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THE WHITE HOUSE

WASHINGTON

April 8, 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON 

SUBJECT: Administration Consumer Policies

At the Cabinet meeting on March 26 you requested that the Domestic Council staff discuss with Cabinet members what might be done by Executive and Administrative action to assist consumers.

BACKGROUND:

1. Your Position on Consumer Protection Agency Proposals

Your objectives, as we understand them, are:

- (1) Prevent, if possible, the passage of legislation creating a Consumer Protection Agency.
- (2) Have enough votes to sustain a veto of S. 200, which would create a Consumer Advocacy Agency, if Congress should pass it or similar legislation.
- (3) Demonstrate, at the same time, your Administration's concern for consumers, and your belief that consumer concerns can be well represented through existing government structures, which were created to advance the public interest.

2. Your Position on Regulatory Reform

Since the greater part of the consumer problem lies with the independent regulatory agencies, you proposed to Congress in January that a Regulatory Review Commission be established to review the independent regulatory agencies. Under your proposal, particular attention would be paid to the effect of these agencies upon consumers and the extent of consumer representation in their decision making.

ALTERNATIVES TO CPA:

To carry out your proposal to work with the Cabinet in developing alternatives to S. 200 and other proposed consumer legislation, I have talked with each Cabinet member and requested a response to these questions:

1. What specific problems does this bill, which would create a new Agency for Consumer Advocacy, present to your department?
2. What specific efforts are you making now to better represent the consumer in your department's decisions and activities?
3. What additional efforts could you take to better represent the consumer in your department's decisions and activities?
4. What regulatory reforms would you suggest to assist the consumer?

The responses from the Cabinet officers are attached at Tab A. In summary, they replied:

1. An Agency for Consumer Advocacy created by S. 200 would grossly interfere with the efficient conduct of the business and operations of every department.
2. Each department in its own way has already been taking specific steps to represent the consumer. Your Administration is doing more than is generally realized.
3. While all felt they are conscientiously representing consumers, they also conceded they could do more to make their consumer work more effective and visible. Many made practical suggestions, e.g., dissatisfied consumers could find redress in the small claims courts in operation in many States.
4. Regulatory reform is badly needed.

CONGRESSIONAL SITUATION:

Many Members of the Congress believe there is great popular appeal in the "consumer protection" issue.

The Senate Government Operations Committee plans formally to report out S. 200 with a 12-1 vote shortly after Congress reconvenes.

The House passed a consumer protection bill last year, and apparently will do so again this year.

Yet a recent poll (Tab B) conducted by Opinion Research Corporation and sponsored by the U.S. Chamber of Commerce, indicates that 75 percent of a sample of 2,000 American consumers would rather make existing agencies more effective than create a new Agency for Consumer Advocacy.

OPTIONS:

In view of your opposition to establishing an Agency for Consumer Advocacy and taking into account your Cabinet's suggestions for alternative actions, we believe these to be the practical options:


1. Executive Action:

- a. By Executive order, expand Mrs. Virginia Knauer's Office of Consumer Affairs and authorize her to formally comment in all rule-making proceedings affecting consumer interests. Also, direct her to participate in agency adjudicatory proceedings when authorized by law.

Pro: Would permit the Office of Consumer Affairs to more effectively carry out its duties, would assure greater Executive control than with a CPA and could command support as an alternative to CPA.

Con: Would go against the spirit of your ban on new spending programs. Also, this very well might not stop CPA legislation and we could end up with both this office and a CPA.

_____ AGREE
(Baroody, Knauer)

 _____ DISAGREE
(Lazarus, Marsh, Seidman, Lynn, Cannon)

- b. By Executive order, establish in each executive department a consumer representative.

Pro: Could provide visible proof of the President's consumer commitment. Could be a strong Administration alternative to a CPA.

Con: Could require sizable increased spending. Could have the effect of relieving agency operational units of considering the public interest. Consumer leaders could see this as an insufficient alternative to CPA.

✓ AGREE

NR7 DISAGREE

(Baroody; Knauer: should be Office of Consumer Representation)

(Lazarus, Marsh, Seidman, Lynn, Cannon)

- c. Ask each department and agency head to meet with Mrs. Knauer to discuss how to develop best an adequate internal structure to provide consideration of consumer views. A lack of such mechanisms appears to be the greatest single weakness in most departments. Where a sufficient structure is already in place, the department or agency head should discuss with Mrs. Knauer how to make it function more effectively.

Pro: Could be an effective means of increasing consumer representation in each department. Would allow flexibility in each agency's consumer structure and show that consumer concerns can be handled by existing departments.

Con: Could be ineffective means of insuring consumer representation. Probably would not placate consumer leaders.

NR7 AGREE

DISAGREE

(Lynn, Knauer, Baroody, Seidman, Lazarus, Marsh, Cannon)

- d. Discuss consumer policies at the next Cabinet meeting. Remind each Cabinet member of the problems they found with S. 200. Point out that to stop that legislation each has a responsibility to speak out against a CPA and to put their own houses in order by improving and publicizing their consumer representation efforts.

Baroody AGREE _____ DISAGREE

(Lynn, Knauer, Baroody,
Lazarus, Seidman, Marsh, Cannon)

- e. Tell the Cabinet you are determined to prove that consumer representation can be adequately handled by their existing departments. Therefore, you expect them all to do a better job in this area than they now are.

Baroody AGREE _____ DISAGREE

(Lynn, Lazarus, Seidman,
Marsh, Baroody, Knauer, Cannon)

- f. Swear in new members of the National Consumer Advisory Council at the White House. This would provide an opportunity to highlight further your consumer policies and to discuss your concerns directly with these national consumer leaders.

Baroody AGREE _____ DISAGREE

(Lynn, Knauer, Baroody,
Lazarus, Seidman, Cannon)

2. Regulatory Reform Action:

- a. Meet with members of the independent regulatory agencies to seek their suggestions and to discuss with them ways to make immediate improvements in the regulatory process.

Baroody AGREE _____ DISAGREE

(Lynn, Knauer, Baroody,
Marsh, Lazarus, Seidman,
Cannon)

- b. Send a special message to the Congress on regulatory reform. Reiterate your support for a Regulatory Review Commission, review your pending reform proposals for financial institutions and fair trade laws and submit new reform initiatives.

_____ AGREE MR7 _____ DISAGREE

(Seidman, Marsh, Lynn, Cannon) (Lazarus)
(Baroody and Knauer if called
Government Reform Message)

3. Other Actions:

- a. Communicate your position on a Consumer Protection Agency by letters to the Chairmen and ranking minority members of the House and Senate Government Operations Committees. A draft letter is at Tab C.

Pro: Would not only make clear your position on S. 200 but would also publicize your consumer initiatives at the same time.

Con: Could be a red flag to Congress and preclude any possibility of compromise.

MR7. _____ AGREE _____ DISAGREE

(Lynn, Baroody, Friedersdorf, (Knauer)
Marsh, Seidman, Lazarus, Cannon)

- b. Plan to discuss your consumer policies in a speech before a major forum.

_____ AGREE _____ DISAGREE

(Lynn, Lazarus, Seidman,
Marsh, Baroody, Knauer,
Cannon)

?



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

March 28, 1975

Subject: Consumer Advocate Bill, S.200

To: James M. Cannon
Assistant to the President for Domestic Affairs

In response to your request of March 27, 1975, attached are two copies of the Department of Agriculture's answers to your questions.

A handwritten signature in black ink, reading "William A. Carlson".

William A. Carlson, Director
Office of Planning and Evaluation

UNITED STATES DEPARTMENT OF AGRICULTURE

Comments on S. 200 and Consumer Representation in USDA1. Impact of S.200 on USDA Programs

S. 200 could impact significantly on over 700 USDA regulatory actions, proceedings and decisions, including such actions as

- CCC commodity supply and price support decisions, and CCC inventory operations
- Commodity procurement and distribution operations under Sec. 32
- Decisions on commodities available and shipped under P.L. 480
- Export promotion, export credit and market development decisions
- Forest Service timber sales and use permits
- Marketing agreement and order rulemaking
- Regulatory decisions and rulemaking proceedings for packers and stockyards regulations
- Decisions regarding commodity grades and standards
- Adjudication under various statutory authorities for licensing, issuance of cease and desist orders, withdrawal of meat and poultry inspection, etc.
- Appointment of advisory committees
- Decisions on food assistance programs (Food Stamps, food distribution, school lunch program, etc.)
- Decisions on plant and animal disease and pest control programs

The adverse effects of the activities of the Agency for Consumer Advocacy would include

- Significant and potentially costly delays in reaching decisions on rules, regulations and program actions
- Possible negation of USDA statutory responsibilities relating to protection of the public and certain industries, with potential danger to health, safety

and food supplies (many USDA actions are extremely time-sensitive, and unwarranted delays or interruptions can negate program objectives -- such as outbreaks of damaging plant and animal diseases, changes in marketing orders or commodity purchases geared to rapidly changing economic events, etc.)

- Duplication and confused lines of responsibilities for consumer representation (e.g., the Secretary of Agriculture represents the interests of farmers in transportation rate-making proceedings, and in other matters involving farmer interest in supplies and prices of purchased inputs; S. 200 would officially authorize the ACA to represent the same interests of farmers.)
- Substantially increased workload, with requirement for increased Federal employment and budgets

2. USDA Actions to Better Represent Consumers

During the past two years USDA has initiated a broad range of actions to improve the opportunities for obtaining informed consumer viewpoints on USDA operations, including

- Established (July 1973) the first full-time consumer affairs specialist reporting directly to the Secretary for any Federal Department
- Initiated consumer-oriented briefings, seminars and conferences on USDA programs, in Washington and the field (typical subjects covered: nutritional labeling, net weight information proposals, milk-marketing orders, export policies, grain reserves, meat marketing margins, etc.)
- Expanded level-of-effort with public information media (TV, Press, Radio, etc.) providing consumer-oriented information kits, TV films and slide sets, special features, reprints, etc.)
- Published special consumer-oriented editions of the annual Agriculture Yearbook
- Conducted a national public opinion survey to measure consumer opinion and understanding about food and agriculture
- Expanded research on food production, food safety and nutrition
- Initiated inflationary impact analyses for a broader range of program decisions to assess potential effects on consumer prices

- Reviewed marketing agreement and order programs, and other regulatory programs to identify those with potential for increasing consumer prices
- Enlisted participation by consumer representatives on advisory committees and task forces (e.g., National Industry Cattle Advisory Committee, Nutrition Standards Task Force, Labeling Standards Advisory Committee)
- Enlisted wider participation by consumers and other interest groups in program planning and decisions on the use of the 187 million acres of National Forests.

3. Additional USDA Administrative Actions Being Considered

- A. Establish an Office of Consumer Affairs in USDA.
- B. Establish a special national public advisory committee to represent consumer viewpoints to the Secretary of Agriculture
- C. Add a consumer representative to selected existing USDA public advisory committees that now include farmer and agribusiness representatives
- D. Review USDA commodity grading and product labeling standards and procedures to assure responsiveness to consumer needs.
- E. Further expand consumer-oriented public information activities.
- F. Improve the administrative processes for obtaining consumer viewpoints in key regulatory and rulemaking proceedings.

4. Possible Regulatory Reforms

- A. Review and revise Federal regulatory policies and procedures that create restrictions, rigidities, and costly inefficiencies in the marketing of agricultural products (e.g., ICC and FTC rules and regulations, labor standards and practices, maritime regulations, etc.).
- B. Establish formal mechanism in the Executive Office of the President to encourage more effective coordination between Federal regulatory agencies.

COMMERCE



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

Honorable James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C. 20500

Re: S. 200

Dear Mr. Cannon:

As requested in your letter of March 27, please find enclosed this Department's response to the four questions posed therein concerning the captioned bill.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Labor", is written over a printed name and title. The signature is written in a cursive style. Below the signature, the words "Secretary of Commerce" are printed. To the left of the signature, there is a large, hand-drawn arrow pointing to the left, which is part of the "Enclosure" notation.

Secretary of Commerce

Enclosure

Comments of Department of Commerce
on S. 200

1. What specific problems does the bill present to your department?

This bill is the latest of a series of consumer advocacy bills introduced in previous Congresses. While all have some degree of similarity, this one is probably most similar to S. 707 of the last Congress. However, it is more complex and involves the interests of factions other than consumers such as farmers and small businesses to a degree that is vague and subject to many interpretations. Further, it requires Federal agencies not only to take actions that would directly support the new Agency for Consumer Advocacy established by the bill, but would require each agency to issue appropriate interpretations, guidelines, standards, or criteria, and rules of procedure relating to rights of individuals who may be affected by agency action (Sec. 23a).

The following provisions of the bill merit specific comment:

- Sec. 4(b)(5). Authorizes the Agency to utilize with their consent and on a reimbursable basis, the services, personnel, and facilities of other Federal agencies.
- Sec. 5(b)(2). The Administrator is authorized to conduct and support research, studies, and testing of any kind which may be in the interests of consumers. This is an almost unlimited scope and means that the Agency could conduct research in product safety, building technology, energy, product performance, etc.
- Sec. 5(b)(4). The Agency would obtain information and publish and distribute material of interest to consumers. This kind of activity is carried on by many agencies. There are no limitations to prevent duplication and overlap. On the other hand, in Sec. 5(b)(6) authorizing the conduct of conferences, surveys, and investigations, such activities may not be undertaken if they are duplicative in significant degree of similar activities conducted by other Federal agencies. Sec. 5(b)(4) should contain similar restrictions.
- Sec. 5(b)(14). Promotes the consumer interests of farmers in obtaining a full supply of goods and services at a fair and equitable price. This requirement is not only completely out of place for this bill, but defies interpretation.

- Sec. 11(b)(2). The implication of this subsection is that the Agency will act as a Consumers Union type of organization, not only in doing testing, but reporting tests of others and rating products. There are no restrictions as to objective requirements for testing or rating. If properly carried out, this could be a useful function, but the absence of detailed requirements or restrictions makes this provision subject to great abuse.
- Sec. 18(a). This is the small businessman's equivalent of the agricultural restriction in Sec. 16(b). It states, "It is the sense of the Congress that small business enterprises should have their varied needs considered by all levels of government in the procedures provided for throughout the Act." Based on this statement and the one for farmers, it appears as though the needs of the large businessman and industry can be ignored by Government.

Apart from the foregoing, a major problem that would result from enactment of S. 200 in its present form would be the procedural and substantive consequences of the sweeping authority for intervention or participation by the proposed agency in formal or informal proceedings and activities of other Federal, State or local agencies, and in court proceedings, to represent consumer interests. Annex A contains a listing of proceedings and activities of the Department which would appear to be subject to adversary intervention by the proposed Consumer Advocates, as a party or otherwise, most of which would be seriously hampered or compromised by such intervention.

1. The establishment of watch quotas for the insular possessions under P. L. 89-805 (19 U.S.C. 1202).
2. The processing of applications for foreign-trade zones under the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a et seq.).
3. The processing of applications for adjustment assistance for firms under the Trade Expansion Act of 1962 (19 U.S.C. 1801 et seq.).
4. The processing of applications for federal recognition of a domestic exposition under the International Expositions Act (22 U.S.C. 2801 et seq.).
5. The processing of applications for importation of foreign excess property under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 512).
6. The textile program under Executive Order 11651 of March 3, 1972 (37 F.R. 4699).
7. The functions of the Department (as a member of the Trade Staff Committee established under the Trade Expansion Act of 1962, 19 U.S.C. section 1801, et seq.) in the formulation of recommendations to the President in international trade matters such as extension, reduction or termination of tariff concessions, relief under section 337 of the Tariff Act of 1930, etc.
8. The activities of the Department in preparing for trade negotiations with foreign governments, such as the establishment and utilization of federal advisory committees to assist in multilateral trade negotiations, as well as activities of other committees established pursuant to the Federal Advisory Committee Act (5 U.S.C. App. I), such as the National Industrial Energy Conservation Council.
9. Although exempt from the rule making and other provisions of the Administrative Procedures Act (other than the Freedom of Information portion thereof), activities under the Defense Production Act of 1950,

as amended, (50 U.S.C. App. 2061 et seq.) and the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 et seq.) could be subject to CPA participation if public notice is given with opportunity for comment - a situation which occurs periodically.

10. The development of voluntary energy conservation specifications pursuant to this Department's voluntary labeling program for household appliances and equipment as set forth in Part 9 of title 15, Code of Federal Regulations (38 F.R. 29574, October 26, 1973).

11. The development of voluntary product standards to reduce undue proliferation of weights, measures, or quantities of consumer commodities in connection with the Fair Packaging and Labeling Act, as set forth in Part 12 of title 15, Code of Federal Regulations.

12. The development of voluntary product standards pursuant to the procedures set forth in Part 10 of title 15, Code of Federal Regulations.

13. Research activities carried out by the National Bureau of Standards on behalf of the Consumer Product Safety Commission under the terms of the Consumer Product Safety Act.

14. The development, publication, and issuance of consumer information booklets disseminated by the National Bureau of Standards.

15. The establishment of fees or charges for services performed or for documents or other publications furnished by the National Technical Information Service pursuant to 15 U.S.C. 1153.

16. The preparation and review of environmental impact statements by the Office of Environmental Affairs.

17. The issuance of regulations, as authorized by 15 U.S.C. 277, relating to the functions and activities of the Office of Telecommunications.

18. The processing of loans to fishermen for new vessel construction, old vessel repair, or acquisition of new fishing gear under the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742 a. et seq.).

19. The voluntary fishery inspection program of the National Marine Fisheries Service.

20. The activities of the Department in preparing for negotiations of international fishing conventions and in implementing such conventions.

21. Programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

22. Commercial fishing operations under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

23. Patent Office proceedings in certain instances under both the patent and trademark laws.

24. The Economic Development Administration's business loan program.

2. We need to know what specific efforts you are making now to better represent the consumer in your department's decisions and activities.

- Departmental Ombudsman. The Department Ombudsman for Business Office was set up in 1970 to respond to inquiries from U.S. businessmen about the Federal establishment. Today it offers assistance and counseling to both business and consumers on a timely basis.

Consumer inquiries to the Department and referrals from other agencies and the Congress are acted upon by the Ombudsman. Assistance can be given to many consumers by obtaining clarification of the facts from all parties involved and expediting resolution. In others, the consumer is directed to the state or local agency with jurisdiction (e. g., insurance complaints are handled by the state insurance commissions). Requests for general consumer-related information, including product availability matters and consumer education, are answered and appropriate data provided.

Complaints under the purview of various other Federal agencies are forwarded and the consumer advised of the action being taken (e. g., an air charter complaint is directed to the Civil Aeronautics Board Consumer Advocate, a mail complaint to the Postal Service Consumer Advocate, an unfair trade practice to the Federal Trade Commission). Some of the interagency contacts for complaint resolution are shown in a list attached.

- Commerce Department Liaison with the President's Special Assistant for Consumer Affairs. In addition to its daily contacts with consumers, and continuing liaison with other Federal agencies with jurisdiction, the Ombudsman exchanges information with the Office of Consumer Affairs. It thus is able to provide a consumer perspective as requested in Departmental activities considered to have a bearing on consumer welfare.

Under an ongoing relationship, the Department also is an active member of the Federal Liaison Committee for Consumer Affairs. The group is responsible for coordinating and improving Federal program efforts in the consumer field. In addition, the Department actively assists the President's Consumer Affairs Assistant in resolving many consumer complaints directed to that Office.

- Consumer Affairs Handbook. Earlier this year, the Department made available to all District Offices a revised Consumer Affairs Handbook. This Handbook contains timely information on Federal and State legislation and activities, directories of consumer affairs offices, voluntary action guidelines and suggestions, speeches, and other pertinent consumer affairs information. The first edition of the Handbook, which was previously distributed by the Bureau in 1971, proved to be a useful and well-balanced reference source for District Office professionals. Consumers and businessmen use the Handbook as an aid to identify appropriate channels and means to solve consumer problems and to keep abreast of developing issues which impact on consumer recourse and business operations. The new edition has been updated, expanded, and will be revised and updated on a regular basis.
- Consumer Product Safety Center. The National Bureau of Standards has established a Center for Consumer Product Safety to help the Consumer Product Safety Commission improve safety aspects of a wide variety of consumer products, including toys, electrical appliances and textile products. Work at the center provides the technical bases for standards that will be applied to potentially hazardous consumer goods.
- Injuries and Products. NBS has investigated a series of injuries and the products involved to develop methods for defining, identifying and measuring sharp points and the injury potential of various projectiles. The flammability of sleeping bags, slumber bags and play tents was studied under real-life conditions. An analysis was conducted of the injury potential of objects with which a falling person comes in contact. A study of the tractive properties of children's footwear was begun and arrangements were made with industry to conduct a cooperative program in this area. Evaluations of babywalkers, highchairs, and other children's furniture for strength and stability are being made. Test methods were established to protect consumers from the noise produced by such articles as cap pistols and small cannons.
- Safety Analysis. NBS has been analyzing consumer product safety to determine what there is about a consumer product that constitutes an unreasonable hazard. As a result, NBS will have the capability to develop methods for evaluating alternative governmental actions, such as voluntary or mandatory standards or user education, and for dealing with hazards identified in consumer products. Another project is the analysis of data describing accidental injuries from consumer products. This effort involves determining whether it is possible to associate hazards with the characteristics of products, rather than with an individual product.

- Children's Strength. In designing safe products, especially toys, the designer must consider a child's ability to misuse the product by pulling it apart or by manipulating potentially hazardous parts. Since fundamental information on the forces children are able to exert in pushing, pulling and twisting was not available, NBS completed a study of the capabilities of 556 children, ages two through six, in day schools and day-care centers in the Washington area.
- Burn and Fire Hazards. Many household products have hot surfaces. Whether a painful burn results from touching a hot surface depends upon both the temperature and the surface material. NBS published a study which established the relationship between the thermal properties of materials and thermal injury to human tissues. From this study and with funds from the CPSC, NBS designed an instrument that yields a single temperature measurement which is directly related to burn hazard and automatically accounts for differences in surface material and the time of contact. With this "thermesthesiometer," a product designer can test a hot surface and determine in a few seconds whether the surface will be harmless to touch, painful, or will inflict an injury.
- Upholstered Furniture. NBS is also assisting the CPSC in reducing the hazard from fires in upholstered furniture. After alerting the public and industry through a "Notice of Possible Need for a Flammability Standard," NBS developed a small scale upholstered chair with the characteristics of upholstered furniture found in the home. Using the mock-up, a series of cigarette ignition tests measures the flammability of upholstered furniture. Objective of the work is to provide the basis for a new performance standard to minimize this fire hazard.
- Mattresses. Like upholstered furniture, mattresses are a substantial flammability hazard when ignited. An NBS-developed test method is included in the new federal performance standard for mattresses, which took effect June 22, 1973. The standard is expected to reduce substantially accidental mattress fires started by cigarettes.
- Children's Sleepwear. To protect young children from the dangers of flammable sleepwear, NBS developed the "Standard for the Flammability of Children's Sleepwear." This standard (which became fully effective July 29, 1973) requires that sleepwear in sizes 0 through 6X pass a strict flammability test. Work on a proposed standard for children's sleepwear in sizes 7 through 14 followed.

- Voluntary Engineering Standards at NBS. Work on three voluntary standards is under way: "Safety Requirements for Home Playground Equipment," sponsored by the National Association of Children's Home Playground Equipment; "Safety Requirements for Toys," sponsored by the Toy Manufacturers of America, Inc., and "Carbonated Soft Drink Bottles," sponsored by the Glass Container Manufacturers Institute, Inc., and the National Soft Drink Association. NBS works with manufacturers, distributors, and consumers to develop acceptable drafts of the standards.

NBS has published a revised and enlarged edition of its "Tabulation of Voluntary Standards and Certification Programs for Consumer Products." The new edition covers 700 product areas in 17 broad categories taken from the National Electronic Injury Surveillance System of the Food and Drug Administration. It lists the voluntary national and international performance and safety standards which have been published in each product area and describes how to obtain them.

The new edition also includes, for the first time, information on standards that are still under development. The tabulation was designed for use by anyone interested in consumer problems, particularly standards-writing groups, consumer organizations, labor unions and trade associations. The broad product categories covered by the tabulation are: kitchen appliances, space heating, cooling and ventilating appliances, housewares, home communications, entertainment and hobbies, home workshop tools and attachments, household maintenance products, farm supplies and equipment, packaging and containers, sports and recreational equipment, toys, yard and garden equipment, child nursery equipment, personal use items, home structures and construction material.

Advertising, credit, fraud
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Air travel

Jack Yohe, Director
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Civil Aeronautics Board
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Alcohol, guns, taxes, tobacco
John Auten, Director
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Treasury Dept.
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Antitrust

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Business

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Mail

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Older Americans

Decker Anstrom
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Administration on Aging
Health, Education & Welfare Dept.

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Product safety

Mary Kay Ryan
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Consumer Product Safety Commission

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Stocks & bonds

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Work regulations, wages, retirement, pensions

Joanne Gordon
Special Assistant to the
Secretary
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Washington, D.C. 20210
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3. What additional efforts could you take to better represent the consumer in your department's decisions and activities?

Consistent with our responsibility to provide assistance to the business community, we are vitally interested in maintaining an active profile in consumer affairs as it relates to encouraging voluntary business action which would impact on both the business community and the consumer. Toward this end, the following program efforts are in our planning process.

- Business-Consumer Seminar Program. The program will be packaged for and eventually conducted by District Office personnel. The seminar is intended to bring together Government (Federal, State, and local) and private consumer affairs officials and spokesmen in a forum to discuss relevant problem issues with a view toward advancing voluntary business action solutions. It is planned to initiate a pilot program with Washington office assistance in a selected District Office. A format for this pilot effort is attached. After the pilot is completed, a package of seminar materials can be assembled and distributed to all District Offices for inclusion in their own seminar program responsibilities. Speech material, discussion topics, speaker and panel suggestions, etc., will be part of the package. Washington assistance will be available to District Offices as necessary. See attachment for additional information.
- Pilot Task Force on Food Retailing and the Consumer in the Inner City. Supermarkets are disappearing from the inner city at an alarming rate. Inner city residents, those who can least afford to pay, must deal with small retailers whose prices are high. There is an immediate need for a program to explore ways to reverse the exodus with those parties who are in the position to effect change.

A pilot program could be initiated to attack the problem of the return of supermarkets to the inner city. The Department would organize an action group composed of representatives from the supermarket industry, consumer groups and appropriate Federal and local agencies. The group would develop possible government incentives and/or other public or private actions to make commercial operations profitable in the inner city.

- Consumer Arbitration. The Department can play a major role in furthering its goal of encouraging positive business-consumer action by initiating a program to establish consumer arbitration panels nationwide. The Department, by utilizing its field office network and numerous private organizations, would take the lead in establishing

the groundwork for arbitration mechanisms. Such arbitrations would be privately structured. This would interface with the new Warranty-FTC Improvement Act (P.L. 93-637), one of the most important consumer laws ever enacted. This act has a provision which says that the FTC may require written consumer product warranties to include arbitration availability information.

- Consumer Credit Program. Help to consumer credit recipients can be given by identifying and analyzing problem areas of the consumer credit industry with a view toward isolating principal factors influencing the availability and cost of consumer credit in the United States. A survey of major credit holders such as commercial banks, consumer finance companies, retailers and credit unions will be crucial in evaluating the availability and cost of consumer credit and in determining the competitive position of credit sources. Appropriate sections of the study will be transmitted to consumers to increase awareness of the cost of credit. Policy recommendations and/or legislative initiatives will be directed to appropriate regulatory agencies and Congressional committees in an effort to resolve the consumer credit issues identified.
- National Business Council for Consumer Affairs. The National Business Council for Consumer Affairs was established in August 1971 by Executive Order 11614 and was organized by the Secretary of Commerce to research key consumer issues and provide reports and recommendations on how to increase the level of business responsibility to consumers in the marketplace. (Descriptive folder, "Mission and Membership," is attached.)

The Council's reports (copies attached) were submitted to the Secretary and disseminated with his enthusiastic endorsement to thousands of business executives and others involved in consumer relations problems. Ultimately, more than 250,000 of the reports were distributed by the Department. These reports were universally praised for their straightforward, practical approach to solving consumer problems.

Follow-up action on the voluntary implementation could be taken by reestablishment of the Executive Committee of the National Business Council for Consumer Affairs, reporting to the Secretary of Commerce and actively pursuing adoption of its guidelines by business firms.

Implementation of NBCCA recommendations would include business liaison, tie-in with trade associations, and the issuance by the NBCCA of an identifying seal of cooperation (similar to the E award) to firms participating in guideline implementation.

- Other Initiatives. A considerable part of the activities of the Patent Office, the Office of Environmental Affairs, the Office of Telecommunications, the Office of Product Standards, and the National Technical Information Service, as well as the National Bureau of Standards, are directed toward serving the public through making more products available to the public, making them safer or making more information about these products available to the consumer. While there might be some marginal utility in expanding efforts in this direction, it would appear to be more profitable to consider new programs such as increased information transfer, metrification, and studies of the effect of regulatory programs in the area of pollution on the cost of energy (thus, ultimately, on the price of consumer products).

4. What regulatory reforms would you suggest to assist the consumer?

It is difficult to review quickly all of the regulations and regulatory authorities which impact on consumers. Literally all decisions made by the Federal government have a consumer impact through changes in economic conditions resulting from these decisions. The understanding of these processes and their total impact on the "public interest," however, can be facilitated through a number of actions, as noted below.

The type of regulatory reform most needed immediately is the moderation of mandatory requirements in the area of pollution abatement, particularly where the standards have been established without adequate data or attention to the economic effect of the standard. Present pollution abatement programs under several statutes, including the Clean Air Act, the Federal Water Pollution Control Act as amended, and the Federal Insecticide, Fungicide and Rodenticide Act, require massive expenditures by industry for testing, monitoring and construction which do not return fair value in terms of cost/benefit of pollution abatement and the cost of which is passed on to the consumer in terms of an energy penalty and inflationary price increases. Greater emphasis on voluntary participation by industry in pollution regulatory programs could probably be expected to accomplish substantially the same objectives (under threat of perhaps even more onerous mandatory requirements) at less cost to the manufacturer and to the consumer.

In the same vein, "unnecessary" regulatory activities should be eliminated, and "necessary" regulatory activities should be structured in such a manner that they may serve the "public interest" rather than solely the needs of special interest groups.

The primary requisite toward achieving this general goal is the acquisition and analyses of data on the effect and impact of specific regulatory policies and practices. The first step therefore should be a comprehensive effort on the part of both the Congress and the Executive Branch to obtain the objective facts and to analyze them in terms of the effect on the public welfare as a whole. (It must be noted that we believe evaluation should be done around the impact on the "public welfare" rather than special interests and consider that evaluation based solely on the impact on the "consumer," at least as defined by many consumerists, would simply shift the emphasis from one "special interest" group (the regulated) to another (the user).)

Following acquisition of the necessary data, two steps should be undertaken. First, eliminate "unnecessary" regulation. Second, "necessary" regulatory activities must be restructured so that the impact of all decisions on the

public welfare can be considered prior to regulatory action. To accomplish this end, agency practices will need to be restructured so that there is an affirmative burden on them to acquire information on the overall impact of their actions. Implicit in this restructuring must be the recognition that most individuals affected by regulatory decisions do not have the financial ability, awareness, or means to come forward to the regulators with their own views. Toward this end the agencies must actively seek out this impact through a number of devices, such as: educational campaigns to inform the general public of issues affecting them and their means of participating in decision making, and undertaking of public opinion studies.

The above process of regulatory reform could be immediately implemented by consideration of the following:

- An executive order requiring each activity and decision made by a regulatory agency to take into active consideration the "public interest" (also, containing the interests of business as a consumer) and to detail the analysis which was used in reaching a decision, i. e., economic analyses, cost/benefit statements, etc.
- The granting of authority to a designated agency within the Executive Branch to be informed of decisions being made, and to have responsibility for making a direct input into the regulatory process through the "advisor" route, thereby carrying out the "public interest."
- The establishment of a committee in the Domestic Council for the purpose of undertaking an analysis of "unnecessary" and "necessary" regulatory processes with the responsibility of advising the President of actions he can, and should, take in this area.
- The establishment of a National Commission on Consumer Protection Reform. Such a commission would study current regulatory agencies with a view toward recommending initiatives to restructure those agencies whose actions directly affect consumers. Emphasis will be on the FTC, CPSC, USDA and other Federal agencies whose decisions impact the consumer. The proliferation of Federal consumer protection activities and lack of responsive accountability justifies the establishment of a commission to analyze and recommend initiatives to improve Federal consumer protection decision making.



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

March 28, 1975

Honorable James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C. 20500

Dear Mr. Cannon:

Further in connection with this Department's response to your letter of March 27 concerning S. 200, please find attached responses to each of the four questions by the National Oceanic and Atmospheric Administration. I regret that, because of electronic problems with their telefax machine, it simply was not possible to obtain these comments in time for incorporation into the material previously sent. While syntax and format might be improved upon, those factors are more than outweighed by the desirability of prompt access to the substance, given the deadline under which you are working.

Please let us know if there is anything further we can do to assist you concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John", written over a horizontal line.

Acting Secretary of Commerce

Enclosures

Question 1: What specific problems does the bill present to your Department?

Answer: The Department concurs with the need to insure that:

1. The interest of consumers are adequately represented before Federal agencies and courts,
2. Information of interest to consumers is properly disseminated, and
3. Consumer complaints are properly addressed and resolved. Therefore, the Department supports the intent and purpose of the proposed legislation (S. 200). However, the Department believes that adequate consideration is generally given to consumers' interest in the various activities. Thus, the Department questions the need for a new, separate agency to function as a consumer advocate within the Federal structure.

Provisions already exist in our regulations, etc., to provide for consumer input in both the formulation of policies, decisions, and activities, and the review of these several actions. For example, consumers' input is specifically sought and utilized in the development and implementation of U.S. grade standards for fisheries products. Provisions are made at various points during the drafting of these standards for consumer input.

Another major objection to the proposed legislation is that it will place additional funding and manpower burdens upon consumer-oriented agencies. Food producers required to comply with the provisions of the legislation and affected consumers will in all likelihood besiege the agencies with requests for assistance which either cannot be given within existing fiscal constraints or which will require diminution of other on-going programs. We cannot find adequate provision in the legislation to fund the additional requirement which will be placed on numerous State, Federal, and local consumer agencies.

We assume that references to farmers and agriculture throughout the legislation includes commercial fishermen and fisheries products.

A specific problem the bill presents to NMFS, NOAA is the need for adequate and timely coordination of activities of mutual interest.

From: Kip Robinson 3/28/75

Question 2. Need to know what specific efforts you are making now to better represent the consumer in your Department's decisions and activities.

Answer: The National Marine Fisheries Service currently has a field staff of 15 consumer information specialists and fishery marketing specialists nationwide who are directly involved in activities to enhance consumer awareness of fisheries products. These activities include:

1. Fish cookery demonstrations to consumer groups, including institutional, school lunch, and household consumers. Information is extended on market forms, purchasing, handling, recognition of quality, cost per serving, nutrition, menu planning, and best buys.
2. Cooperation with other State and Federal agencies concerned with foods to develop tie-ins of fisheries products with other abundant food products, thereby providing consumers with a wide latitude of combinations in menu planning.
3. Development and distribution of printed materials to consumers which stress the factors regarding fisheries products noted above. An effort has been made to reach low income ethnic groups through special language publications, particularly to Spanish language consumers,
4. Seafood merchandizing clinics at the retail level to enhance quality at point of sale and to effect merchandising efficiencies, thereby reducing costs to consumers.
5. Development of markets for underutilized species, many of which are low in cost.

Our voluntary inspection program has a value in increasing consumer protection. Service although small is recognized by consumer organizations, i.e., consumer unions. In fact, inspection has been a large factor in developing consumer confidence in numerous sea foods.

Question 3. What additional efforts could you take to better represent the consumer in your Department's decisions and activities?

Answer: Basic needs to improve consumer education efforts regarding fisheries products include:

1. Additional funds and personnel to develop a more favorable ratio between consumer education and marketing personnel and producers, merchandisers, and consumers of fisheries products.
2. Increased consumer education and merchandising aids.
3. Test kitchens and other laboratory facilities for consumer product development and testing, with emphasis on cost, nutrition, preparation, variety, and product safety.
4. Additional fishery products standards and sanitation guidelines and increased inspection of fishery products.

Question 4: What regulatory reforms would you suggest to assist the consumer?

Answer: The Department believes that the same level of quality and safety and resulting consumer confidence should be assured in fisheries products as is found in other animal protein foods through the passage of mandatory seafood inspection legislation. An appropriate system for mandatory inspection of all fishery vessels, establishments, and products marketed in commerce is in the best interest of consumers.

EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 28 1975

OFFICE OF
PLANNING AND MANAGEMENT

SUBJECT: S. 200

FROM: Alvin L. Alm
Assistant Administrator
for Planning and Management

A handwritten signature in black ink that reads "Alvin L. Alm".

TO: James Cannon
Executive Director
Domestic Council

Attached are our responses to the questions you posed to Russ Train informally yesterday about S. 200.

Attachment

S. 200

Questions:

1. What impact will S. 200 have on EPA?

Answer:

S. 200 has the potential for far-reaching impact on virtually every EPA activity. Since the reach of S. 200 includes not only formal and informal rule-making and adjudicatory proceedings, but also all other proceedings or actions "which may substantially affect an interest of consumers, "it is difficult to identify any EPA actions which would not fall within that scope. Under these circumstances, our many rule-making proceedings could be encumbered by the involvement of the CPA, which would have independent authority to conduct separate interrogatories of all parties. Also, under S. 200, numerous discretionary actions of the Administrator could involve the CPA. In addition, numerous notice requirements with respect to anticipated or scheduled activities which could have consumer impact, would have to be provided to the CPA. The potential for delay and red tape is significant, especially if economic impact statements were required on each EPA action (as contemplated by one amendment).

The extent to which S. 200 will impact EPA is not known. Thus far, consumers have not involved themselves significantly in EPA's programs.

2. What is EPA doing in its present activities to represent consumer interests?

Answer:

EPA is conscious of the need to take into account consumer interests. In carrying out our responsibilities we endeavor to assess the impact of our various programs and activities on the economy. We generally include members of the public who do reflect consumer views on many of the advisory committees established under statute or under our own initiative to advise with respect to many of our program activities.

We also routinely assess the energy costs and impact of many of our regulatory program requirements. These assessments, of course, often have significant impact upon consumers. As a part of our energy conservation program we have been compiling facts with respect to fuel economy of motor vehicles and have been making this information available to the public. We expect this information to have a profound impact on consumer activity in the vital area of automobile purchases. An additional specific program which favorably impacts consumer interests is the Agency's pesticides labeling program.

3. What additional things could EPA do under its present authorities?

Answer:

Although we believe we have been conscious of the impact of our programs and activities upon the consumers, it appears that some of those activities could involve greater citizen, i. e., consumer participation. For example, in the development of transportation control plans as a part of State implementation plans for the achievement of air quality standards, earlier and more extensive public discussion with consumers immediately affected would have been desirable. It is now our plan to pursue such policy in the development and revision of such plans. It must be remembered, however, that many of our responsibilities under law are greatly circumscribed by specific criteria, i. e., considerations of public health and the environment.

The Agency has recently been given authority to set drinking water standards, and we are presently developing criteria to do that. Additionally, the Agency is attempting to develop an auto emission warranty program for catalysts.

4. What regulatory reforms generally, if any, would EPA recommend?

Answer:

We are already including a relatively new procedure which provides citizens a right to be directly involved in our regulatory activities. Most of the EPA legislation includes the citizen suit provision. This authority, whereby citizens may bring suit, has been limited to non-discretionary actions. We note that S. 200 would extend citizen involvement through the CPA well beyond non-discretionary actions into virtually every discretionary action of government.



FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D. C. 20461

March 28, 1975

OFFICE OF THE ADMINISTRATOR

Honorable James S. Cannon
Assistant to the President
for Domestic Affairs
The White House

Dear Jim:

This is in response to your request yesterday for my views on four questions you posed in the context of the Consumer Advocate Bill, S. 200.

Before addressing the specific questions you raised, I should state that my general view is that Federal agencies should keep their own houses in order, and accordingly, each agency should provide internally for representation of consumer interests so that this important element can be reflected in each agency's decisions and programs.

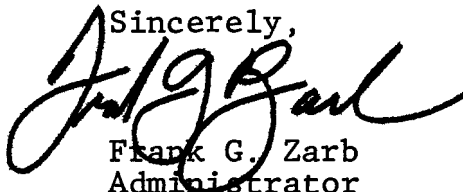
This bill, which is similar to legislation considered during the last several Congresses, would add a new dimension to the concept of consumer representation by providing this new agency litigation and advocacy powers similar to organizations in the private sector. Though there is always uncertainty as to the institutional competence and responsibility that such a novel agency would develop, I believe that under this bill the Agency for Consumer Advocacy might be a potential irritant to FEA's operations, but would not present any substantial problems in carrying out FEA's responsibilities. We have some experience with the GAO as a potentially adverse agency permitted unusually broad access to FEA records, and, of course, being the target for litigation by public interest-oriented groups is something we have learned to live with.

FEA currently has in place an Office of Consumer Affairs/Special Impact, which is our internal consumer-oriented element which has frequent opportunities to participate in the policy development process. Moreover, under FEA's

organic legislation and the agency's procedures, we encourage participation by the public in every significant aspect of development of our regulatory programs. For example, in nearly every instance, FEA rulemakings involve prior public hearings, and all FEA Advisory Committee meetings are open to the public with general public observers permitted to present oral statements during such meetings.

Absent a major reorientation of limited resources, additional efforts to represent consumer interests in FEA largely would involve improvements in the carrying out of the existing structure whereby the agency is exposed to consumer concerns in its decision-making procedures. The visibility and significance of FEA's activities are such that we are very exposed to public scrutiny and aware of public sentiments on our activities. Regulatory reforms which have been suggested in prior studies, such as the Ash Council Reports, focused largely on the collegial, adjudicative form of agency structure and the shortcomings associated with such organizations. While these critical examinations would not appear to be particularly relevant to FEA, if you wish, I would be happy to give the general subject of regulatory reforms additional thought in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank G. Zarb". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Frank G. Zarb
Administrator

TALKING POINTS FOR REPLY TO JAMES CANNON LETTER

1. What specific problems does S. 200, the "Consumer Protection Act of 1975" present to HEW?

. There would be significant overlap between the tasks of the new Agency for Consumer Advocacy (ACA) and HEW's Office of Consumer Affairs and the Food and Drug Administration.

-- FDA's total job could be interpreted as within OCA's jurisdiction and subject to continuous and costly monitoring and "double think."

In general, the bill provides the new agency with too broad authority to intervene in the internal and the public decision-making processes of the Department. The agency could seriously hamper our policy making and significantly impact our staff time and costs. Specifically:

-- The functions and purposes of the ACA -- specifically, representing "interests of consumers before Federal agencies ... with respect to the ... purity, potency, healthfulness ... and cost of any ... property ... or goods, services or credit" -- so closely track FDA's and ASH's responsibilities in the health industry, that ACA staff would be permitted under the Act to take part, as an advocate, in every health-related decision we made. This would have significant cost and time implications.

-- Section 6 would establish the Administrator's right to inter-
vene as a party to any Federal agency proceeding or activity

which may affect consumers. That would be virtually every action this Department takes, and would subject us to constant review by another official agency. This is particularly alarming because no clear guidelines are established for the intervention.

-- Section 12 would require HEW to provide a status report, "upon specific request by the Administrator," on "any action which may substantially affect an interest of consumers." Here, again, virtually all HEW actions would be included.

2. What specific efforts are we making now to better represent the consumer in HEW's decisions and activities?

. There is a long list of areas in which consumer input and representation has been expanded; it is an area we have paid much attention to:

. Health

-- Under the new Health Planning legislation (P.L. 93-641), which HEW had a major role in developing, the role of consumers in determining health needs and plans for each geographic area is expanded through the requirement that a majority of local planning board members be consumer representatives.

-- FDA has recently expanded a number of its committees to include consumer representatives. One of these, the Ad Hoc Consumer Advisory Committee, which meets monthly with top FDA staff, contains representatives of many major consumer organizations and sponsors conferences on consumer subjects (note recent conference on sugar, funded by FDA and National Academy of Sciences).

-- FDA and NIH also have significant consumer representation in their management structures: in FDA by the recent appointment of an Assistant Commissioner for Professional and Consumer Affairs; in NIH by the direct consumer representatives on the Review Councils of the National Institutes of Health.

. Social Services

-- The newly enacted Social Services legislation (Title XX), which HEW is primarily responsible for, is a landmark in open process and public participation. Some examples are:

- States must, for the first time, accept a 45 day public comment period on their plans for services.
- Consumer advisory boards, while voluntary, will be paid for under the Act if established.

-- The Department is publishing a citizens guide on how to get into the social services process.

. The Office of Consumer Affairs

-- OCA acts, of course, as a constant consumer advocate within the Department. They review decisions, regulations, possible rule changes and all other policy matters to provide continuing guidance on consumer impact.

-- Additionally, OCA publishes a bi-weekly "Consumer Register" which pulls out of the Federal Register and records for consumers those items which are of major consumer interest. Instructions and forms for comment are provided. 25,000 are published bi-weekly; and an increase in the percent of consumer comments has been noticeable.

-- OCA has also been working with FDA on a major effort to streamline regulations to make rulemaking easier to understand and participate in.

- . Social Security Number Privacy Initiative

The Department has for some time been developing legislation which would protect the consumer from abuse of his social security number by government and private organizations. While generally not included under "consumerism," it is nevertheless a significant protective measure for the consumer.

- . Education

- The Department has recently taken a number of major steps against certain types of proprietary schools which abuse the students' rights to maximize profits. In particular, we have taken decisive action to protect student loan recipients' rights to refunds when such schools fail to provide the educational services the student has paid for. We are also requiring truthful disclosure of basic information about the school before the student takes out a loan.

- We are working closely with the Education Commission of the States to develop standards and model legislation to deal with the problem of "degree mills."

- We are reviewing standards for recognizing accrediting associations and their role in determining the institutions whose students are eligible for Federal aid.

- There are numerous other consumer protection and participation items included in our Higher Education package. The specifics can be forwarded in a day or so, if required.

- . In implementation of the Education Act of 1974 (P.L. 93-380) the Department undertook a series of regional conferences involving members of the public, the education community, and regional office staff to explain the implications of new portions of the bill, our proposed regulation development process and how to input into it, and anticipated applications, procedures and deadlines.
- . In program areas which have substantially new dimensions we have made special efforts to insure that these dimensions are understood by all potential consumers (e.g., the new regulations for Title IV of the Civil Rights Act permit funding for the elimination for sex discrimination. Accordingly, a special press release accompanied issuance of the regulations and letters regarding their intent were sent to all potential applicants and public interest groups).
- . The Commissioner of Education has initiated a series of meetings with key State school officers to discuss all of the Office of Education programs with them and any concerns that they may have with regard to their operations. In addition, the Commissioner has appointed a full time ombudsman to maintain continuous liaison with Chief State school officers and to report their concerns directly to him.

3. What additional efforts could we take to better represent the consumer in HEW's decisions and activities?

. We intend to make expanded use of surveys and other instruments to secure consumer views on potential action items. For

example:

-- FDA has recently surveyed consumer preferences in developing nutritional labeling.

-- We contemplate a study to determine how to make consumer choice a more powerful influence for assuring long term care quality.

. We also intend to include key persons representing public and other interested groups in some of our internal policy discussions leading to the development of regulations and other decisions-- at least to enlarge our sense of the alternatives and of the probable consequences of each policy option--much as we did with Title XX. Additionally, we will

-- Extend the requirement that is now in some programs, for state and local grantee public agencies to involve consumers meaningfully in their planning, to more of the HEW funded programs.

-- Continue to place high priority on seeking public input into decisions from affected consumers, at an early enough stage to allow for meaningful participation.

-- Place priority on OCA and OE consumer education activities directed toward increasing knowledge necessary for intelligent marketplace decisions.

- . In the area of Education we expect to continue and expand our use of regional consultations with public interest groups, press releases regarding changes in policy, and close consultation with congressional staff as we proceed with new legislation development and/or implementation. Additionally, we expect to:
 - Continue present efforts to write summary statements for all new Departmental regulations and to draft such regulations in such a form as to be easily understood by the layman,
 - Continue on-going efforts to expedite the publication of new regulations, and
 - hold special follow-up discussions with concerned interest groups as appropriate (e.g., Title IX and Title VII of the ESEA).

4. What regulatory reforms would you suggest?

o In areas of HEW's regulatory responsibility we see the need for a number of changes:

-- The Department anticipates shortly reintroducing a bill to require the enumeration of ingredients on labels for those foods having mandatory formulations. In addition, statutory authority will be sought to require drained weight labeling for canned food measures. Both of these authorities, sought for FDA, will provide greater information to the consumer to assist in decision making on purchases.

-- FDA is also seeking authority to streamline and reduce the time required for its rule-making under the Food, Drug and Cosmetic Act. The expectation is that the desired revisions, if achieved, will reduce unnecessary and harmful delays in promulgation of food and drug standards and thereby increase consumer protection.

-- Legislation is presently being prepared to expand the Center for Disease Control's authority to deal with interstate clinical laboratories which are not meeting standards. Increased authority would permit more rapid CDC actions, under its regulatory authority, to require interstate compliance with high professional standards.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

OFFICE OF THE SECRETARY

IN REPLY REFER TO:

March 28, 1975

MEMORANDUM

TO : Carla A. Hills, Secretary
FROM : Bernard J. Carl, Special Assistant
SUBJECT: Consumer Protection Act of 1975

1. The proposed legislation is not expected to have any substantial impact on the activities of this agency as differentiated from its impact on the Executive Branch generally.

First, we have few formal regulatory proceedings in which it is likely the proposed Administrator would intervene. One such proceeding would be hearings pursuant to the Interstate Land Sales Act, when the Secretary refuses to accept a lot developer's disclosure statement or where the Secretary suspends such a statement. We would not consider the Administrator's participation in such a proceeding particularly onerous.

Most of our other proceedings involve less formal policy determinations, for example, the formulation of proposed regulations concerning mobile home standards, settlement procedures or minimum property standards. We would welcome wider participation of consumer groups and their representatives including the Administrator in such proceedings, which usually involve only publication for comment in the Federal Register and, occasionally, a public hearing. We are, however, somewhat concerned that the broad definition of "agency activity" contained in S.200 would allow the Administrator to become involved in our informal communications with constituent industry groups, making such communication exceedingly difficult.

There are certain other elements of the Act which we might find somewhat onerous. We are particularly troubled by the proposed agency's broad authority to secure information from other federal departments, since that authority could deter members of our client industries from providing us with full and candid disclosures of financial and other information which we find very useful in the conduct of our activities.

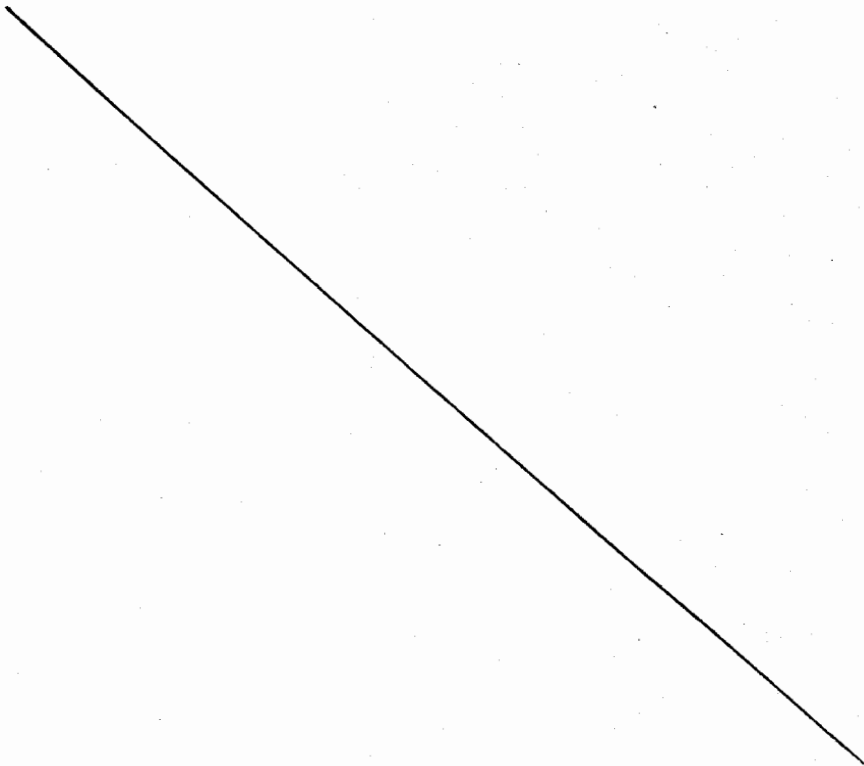
2. We have several programs with a consumer protection orientation. For your information, I am attaching hereto a list of some of those programs.
3. An effort could be made to accord better representation to consumers in this Department's decisions and activities, and implementation of such reforms could easily be undertaken. First, we have increasingly made public hearings or comment periods a prelude to any significant agency action which could affect consumers. For example, we recently held extensive public hearings in Washington and Florida on the question of condominium regulation, to afford consumers an opportunity to express their views to open up new channels of communication with consumer groups.

Presently under study are mechanisms for improving consumer complaint handling. A proposal for a centralized facility within the Department to coordinate the handling of consumer complaints is being considered, as is a suggestion to make consumer complaint handling by local offices more directly subject to Central Office supervision.

As this agency increasingly becomes involved in regulating its client industries in consumer protection matters (See attached statement.), serious consideration will have to be given to what internal structure can best accommodate that new role. It is premature, at this time, to speculate on the results of that consideration.

4. There is one alternative to the 1975 Consumer Protection Act which might be saleable to the Congress and also be a reasonable accommodation of our concerns about the proposed legislation. That alternative would be as follows:

- (1) The Bureau of Consumer Protection (BCP) of the Federal Trade Commission could be empowered to:
 - (a) Represent consumer interests in any agency proceeding (but not informal agency activity, as defined by S.200) which may substantially affect consumers' interests whenever it determines that such intervention is necessary to adequately represent the interest of consumers.
 - (b) The BCP could be empowered to participate in any informal rule-making where public comment is invited by presenting written or oral submissions to the extent the public was invited to do so, and the agency involved could be obligated to consider some admissions.
 - (c) The Bureau of Consumer Protection could also be permitted to initiate or participate in any Federal court proceeding involving review of a Federal agency action which substantially affects consumer interests, not only if the BCP were previously a party to the agency proceedings. In that context, the BCP would seek review as a representative of consumers who are aggrieved parties for purposes of the judicial review.
 - (d) The BCP would be given authority to receive and review consumer complaints, to notify the party against whom the complaint had been lodged, transmit such complaints to the proper authority, and to co-ordinate responsive action on such complaints.

- (e) The BCP could also be empowered to maintain logs of consumer complaints and responses.
 - (f) The BCP would also have the obligation of assisting and coordinating Executive Branch programs to disseminate consumer information materials.
- (2) This proposal has several advantages over S.200:
- (a) The Federal Trade Commission's Bureau of Consumer Protection already has substantial consumer protection functions. The stated purposes of the proposed Agency for Consumer Advocacy includes the protection of consumer choice in a competitive market and the prevention of unfair or deceptive trade practices. These are identical to the statutory responsibilities of the Federal Trade Commission in consumer affairs matters. It seems unconscionably wasteful and inefficient to fractionalize within the Executive Branch the responsibility for protecting consumers against such practices.
- 

- b. The Federal Trade Commission's power to promulgate trade regulation rules, combined with its authority to sue to enforce those regulations, makes that agency a natural focus for consumer protection activities in the Executive Branch. It is already an agency whose perceived constituency is consumer groups. It is, thus, well suited to the role envisioned for the Agency for Consumer Advocacy.
- c. The consumer complaint function envisioned by the Act would be a useful informational source for the FTC in implementing its power to proscribe trade regulation rules concerning unfair trade practices.
- d. Recent legislation has already given the Federal Trade Commission limited dependent litigative authority to protect consumer interests. It is not a major step to supplement that authority to include participation in administrative and judicial review proceedings involving consumer interests, even beyond those involving unfair trade practices as defined by the Federal Trade Act.
- e. Giving the Federal Trade Commission the power to intervene in other agency proceedings avoids the problem of dual prosecution in FTC matters that would result from having a separate agency intervening in FTC proceedings.
- f. Giving the FTC this responsibility avoids the creation of an entirely new bureaucracy and the attendant start-up costs, delays and duplication of effort that would involve.
- g. The FTC already has significant expertise and technical staff skilled in consumer matters so that they could undertake their statutory charge almost immediately.
- h. Although an incremental increase in the FTC Bureau of Consumer Protection staff would be required, that increase would be less than would be required by the creation of a new agency.
- i. The FTC is an agency with considerable stability and is a part of the Executive Branch in terms of its budget operation, hence, would be far less disruptive than the proposed agency.

- j. The FTC already has significant but carefully circumscribed investigative powers, pursuant to its regulatory role, which could be relied on as an alternative to the expansive and troublesome information gathering tools afforded to the proposed Agency for Consumer Advocacy under S.200.
- k. The FTC has already developed techniques for the informal resolution of issues relating to consumer protection which could also be applied in meeting the statutory mandate envisioned here.
- l. The FTC should be a sufficiently independent body to mollify Congress' fears about insulating the Administrator of a consumer protection agency from political pressures.

Attachment

APPENDIX

Among the significant current or impending consumer oriented activities of the Department are the following:

1. Interstate Land Sales -- The Office of Interstate Land Sales Registration (OILSR) is responsible for implementation of the Land Sales Full Disclosure Act requiring developers and promoters selling or leasing 50 or more unimproved lots in interstate commerce, pursuant to a common promotional plan, to file a registration statement with HUD. The statement must disclose all material information pertaining to the land and the developer must prepare a digest of the registration statement for distribution to prospective purchasers. OILSR reviews the registration statements and is authorized to sue to cure deficiencies or to enjoin violations of the Act.

One important issue concerning the activities of this agency is its interpretation of its regulatory authority to include an uncompleted condominium unit as the equivalent of a lot under the Act. There is much industry opposition to this interpretation and a test case is in the offing.

2. FHA Minimum Property Standards -- FHA has always had some quasi-consumer protection functions pursuant to its responsibility to establish "minimum property standards" and to conduct compliance inspections of insured homes pursuant to the National Housing Act of 1937. Such minimum property standards set out minimum levels for elements of design and construction as well as for materials used in that construction. There are, for example, standards for insulation materials, safety glass, acoustical treatment, and sealing of wood products.
3. HUD Carpeting Standards -- On March 1, 1975, new HUD carpet standards and a HUD certification program for carpeting was initiated. The new standards were implemented despite a concerted effort on the part of the industry to postpone the effective date of the new standards. The carpet standards constitute a marked departure from previous HUD property standards for two reasons. Previously, standards were determined largely by the affected industry and a self-certification process was used to police compliance. The new carpeting standards are substantially more stringent than those proposed by the industry and a third party enforcement mechanism was established. Accordingly, the new carpeting standards mark a significant advance in HUD consumer related regulatory activities.

4. Other FHA Consumer Related Responsibilities -- FHA has several other consumer related responsibilities, including FHA appraisals, its subdivision analysis work, FHA limitations on short-swing profits that can be made by persons who sell homes without occupying them, and restrictions on "kick-backs" from a mortgagee in an insured transaction.
5. Mobile Home Standards -- Title VI of the Housing and Community Development Act of 1974 authorizes the HUD Secretary -- in consultation with a 24-member advisory council on which consumers will have one-third representation -- to establish a national mobile home construction and safety standard and to work with the States to implement an effective enforcement program. The initial standards will be issued by August 22, 1975, and will be revised as additional data and information are gained from research efforts. The standards, when effective, will preempt local standards covering construction of the mobile home. An effective enforcement system -- including a provision for recall of defective units -- will provide assurance that the units built will be in compliance with the improved standards.
6. Real Estate Settlements -- The Real Estate Settlement Procedures Act requires the Secretary (HPMC) to promulgate a form to be used as the standard real estate settlement form in all transactions involving Federally related loans, and to establish ceilings on settlement costs. The required form is scheduled to be published on May 1, 1975. The Act also requires advance itemized disclosure of settlement costs in affected transactions at least 12 days prior to settlement and prescribes certain activities such as "fee-splitting." Criminal provisions and a private right of action are provided. HUD's role in implementing or enforcing some of these proscriptions is unclear.

7. FHA Insured Condominiums -- Section 234 of the National Housing Act provides for FHA insurance for mortgages on condominium units. Section 234(c) authorizes the Secretary (HPMC) to prescribe "such controls as he [sic] determines to be necessary and favorable to promote and protect individual owners of the multifamily project and its occupants." Section 234(d)(2) allows the Secretary to regulate or restrict "rents, charges, capital structure, rate of return, and methods of operation until the termination of all obligations under the [Federal] insurance and during such further period of time as the Secretary shall be owner, holder, or reinsurer of the mortgage." Probably because of its quasi-consumer protection elements, Section 234 has not been utilized to any significant degree; however, it does represent a consumer protection function mandated by statute.
8. Condominium Study -- HUD is currently undertaking an investigation of condominium housing with a report to Congress due in August of 1975. Among the issues to be considered are whether disclosure or substantive regulation of condominium sales are appropriate; the relationship between the Federal and State regulation; and what legislation is necessary to implement the recommendations of the HUD study. Several bills have already been introduced to provide for Federal regulation of the condominium market and it seems clear that, by the end of the session of Congress, HUD will have a significant regulatory role in this area as well.

OGC has already prepared a model State statute concerning condominiums and conversions which has not been publicly disseminated.

9. HUD has another important consumer oriented function. Section 518 of the National Housing Act was amended in December 1970 to permit HUD to correct, or to compensate owners for correcting structural or other defects which seriously affect the use and livability of existing houses insured under Section 235. In the period from enactment to June 30, 1974, approximately 9,900 vouchers were paid and \$7.6 million was expended to correct or compensate for the correction of structural and other defects. The program has been essentially inactive since

June 30 due to the suspension of the Section 235 program in January 1973 and the statutory requirement for a claim to be filed within one year of purchase.

The Housing and Community Development Act of 1974 amended Section 518(b) to include on a one-time basis the correction, or the compensation for correction, of structural or other major defects in existing houses insured by HUD during the period from August 1, 1968, to January 1, 1973, under Section 203(b) or Section 221(d)(2). Eligibility was restricted to those properties with defects so seriously affecting the use and livability of the dwelling that a serious danger to the life or safety of the inhabitants is created.

Section 518(a) provides purchasers of all new FHA insured homes with protection for four years after construction. If a serious structural defect is found in a home built under FHA inspection, FHA pays for the cost of repairs.

10. In an effort to deal with the dangers of lead-based paint, FHA requires that for insurance to be provided on the resale of houses built before 1950, a seller must remove all loose, scaling paint and repaint with new (non-lead) paint. If repainting is impossible, the area must be covered over to a height at least equal to that of the average 7-year-old child.
11. HUD publishes a substantial volume of consumer education material, mostly pamphlets to inform consumers about housing matters.
12. Finally, Wilbur Jones, Special Assistant to the Secretary, is in the process of preparing a comprehensive study and recommendation for a Consumer Affairs office within the Department. The proposal envisions the Consumer Affairs Office as a mechanism to expedite the control consumer complaints and to coordinate consumer education functions now handled elsewhere in the Department.

INTERIOR



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Dear Jim:

In response to your letter of yesterday, we have conducted a quick survey of our programs with respect to consumer interests.

Most of our programs affect consumers only indirectly. The closest we come to the consumer are our parks and recreation programs. Nominal fees are charged in certain areas for specific services but these fees generate only about 10% of our operating costs. The Department also markets water and hydroelectricity. However, we act as a wholesaler and sell bulk power and water to public utilities, municipalities and irrigation districts. Our mineral leasing activities are even further removed from ultimate consumers.

I do not mean to imply, however, that our programs have no impact on consumers. More specifically, let me address your four questions.

1. Problems the Economic Advocate bill presents to Interior

In its mission of management and protection of natural resources, the Department does take actions that affect the supply of important commodities and services, such as energy, minerals, recreation opportunities, and the like. The central problem the Consumer Advocate Bill might present to Interior is that such a consumer agency could set up a powerful and biased special interest with very broad authority to intervene in Departmental activity. This could be highly unfair, since consumers as a group are only one of many sectors with an interest in the conduct of natural resources policy. Other interests, such as the taxpayer, as title holders to Federal resources, and private owners of resources, are also entitled to fair treatment in the disposition of Federal resources. We feel that we provide a balanced decision process now, giving due consideration to consumer interests through normal processes of public comment and advisory activity. This bill could easily produce an undesirable weighting of our decisions.

2. Efforts now being made to represent the consumer

We have progressed in our efforts to provide clearer and more comprehensive environmental impact statements covering our proposed actions which could affect consumers as well as other interests. For example,



Save Energy and You Serve America!

proposed rate increases in hydro-power and water rates charged by the Department have been subjected to environmental impact analyses. It is through this process and related public hearings that ultimate consumers can comment on whether our analysis adequately presents the consequences of our proposed actions on their well being. More remotely, our environmental analyses and public hearings on proposed leasing of mineral deposits, rights-of-way grants over public lands, and subsequent regulations provide similar opportunities for the expression and consideration of consumer interests.

In general, we are attempting to factually provide consumer interests the implications of our actions through environmental impact analyses. More specifically, in the marketing of power and water, we are providing these products at a rate equivalent to the costs the Federal Government incurs, except for irrigation water which we normally provide at substantial subsidies. With respect to the leasing of Federally owned mineral resources, both onshore and on the outer continental shelf, we are attempting to increase the competition for the development of these resources which will be immediately beneficial to the taxpayer and will also benefit consumers in the longer run. Finally, our programs to provide Federal parks and to assist States in their park programs increase the opportunities and reduce the costs for outdoor recreation interests.

3. Additional efforts to represent consumer interests

Our highest priority objective in the Department is to increase the domestic supply of energy. Success in this effort will reduce consumers' energy costs. We are proposing an accelerated oil and gas leasing program on the outer continental shelf which could lessen our reliance of foreign supplies and reduce world prices. We are also about to propose a new coal leasing policy designed to increase the supply of clean energy on a least-cost basis.

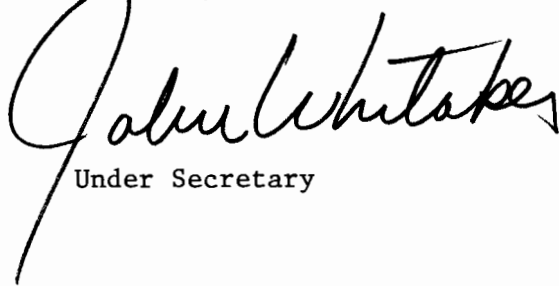
4. Regulatory reforms

We are about to promulgate new regulations which would ban joint bidding by the major oil companies on oil and gas lease sales on the outer continental shelf. Such action should increase competition and ultimately be beneficial to consumers. In addition, as part of our proposed new coal leasing policy, we will apply strict diligence regulations which will force present and future leasees to either produce coal in substantial quantities or relinquish their rights. Such a regulation will increase scarce energy supplies and reduce their costs in the near future.

I sympathize with you in your efforts to find a better alternative for representing consumer interests than S.200. However, in this attempt, I hope we can avoid alternatives which on the surface seem reasonable, but actually create greater red tape and impede an orderly and objective decisionmaking process. The inflationary impact statement drill is a case in point. The intent was good, but the consequences could be disastrous in terms of delay and bureaucratic costs. I trust that whatever alternatives for representing consumer interests are proposed, their full implications and costs will be considered.

Please call if you need further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John Whiteaker". The signature is written in a cursive style with a large, looping initial "J".

Under Secretary

Honorable James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C. 20500

JUSTICE



Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR JAMES M. CANNON
Assistant to the President for
Domestic Affairs

FROM: Edward H. Levi *EL*
Attorney General

SUBJECT: The Proposed Consumer Protection Act
of 1975 - S. 200

Yesterday you requested our comments on what specific problems might be presented for the Department of Justice if S. 200 were enacted, as well as suggestions for possible regulatory reforms and other ways in which consideration of the consumer interests in governmental decisions might be enhanced.

I. Potential Impact of S. 200 on Current Activities of the Department.

The bill in its current form could affect our activities in several different ways:

First, the bill might well undermine the ability of the Solicitor General to control the presentation of appeals by government agencies before the Supreme Court.

For example, the Solicitor General's Office believes that under the bill: (1) the Administrator may be entitled to present written and oral arguments to the Solicitor General as to why he ought to seek certiorari with respect to cases that may affect consumers,^{1/} (2) the Administrator may have the right to seek review of cases in the Supreme Court notwithstanding the Solicitor General's objections,^{2/} (3) the Administrator may be entitled to request the Solicitor General to seek certiorari in certain cases of substantial interest to consumers and to demand a public statement of the reasons for denying such a request,^{3/} and (4) the Solicitor General might be required to notify the Administrator any time the Solicitor General made a determination as to whether to seek review of a case that may substantially affect consumers.^{4/}

In the past, Chief Justice Burger has expressed the strong opposition of the Supreme Court to this kind of dilution of the Solicitor General's authority over government appeals to that body.^{5/}

Second, the establishment of an independent consumer advocate would tend to duplicate and dilute the current efforts of the Department to represent the public interest in competition in the proceedings of regulatory agencies.

In recent years, the Department has become increasingly active in seeking to assure that the regulated industries operate subject to the maximum degree of competition consistent with the regulatory goals established by Congress. Too often, regulation has operated to protect firms from competition, rather than to serve the public. The Supreme Court has repeatedly emphasized that the antitrust laws represent a "fundamental national economic policy," and that appeals of their application will not be lightly implied. See, e.g., California v. Federal Power Commission, 369 U.S. 482 (1962). The courts have stressed that the basic goal of direct government regulation through administrative bodies and the goal of indirect governmental regulation in the form of the antitrust laws is the same -- to achieve the most efficient possible allocation of resources. The regulatory agencies are thus compelled by the courts to follow antitrust principles in making "public interest" determinations.

Accordingly, the Department has opposed such anti-competitive and anti-consumer practices as minimum commission rates before the S.E.C. and minimum air charter fares before the C.A.B.. The Federal Trade Commission has also recently intervened in several proceedings before other regulatory agencies to advocate a "pro-consumer" position. We believe that a substantial case can be made for an increase in departmental resources to carry out this sort of advocacy which is manifestly in the interest of consumers. However, we fail to see how the interest of consumers will be advanced by the creation of another "consumer" advocate with perhaps still another point of view to participate in the proceedings of regulatory agencies. Indeed, the confusion and additional delays engendered by more participants in regulatory agency proceedings may well be contrary to the long run benefit of consumers.

Finally, the range of departmental activities subject to possible intervention by the consumer advocate appears to be quite broad. For example, the Criminal Division may be required to state reasons for declining prosecution in a case related to mail fraud.^{6/} The

Administrator may be entitled to participate in meetings between the Antitrust Division and defense counsel for the purpose of discussing whether or not to bring an antitrust action.^{7/} The Administrator may have the right to participate in a decision by the Tax Division concerning settlements of large tax disputes with manufacturers.^{8/} The Lands Division might be required to permit the Administrator to participate in decisions whether or not to bring air or water pollution suits and to demand an explanation for any decision to decline such a suit.^{9/}

II. Current Consumer-Related Activities of the Department

The Consumer Affairs Section of the Antitrust Division enforces a wide variety of laws designed to protect consumers against unfair, deceptive, dangerous, or fraudulent business practices.^{10/} The intervention by the Department in a variety of regulatory proceedings in order to encourage the adoption of pro-consumer competitive principles in agency decisions was discussed above. In addition, the Department brings numerous cases to bar price-fixing activities which raise prices to consumers. For example, a pending suit seeks elimination of minimum fee schedules used by Oregon lawyers.^{11/} Finally, we vigorously enforce statutes prohibiting mail fraud and extortionate credit transactions.^{12/}

In the legislative field, the Department has prepared a bill which would remove the existing antitrust exemption for state fair trade laws and is working on a proposal to modify the Robinson-Patman Act provisions which discourage lower prices based upon demonstrably lower business costs. We believe that both of these proposed legislative reforms would substantially benefit consumers.

III. What Additional Steps Could the Department Take in the Area of Consumer Protection?

In 1970, the Department introduced a bill which would have codified a number of practices that adversely affect the consumer. These included such practices as bait and switch, passing off used goods as new goods, misrepresenting the origin of goods, and the like. The responsibility for enforcement of this bill would be placed within the Department of Justice. This legislation would strengthen the deterrent effect of some of the prohibitions already contained in the Federal Trade Commission Act.

To make the responsibilities of the Department in protecting the interests of the consumer more visible, the President could announce creation of a Consumer Protection Division within the Department of Justice to be headed by an Assistant Attorney General. Such a Division could assume the current consumer statutory enforcement responsibilities

of the Department without requiring new legislation. There are presently a number of statutes which can be more vigorously enforced with the addition of more attorneys and supportive personnel. However, the Department believes that careful thought must be given prior to a Presidential decision establishing a Consumer Protection Division because (1) it might divert Departmental resources into areas of relatively low law enforcement priority, and (2) an appointee designated to head the Division may not be confirmed by a Senate overwhelmingly committed to S. 200, and (3) establishing the Division may not prevent enactment of S. 200.

We do not think it would be appropriate or helpful to the consumer to expand the use of agency hearings in the Department. Most Departmental decisions affecting consumers concern litigation and it would seem unhelpful and in some cases prejudicial to defendants to have hearings on litigation tactics. We also do not think consumer interests would be substantially advanced by creating an intra-departmental review mechanism designed to insure that consumer interests are appropriately weighed in Departmental

decisions. Such a process might substantially increase the paper flow to higher level officials without a corresponding improvement in consideration of consumer interests. Finally, in view of the innumerable interests which may be characterized as pro-consumer, requiring officials to certify that they have considered a consumer viewpoint in making decisions may produce only pro forma responses.

IV. What Regulatory Reforms Might Assist the Consumer?

The Department has already advanced proposals for the reform of surface transportation regulation, the reform of air transportation regulation and the reform of monetary and fiscal regulation. Our proposals are uniformly directed toward the achievement of less costly and complex regulation and greater economic competition.

Finally, although the Department has considerable reservations about the following proposals, they might conceivably serve as possible alternatives to S. 200:

1. Propose special funding and any additional necessary authority in the Legal Services Corporation Act for attorneys to represent the general interest of consumers in litigation. This proposal would possibly satisfy those who contend that S. 200 is needed because

consumers individually are insufficiently affected by many agency decisions to pay for representation. The very broad interpretation of standing under the Administrative Procedure Act given by the Supreme Court in U.S. v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973) would entitle consumers represented by legal services attorneys to challenge numerous regulatory actions.

2. Require consumer impact statements, analogous to environmental impact statements, to be used in connection with agency decisions.

The Department is of course prepared to provide any further information you may require. In addition, we are prepared to supply possible amendments to S. 200 which the Administration may desire to support at a later stage of the legislative process.

FOOTNOTES

1/ §6(a)(3).

2/ §6(c)(1).

3/ §6(d).

4/ §12.

5/ "It is the unanimous view of the Justices that it would be unwise to dilute the authority of the Solicitor General as to Supreme Court jurisdiction in cases arising within the Executive Branch and independent agencies. It is very likely that there would be an increase in the workload of the Supreme Court if matters could be brought here without the concurrence of the Solicitor General. Even more important, perhaps, the Solicitor General exercises a highly important role in the selection of cases to brought here in terms of the longrange public interest." Hearings Before the Subcommittee on Commerce and Finance of the House Committee on Interstate and Foreign Commerce, 92d Cong., 1st Sess., series 92-37b, pt. 3 at 1809 (1972).

6/ See §6(j).

7/ See §6(a)(3).

8/ Id.

9/ See §6(a)(3), (j).

10/ That Section enforces the (1) Federal Food, Drug and Cosmetic Act prohibiting, inter alia, adulteration and misbranding of numerous products, (2) Federal Hazardous Substances Act prohibiting the sale of misbranded or banned hazardous substances, (3) Fair Packaging and Labeling Act prohibiting the distribution of products not fairly packaged and labeled, (4) Child Protection and Toy Safety Act requiring special labeling to protect children, (5) Automobile Information Disclosure Act requiring auto manufacturers to disclose certain prices and assembly information, (6) Federal Cigarette Labeling and Advertising Act requiring warnings on cigarette packages, (7) Poison Prevention Packing Act requiring special packaging of dangerous household products to protect children, (8) Consumer Credit Protection Act prohibiting the false or inaccurate dissemination of credit information, (9) Wool Products Labeling Act prohibiting the distribution of misbranded wool products, (10) Fur Products Labeling Act prohibiting the distribution of mislabeled fur products, (11) Textile Products Identification prohibiting the misbranding of textile fiber products, (12) Federal Trade Commission Act prohibiting unfair or deceptive business practices, and (13) Motor Vehicle Information and Cost Savings Act forbidding odometer resetting and requiring uniform auto bumper standards.

11/ See U.S. v. Oregon State Bar.

12/ 18 U.S.C. §891, 1341.

LABOR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

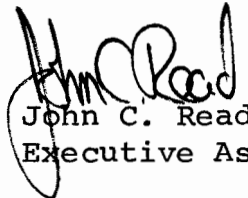
March 28, 1975

Dear Mr. Cannon:

The attached memorandum prepared by Department of Labor staff provides some brief responses to the four questions you posed in your March 27 letter to Secretary Dunlop. The Secretary has not had the opportunity to review this document but has asked me to respond in his behalf.

I hope this information is sufficient and useful.

Sincerely,



John C. Read

Executive Assistant

Mr. James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C.

Attachment

cc: Secretary Dunlop

THE IMPACT OF S200 ON THE DEPARTMENT OF LABOR

I. Special Problems

Labor standards enforcement (Fair Labor Standards Act, Age Discrimination in Employment Act, Equal Pay Act, Service Contract Act, Davis-Bacon Act, Walsh-Healy Act, Occupational Safety and Health Act, Executive Order E011246) almost necessarily has a cost impact and therefore could involve an "interest of consumers." Section 6 of S200 allows the administrator of the Agency for Consumer Advocacy to intervene in DOL enforcement actions, initiate judicial review of such actions or request the initiation of proceedings under the labor standards provisions. This would mean that the Department would have to deal with a new party in most of our enforcement activities.

Section 10 of S200 permits the administrator to gather information required to protect the health and safety of consumers, and this could duplicate our own information gathering under the Occupational Safety and Health Act.

The labor disputes exemption under Section 16 of S200 is not broad enough to exclude OSHA enforcement or civil rights proceedings.

- II. Specific efforts by the Department to better represent the consumer include our published policies of proposing rules and regulations even where not required to do so, regional hearings on such regulations, economic impact statements and the preparation of summaries of all comments received in the rule making process.
- III. Additional efforts by the Department to better represent the consumer in our activities include the preparation of detailed guidelines for all the agencies within the Department on the preparation of economic impact statements for all new legislation and regulations which would have a significant economic impact.

IV. We do not have any regulatory reforms to propose. It has been the Secretary's view that a catalog of existing programs and policies in this area is necessary before any new legislation or reform should be undertaken.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

March 28, 1975

Mr. James M. Cannon
Assistant to the President for Domestic Affairs
The White House
Washington, D. C.

Dear Jim:

Enclosed is our Department's response to the questions of the Domestic Council regarding the Consumer Advocate Bill, S. 200.

I think you will find the Department of Transportation has a creditable record of achievement in the area of consumer involvement.

We stand by to provide more information as required.

Sincerely,

A handwritten signature in black ink, appearing to read "R. H. Binder". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Henri Binder
Acting Secretary

Enclosure

DEPARTMENT OF TRANSPORTATION

1. What specific problems does the bill present to your department?

The answer depends most heavily on how aggressively the Act is administered. The powers conferred by the Act are very sweeping and if exercised to their limit could be a serious impediment to the effective and timely administration of many of our programs, particularly in the regulatory area. At the other end of the spectrum, if the Act is administered with wisdom and restraint, the new agency's activities could provide constructive and different points of view in our decision making process.

Specifically, the bill risks imposing administrative burdens that ultimately may harm, rather than benefit the consumer. The potential for massive expenditures required of the government and the private sector may have serious consequences. Advisory committees might proliferate (Sec. 4(b)(3)); additional burdens would be placed upon agencies by requiring them to make already scarce resources available to the new agency (Sec. 4(c)(5)); and each agency would be required to respond specifically to every complaint forwarded to it by the ACA and to keep it informed of agency action on the complaint (Sec. 7(a)). All businesses and other commercial establishments would be required to supply massive amounts of information through interrogatories (Sec. 10(a)(1)), and face potential severe hardship as a result of the public complaint file to be maintained by the ACA (Sec. 7(c)). Complaints would be included in the public file regardless of their merit, and even anonymous submissions would be included. Agency sponsorship of the file at least implies the complaints are meritorious.

Resolution of competing issues would be made more cumbersome and costly in many respects. Today's informal proceedings could become formalized if in a cautious effort to develop an "ironclad" record the agency should decide the interest propounded by the ACA is not, on balance, in the public interest. Additionally, resources of the DOT would, to some extent, be diverted from its primary, ever-expanding mission in order to assist the ACA.

To the extent the government will be forced to expend these sums, consumers in their taxpayer roles will suffer. To the extent businesses face increased expenses, the consumer will pay higher prices. Yet this is the very consumer whose interests are to be protected.

Further, the bill risks impeding the implementation of other laws. The Freedom of Information Act (5 U.S.C. 522), for example, recently was amended (P.L.93-502) to ensure greater access by the public to information possessed by agencies. The bill would effectively vitiate the provisions of that Act in which the Congress recognized certain specified classes of information should not be required to be released. The bill would provide the Administrator access to some of this information (Sec. 10(b)), especially that permitted to be withheld from the public under 5 U.S.C. 552(b)(4) unless it falls within the more narrow definition in Sec 10(b)(7) of the bill. The Administrator then could release this information to the public if he determined it is necessary to protect health or safety (Sec. 11(a)(1)).

It might also be noted that much of the consumer type criticism leveled at the Department concerns DOT funded public works projects -- highways, airports, and so on. The new Act does not address this question, and we believe that the opportunities given consumers to participate in the environmental impact statement process fully protect their interests.

With respect to safety regulatory activities, all of which affect consumers particularly in the automobile and aviation field, we do not believe that the Act would have a serious effect, although it may introduce some further delay in the issuance of final rules.

2. What specific effort is the Department making to represent the consumer in its decisions and activities?

The Department of Transportation has within the Office of the Secretary an Office of Consumer Affairs which serves as a focal point for consumer advocacy in the Department. A major function of this office is to provide DOT policy leaders with an accurate picture of the needs and concerns of the individual transportation consumer as this office has determined them through various techniques.

The Office of Consumer Affairs has conducted 54 consumer public hearings in 21 states in the 10 regions of the country to listen first hand to the consumer's transportation problems, needs and suggestions. A detailed report is now being transmitted to the Secretary and to all Secretarial Offices and Administrations of the Department for consideration in policy decisions and activities. The report indicates that consumer concerns range from those of a policy nature such as the need for transit operating subsidies, more mass transit facilities and greater consumer involvement in comprehensive transportation planning to such modal concerns as automobile repair problems, stricter enforcement of traffic laws and baggage problems in air travel. In addition, the special transportation needs of the elderly and handicapped were voiced loud and strong.

The Office of Consumer Affairs, after an intensive study of the DOT rulemaking process which included a sponsorship of a workshop attended by consumers outside of the Department as well as DOT representatives,

submitted a report to the Secretary with five specific recommendations for greater citizen involvement in the rulemaking of the DOT administrations. These recommendations, which have been adopted by the Secretary and are being implemented, are:

- (a) That DOT administrations utilize the Notice and Comment rulemaking procedures in substantive rules relating to public property, loans, grants, benefits or contracts.
- (b) That the DOT administrations made the fullest use of the Advance Notice of Proposed Rulemaking.
- (c) That within DOT the normal minimum length of time for public comment on a notice of proposed rulemaking be 45 days.
- (d) That DOT administrations and Secretarial offices submit to the General Counsel and the Office of Consumer Affairs its policy and precedures for consumer involvement in rulemaking and that by September 30 of each year a brief report be submitted to the Office of Consumer Affairs highlighting successful activities and techniques employed during the year to involve consumers in the rulemaking process.
- (e) That each Administrator and Secretarial Office designate a member of his staff to work in a liaison capacity with the DOT Office of Consumer Affairs on rulemaking matters which have a substantial public interest.

The Department has conducted a number of studies to determine the problems, needs and preferences of the consumer regarding transportation. Among these are studies entitled "Traveler Service Problems," "Journey to Work Patterns of the Transportation Disadvantaged," and "Consumer Problems of the Transportation Disadvantaged." The Department is also conducting studies and demonstration programs to determine the transportation needs and best methods for solving the transportation needs of the elderly and handicapped.

The Office of Consumer Affairs serves as sponsor of the Department's 21 member Citizens' Advisory Committee on Transportation Quality.

The purpose of the Committee is to provide the citizens' point of view to the Secretary in order to assist the Department in developing policy initiatives for consumer related transportation affairs. The Committee has recently submitted recommendations on improving the adequacy and quality of public transportation. It has made recommendations pertaining to the federal role in abandoned automobiles on the highways, and on ways to compensate consumers for impacts of transportation facilities on their environment.

Two of the seven administrations of the Department have consumer affairs programs. These are the Office of Public Affairs and Consumer Services in the National Highway Traffic Safety Administration (NHTSA), and the Community and Consumer Liaison Division in the Federal Aviation Administration (FAA). Six of the seven administrations of the Department

administer laws and programs that benefit consumers directly. The seventh administration, the St. Lawrence Seaway Development Corporation, benefits the consumer indirectly by facilitating the movement of goods.

Finally, it should be noted that the Department makes extensive use of the Federal Register to invite consumer comment on proposed actions. This applies not only to rulemaking procedures where advanced notice of the opportunity for comment are required, but in informal proceedings as well. For example, the Department published in the Federal register on March 6, 1975, a Request for Public Participation in connection with an international aviation policy review conducted by the Department, and other agencies.

3. What additional efforts could you take to better represent the consumer in your department's decisions and activities.

Adequate machinery exists in the Department to project the consumers' concerns into the Department's decisions and activities, as demonstrated above. What is needed is a continued determination to make that machinery work effectively. As was pointed out in the DOT Workshop on Consumer Involvement in DOT Rulemaking (copy of proceedings attached), "success depends much more on the state of mind of the regulatory agency than it does on following any checklist of things to be done although a checklist may be useful."

4. What regulatory reforms would you suggest to assist the consumer?

Much of government economic regulation of transportation has produced results detrimental to consumers which far outweigh its social benefits.

Much Federal regulation, originally imposed to prevent monopoly abuses, *and encourage the development and expansion of the nation,* has long outlived its original purposes. Indeed, this Federal regulation, which is administered by the Interstate Commerce Commission and the Civil Aeronautics Board, has grown so cumbersome that consumers are denied prompt realization of technological innovations, and pricing adjustments that reflect changes in competitive conditions, and have to suffer unnecessary inefficiency. As a result, consumers get poorer service and have to pay higher prices. The Administration is committed to reform of economic regulation of all phases of intercity transportation: rail, truck, air and water, and expects to submit legislation to Congress for the rail mode within two weeks with legislation to follow in the other areas *in four to six weeks.* ~~within two months~~. The need for these regulatory reforms and the benefits to consumers have been recognized by a wide-ranging group of consumer advocates.

We also suggest the President issue an Executive Order directing all Federal agencies to immediately review their regulatory procedures for the purpose of determining how they can encourage and facilitate public participation in appropriate phases of the regulatory process. This would be an internal measure to require stronger management attention to consumer affairs and stop "tokenism" treatment, if any, of this subject. A report of the review with new actions taken or of

proposed actions should be submitted to the President and Congress within six months of date of the order. The report then should identify actions which have been taken and proposals for new activities which are designed to bring the consumer into closer contact with the decision-making process.

CONSUMER INVOLVEMENT IN RULEMAKING

Report of a Study and Recommendations
to the Secretary of Transportation
for Consumer Involvement in Rulemaking.



June 1974

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20590**

C O N S U M E R I N V O L V E M E N T

I N

R U L E M A K I N G

Report of a Study and Recommendations to the
Secretary of Transportation for Consumer Involvement
in Rulemaking.

June 1974

Office of Consumer Affairs
Office of the Assistant Secretary for Environment, Safety, and
Consumer Affairs
Office of the Secretary
Department of Transportation
Washington, D. C. 20590

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Transportation for Consumer Involvement in Rulemaking

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- Appendix 4 - An Examination of Consumer Expression in the Development of Federal Rules and Regulations

LIST OF RECOMMENDATIONS TO THE SECRETARY
REGARDING
CONSUMER INVOLVEMENT IN RULEMAKING - DOT

Recommendation A

THAT THE DOT OPERATING ADMINISTRATIONS UTILIZE THE NOTICE AND COMMENT RULEMAKING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT IN PROCEDURAL AND SUBSTANTIVE RULES OF GENERAL APPLICABILITY "RELATING TO PUBLIC PROPERTY, LOANS, GRANTS, BENEFITS, OR CONTRACTS" WHICH HAVE BEEN DETERMINED BY THEM TO HAVE A SUBSTANTIAL PUBLIC INTEREST EVEN THOUGH SUCH RULES MAY NOW BE EXEMPT FROM NOTICE AND COMMENT PROCEDURES.

Recommendation B

THAT THE OPERATING ADMINISTRATIONS WITHIN DOT SHALL MAKE THE FULLEST PRACTICAL USE OF THE ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM).

Recommendation C

THAT, WITHIN THE DEPARTMENT, THE NORMAL MINIMUM LENGTH OF TIME FOR PUBLIC COMMENT ON A NOTICE OF PROPOSED RULEMAKING FOLLOWING PUBLICATION IN THE FEDERAL REGISTER SHALL BE FORTY-FIVE DAYS.

Recommendation D

THAT EACH DOT ADMINISTRATION AND APPROPRIATE SECRETARIAL OFFICE SUBMIT TO THE GENERAL COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS

ITS POLICY AND PROCEDURES FOR CONSUMER INVOLVEMENT IN RULE-
MAKING WITHIN 60 DAYS FROM RECEIPT OF THE SECRETARY'S
MEMORANDUM; THAT THEREAFTER A COPY OF ANY SIGNIFICANT CHANGES
IN SAID POLICY AND/OR PROCEDURES BE PROVIDED TO THE GENERAL
COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS; THAT BY SEPTEMBER
30 OF EACH YEAR, A BRIEF REPORT BE SUBMITTED TO THE OFFICE OF
CONSUMER AFFAIRS HIGHLIGHTING SUCCESSFUL ACTIVITIES AND
TECHNIQUES EMPLOYED DURING THE COURSE OF THE YEAR BY THE
ADMINISTRATION OR SECRETARIAL OFFICE TO INVOLVE CONSUMERS IN
THE RULEMAKING PROCESS; THAT PERIODICALLY THE OFFICE OF CONSUMER
AFFAIRS SHALL COMPILE A REPORT OF CHANGES IN POLICIES AND/OR
PROCEDURES AND SPECIAL ACTIVITIES AND TECHNIQUES FOR CONSUMER
INVOLVEMENT IN RULEMAKING; AND THAT AFTER SAID REPORT HAS
BEEN REVIEWED AND APPROVED BY THE APPROPRIATE OFFICES, THE
OFFICE OF CONSUMER AFFAIRS SHALL DISTRIBUTE THE REPORT
THROUGH CHANNELS OF COMMUNICATION ACCESSIBLE TO CONSUMERS.

Recommendation E

THAT EACH ADMINISTRATOR AND APPROPRIATE SECRETARIAL
OFFICER DESIGNATE A MEMBER OF HIS STAFF KNOWLEDGEABLE IN
THAT ADMINISTRATION'S OR OFFICE'S RULEMAKING PROCEDURES
TO WORK IN A LIAISON CAPACITY WITH THE OFFICE OF CONSUMER
AFFAIRS IN ITS WORK WITH CITIZEN/CONSUMER LEADERS AND GROUPS
CONCERNED WITH CONSUMER PARTICIPATION IN RULEMAKING MATTERS
WHICH HAVE A SUBSTANTIAL PUBLIC INTEREST.

REPORT OF A STUDY AND RECOMMENDATIONS TO THE SECRETARY OF
TRANSPORTATION FOR CONSUMER INVOLVEMENT IN RULEMAKING

I. BACKGROUND OF THE STUDY

Communications Between White House and Secretary Volpe

In December 1971, Virginia Knauer, Special Assistant to the President for Consumer Affairs, expressed her general concern about the lack of adequate citizen participation in Federal rulemaking. In a letter to Secretary of Transportation, John Volpe, she said she wasn't sure "that individual agency procedures were able to fully reflect public sentiment in the framing of formal regulations."

Her concern was based on a study which her office had conducted. It revealed that "there is little formal surveying, prior to drafting rules and regulations, of consumer opinion which could insure that agencies recognize public views. Rather, current policy tends to presume a knowledge of public sentiment." It also revealed that "consumers are interested and they can make positive suggestions if the opportunities to do so are readily available and the issues are well defined."¹

Directive by the Secretary to DOT Office of Consumer Affairs

The Secretary then directed the Department's Office of Consumer Affairs to conduct a "thorough examination...of our present methods of giving consumers opportunities to express their views in the rulemaking process" and to "make recommendations for the implementation of any

¹ Executive Office of Consumer Affairs, Division of Program Analysis: "An Examination of Consumer Expression in the Development of Federal Rules and Regulations." November 19, 1971. (See Appendix 4 for excerpts from this report.)

necessary changes in our rulemaking process to make it as 'consumer responsive' as possible."²

Study of Current DOT Practices

In the Spring and Summer of 1972, the Office of Consumer Affairs conducted a study throughout the Department called "Consumer Involvement in the Development of Rules, Regulations and Procedures Within DOT." There was considerable interest in the subject within each of the operating administrations and the DOT Consumer Affairs Coordinating Committee. In September 1972, a preliminary report of current practices was issued which summarized the philosophy and activity of the various offices and administrations within the Department of Transportation in the development of rules, regulations and procedures. This preliminary fact-finding on the in-house state of the art revealed considerable variations throughout the Department in both attitudes and practices.

Workshop

The Office of Consumer Affairs then planned a workshop on the subject of consumer involvement in rulemaking in order to help raise the level of responsiveness in this matter throughout the Department. Other objectives included an exchange of knowledge and experience as to the practical steps that can be taken for meaningful consumer involvement in rulemaking and the development of suggestions from which a set of recommendations could be made for Departmental consideration.

² Letter from the Secretary of Transportation to the Special Assistant to the President for Consumer Affairs, December 29, 1971.

The workshop, held on December 4 and 5, 1972, brought together all of the operating administrations, the secretarial offices, and outside professionals who were knowledgeable and skilled in the implementation of consumer involvement in rulemaking, for a thorough consideration of the subject. (See Appendix 1.) In addition, there were representatives from the trade associations, academia, the public at large, the DOT Consumer Affairs Coordinating Committee and members of the Department's Citizens' Advisory Committee on Transportation Quality. Thus, professional outside expertise and citizen-consumers were drawn together with Department officials for meaningful dialogue and work sessions. In all, 98 persons attended. A list of the chairmen of the six workshop task force groups appears in Appendix 2.

The last plenary session of the workshop consisted of reports from each of the task force groups, responses to these presentations by members present and a general discussion of key ideas that emerged from the various groups. A transcript was made of this final session and sent to all attendees.³

Development of Report

The last step in the process has been the preparation of this report. Drafts have been reviewed by the Consumer Affairs Coordinating Committee of the Department, the Citizens' Advisory Committee on Transportation Quality, the heads of the operating administrations, Secretarial Offices, and those who attended the workshop. The final decisions regarding the

³ DOT Office of Consumer Affairs, Workshop on Consumer Involvement in the Development of Rules, Regulations and Procedures, Department of Transportation, Transcript of the Final Session, December 5, 1973. (Copies of Transcript available from Office of Consumer Affairs.)

recommendations which are transmitted to the Secretary through this report are those of the Office of Consumer Affairs, Office of the Assistant Secretary for Environment, Safety, and Consumer Affairs. Every effort has been made to incorporate the thinking of all who have been part of the study process.

II. SOME DEFINITIONS

Rule

For the purpose of this study, the definition of "rule" is taken from the Administrative Procedure Act.⁴ "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."

This definition, as interpreted for this study, is intended to include the development of "regulations" and "procedures" which have a substantial effect on the public. Similar or related terms, such as "guidelines" or "notices," which substantially affect agency structure or programs, are also included in this definition.

Rulemaking

"Rulemaking" means the agency process for formulating, amending, or repealing a rule.

⁴ Administrative Procedure Act, 5 USC § 551(4) and (5).

Notice and Comment Rulemaking Process

The rules adopted in the "informal" process of the Administrative Procedure Act (5 USC § 553) are also known as "notice-and-comment" rulemaking. This contrasts with the formal rulemaking procedures which require a formal hearing, the taking of evidence and decisions made strictly "on the record" as in a court case. The key element of informal rulemaking is the notice of proposed rulemaking. Under the Administrative Procedure Act, this is required to contain "either the terms of substance of the proposed rule or a description of the subjects and issues involved." In practice, this means that the agency drafts and publishes the rule that it proposes to issue in as close to final form as it can.⁵ There are two main purposes for this. First, it gives the concerned public, both the persons to be regulated and those who presumably would benefit from it, advance notice that the regulation is being developed. Thus, they are not likely to be taken by surprise when the rule takes effect. Second, it provides the concerned public an opportunity to express their opinions on the precise **proposal** of the agency, both generally and with respect to changes that should be made in the draft before the rule is finally issued.

An important aspect of a notice is the preamble which must include a discussion of the salient features of the notice--what is being proposed, the problems or issues that it deals with, prior related notices and the main points made by persons commenting to date. The preamble also provides the expected or approximate date for the rule to take

⁵ Under recommendation B of this report there is a discussion of the importance of citizen-consumer input to the rule formulation before it is issued in "as close to final form" as possible. The use of the Advance Notice of Proposed Rulemaking (ANPRM) and other methods of early involvement are discussed.

effect. It invites comment from the public, states the docket number and the address for sending comments, and provides the date by which comments should be received. The "docket," a permanent file on a subject matter, is kept in a public file room where the public can come in and examine all comments that have been made at any time to any docket.

After the comment period closes, the agency analyzes the comments, engages in additional fact-finding, if needed, considers any information that it may have received from other sources, makes its final decision and issues the rule if that is the decision. The rule is then published in the Federal Register with a description of comments. Within 30 days following the publication of a rule, a person may file a "petition for reconsideration" asking that it be revoked or changed. If this occurs, the agency again analyzes the petition and makes its decision either to deny the petition or to reopen the record. The final disposition of the matter is eventually published in the Federal Register.⁶

The above procedure for informal rulemaking, outlined in chart form by DOT's Office of General Counsel for use by the workshop participants, can be found in Appendix 3.

III. THE NEED FOR CONSUMER INVOLVEMENT IN RULEMAKING

Increased Consumer Awareness and Concern

As modern government has become more and more centralized at both the Federal and state levels, and as the agencies of government have

⁶ Administrative Procedure Act, 5 USC, § 553 (b) - (e).

grown both in number and in power, it has become inevitable that decisions are made and rules, regulations and procedures are determined with less and less involvement of the citizen/consumer for whom the rules are established. In the past, the consumer has been more willing than he is now to go along with what the officials of government, business, the universities and industry have spelled out for him. Today, the consumer is more sophisticated, better educated, more exposed to the learning effects of a vast mass media and has more leisure for involvement. He is more aware of the need for change and he believes more strongly that his voice should and can be heard in the development of laws, rules, and policies that affect human needs, his own included.

In addition, in a rapidly changing society where new values and institutional arrangements are vying with the old, the consumer is looking for new meaning and purpose within the institutions of society. Consequently, he is more prone to examine old assumptions and to participate in public affairs in order to effect change.

Development of Consumer Movement

The consumer realizes that something must be done to close the gap between the agencies of government and their ultimate constituents, including himself. He has observed that representative democracy has its limitations and that it is difficult for elected officials to keep tuned in to what people at the "grass roots" are thinking, feeling and needing. To close the gap, a consumer movement has been growing in the

United States. This and the growing desire of citizens to participate in decision-making have become a necessary counterpart to the extensive lobbying of business and industry whose traditional strength and capacity to represent private interests have far outdistanced any similar consumer effort.

Growth of Consumer Organizations

Not only are there increased personal interest and a willingness to be involved in the processes of governmental decision-making, but there is a growing number of consumer organizations at both the local and the national level that are becoming effective spokesmen for consumer interests. Contrary to the past situation in which an administrative agency was only exposed, in most cases, to the views of its staff and of private persons with their own interests in the proceeding, today's consumer groups are keeping abreast of those issues before an administrative agency which affect consumer interests. They stand willing to assist the agency in highlighting the people-interests that deserve protection and in producing relevant evidence and argument which suggest appropriate action. Furthermore, the more consumers become involved, the more they realize that their participation must be far upstream in the decision-making process if their needs are going to be met most effectively.

Opportunity for the Department of Transportation

Officials of government and industry are increasingly aware that their decisions cannot be made in a vacuum of unawareness about consumer

feelings, insights and convictions, or with only an educated guess as to what is best for the consumer. The rising tide of consumer determination to be included in the planning process provides the decision-makers with a better opportunity to evaluate consumer viewpoints and interest.

It is useful to recall that a generation ago there was little belief that it was necessary for governmental agencies to seek the views of the consumer as a third party to the relationship between the regulator and those industries and businesses in the private sector that were being regulated. It was simply presumed that the major role of the government regulatory agency was to protect the interests of the general public which would obviously include consumer interests no matter what definition was used. However, this theory has too often not worked out in practice and the public's awareness of this fact has increased significantly as a result of the encroachments on the human and ecological environments which America's technology has often created.

Since the transportation consumer, in the broadest sense, is either the victim or the beneficiary of policies and decisions reached by the Department of Transportation, the Department must find means of filling the gap between the rulemaking process in Washington and the citizen. The consumer must somehow understand and be involved in the process or else he will consider regulatory decisions to be an "intrusion of authority" into his life and will find the means to subvert, thwart or resist them.

Agency intent is not enough. Sensitive and practical rules for guiding consumer participation within reasonable channels must be

developed by DOT agencies. It is precisely this need that has motivated the current effort to further develop consumer involvement in rulemaking in the Department. This study has revealed that attitudes must be changed, new points of view must be taken and new resources must be found to create a vital process of participation. Earnest pursuit of these goals may not be easy but the rewards of avoiding costly mistakes, of ending up with transportation systems that do reflect the general will of the public, and of decreasing the sense of alienation between the consumer in our society and his government, can far outweigh all the frustration which the Federal, state and local agencies may encounter as they implant a new consumer methodology into their day-to-day planning. In short, the Office of Consumer Affairs believes that the Department, as a whole, must make a firm commitment that there will be no rulemaking on matters of substantive public interest without adequate provision for citizen-consumer participation in the rulemaking process.

IV. SPECIFIC RECOMMENDATIONS FOR CONSUMER INVOLVEMENT IN DOT RULEMAKING

Recommendation A

THAT THE DOT OPERATING ADMINISTRATIONS⁷ UTILIZE THE NOTICE AND COMMENT RULEMAKING PROCEDURES OF THE ADMINISTRATIVE PROCEDURE ACT IN PROCEDURAL AND SUBSTANTIVE RULES OF GENERAL APPLICABILITY "RELATING TO PUBLIC PROPERTY, LOANS, GRANTS, BENEFITS, OR CONTRACTS" WHICH HAVE BEEN DETERMINED BY THEM TO HAVE A SUBSTANTIAL

⁷ The Offices of the General Counsel, Assistant Secretary for Administration, Pipeline Safety and Hazardous Materials are considered to be "Operating Administrations" for the purpose of this report because of their regulatory and/or operating responsibilities.

PUBLIC INTEREST EVEN THOUGH SUCH RULES MAY NOW BE EXEMPT
FROM NOTICE AND COMMENT PROCEDURES.

The Administrative Procedure Act exempts from its notice-and-comment rulemaking provisions those rules "relating to public property, loans, grants, benefits or contracts."⁸ The Office of Consumer Affairs concurs with the Administrative Conference of the United States and the American Bar Association that this is an unfortunate blanket exemption. As a matter of fact, the general public does have a vital concern in the promulgation and content of general regulations governing such matters as the terms on which others contract with the Federal Government and their eligibility for grants and benefits.

The fact that the public interest can be as much affected by an agency's exemption program, and by other *ex parte* rulemaking, as by an agency's rulemaking policies has led the Administrative Conference to state:

"The general principle is clear - rulemaking which is of vital interest to a large number of people should be accompanied by the notice-and-comment procedures of 5 USC §553, unless, in accordance with that section, the agency finds that 'Notice and public procedures are impracticable, unnecessary, or contrary to the public interest.' The opportunity for the public to participate in rulemaking actions is likely to improve the quality of the rules as well as to increase their public acceptability."⁹

⁸ The Administrative Procedure Act, 5 USC, § 553 (a)(2)

⁹ Recommendation #16, 1971-72 Report, Administrative Conference of the United States, July 1972.

There is no intention to suggest that every contract and every grant in the "exempted" operating administrations be subject to "notice and comment" procedures. Rather, reference is to those rules which are followed by the Federal agency that involve the application of Federal requirements and which have a substantial public impact, for example, rulemaking concerning acquisition of U. S. land for public transportation facilities or for awarding transportation facility funding or planning grants.

The rationale for this recommendation is further summed up in the following statement of the Committee on Rulemaking of the Administrative Conference of the United States:

"Public participation in rulemaking helps to assure wiser policy formulation than would otherwise be the case, and provides a means by which private parties can defend their interests against governmental rules they deem undesirable. The most important reason why such public participation is worthwhile is that it helps elicit the information, facts, and probabilities which are necessary to fair and intelligent action by those responsible for promulgating administrative rules. Involvement of the people in the formulation of rules is, therefore, an important goal which ought to be pursued as far as possible."¹⁰

This office strongly recommends that the Secretary of Transportation direct all DOT operating administrations to use notice-and-comment proceedings in the promulgation of rules where the public is substantially affected.

¹⁰ Consultant's Report in Support of Recommendations of the Committee on Rulemaking, Administrative Conference of the U. S. by Arthur Earl Bonfield, September 1969.

Recommendation B

THAT THE OPERATING ADMINISTRATIONS WITHIN DOT SHALL MAKE
THE FULLEST PRACTICAL USE OF THE ADVANCE NOTICE OF PROPOSED
RULEMAKING (ANPRM).

Though it has not been used uniformly, the use of the Advance Notice of Proposed Rulemaking (ANPRM) is a practice which enables the consumer to become involved in the rulemaking process at the earliest stages. It has been an effective tool over the years in the Department of Transportation. The Federal Aviation Administration pioneered the use of the ANPRM and the National Highway Traffic Safety Administration has effectively applied it.

The Advance Notice of Proposed Rulemaking is placed in the Federal Register and is a tentative description of the situation or problem to be dealt with. The Advance Notice states the nature and background of the problem, including the history of attempted solutions from the past, the issues surrounding the problem, those areas needing enlightenment or guidance, and in general the kinds of objectives which are sought. The public is then asked to further define the problem, to comment on possible solutions, and to present factual information which will help the agency to draft an appropriate proposed rule.

Thus, consumer involvement in thinking through the problem and looking at possible alternative solutions before a draft proposal is drawn up, enables the public to assist the agency in defining what the

problem is and getting a practical grip on it. The public's insights regarding goals and objectives and practical ways of meeting the need from a consumer point of view are thus encouraged and utilized from the very beginning.

Throughout the Workshop, it was suggested that there be greater use of "Advance Notice of Proposed Rulemaking" (ANPRM). Most Workshop participants indicated that the conscientious and appropriate use of the ANPRM went to the heart of much of the consumer complaint. Without it, citizen-consumers are left out of the rulemaking process at a point in the development of a rule where their understanding of the problem and contributions would be most useful. Citizens point out that once an agency has considered the problem on its own, conceived a solution, put its best position in writing and published it in the Federal Register, the public is prone to feel that the "die is cast" should it wish to bring forth for consideration other ideas for dealing with the problem. Without the ANPRM, consumers and consumer organizations are forced into a position in which they must react to what the agency has developed, and they tend to feel bound by the frame of reference which the agency has put forth.

It is true that the Advance Notice provides another step in the rulemaking process. Thus, it appears to take additional time and to require more red tape. There are, however, several values in making use of an ANPRM. The public rightfully asks the agency to take it into its confidence at the earliest possible stages of consideration, before

solidifying concepts and approaches. When this is done, the public will tend to be more responsive and less apathetic and their contribution will be more effective. Consumer groups will be less antagonistic if they have had an opportunity to participate in the formulation of the proposed rule; therefore, there is likely to be less negative reaction when the rule is finally proposed, less polarization of ideas and more cooperation and support through the rest of the rulemaking process. Overall, it is possible that there would be less rather than more delay.

It is not expected that the Advance Notice of Rulemaking procedure would be used in all cases. It should be used where the consumers' stake in the subject or the rule is apparent and substantial. In some situations there may have already been a substantial public involvement with the agency about the rule, making an ANPRM unnecessary; the proposed rule may be of a perfunctory or technical nature which would draw little, if any, public interest. There may be instances where the issue being considered is minor, having little effect on consumers; again, the emergency conditions surrounding a rulemaking may not allow time for an ANPRM.

In cases where the consumer public is affected either directly or indirectly, or in matters where there is apt to be disagreement, public reaction or controversy over certain issues, it is especially important to use the ANPRM procedure. Each administration or program would be expected to use its own judgment in identifying the appropriate situations

for use of the Advance Notice, though it is the intent of this recommendation that it be used both uniformly throughout the Department and as frequently as can be justified from the consumer point of view.

Recommendation C

THAT, WITHIN THE DEPARTMENT, THE NORMAL MINIMUM LENGTH OF TIME FOR PUBLIC COMMENT ON A NOTICE OF PROPOSED RULEMAKING FOLLOWING PUBLICATION IN THE FEDERAL REGISTER SHALL BE FORTY-FIVE DAYS.

Throughout the Workshop, there was frequent comment that there was not enough time allowed for consumers and consumer groups to react in an organized and thoughtful way to the proposed rule. Consumer groups, for example, may wish to consult with their constituencies before taking a position on a rule. Since most consumer groups have very low budgets and severe staff limitations, preparation for a meaningful response is apt to take them more time than a business, industry, professional group or other government agency.

We recommend, therefore, that in place of the present minimum of 30 days established by the Administrative Procedure Act to comment on a Notice of Proposed Rulemaking, 45 days be established in DOT as the minimum comment period for rulemaking that significantly affects the consumers' interest or welfare. It should be understood, however, that this length of time is often not enough and that in most cases, 60 to 90 days is more desirable. In fact, if in the agency's judgement a proposed rule directly and substantially involves consumers, then it

is urged that the response time be broadened to 90 days or more.

This recommendation is not meant to inhibit a shorter time for processing a rule where there are technical considerations of little or no importance to consumers or where emergencies must be met.

Recommendation D

THAT EACH DOT ADMINISTRATION AND APPROPRIATE SECRETARIAL OFFICE
SUBMIT TO THE GENERAL COUNSEL AND THE OFFICE OF CONSUMER AFFAIRS
ITS POLICY AND PROCEDURES FOR CONSUMER INVOLVEMENT IN RULE-
MAKING WITHIN 60 DAYS FROM RECEIPT OF THE SECRETARY'S
MEMORANDUM; THAT THEREAFTER A COPY OF ANY SIGNIFICANT CHANGES
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30 OF EACH YEAR, A BRIEF REPORT BE SUBMITTED TO THE OFFICE OF
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BEEN REVIEWED AND APPROVED BY THE APPROPRIATE OFFICES, THE
OFFICE OF CONSUMER AFFAIRS SHALL DISTRIBUTE THE REPORT
THROUGH CHANNELS OF COMMUNICATION ACCESSIBLE TO CONSUMERS.

Discussion

The ultimate objective of this recommendation is to establish a program within each operating administration that will actively solicit consumer input in the rulemaking process and explain the workings of the program to the consumer. "Notice-and-comment" procedures are not enough.

Too often, public agencies have assumed that the public can find out about rulemaking by reading the Federal Register where the notice is published prior to promulgation of the rule. There is consensus, however, that the Federal Register is seen by only a very small percentage of the public. An indication of this fact comes from a recent in-office survey of the mailing list of the Federal Register.¹¹ Of the approximately 26 thousand paid subscriptions, less than six percent went to consumer groups and social organizations in contrast to 60 percent going to business and industry. Another nine percent were sent to lawyers, the majority of whom, it is reasonable to assume, were representing business interests. This pattern of subscription distribution has held in recent years even though the number of paid subscribers to the Federal Register has more than doubled in the last two years.

Most consumers are generally unaware of the existence of the Federal Register and of those who are, many would be at a loss to know how to make use of it effectively. For example, more often than not, consumers don't understand what a "docket" is or how to use it.

¹¹ As reported in a separate memorandum by the Director, Federal Register, April 1973.

There is feeling among some government officials that the public is apathetic and not interested in being involved. On the contrary, widespread professional agreement with the Office of Consumer Affairs supports its conclusion that "consumers, both as individuals and members of organizations, are interested and can make positive views if the opportunities to do so are readily available."¹² The Workshop on Consumer Involvement in the Development of Rules, Regulations and Procedures, described earlier in this report, stressed that it is non-productive for the agency or program to wait until the consumer comes to them.

Some Techniques for Involving Consumers in Rulemaking

Below is a summary of some of the methods for consumer involvement in rulemaking which were suggested by workshop participants and others. While some of these have already been used successfully within the Department, all are listed here in the hope that many more will be adopted as each administration undertakes a critical review of its policy and procedures for consumer involvement in rulemaking. Because of the differences in DOT's programs, no single list of techniques would apply to all. Thus each administration should incorporate in its procedures its own program for dealing with and reaching out to the consumer.

¹² Executive Office of Consumer Affairs, Division of Program Analysis: "An Examination of Consumer Expression in the Development of Federal Rules and Regulations." November 19, 1971. (See Appendix 4 for excerpts from this report.)

The suggestions are as follows:

- ° Prior to the submission of a notice of proposed rulemaking in matters of substantial public interest, find out what consumers believe to be the main issues and what their needs are in regard to these issues.
- ... Develop a key list of a wide variety of consumer groups and organizations who have a special interest in and potential involvement in a particular administration's program.
- a. Make direct contact with these groups and invite them to submit their views regarding proposed rules in writing and orally.
 - b. Let these groups know the importance your agency places on consumer involvement. Send them appropriate materials.
 - c. Encourage them to send representatives to hearings, and to national, regional and local meetings on the matter.
- ... When rules are contemplated which relate to a specific geographical area, conduct an informal conference or workshop in close geographical proximity to those substantially affected in order to get their views.

- ... Include consumer representatives in discussions about guidelines and other criteria which lead to rules, standards or procedures.
- ... Invite the public to attend regularly scheduled or special national conferences and meetings in which the major issues facing your operations are openly discussed. Provide means for interaction and encourage citizen-consumers to register their views.
- ... Conduct public hearings, when appropriate, allowing a fair amount of time for all participants to comment.
- ... Arrange for scientifically conducted public opinion sampling as one tool for understanding consumer interests and points of view.
- ° Keep consumers informed from the period preceding development of the Notice of Proposed Rulemaking until the rulemaking process is completed.
 - ... Make full use of the advance notice of proposed rulemaking.
 - ... Develop a list of editors of magazines and newsletters that relate to a wide variety of consumers. Send them all information relating to rulemaking in an easily understood form.

- ... Highlight current rulemaking activities and related issues in feature stories for the local news media, trade journals, union papers, the minority press and other channels.
- ... Make greater use of the mass media, particularly television, in informing and interpreting to the consumer rulemaking matters that are under discussion.
- ... Use the regular DOT public news releases to draw attention to proposals for rules and regulations. Such releases should encourage consumer groups and private citizens to submit their views. Press releases should state where, when and how comments should be submitted. In distributing such news releases, the appropriate trade media should be included.
- ... Publish a periodic bulletin listing:
 - a. The name and docket number, or other identification, of any scheduled proceeding in which public input may be appropriate.
 - b. A brief summary of the purpose of the proceeding.
 - c. The date, time and place of public hearings or meetings.
 - d. The name of the agency and address of the person to contact if participation or further information is sought.

- ... In connection with each notice of proposed rulemaking, issue a set of instructions which will set forth the procedures for consumer submission of comments and responses to a proposal. Such instructions should emphasize the need for and the importance of consumer comment and describe how the consumer can be most effective in making his input.

- ... Stimulate consumer organizations to publicize information regarding preparation for rulemaking and to establish a flow of feedback from their constituents to their own offices as well as to the government administration in question.

- ... Make easily available to the public those documents, materials and public submissions upon which the proposed rule is based.

- ... Prepare a "consumer digest" as an automatic companion piece to every major important Notice of Proposed Rulemaking and the final rule. Such digests could present the widest possible lay interpretations of each proposal and action. These could also be used in the Federal Register, with press releases and in feature articles.

- ... Use simple clear layman's language when writing the preamble, the proposed rule and rulemaking actions to be published in the Federal Register.

... When the final rule is published, make specific reference in the Federal Register and elsewhere to the number and meaningfulness of the pro and con comments received from the public. This is a way of expressing gratitude for public response and encouraging it in the future.

- Before final determination is made on a proposed rule, collect, analyze, and evaluate data from a variety of consumers upon which to base the necessity and direction of a new rule that may substantially affect them.
- If an agency has difficulty in reaching consumers regarding rule-making that may affect them, conduct research to determine how best to proceed to inform and involve the public in the rulemaking process.
- Conduct, at least annually, an evaluation of the state of rule-making as it affects consumers. This assessment should include rules needed, rules in the process of being developed, rules in effect, and rules needing revision.

The Critical Factor of Attitude

The suggestions listed above for involving consumers in rulemaking do not begin to exhaust the creative methods and techniques available for this purpose. However, even if all of the best methods were tailored to each situation, this would not necessarily guarantee

proper involvement. Again and again, the workshop pointed out that success depends much more on the state of mind of the regulating agency than it does on following any checklist of things to be done, although a checklist may be useful.

It should be the basic concern of each administrator and office director that there be understanding and positive acceptance of the need for consumer involvement in rulemaking. If transportation officials have a determined and positive attitude, this will go far toward achieving the desired result.

Recommendation E

THAT EACH ADMINISTRATOR AND APPROPRIATE SECRETARIAL OFFICER
DESIGNATE A MEMBER OF HIS STAFF KNOWLEDGEABLE IN THAT
ADMINISTRATION'S OR OFFICE'S RULEMAKING PROCEDURES TO WORK
IN A LIAISON CAPACITY WITH THE OFFICE OF CONSUMER AFFAIRS
IN ITS WORK WITH CITIZEN/CONSUMER LEADERS AND GROUPS CONCERNED
WITH CONSUMER PARTICIPATION IN RULEMAKING MATTERS WHICH HAVE
A SUBSTANTIAL PUBLIC INTEREST.

Throughout the conduct of this study, it has been clear to those involved that there must be some mechanism within the Department of Transportation which would help to keep active and alive the concern for enhancing consumer participation in rulemaking. From the beginning, two thoughts have been advanced: (a) that there should be a consumer advisory committee attached to each of the operating administrations that would act as a stimulant to achieving this goal and (b) that there should be coordinated and unified procedures within DOT to enable it to keep abreast of the status of consumer involvement in rulemaking in each of the administrations.

Both of these ideas have received wide support. The December 1972 workshop discussed both, but emphasized the need for a consumer advisory group which would focus on rulemaking in each modal administration. At later stages of the study, the General Counsel's Office, the Office of the Assistant Secretary for Administration and others pointed out the desirability of consolidating consumer or citizen committees rather than adding to their number within DOT. This thinking is consistent with the Federal Advisory Committee Act of 1972, which discourages the proliferation of new committees, seeks to abolish those that are ineffective, and to consolidate others.

In view of this development, the Office of Consumer Affairs recommends that the Administrations make full use of the citizen/consumer committees within the Operating Administrations and Secretarial Offices rather than establishing new committees for this purpose. It also recommends that each Administrator and appropriate Secretarial Officer designate a member of his staff knowledgeable in that Administration's or Office's rulemaking activities and procedures to work in a liaison capacity with the Office of Consumer Affairs in its work with community and consumer leaders and groups concerned with the public role in Federal rulemaking activities.

This mechanism will assure that a knowledgeable person from each Administration will be available to advise the Office of Consumer Affairs and to keep it abreast of new procedures and techniques for

consumer involvement in rulemaking. It will also provide the basis for a working relationship that will assist in the implementation of Recommendations A, B, C and D.

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RESOURCE PERSONS

WORKSHOP ON CONSUMER INVOLVEMENT IN THE DEVELOPMENT OF RULES, REGULATIONS
AND PROCEDURES

December 4 and 5, 1972

Department of Transportation

- | | |
|--------------------------|--|
| 1. Fred Emery | Director, Federal Register |
| 2. Everett Crawford | Director, Federal Program Studies,
Center for Governmental Studies |
| 3. George Washnis | Director, Municipal Studies,
Center for Governmental Studies |
| 4. Richard K. Berg | Executive Secretary, Administrative
Conference of the United States |
| 5. Margaret Gilhooley | Senior Attorney, Administrative
Conference of the United States |
| 6. Ernest A. E. Gellhorn | Consultant to the Administrative
Conference of the U.S. and Professor
of Law, University of Virginia |
| 7. Kenneth Harris | Executive (White House) Office of
Consumer Affairs |
| 8. Edward P. Taptich | Vice Chairman, Agency Rulemaking
Committee, Administrative Law Section,
American Bar Association |

CHAIRMEN AND CO-CHAIRMEN OF WORKSHOP GROUPS

Workshop on Consumer Involvement in the Development of Rules, Regulations,
and Procedures

United States Coast Guard

Chairman, A. C. Wagner, Chief, Office of Boating Safety
Co-Chairman, Peter Ueberroth, Member, Citizens' Advisory Committee
on Transportation Quality

Federal Aviation Administration

Chairman, R. Dewey Roark, Deputy General Counsel
Co-Chairman, Ki Suh Park, Member, Citizens' Advisory Committee on
Transportation Quality

Federal Highway Administration

Chairman, Ali Sevin, Chief, Network Evaluation Branch
Co-Chairman, Mary Head, Member, Citizens' Advisory Committee on
Transportation Quality

Federal Railroad Administration (Combined with Hazardous Materials and
Pipeline Safety)

Chairman, Lucien M. Furrow, Attorney Advisor, Safety Regulations Division
Co-Chairman, Henry Acchione, Member, Citizens' Advisory Committee on
Transportation Quality

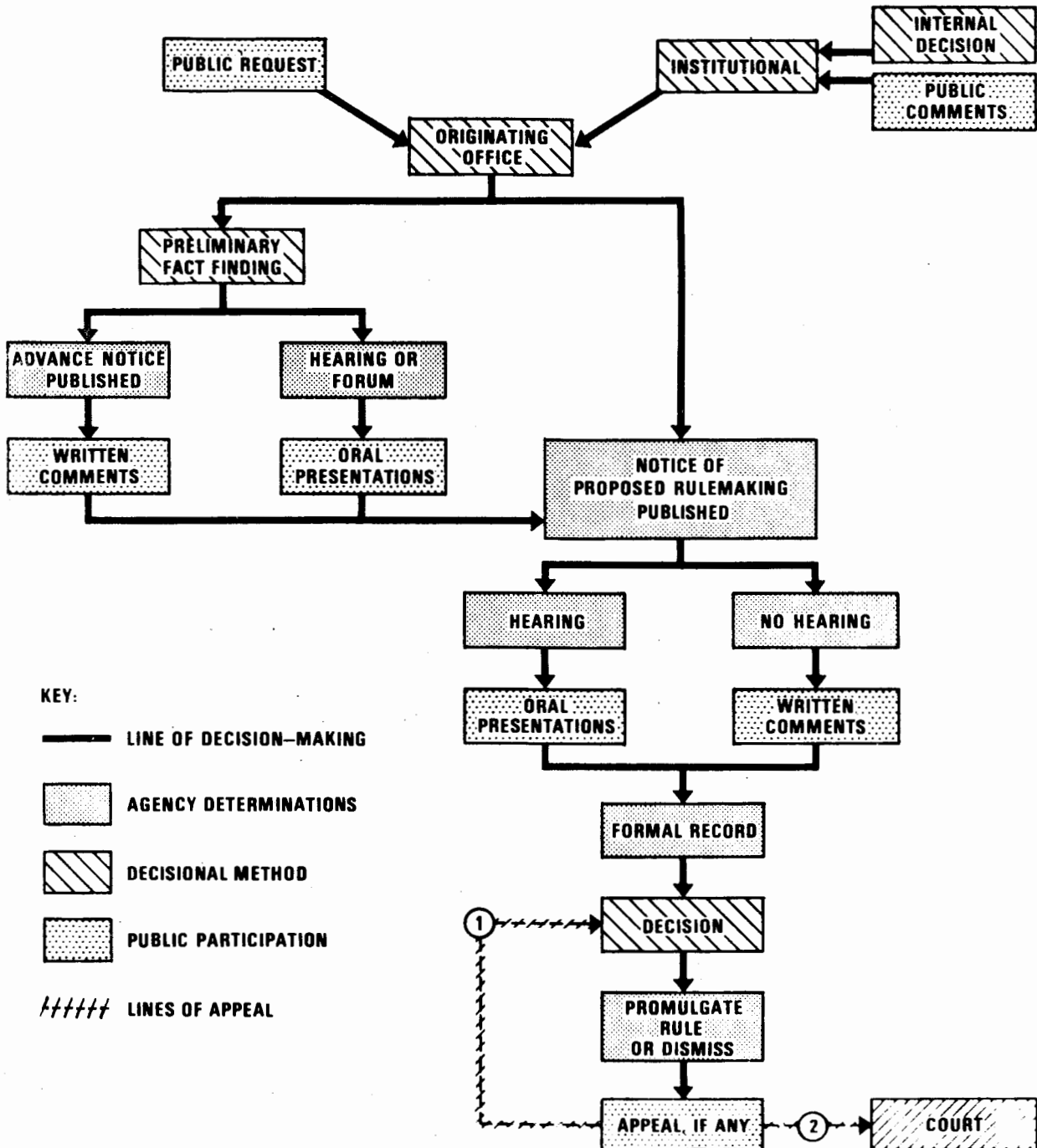
National Highway Traffic Safety Administration

Chairman, Gilbert Watson, Chief, Consumer Affairs
Co-Chairman, William Dunn, Member, Citizens' Advisory Committee on
Transportation Quality

Urban Mass Transportation Administration

Chairman, Robert McManus, Associate Administrator, Office of Program
Planning
Co-Chairman, Dana Reed, Member, Citizens' Advisory Committee on
Transportation Quality

DEPARTMENT OF TRANSPORTATION BASIC RULEMAKING PROCEDURES



AN EXAMINATION OF CONSUMER EXPRESSION
IN THE DEVELOPMENT OF FEDERAL RULES AND REGULATIONS

(An excerpt from the draft staff study, Office of Consumer Affairs (White House), Division of Program Analysis, November 19, 1971)

A. Conclusions

1. Consumers, both as individuals and members of organizations, are interested and can make positive views if the opportunities to do so are readily available.
2. There is little formal survey of consumer opinion prior to drafting and proposing rules and regulations to enable agencies to recognize public views rather than acting with a presumed knowledge of public sentiment.
3. Few individual consumers subscribe to the Federal Register.
4. Few agencies request OMB approval to solicit the public for information.
5. Agencies generally are meeting the requirements of law in rulemaking. However, there are many examples where agencies do not allow adequate time for consumer response or where consumers are completely omitted.
6. Federal Register articles often are complex, in many cases so much so that a complete understanding requires not only reading the proposed rule but also the related section of the Code of Federal Regulations.
7. There is no single source in the Federal Government extracting and publishing Federal Register articles of interest to consumers in a concise, easy to understand manner.

B. Recommendations

Federal agencies should increase consumer participation in rulemaking by:

- a. Conducting field surveys to confirm consumer attitudes concerning particular potential policies affecting them.
- b. Taking care to invite consumer groups representing a cross-section of consumers to submit views orally or in writing.

- c. Holding more formal hearings or informal conferences in close geographic proximity to those substantially affected by rules being contemplated.
- d. Including consumer representatives in government/industry discussions on guidelines which ultimately lead to establishing the criteria by which Federal officials evaluate compliance with standards or procedures (e.g., FDA Manufacturing and controls of Investigational New Drugs and New Drug applications.)
- e. Making the Code of Federal Regulations available to consumers through free or low-cost subscription to libraries or through having a free copy available for use at convenient Federal locations (i.e. Civil Service Commission offices or Consumer Information Center).
- f. Working closely with the Office of Consumer Affairs to publish a Consumer Federal Register or to incorporate pertinent Federal Register articles in the semi-monthly Consumer News.
- g. Extending time for public comments on Federal Register articles.
- h. Stimulating the use of public news announcements by agencies, as a source to draw attention to significant proposals for rules and regulations, and to otherwise request consumers to submit their views on topics in consumer matters generally affecting them.

With respect to OMB:

- a. Further evaluating of the procedural requirements relating to the Federal Reports Act, so as to encourage agencies to undertake essential public surveys.
- b. Evaluating the possibility of amending the Federal Reports Act to enable more flexibility in surveying of consumer desires.
- c. Encouraging Federal Executive Boards located in major metropolitan areas to serve as catalysts to inform the consumer of proposed rules, and to indicate in general how the consumer can become more informed.



THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

April 3, 1975

NOTE FOR JAMES CANNON
THE WHITE HOUSE

Attached is a follow-up in response to your memorandum of March 27 concerning S. 200, which I initially responded to by phone. I will have additional material for you as soon as it is available.


Stephen S. Gardner

Attachment

TREASURY DEPARTMENT ACTIVITIES RESPONSIVE TO CONSUMER NEEDS

INTRODUCTION

The Department of the Treasury's chief ongoing contribution to the American consumer is in the fulfillment of one of its basic historic missions: to manage the public finances in the most efficient, effective, and economical manner. Consequently, most Treasury activities serve the general public only in an indirect way. However, a few of the Department's policies and programs do touch the consumer directly. These are outlined briefly below.

COMPTROLLER OF THE CURRENCY

In administering the National Banking Act, the Comptroller of the Currency protects the depositors of approximately 4,000 national banks. The Comptroller issues rules and regulations to assure the solvency of the national banks, thereby protecting the individual depositors and permitting the banks to offer the best possible service to the public. The Comptroller's office makes an examination of each national bank at least three times every 2 years.

The Comptroller of the Currency has also been active in enforcing administrative measures to protect consumers as installment borrowers from national banks. These measures have been taken pursuant to provisions of the Truth-in-Lending Act and the Fair Credit Reporting Act.

UNITED STATES SAVINGS BONDS DIVISION

The Savings Bonds Division promotes the sale of Government Savings Bonds, which provide a means of protected investment to individual purchasers. The Division conducts educational programs explaining the value of Savings Bonds for individual security, as in building family education funds and retirement programs. It also conducts a program, in cooperation with the American Institute of Banking, to train bank personnel in handling Savings Bonds and better serving the buying public.

Recently, the Division has instituted the practice of recording individual Social Security numbers on bonds to assist in identification of the purchaser.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

The Bureau of Alcohol, Tobacco and Firearms is charged with preventing consumer deception in the labeling and advertising of alcoholic beverages. (The FDA and FTC also have authority in this field but refer cases to the Bureau because of its broader power.) The Bureau also has authority to prevent the reuse of liquor bottles and regulate other products containing alcohol consumed by the public.

Most recently, the Bureau has issued regulations requiring that wine be bottled in metric measures to reduce the number of bottle sizes confronting the consumer.

U. S. CUSTOMS SERVICE

The U. S. Customs Service serves the traveling public by issuing pamphlets and leaflets for travelers going abroad, including information about the limitations on what they bring home and whether the articles are dutiable or duty free.

Customs also offers the consumer protection against the importation of many dangerous or illegal items such as diseased plants and animals, narcotics and dangerous drugs, merchandise bearing illegal or unauthorized trademarks or trade names, flammable children's clothing, and many sorts of hazardous material. In this capacity, Customs acts as the first-line enforcer of many laws which are primarily administered by other Federal agencies.

Customs is now engaged in bringing into operation a new Automated Merchandise Processing System, which will not only make its operations more efficient and economical, but will benefit consumers by assuring uniform application of customs duty standards, and thru mechanization, reducing the amount of paperwork consumers must prepare.

BUREAU OF ENGRAVING AND PRINTING

The Bureau of Engraving and Printing produces all United States currency, postage stamps, and major items of a financial character issued by the United States, and develops deterrents to the counterfeiting of such securities.

The Bureau participates with exhibits in public events sponsored by various numismatic, philatelic, and other organizations, for educational purposes, with particular emphasis on the recognition of genuine versus counterfeit securities.

It also maintains a mail order service through which official engraved and lithographic prints are offered for sale at nominal prices.

FISCAL SERVICE

The Fiscal Service consists of the Bureau of Government Financial Operations and the Bureau of the Public Debt. The Fiscal Service performs administrative functions arising out of the Treasury Department's debt management policies. It is responsible for making available to the public Treasury and agency marketable securities and United States Savings Bonds. The Service prepares offering circulars and regulations governing transactions in these securities.

The Service settles claims made by payees of Government checks when the checks are not received or are lost, stolen or forged.

The Service directs the Savings Bond activities of approximately 18,000 (30,300 outlets) private financial institutions, industrial organizations, selected post offices, and others which deal directly with the public in the issuance of Savings Bonds, and approximately 16,700 financial institutions (31,700 outlets) which act as paying agents for Savings Bonds. The Bureau also maintains records of registered Government securities, including Savings Bonds, for the owners' protection.

In the Washington, D.C. area, the Service cash room provides service to consumers wishing to cash Government checks and Savings Bonds.

BUREAU OF THE MINT

The Bureau manufactures all coinage for the United States and makes circulating coins available to the public through the Federal Reserve Banks. In addition, the Mint produces special numismatic coins and national medals for the public. Over 200 types of national historic medals are available through four exhibit and sales areas. The Mint also maintains a mailing list containing more than three million names of persons interested in purchasing special coins.

INTERNAL REVENUE SERVICE

The Taxpayer Service Program offers answers to tax questions, assistance in the preparation of tax returns, and tax information publications through approximately 780 permanent Internal Revenue offices throughout the United States. Intermittent Taxpayer Service is provided by some Revenue Service offices at shopping malls,

storefronts, adult education centers, and through radio spot announcements and television programs. Toll-free telephone services are available to any taxpayer in the nation. Toll-free telephone numbers are listed in tax packages and in local telephone directories.

Various types of tax courses are arranged for groups of taxpayers, such as small business associations, and for taxpayers with unusual circumstances such as for individuals who have suffered property losses in natural disasters. Tax institutes are conducted by district offices; usually between late November and March for individuals who assist taxpayers in preparing their returns. High school and adult education teachers are furnished upon request updated packages of materials which enable them to present a complete Federal income tax program. A self-instructional course is available to volunteers for assisting taxpayers through community action and other civic organization programs.

The purpose of this whole program is to help taxpayers voluntarily comply with tax laws and to design administrative procedures which will minimize the burden on the taxpayer of preparing and filing returns.

To enhance its responsiveness to the consumers, the Internal Revenue Service has included three public interest members to serve on its advisory committees. (NOTE: Each time that an advisory committee is formed or has its charter renewed anywhere within the Treasury Department, its membership is examined with an eye to determining the appropriateness of including public interest advocates.)

U. S. SECRET SERVICE

The Secret Service guards against counterfeiting of currency and the forging of Government checks, and makes investigations leading to recovery or replacement of lost and stolen checks.

In addition, the Secret Service trains bank tellers, cashiers, and other money handlers in techniques of detecting counterfeit currency and safeguarding against check and bond forgers.

THE WHITE HOUSE

WASHINGTON

March 28, 1975

COMMENTS PHONED TO : JIM CANNON

FROM : Stephen Gardner
Treasury Department

SUBJECT : Comments on Consumer Advocate Bill

1. The specific problems that the bill gives us are very large. The section that permits the agency to initiate proceedings in Federal courts to review Federal agency actions could extend to millions of administrative decisions made in IRS and Customs cases. That's just a overview and it would impose tremendous burden.
2. & 3. The specific efforts made by the many treasury bureaus agencies and departments to better represent the consumer need to be coded or listed in more detail than this time frame allows. As a matter of fact, we are thinking of developing an over-view function in the Secretaries office to coordinate consumer interest and representation for all treasury sections.
4. There are numerable regulatory reforms we could suggest - for example, financial institutions act is a consumer bill. A regulatory reform list is being submitted by special messenger.

to: Jim Cannon

Department
of the Treasury

m: _____ date: 3-28-74

Office of the
Secretary

attached is the answer to
question 4 of your letter
asking for a Treasury response
dealing with the Consumer Protection
Act.

Please add this to the
response called in by Deputy
Secretary Gardner answering your
first three questions.

Sid
Sidney L. Jones
Counselor to the
Secretary of the Treasury
room 3413
ext. 5901



OFFICE OF THE SECRETARY OF THE TREASURY
WASHINGTON, D.C. 20220

REGULATORY REFORMS SUGGESTED TO ASSIST THE CONSUMER

1. Surface Transportation Deregulation--
 - a. Truck
 - b. Railroad
2. CAB reforms on airplane fare.
3. Assess impact of EPA rulings (see #21)
4. Repeal McGuire Act.
5. Enactment of Financial Institutions Act.
6. Unify State foreclosure and usury laws.
7. Building code and standards revisial.
8. Vigorous enforcement of antitrust laws.
9. Avoid Cargo Preference legislation.
10. Repeal Jones Act.
11. Repeal Davis-Bacon Act.
12. Accelerate Nuclear plant licensing.
13. Assess Impact of OSHA regulations (see #22)
14. Repeal of the Anti-trust Exemption of Agricultural Cooperatives with Annual Sales Exceeding \$10 Million. In the context of anti-trust exemptions for agricultural cooperatives, consider amending the Capper-Volstead Act of 1922 and any subsequent legislation incorporating its features of granting dairy cooperatives anti-trust exemptions. The intent of the original law was to give small farmer cooperatives equal bargaining power with buyers, but not to give the supercooperatives of today virtual control over domestic supplies.

Any size limit for exemption would be purely arbitrary and could in several commodities act as a substantial deterrent to pro competitive activities. It is our view that existing

laws are a sufficient deterrent to any abuses that may accrue from large cooperatives. This is evident by the fact that there are currently at least five anti-trust suits pending against cooperatives in either the Department of Justice or the Federal Trade Commission. Three of these cases are milk, one in broilers, and one in lettuce. USDA is also investigating charges of undue price enhancement in potatoes.

15. Amendment of marketing order legislation so as to prohibit restrictions on interstate movement and production quotas on individual producers. The Agricultural Marketing Agreement Act of 1937 provides authority for a wide range of regulatory activities relating to the marketing of agricultural commodities.
16. Support Regulatory Reform Commission.
17. Review the Commodity Exchange Act.
18. Review occupational licensing requirements which may limit entry, competition and productivity improvements. It is our understanding that most of the licensing restrictions are under State law.
19. Review the necessity for commodity import restrictions currently in effect for meat, sugar, coffee, dairy products, cotton, wheat, and other products. (Import restrictions on coffee are no longer in effect. Our obligations under the International Coffee Agreement of 1968 lapsed on September 30, 1973, at which time all quota provisions and import restrictions under the ICA ended. Import restrictions on sugar continue as part of the U.S. Sugar Act; however, these restrictions end with the expiration of the Act on December 31, 1974.)
20. Deregulation of natural gas.
21. Environment - The Federal Government should reexamine its policies toward environmental protection to determine (a) which programs are, on balance, beneficial (in the sense of having economic/social benefits which outweigh their economic/social costs), (b) which of those which are not beneficial could be made beneficial through an improved program of implementation, and (c) which of those which are beneficial could be improved through more efficient programs of implementation. For those programs which can be improved a plan of action should be drawn to implement such improvement. Those programs which are not and cannot be made beneficial should be truncated. An interagency task force composed of representatives from OMB, DOT, DOA, DOC, Treasury, HEW, DOI, CEA and EPA, and the Domestic Council should be convened to map out the work.

22. Safety - The Federal Government should determine whether its safety regulations are cost-effective. Where such programs are not beneficial and cannot be made beneficial, they should be truncated. Specific attention should be given to: (a) passive restraint systems in auto vehicles, (b) safety standards in the design of interstate highways, (c) safety regulations which impact upon the airport/airway system, and (d) regulations governing product safety.

23. The Department of Health, Education, and Welfare should be directed to make an intense study of Federal, State, and local regulations which impact upon the costs (and productivity) of medical care provisions. Among the problems to be addressed are the following:
 - a. Discriminatory examinations. The AMA promulgates a more difficult examination for "foreign" (educated) physicians, even if such physicians are U.S. citizens. Also, State examinations discriminate against out-of-State educated physicians.
 - b. Discrimination against innovative delivery systems. State and local codes of ethics penalize physicians who attempt innovative delivery systems (health maintenance organizations, etc.).
 - c. Limits on hospital practice. Local medical associations, in "cooperation" with hospitals, determine which physicians are authorized to practice.
 - d. Ban on advertising. State and local codes of ethics ban advertising as "unprofessional." A physician who does advertise is driven out of the association(s) and is deprived of access to hospitals and may even lose his license to practice. The effects of this on competition are obvious.
 - e. Ban on drug advertising. State and local codes of ethics and some State laws bar the advertising of drug prices. There is some evidence that this has a significant adverse competitive effect.
 - f. Others. Other problem areas include: (1) the fee-setting activities of Blue Shield plans, (2) the promulgation of Relative Value Scales by State and local medical societies, (3) maximum price fixing, market preemption, and monopolization by foundations' usurpation of insurers' claims-review functions, and (4) hospital monopolies, including market division accomplished through health planning councils.

24. Remove restrictions against para-professionals.
25. Amendment of civil aviation legislation to permit discount air fares and to bring capacity - limiting agreements under the antitrust laws.

(Comment: While these may be proper objectives, it should be kept in mind that the action plan devised by the Administration Task Force to deal with international aviation problems:

- a. suggests a reorganization of the fare structure which would minimize the use of discount fares, and
 - b. encourages the use of capacity agreements by carriers crossing the Atlantic.
26. DOT and CAB investigate IATA system of rate-making.
 27. Rigorous enforcement of Inflation Impact Statement.
 28. Prevent further increases in minimum wage or at least permit teenage exemption.
 29. Repeal the private express statutes that give Post Office a first-class mail monopoly.
 30. Required coordination of all Federal land use activities.

TAB B

NEWS BUREAU
North Harrison Street
Princeton, New Jersey 08540
609/924-5900

Press Contact: Henry L. Dursin
Senior Vice President
Opinion Research Corporation
609/924-5900

FOR IMMEDIATE RELEASE

PRINCETON, N. J. -- March 11: American consumers, by a 75% majority, are opposed to the creation of a new, independent consumer agency within the Federal Government, according to a nationwide survey of public attitudes released here today by Opinion Research Corporation.

Public opposition to the proposed agency spreads throughout all geographic areas and major population groupings.

The survey found that 13% of consumers would support efforts now under way in Congress to enact legislation establishing the Agency for Consumer Advocacy, which proponents of the bill say will give the consumer a larger voice in helping shape government decisions. In addition, more than half of 13% who initially favored such an agency withdrew their support rather than have the government spend \$60 million to set up and operate it for the first three years. The bill (S. 200), now under consideration in the Senate, provides \$60 million to set up and operate the new agency over the first three years.

A total of 12% of the public had no opinion on whether or not a new agency should be established.

Opinion Research Corporation conducted the survey, which was sponsored by The Business Roundtable. A total of 2,038 people of voting age were interviewed in

-more-

their homes between January 10 and February 3, 1975. All sections of the country and all population groups are represented. The sampling method used is the most reliable and professional known.

The survey found that the public is generally satisfied with the consumer protection efforts of existing government agencies. Almost 80% of consumers feel they are being treated fairly by the government.

Asked about present Federal agencies in the consumer field, 63% of those surveyed had heard of the Office of Consumer Affairs and more than half of these respondents felt it is doing an effective job.

A total of 50% of the public said they have heard about the Consumer Product Safety Commission, established in 1973; and about three-fourths rated this agency as effective. Some 75% of the public had heard of the Environmental Protection Agency, with almost half giving it an effective rating.

Given a choice between creating a new consumer agency or taking the steps necessary to make existing consumer agencies more effective, the respondents strongly favored improving the present agencies by a margin of 75% to 13%.

A clear majority of the public feels it is generally being treated fairly by business, according to the opinion poll. The survey found that 27% of consumers believe they are "almost always" dealt with fairly by business, while an additional 59% feel they are "usually" treated fairly. Thirteen percent of the public said they have been treated unfairly.

In cases in which consumers have been dissatisfied with some product or service, the survey showed that they believe the best places to go in order to get something done about it are the "person who sold it to them in the first place," the Better Business Bureau, and the company that made the product or furnished the service. Eight percent of the total public look to the Federal consumer agencies to correct unfair treatment.

###

For information about The Business Roundtable, please contact James M. Freeman at The Roundtable office, 405 Lexington Avenue, New York City (telephone: 212/ 682-6370).

QUESTION C 17 (Continued)

	NUMBER OF INTERVIEWS		1. Favor New Agency 2. Make Existing More Effective 3. Both (Volunteered by Resp.) 4. No Opinion			
	UNWTD.	WTD.	1.	2.	3.	4.
Rural	297	940	9	70	2	19
CLO Suburb 1 family	362	1286	7	84	1	8
New Suburb 1 family	260	731	9	82	4	5
City 1 family	619	1976	11	76	2	11
City Multifamily	122	425	17	68	4	11
City Apartment	200	804	11	57	11	21
Northeast	537	1552	11	72	5	12
North Central	503	1900	9	76	3	12
South	630	2136	9	78	2	11
West	208	1120	11	71	3	15
Under \$5,000 Family income	349	1653	11	67	5	17
\$5,000 - \$6,999	229	705	8	72	2	16
\$7,000 - \$9,999	346	943	11	74	2	13
\$10,000 - \$14,999	464	1420	9	82	1	8
\$15,000 or over	595	1831	9	83	4	1
No children in household	1003	3325	9	73	4	14
With children under 10	1035	3182	10	77	3	10
With teenagers 12-17	907	1622	10	83	2	8
White	1803	5874	10	76	3	11
Nonwhite	226	810	12	66	4	18
Own home	1388	4292	10	79	2	9
Rent home	630	2361	10	68	6	16

THOSE IN FAVOR OF SETTING UP AN ADDITIONAL FEDERAL CONSUMER PROTECTION AGENCY ON TOP OF ALL THE OTHER AGENCIES SAY IT IS NEEDED BECAUSE THE AGENCIES WE HAVE ARE NOT GETTING THE JOB DON BY THEMSELVES . THOSE WHO OPPOSE SETTING UP THE ADDITIONAL AGENCY SAY THAT WE ALREADY HAVE PLENTY OF GOVERNMENT AGENCIES TO PROTECT CONSUMERS, AND IT'S JUST A MATTER OF MAKING THEM WORK BETTER. HOW DO YOU FEEL? DO YOU FAVOR SETTING UP AN ADDITIONAL CONSUMER PROTECTION AGENCY OVER ALL THE OTHERS, OR DO YOU FAVOR DOING WHAT IS NECESSARY TO MAKE THE AGENCIES WE NOW HAVE MORE EFFECTIVE IN PROTECTING CONSUMER INTERESTS?

	NUMBER OF INTERVIEWS		1. Favor New Agency 2. Make Existing More Effective 3. Both (Volunteered by Resp.) 4. No Opinion			
	UNWTD.	WTD.	1.	2.	3.	4.
Total U.S. Public	2038	6707	10	75	3	12
Men	1031	3233	10	76	3	11
Women	1007	3475	9	75	3	13
18-29 Years of age	522	1918	12	70	4	14
30-39	421	1145	8	77	4	11
40-49	328	1117	8	79	3	10
50-59	311	1041	10	82	2	6
60 Years or over	456	1407	9	71	3	17
Less than high school complete	666	2305	9	73	2	16
High school complete	712	2502	10	75	4	11
Some college	648	1776	10	79	4	7
Professional	270	772	12	79	4	5
Managerial	242	696	9	80	2	9
Clerical, Sales	207	677	8	74	7	11
Craftsman, foreman	378	1288	10	79	3	8
Other manual service	473	1731	10	73	3	14
Farmer, farm laborer	42	101	11	69	3	17

	NUMBER OF INTERVIEWS		1. Favor New Agency 2. Make Existing More Effective 3. Both (Volunteered by Resp.) 4. No Opinion			
	UNWTD.	WTD.	1.	2.	3.	4.
Initiator Scale						
Highest initiative	101	280	8	78	6	8
High	527	1553	9	80	4	7
Middle	852	2802	10	78	2	10
Low	337	1172	11	69	5	15
Lowest	218	892	11	62	3	24
Total U. S. Public	2038	6707	10	75	3	12
Yes, have heard of proposal	469	1490	15	78	3	4
No, haven't heard of proposal	1387	4610	8	76	3	13
Don't know	182	608	6	62	4	20

* - Untwed. - (unweighted)
* - Wtd. - (weighted)

WELL, TO GET THE ADDITIONAL FEDERAL CONSUMER PROTECTION AGENCY SET UP AND STARTED WILL COST AT LEAST 60 MILLION NEW TAX DOLLARS IN THE FIRST THREE YEARS. WOULD YOU STILL BE IN FAVOR IF IT MEANS SPENDING THAT KIND OF MONEY?

PRINCETON, NEW JERSEY

	<u>Number of Interviews</u>		<u>Per Cent Asked This Question</u>	<u>Yes</u>	<u>No</u>	<u>No Opinio</u>
	<u>Unwtd.*</u>	<u>Wtd.*</u>				
Total U.S. Public	2038	6707	13	5	6	2
Men	1031	3233	14	6	6	1
Women	1007	3475	12	4	7	2
18 - 29 Years of Age	522	1918	16	6	8	2
30 - 39	421	1145	12	4	6	2
40 - 49	328	1117	11	4	5	1
50 - 59	311	1041	12	5	5	2
60 Years or Over	456	1487	13	5	7	1
Less than High School Complete	666	2395	11	3	7	1
High School Complete	712	2502	14	5	7	2
Some College	648	1776	14	8	4	1
Professional	270	772	15	8	6	1
Managerial	242	696	11	5	5	1
Clerical, Sales	207	677	15	5	7	3
Craftsman, Foreman	378	1286	13	4	6	2
Other Manual, Service	473	1731	13	6	6	2
Farmer, Farm Laborer	42	181	14	3	7	4
Rural	297	940	11	6	4	2
Old Suburb 1 Family	362	1286	7	4	3	0
New Suburb 1 Family	260	731	13	5	4	2
City 1 Family	619	1976	13	4	7	1
City Multifamily	122	425	21	12	8	1
City Apartment	200	804	22	0	11	3

	<u>Number of Interviews</u>		<u>Per Cent Asked This Question</u>	<u>Yes</u>	<u>No</u>	<u>No Opini</u>
	<u>Unwtd.*</u>	<u>Wtd.*</u>				
Northeast	537	1552	16	6	9	1
North Central	583	1900	12	7	4	1
South	630	2136	11	3	6	2
West	288	1120	14	6	7	1
Under \$5,000 Family Income	349	1653	16	5	9	1
\$5,000 - \$6,999	229	705	10	3	5	3
\$7,000 - \$9,999	346	943	13	4	8	2
\$10,000 - \$14,999	464	1420	10	4	4	1
\$15,000 or Over	595	1831	13	7	5	1
No Children in Household	1003	3525	13	6	6	1
With Children Under 18	1035	3182	13	4	7	2
With Teenagers 12 - 17	507	1622	12	4	7	2
White	1803	5074	13	5	6	1
Nonwhite	226	810	16	6	8	2
Own Home	1388	4292	12	4	6	1
Rent Home	630	2361	15	7	7	2
Initiator Scale						
Highest Initiative	101	280	14	10	4	0
High	527	1553	13	6	6	1
Middle	852	2802	12	6	5	1
Low	337	1172	16	2	10	4
Lowest	218	892	14	4	6	3

OPINION RESEARCH CORPORATION
 Princeton, New Jersey

* - Unwtd. - (unweighted)

* - Wtd. - (weighted)

TAB C

THE WHITE HOUSE

WASHINGTON

TO: GOVERNMENT OPERATIONS COMMITTEE

Representative Jack Brooks
Representative Frank Horton
Senator Abraham Ribicoff
Senator Charles Percy

Dear (_____):

In the interest of protecting the American consumer, I am directing department and agency heads, in coordination with the Domestic Council, to review Executive branch procedures to make certain that consumer interests receive full consideration in all Government actions.

To be frank, I recognize the legitimate public and Congressional concerns that the interests of consumers have not always been adequately considered by Federal departments and agencies. This must be changed. Therefore I am asking each agency head to examine the specific efforts he is making now to represent the consumer in the agency's decisions and activities and to work with Virginia Knauer, my Special Assistant for Consumer Affairs, in instituting additional efforts his agency could undertake to better represent consumer interests.

In examining their present procedures and in establishing new ones, department and agency heads will follow these guidelines:

All consumer interests should receive a fair chance to be heard in the Government decision making process; and

The costs and administrative requirements of Federal rules and regulations on the private sector should be held to a minimum.

Regulatory reform is one of the most important vehicles for improving consumer protection. Outdated regulatory practices lead to higher prices and reduced services. I urge the

Congress to pass a number of specific legislative proposals in this regard, including the bill I submitted in January to establish a Regulatory Review Commission. I have also requested the Congress to repeal outdated fair trade laws which raise prices and to reform many of the existing banking laws and regulations which penalize small savers. I will soon request legislation to overhaul our system of transportation regulation to allow freer competition, improved services, and lower prices.

I am also asking the chairmen and members of the independent regulatory agencies to meet with me. I intend to ask for their suggestions and to discuss with them ways they can make immediate improvements in the regulatory process. I am determined that the public will receive the most efficient and effective public service at the least cost.

In view of the steps that are being taken by the Executive department to make Government-wide improvements in the quality of service to the consumer, I am requesting that the Congress postpone further action on S. 200, which would create a new Federal Agency for Consumer Advocacy.

I do not believe that we need yet another Federal bureaucracy in Washington, with its attendant costs of \$60 million for the first three years and hundreds of additional Federal employees, in order to achieve better consumer representation and protection in Government. At a time when we are trying to cut down on both the size and the cost of Government, it would be unsound to add another layer of bureaucracy instead of improving the underlying structure.

Although the purpose of this new Federal agency would be to protect the consumers, the practical effect could well be to raise costs and prices to consumers.

It is my conviction that the best way to protect the consumer is to improve the existing institutions of Government, not to add more Government.

I look forward to working with you, the members of your Committee, and the Congress in advancing the interests of all consumers within our existing departments and agencies.

THE WHITE HOUSE

WASHINGTON

April 15, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM CANNON
FROM: JERRY H. JONES
SUBJECT: Administration Consumer Policies

Your memorandum to the President of April 8 on the above subject has been reviewed and the following decisions were made:

1. Executive Action:

- a. By Executive order, expand Mrs. Virginia Knauer's Office of Consumer Affairs and authorize her to formally comment in all rule-making proceedings affecting consumer interests. Disagree.
- b. By Executive order, establish in each executive department a consumer representative. Disagree.
- c. Ask each department and agency head to meet with Mrs. Knauer to discuss how to develop best an adequate internal structure to provide consideration of consumer views. Agree.
- d. Discuss consumer policies at the next Cabinet meeting. Agree.
- e. Tell the Cabinet you are determined to prove that consumer representation can be adequately handled by their existing departments. Agree.
- f. Swear in new members of the National Consumer Advisory Council at the White House. Agree.

2. Regulatory Reform Action:

a. Meet with members of the independent regulatory agencies to seek their suggestions and to discuss with them ways to make immediate improvements in the regulatory process. Agree.

b. Send a special message to the Congress on regulatory reform. Disagree.

3. Other Actions:

a. Communicate your position on a Consumer Protection Agency by letters to the Chairmen and ranking minority members of the House and Senate Government Operations Committees. Agree.

b. Plan to discuss your consumer policies in a speech before a major forum. No decision was indicated and a question mark was noted in the left margin next to this option.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld
Bill Baroody
Jim Lynn
Bill Seidman
Jack Marsh
Ken Lazarus