H.R. 8110 rather than H.R. 260 or H.R. 8157.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report and that enactment of H.R. 8110 would be in accord with the program of the President.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., September 3, 1971.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 8157, "To protect consumers against unreasonable risk of injury from hazardous products, and for other purposes."

The proposed bill would create and establish a Consumer Product Safety Commission consisting of five Commissioners who would have the authority to promulgate consumer product safety standards or other regulations for consumer product safety, except as to those products regulated under existing Federal laws as, for example, the Food, Drug, and Cosmetic Act; and the Federal Insecticide, Fungicide, and Rodenticide Act.

Section 21 of the bill deals with the responsibilities of this Department in regard to the importations of a product which fails to comply with an applicable standard or regulation prescribed under the Act, which is not accompanied by a certification in the form prescribed by the Act, or which contains a defect which creates an unreasonable risk of personal injury to the public. The Bureau of Customs is directed to refuse admission to such a product. In this regard, the bill is deficient in that it does not contain the usual provision permitting delivery of such a product under bond while it is being determined whether the product complies or can be brought into conformity with an applicable standard, or contains a defect which creates an unreasonable risk of personal injury to the public.

Moreover, under the prescribed procedure, the Bureau of Customs would be required to sample and test every imported product to make such determinations. We suggest as an alternative procedure that each product for which a product safety standard has been prescribed be accompanied by a certification to obviate the sampling and testing of products which have been approved by the Consumer Product Safety Commission. If the importation does not contain such a certification, it would be released under bond and a sample would be delivered to the Commission for a determination as to whether the product should be admitted. Customs would not attempt to determine whether a product creates an unreasonable risk of personal injury to the public. To accomplish this proposed revision, we suggest the following language:

"Any consumer product imported into the United States to which a product safety standard applies, and which is not accompanied by a

certification in the form prescribed by the Commission, shall not be delivered from Customs custody except under bond, as provided in section 499 of the Tariff Act of 1930, as amended. In the event an imported consumer product is delivered from Customs custody under bond the Secretary of the Treasury shall obtain without charge and deliver to the Commission, a reasonable number of samples of such consumer product. If the Commission determines from examination or testing of such samples or otherwise that the product cannot be brought into compliance with all applicable consumer product safety standards under this Act, or contains a defect which creates an unreasonable risk of personal injury to the public, such product shall be refused admission, and the Secretary of the Treasury shall demand redelivery of the merchandise into Customs custody. The Secretary of the Treasury shall cause destruction of such merchandise unless it is exported, under regulations prescribed by him, within 90 days after notice to the importer or consignee. If the importer fails to redeliver the merchandise, the Secretary of the Treasury shall assert a claim for liquidated damages for breach of the 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 5 years prior thereto, the imported 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."

If this procedure is adopted, paragraph (c) of section 21 becomes unnecessary. Otherwise, the paragraph creates administrative difficulties because it authorizes the Commission to permit the importer to perform such operations as are necessary to bring a product into conformity with an applicable standard without authorizing Customs to deliver the product to the importer. Consequently, the product would have to be altered while in Customs custody. The lack of adequate facilities for such operations would place an extreme burden on importers and Customs. If paragraph (c) is construed to permit the delivery of a nonconforming product to the importer, no provision is made for delivery under bond to insure redelivery to Customs if the product cannot be brought into conformity.

Section 24 makes unlawful the importation of any consumer product which is not in conformity with an applicable regulation or standard prescribed pursuant to this Act, if such product is manufactured after the effective date of such regulation or standard. To base such prohibition on a determination as to whether a product is manufactured after the effective date of a standard would present administrative problems in ascertaining the actual date of manufacture with regard to imported consumer products. Consideration should be given to amending section 24 with respect to imported consumer products, to prohibit the importation of nonconforming products into the United States after the effective date of a standard, without regard to the date of manufacture.

The terms "offered for importation" and "offered for import" which are used in paragraphs (a), (b), and (d) of section 21 might be interpreted as granting Customs jurisdiction over merchandise before its

arrival in this country. We suggest that the word "imported" be substituted for both terms.

In section 34(g) the definition of "state" would extend the coverage of the Act to a geographical area greater than the Customs territory of the United States (the states, District of Columbia, and Puerto Rico), the area where the Bureau of Customs administers the laws relating to importation and exportation of merchandise. Therefore, it is assumed that the provisions of the bill concerning importation and exportation into and from Guam and the Virgin Islands of the United States would be enforced by an agency other than the Bureau of Customs.

Potentially, the proposed bill would require a degree of sampling, inspection and Customs storage of nonconforming products which might require some increase in Customs manpower and funds.

H.R. 8110, which is also pending before your Committee, incorporates draft legislation on the matter proposed by the Department of Health, Education, and Welfare. Accordingly, the Department recommends favorable consideration of H.R. 8110 in lieu of action on H.R. 8157.

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

Sincerely yours,

SAMUEL R. PIERCE, *General Counsel.*

LETTER FROM PRESIDENT NIXON TO CHAIRMAN STAGGERS RECOMMENDING FAVORABLE ACTION ON H.R. 8110

THE WHITE HOUSE,
Washington, D.C., December 8, 1971.

Hon. HARLEY O. STAGGERS,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: In my Consumer Message of February 24, I proposed comprehensive product safety legislation authorizing the Department of Health, Education, and Welfare to regulate hazardous consumer products. Subsequently H R. 8110, a bill incorporating this proposal, was introduced on behalf of the Administration and referred to your Committee.

As part of the preparation of this bill, I asked Secretary Richardson to undertake a careful study of the organizational structure within the Department of Health, Education, and Welfare that would most effectively implement the consumer product safety authority proposed in H.R. 8110.

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

The Consumer Safety Administration will continue the work of the Food and Drug Administration. At the same time, the new unit will be structured so that the regulation of hazardous consumer products authorized in H.R. 8110 will have the facilities, the personnel and the organizational prominence that will ensure an effective, efficient and responsive product safety program. Finally, where possible, common facilities such as laboratories and field offices will be utilized to gain the maximum possible cost effectiveness.

H.R. 8110 is a strong bill which will fully satisfy the public need for adequate protection against hazardous consumer products, and Secretary Richardson has acted to ensure that his Department is fully capable of implementing this needed authority. I urge your Committee to report H.R. 8110 favorably to the House of Representatives.

Sincerely,

RICHARD M. NIXON.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5. UNITED STATES CODE

* * * * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $40,000:

* * * * * * *

(59) Chairman, Consumer Product Safety Commission.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $38,000:

* * * * * * *

(96) Members, Consumer Product Safety Commission (4).

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Appendix

ADMINISTRATIVE PROCEDURE PROVISIONS OF TITLE 5, UNITED STATES CODE

(Formerly the Administrative Procedure Act)

§ 553. Rule making.

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms of substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

Source: Section 4, Administrative Procedure Act.

§ 554. Adjudications.

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a hearing examiner appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearings;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or pracitces of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

Source: Section 5, Administrative Procedure Act.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision..

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more hearing examiners appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings. in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to publish rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) make or recommend decisions in accordance with section 557 of this title; and

(9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

Source: Section 7, Administrative Procedure Act.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record.

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the

parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Source: Section 8, Administrative Procedure Act.

Chapter 7.—JUDICIAL REVIEW

§ 701. Application; definitions.

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories of possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

Source: Section 10, Administrative Procedure Act.

§ 702. Right of review.

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Source: Section 10(a), Administrative Procedure Act.

§ 703. Form and venue of proceeding.

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

Source: Section 10(b), Administrative Procedure Act.

§ 704. Actions reviewable.

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsiderations, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

Source: Section 10(c), Administrative Procedure Act.

§ 705. Relief pending review.

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Source: Section 10(d), Administrative Procedure Act.

§ 706. Scope of review.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Source: Section 10(e), Administrative Procedure Act.

18 U.S.C. 1905

For the information of the members, section 1905 of title 18, United States Code, is set forth below:

SECTION 1905 OF TITLE 18, UNITED STATES CODE

Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association: or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(96) Members, Consumer Product Safety Commission (4).

* * * * * * *

MINORITY VIEWS

The concept that appropriate Federal legislation can result in reducing the risks resulting from the use of some consumer products is generally agreed upon. Any new legislation enacted should, however, build upon programs which have been tried and are known to be effective.

The record shows that the Food and Drug Administration has compiled a record in the past 30 months that can be favorably compared with any other regulatory agency in the Federal Government. The Secretary of Health, Education, and Welfare has testified, and it would be difficult to prove otherwise, that under existing authority the Food and Drug Administration has made the most dramatic progress in the 66 years of the existence of the organization.

In addition to reorganization, which gave FDA full agency status for the first time, the administration has vastly increased its budget. In the fiscal year 1970 the budget for FDA was $76.3 million. For fiscal year 1973 the administration has requested $178.8 million, which represents an increase of 146% over the last four fiscal years. The budget requested by the President for fiscal year 1973 is a 70% increase over 1972, the largest increase requested by any administration in the history of the Food and Drug Administration.

There is no doubt that controls can be more effective and enforcement moves made more quickly if we build upon the experience, capabilities and scientific resources of the existing administration rather than making it necessary to start all over again by creating a new commission.

Although independence from a cabinet department and bipartisan membership of independent regulatory agencies theoretically guarantee even-handed regulation and decision-making, these attributes have in fact resulted in chronic indecision and eternal bickering. Split decision policy-making and case-by-case enforcement have resulted in a mass of lengthy court actions at every turn. This is not to be desired in the field of product safety standard setting.

The very independence of a commission from cabinet affiliation makes it less able to pursue vigorously its purposes. In the matters of funding and competition for scarce personnel allocations, independent agencies have traditionally fared badly. There is no strong cabinet level executive to make the necessary priority decisions and to fight the fight for adequate funding at the highest levels. Chairmen of independent agencies seldom see the President for discussions of their agency needs.

To create a new commission will guarantee that not much of anything will happen in the field of product safety for two or three years. It will take that much time to work out the details, get space and hire the kinds of people needed. Even the commissioners themselves, however competent they may be, will need considerable time to learn to

work together. This does not mean there will not be some kind of entity very quickly or that stationery headed "Product Safety Commission" will not appear promptly. It only means that the real business of creating and enforcing product safety standards will not be meaningfully pursued for a long, long time after this legislation is passed.

There is also every reason to believe from a fiscal point of view that the creation of a new commission will cost the taxpayers far more than leaving the product safety effort in an already organized and operating department of government. A new effort will require new forces and new research facilities. HEW has these already. A new commission would of necessity create new and unnecessary costs for the taxpayer. Practically, in the ways of government there is no way to prevent this sort of thing from happening.

The interest of the consumer will clearly be served best by strengthening the present organization (FDA) as a key health and safety related agency within the Department of Health, Eucation, and Welfare.

SAMUEL L. DEVINE,
ANCHER NELSEN,
JAMES HARVEY,
CLARENCE J. BROWN,
JAMES F. HASTINGS,
JOHN G. SCHMITZ,
JAMES M. COLLINS.

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