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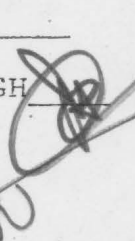
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DATE: June 11, 1975

JMC action required by: _____

TO: JIM CANNON 

VIA: DICK DUNHAM _____

JIM CAVANAUGH 

File

FROM: PAM NEEDHAM 

SUBJECT: CONSUMER PROTECTION LEGISLATION

COMMENTS: Per request of Jim Cavanaugh for further discussion with you.

DATE: _____

RETURN TO: PAM NEEDHAM

Pam is going to miss!

Material has been:

- _____ Signed and forwarded
- _____ Changed and signed (copy attached)
- _____ Returned per our conversation
- _____ Noted
- _____



Jim Cannon

THE WHITE HOUSE

WASHINGTON

June 11, 1975

MEMORANDUM FOR: JIM CANNON
FROM: PAM NEEDHAM
SUBJECT: CONSUMER PROTECTION LEGISLATION

On June 4 Congressmen Brooks, Rosenthal and Horton introduced legislation to create an Agency for Consumer Protection, H.R. 7575.

As Brooks pointed out in submitting the bill, it is similar to the one passed by the House last year, 293-94.

My brief reading of it indicates H.R. 7575 is virtually the same as S. 200. Some differences are seen in the following provisions:

- Term of the Administrator

H.R. 7575 does not limit the President's power to appoint or remove the Administrator.

- Budget

There does not appear to be a requirement in H.R. 7575 for simultaneous budget submissions to the Congress.

- Dual Prosecution

H.R. 7575 does seem to put a partial limit on the intervention authority of the ACP in the area of agency adjudications of alleged violations of law. In such proceedings the ACP would be held to a role of amicus curiae rather than that of a "prosecutor" as in S. 200.



- Appropriations

Rather than setting forth specific appropriation amounts for the Agency as S. 200 does, H.R. 7575 provides only for "such sums."

Clearly what we need is a complete legal analysis of H.R. 7575 comparable to the one on S. 200. OMB has told me today that they are working on it and should have it available early next week. At the same time, they will do an updated summary of S. 200 to reflect floor amendments.



94TH CONGRESS
1ST SESSION

H. R. 7575

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 1975

Mr. BROOKS (for himself, Mr. ROSENTHAL, and Mr. HORTON) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To establish an Agency for Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Consumer Protection Act
4 of 1975".

STATEMENT OF FINDINGS

6 SEC. 2. The Congress finds that the interests of con-
7 sumers are inadequately represented and protected within
8 the Federal Government; and that vigorous representation



1 and protection of the interests of consumers are essential to
2 the fair and efficient functioning of a free market economy.

3 ESTABLISHMENT

4 SEC. 3. (a) There is hereby established as an inde-
5 pendent agency within the executive branch of the Govern-
6 ment an Agency for Consumer Protection. The Agency shall
7 be headed by an Administrator who shall be appointed by
8 the President, by and with the advice and consent of the
9 Senate. The Administrator shall be a person who by reason
10 of training, experience, and attainments is exceptionally
11 qualified to represent the interests of consumers. There shall
12 be in the Agency a Deputy Administrator who shall be
13 appointed by the President, by and with the advice and
14 consent of the Senate. The Deputy Administrator shall per-
15 form such functions, powers, and duties as may be pre-
16 scribed from time to time by the Administrator and shall
17 act for, and exercise the powers of, the Administrator during
18 the absence or disability of, or in the event of a vacancy in
19 the office of, the Administrator.

20 (b) No employee of the Agency while serving in such
21 position may engage in any business, vocation, or other em-
22 ployment or have other interests which are inconsistent with
23 his official responsibilities.

24 POWERS AND DUTIES OF THE ADMINISTRATOR

25 SEC. 4. (a) The Administrator shall be responsible
26 for the exercise of the powers and the discharge of the duties



1 of the Agency, and shall have the authority to direct and
2 supervise all personnel and activities thereof.

3 (b) In addition to any other authority conferred upon
4 him by this Act, the Administrator is authorized, in carrying
5 out his functions under this Act, to—

6 (1) subject to the civil service and classification
7 laws, select, appoint, employ, and fix the compensation
8 of such officers and employees as are necessary to carry
9 out the provisions of this Act and to prescribe their
10 authority and duties;

11 (2) employ experts and consultants in accordance
12 with section 3109 of title 5, United States Code, and
13 compensate individuals so employed for each day (in-
14 cluding traveltime) at rates not in excess of the maxi-
15 mum rate of pay for grade GS-18 as provided in section
16 5332 of title 5, United States Code, and while such
17 experts and consultants are so serving away from their
18 homes or regular place of business, pay such employees
19 travel expenses and per diem in lieu of subsistence
20 at rates authorized by section 5703 of title 5, United
21 States Code, for persons in Government service em-
22 ployed intermittently;

23 (3) appoint advisory committees composed of such
24 private citizens and officials of the Federal, State, and
25 local governments as he deems desirable to advise him

1 with respect to his functions under this Act, and pay
2 such members (other than those regularly employed by
3 the Federal Government) while attending meetings of
4 such committees or otherwise serving at the request of
5 the Administrator compensation and travel expenses at
6 the rate provided for in paragraph (2) of this subsection
7 with respect to experts and consultants;

8 (4) promulgate such rules as may be necessary to
9 carry out the functions vested in him or in the Agency,
10 and delegate authority for the performance of any func-
11 tion to any officer or employee under his direction and
12 supervision;

13 (5) utilize, with their consent, the services, person-
14 nel, and facilities of other Federal agencies and of State
15 and private agencies and instrumentalities;

16 (6) enter into and perform such contracts, leases,
17 cooperative agreements, or other transactions as may be
18 necessary in the conduct of the work of the Agency and
19 on such terms as the Administrator may deem appropri-
20 ate, with any agency or instrumentality of the United
21 States, or with any State, territory, or possession, or any
22 political subdivision thereof, or with any public or pri-
23 vate person, firm, association, corporation, or institution;

24 (7) accept voluntary and uncompensated services,

1 notwithstanding the provisions of section 3679 (b) of
2 the Revised Statutes (31 U.S.C. 665 (b)) ;

3 (8) adopt an official seal, which shall be judicially
4 noticed; and

5 (9) encourage the development of informal dispute
6 settlement procedures involving consumers.

7 (c) Upon request made by the Administrator, each
8 Federal agency is authorized and directed to make its serv-
9 ices, personnel, and facilities available to the greatest prac-
10 ticable extent within its capability to the Agency in the per-
11 formance of its functions.

12 (d) The Administrator shall transmit to the Congress
13 and the President in January of each year a report which
14 shall include a comprehensive statement of the activities
15 and accomplishments of the Agency during the preceding
16 calendar year including a summary of consumer complaints
17 received and actions taken thereon and such recommenda-
18 tions for additional legislation as he may determine to be
19 necessary or desirable to protect the interests of consumers
20 within the United States. Each such report shall include a
21 summary and evaluation of selected major consumer pro-
22 grams of each Federal agency, including, but not limited to,
23 comment with respect to the effectiveness and efficiency of

1 such programs as well as deficiencies noted in the coordina-
2 tion, administration, or enforcement of such programs.

3 FUNCTIONS OF THE AGENCY

4 SEC. 5. (a) The Agency shall, in the performance of
5 its functions, advise the Congress and the President as to
6 matters affecting the interests of consumers; and protect
7 and promote the interests of the people of the United States
8 as consumers of goods and services made available to them
9 through the trade and commerce of the United States.

10 (b) The functions of the Agency shall be to—

11 (1) represent the interests of consumers before
12 Federal agencies and courts to the extent authorized by
13 this Act;

14 (2) encourage and support research, studies, and
15 testing leading to a better understanding of consumer
16 products and improved products, services, and consumer
17 information, to the extent authorized in section 9 of this
18 Act;

19 (3) submit recommendations annually to the Con-
20 gress and the President on measures to improve the
21 operation of the Federal Government in the protection
22 and promotion of the interests of consumers;

23 (4) publish and distribute material developed pur-
24 suant to carrying out its responsibilities under this Act

1 which will inform consumers of matters of interest to
2 them, to the extent authorized in section 8 of this Act;

3 (5) conduct conferences, surveys, and investiga-
4 tions, including economic surveys, concerning the needs,
5 interests, and problems of consumers which are not
6 duplicative in significant degree of similar activities
7 conducted by other Federal agencies;

8 (6) cooperate with State and local governments
9 and private enterprise in the promotion and protection
10 of the interests of consumers; and

11 (7) keep the appropriate committees of Congress
12 fully and currently informed of all its activities, except
13 that this paragraph is not authority to withhold informa-
14 tion requested by individual Members of Congress.

15 REPRESENTATION OF CONSUMERS

16 SEC. 6. (a) Whenever the Administrator determines
17 that the result of any Federal agency proceeding or activity
18 may substantially affect an interest of consumers, he may as
19 of right intervene as a party or otherwise participate for
20 the purpose of representing the interests of consumers, as
21 provided in paragraph (1) or (2) of this subsection. In any
22 proceeding, the Administrator shall refrain from intervening
23 as a party, unless he determines that such intervention is
24 necessary to represent adequately the interest of consumers.

1 The Administrator shall comply with Federal agency statutes
2 and rules of procedure of general applicability governing the
3 timing of intervention or participation in such proceeding or
4 activity and, upon intervening or participating therein, shall
5 comply with Federal agency statutes and rules of procedure
6 of general applicability governing the conduct thereof. The
7 intervention or participation of the Administrator in any
8 Federal agency proceeding or activity shall not affect the
9 obligation of the Federal agency conducting such proceeding
10 or activity to assure procedural fairness to all participants.

11 (1) Except as provided in subsection (c), the Ad-
12 ministrator may intervene as a party or otherwise par-
13 ticipate in any Federal agency proceeding which is sub-
14 ject to section 553, 554, 556, or 557 of title 5, United
15 States Code, or to any other statute or regulation au-
16 thorizing a hearing, or which is conducted on the record
17 after opportunity for an agency hearing.

18 (2) Except as provided in subsection (c), in any
19 Federal agency proceeding not covered by paragraph
20 (1), or any other Federal agency activity, the Adminis-
21 trator may participate or communicate in any manner
22 that any person may participate or communicate under
23 Federal agency statutes, rules, or practices. The Federal
24 agency shall give consideration to the written or oral
25 submission of the Administrator. Such submission shall

1 be presented in an orderly manner and without causing
2 undue delay.

3 (b) At such time as the Administrator determines to
4 intervene or participate in a Federal agency proceeding
5 under subsection (a) (1) of this section, he shall issue
6 publicly a written statement setting forth his findings under
7 subsection (a), stating concisely the specific interests of
8 consumers to be protected. Upon intervening or participat-
9 ing he shall file a copy of his statement in the proceeding.

10 (c) In—

11 (1) any Federal agency proceeding seeking pri-
12 marily to impose a fine or forfeiture which the
13 agency may impose under its own authority for an
14 alleged violation of a statute of the United States or
15 of a rule, order, or decree promulgated thereunder, or

16 (2) any action in any court of the United States
17 to which the United States or any Federal agency is
18 a party,

19 and which in the opinion of the Administrator may substan-
20 tially affect the interests of consumers, the Administrator
21 upon his own motion, or upon written request made by the
22 officer or employee who is charged with the duty of present-
23 ing the case for the United States or the Federal agency in
24 the proceeding or action, may transmit to such officer or
25 employee all evidence and information in the possession of

1 the Administrator relevant to the proceeding or action and
2 may, in the discretion of the Federal agency or court, appear
3 as amicus curiae and present written or oral argument to
4 such agency or court.

5 (d) To the extent that any person, if aggrieved, would
6 have a right of judicial review by law, the Administrator
7 may institute, or intervene as a party, in a proceeding in a
8 court of the United States involving judicial review of any
9 Federal agency action which the Administrator determines
10 substantially affects the interests of consumers, except that
11 where the Administrator did not intervene or participate in
12 the Federal agency proceeding or activity involved, the court
13 shall determine whether the Administrator's institution of
14 the judicial proceeding would be necessary to the interests
15 of justice. Before instituting a proceeding to obtain judicial
16 review in a case where the Administrator did not inter-
17 vene or participate in the Federal agency proceeding or
18 activity, the Administrator shall petition the Federal agency
19 for rehearing or reconsideration of its action if the Fed-
20 eral agency statutes or rules specifically authorize rehear-
21 ing or reconsideration. The petition shall be filed within
22 sixty days after the Federal agency action or within such
23 longer time as may be allowed by Federal agency proce-
24 dures. If the Federal agency does not act finally upon such
25 petition within sixty days after filing thereof, or within any



1 shorter time, less five days, as may be provided by law for
2 the initiation of judicial review, the Administrator may in-
3 stitute a proceeding for judicial review immediately. The
4 participation of the Administrator in a proceeding for judi-
5 cial review of a Federal agency action shall not alter or
6 affect the scope of review otherwise applicable to such agency
7 action.

8 (e) When the Administrator determines it to be in the
9 interests of consumers, he may request the Federal agency
10 concerned to initiate such proceeding or to take such other
11 action as may be authorized by law with respect to such
12 agency. If the Federal agency fails to take the action re-
13 quested, it shall promptly notify the Agency of the reasons
14 for its failure and such notification shall be a matter of
15 public record. To the extent that any person, if aggrieved,
16 would have a right of judicial review by law, the Agency
17 may institute a proceeding in a court of the United States
18 to secure review of the action of a Federal agency or its
19 refusal to act.

20 (f) Appearances by the Agency under this section shall
21 be in its own name and shall be made by qualified represent-
22 atives designated by the Administrator.

23 (g) In any Federal agency proceeding to which the
24 Agency is a party, the Agency is authorized to request
25 the Federal agency to issue, and the Federal agency shall,

1 on a statement or showing (if such statement or showing
2 is required by the Federal agency's rules of procedure) of
3 general relevance and reasonable scope of the evidence
4 sought, issue such orders, as are authorized by the Federal
5 agency's statutory powers, for the copying of documents,
6 papers, and records, summoning of witnesses, production of
7 books and papers, and submission of information in writing.

8 (h) The Agency is not authorized to intervene in pro-
9 ceedings or actions before State or local agencies and courts.

10 (i) Nothing in this section shall be construed to prohibit
11 the Agency from communicating with Federal, State, or
12 local agencies at times and in manners not inconsistent with
13 law or agency rules.

14 CONSUMER COMPLAINTS

15 SEC. 7. (a) The Agency shall receive, evaluate, de-
16 velop, act on, and transmit complaints to the appropriate
17 Federal or non-Federal entities concerning actions or prac-
18 tices which may be detrimental to the interests of consumers.

19 (b) Whenever the Agency receives from any source, or
20 develops on its own initiative, any complaint or other infor-
21 mation affecting the interests of consumers and disclosing a
22 probable violation of—

23 (1) a law of the United States,

24 (2) a rule or order of a Federal agency or officer,

25 or



1 (3) a judgment, decree, or order of any court of the
2 United States involving a matter of Federal law,
3 it shall take such action within its authority as may be
4 desirable, including the proposal of legislation, or shall
5 promptly transmit such complaint or other information to
6 the Federal agency or officer charged with the duty of
7 enforcing such law, rule, order, judgment, or decree, for
8 appropriate action.

9 (c) The Agency shall ascertain the nature and extent of
10 action taken with regard to respective complaints and other
11 information transmitted under subsection (b) of this section.

12 (d) The Agency shall promptly notify producers, dis-
13 tributors, retailers or suppliers of goods and services of all
14 complaints of any significance concerning them received or
15 developed under this section.

16 (e) The Agency shall maintain a public document room
17 containing an up-to-date listing of all signed consumer com-
18 plaints of any significance for public inspection and copying
19 which the Agency has received, arranged in meaningful and
20 useful categories, together with annotations of actions taken
21 by it. Complaints shall be listed and made available for pub-
22 lic inspection and copying only if—

23 (1) the complainant's identity is protected when he
24 has requested confidentiality;

25 (2) the party complained against has had sixty

1 days to comment on such complaint and such comment,
2 when received, is displayed together with the complaint;
3 and

4 (3) the entity to which the complaint has been re-
5 ferred has had sixty days to notify the Agency what
6 action, if any, it intends to take with respect to the
7 complaint.

8 CONSUMER INFORMATION AND SERVICES

9 SEC. 8. (a) The Agency shall develop on its own
10 initiative, and, subject to the other provisions of this Act,
11 gather from other Federal agencies and non-Federal sources,
12 and disseminate to the public in such manner, at such times,
13 and in such form as it determines to be most effective, infor-
14 mation, statistics, and other data concerning—

15 (1) the functions and duties of the Agency;

16 (2) consumer products and services;

17 (3) problems encountered by consumers generally,
18 including annual reports on interest rates and commercial
19 and trade practices which adversely affect consumers;
20 and

21 (4) notices of Federal hearings, proposed and final
22 rules and orders, and other pertinent activities of Fed-
23 eral agencies that affect consumers.

24 (b) All Federal agencies which, in the judgment of the
25 Administrator, possess information which would be useful

1 to consumers are authorized and directed to cooperate with
2 the Agency in making such information available to the
3 public.

4 TESTING AND RESEARCH

5 SEC. 9. (a) The Agency shall, in the exercise of its
6 functions—

7 (1) encourage and support through both public and
8 private entities the development and application of
9 methods and techniques for testing materials, mecha-
10 nisms, components, structures, and processes used in
11 consumer products and for improving consumer services;

12 (2) make recommendations to other Federal agen-
13 cies with respect to research, studies, analyses, and
14 other information within their authority which would
15 be useful and beneficial to consumers; and

16 (3) investigate and report to Congress on the
17 desirability and feasibility of establishing a National
18 Consumer Information Foundation which would admin-
19 ister a voluntary, self-supporting, information tag pro-
20 gram (similar to the "Tel-Tag" program of Great
21 Britain) under which any manufacturer of a nonperish-
22 able consumer product to be sold at retail could be
23 authorized to attach to each copy of such product a tag,
24 standard in form, containing information, based on uni-

1 form standards relating to the performance, safety, dur-
2 ability, and care of the product.

3 (b) All Federal agencies which, in the judgment of the
4 Administrator, possess testing facilities and staff relating to
5 the performance of consumer products and services, are
6 authorized and directed to perform promptly, to the greatest
7 practicable extent within their capability, such tests as the
8 Administrator may request in the exercise of his functions
9 under section 6 of this Act, regarding products, services, or
10 any matter affecting the interests of consumers. Such tests
11 shall, to the extent possible, be conducted in accordance
12 with generally accepted methodologies and procedures, and
13 in every case when test results are published, the method-
14 ologies and procedures used shall be available along with
15 the test results. The results of such tests may be used or
16 published only in proceedings in which the Agency is par-
17 ticipating or has intervened pursuant to section 6. In pro-
18 viding facilities and staff upon request made in writing by
19 the Administrator, Federal agencies—

20 (1) may perform functions under this section with-
21 out regard to section 3648 of the Revised Statutes (31
22 U.S.C. 529) ;

23 (2) may request any other Federal agency to sup-
24 ply such statistics, data, progress reports, and other in-
25 formation as the Administrator deems necessary to carry



1 out his functions under this section and any such other
2 agency is authorized and directed to cooperate to the
3 extent permitted by law by furnishing such materials;
4 and

5 (3) may, to the extent necessary and authorized,
6 acquire or establish additional facilities and purchase
7 additional equipment for the purpose of carrying out
8 the purposes of this section.

9 (c) Neither a Federal agency engaged in testing prod-
10 ucts under this Act nor the Administrator shall declare one
11 product to be better, or a better buy, than any other product;
12 however, the provisions of this subsection shall not prohibit
13 the use or publication of test data as provided in subsection
14 (b).

15 INFORMATION GATHERING

16 SEC. 10. (a) (1) To the extent required to protect the
17 health or safety of consumers, or to discover consumer fraud
18 or substantial economic injury to consumers, the Adminis-
19 trator is authorized to issue written interrogatories or re-
20 quests for reports and other related information to any person
21 engaged in a trade, business, or industry which substantially
22 affects interstate commerce. Such interrogatories or requests
23 shall set forth with particularity the consumer interest sought
24 to be protected, and the purposes for which the information
25 is sought.

1 (2) Nothing in this subsection shall be construed to
2 authorize the inspection or copying of documents, papers,
3 books, or records, or to compel the attendance of any person,
4 or shall require the disclosure of information which would
5 violate any relationship privileged according to law.

6 (3) The Administrator shall not exercise the authority
7 under paragraph (1) of this subsection if the information
8 sought—

9 (A) is available as a matter of public record;

10 (B) can be obtained from another Federal agency
11 pursuant to subsection (b) of this section; or

12 (C) is for use in connection with his intervention
13 in any pending Federal agency proceeding against the
14 person to whom the interrogatories are addressed.

15 (4) In the event of noncompliance with any inter-
16 rogatories or requests submitted to any person by the Ad-
17 ministrator pursuant to paragraph (1), any district court
18 of the United States within the jurisdiction of which such
19 person is found, or has his principal place of business, shall
20 issue an order, on conditions and with such apportionment of
21 costs as it deems just, requiring compliance with a valid
22 order of the Administrator. The district court of the United
23 States shall issue such an order upon petition by the Admin-
24 istrator or on a motion to quash, and upon the Administra-
25 tor's carrying the burden of proving in court that such order



1 is for information that may substantially affect the health or
2 safety of consumers or may be necessary in the discovery
3 of consumer fraud or substantial economic injury to con-
4 sumers, and is relevant to the purposes for which the in-
5 formation is sought, unless the person to whom the inter-
6 rogatory or request is addressed shows that answering such
7 interrogatory or request will be unnecessarily or excessively
8 burdensome.

9 (b) Upon written request by the Administrator, each
10 Federal agency is authorized and directed to furnish or allow
11 access to all documents, papers, and records in its posses-
12 sion which the Administrator deems necessary for the per-
13 formance of his functions and to furnish at cost copies of
14 specified documents, papers, and records. Notwithstanding
15 this subsection, a Federal agency may deny the Adminis-
16 trator access to and copies of—

17 (1) information classified in the interest of national
18 defense, or national security by an individual authorized
19 to classify such information under applicable Executive
20 order or statutes and restricted data whose dissemination
21 is controlled pursuant to the Atomic Energy Act (42
22 U.S.C. 2011 et seq.) ;

23 (2) policy recommendations by Federal agency
24 personnel intended for internal agency use only;

25 (3) information concerning routine executive and

1 administrative functions which is not otherwise a matter
2 of public record;

3 (4) personnel and medical files and similar files the
4 disclosure of which would constitute a clearly unwar-
5 ranted invasion of personal privacy;

6 (5) information which such Federal agency is ex-
7 pressly prohibited by law from disclosing to another
8 Federal agency; and

9 (6) trade secrets and commercial or financial in-
10 formation described in section 552 (b) (4) of title 5,
11 United States Code—

12 (A) obtained prior to the effective date of this
13 Act by a Federal agency, if the agency had agreed
14 to treat and has treated such information as privi-
15 leged or confidential and states in writing to the
16 Administrator that, taking into account the nature
17 of the assurances given, the character of the in-
18 formation requested, and the purpose, as stated by
19 the Administrator, for which access is sought, to
20 permit such access would constitute a breach of
21 faith by the agency; or

22 (B) obtained subsequent to the effective date
23 of this Act by a Federal agency, if the agency has
24 agreed in writing as a condition of receipt to treat
25 such information as privileged or confidential, on



1 the basis of its determination set forth in writing
2 that such information was not obtainable without
3 such an agreement and that failure to obtain such
4 information would seriously impair performance
5 of the agency's function.

6 Before granting the Administrator access to trade secrets
7 and commercial or financial information described in
8 section 552 (b) (4) of title 5, United States Code, the agency
9 shall notify the person who provided such information of its
10 intention to do so and the reasons therefor, and shall afford
11 him a reasonable opportunity to comment or seek injunc-
12 tive relief. Where access to information is denied to the
13 Administrator by a Federal agency pursuant to this subsec-
14 tion, the head of the agency and the Administrator shall
15 seek to find a means of providing the information in such
16 other form, or under such conditions, as will meet the
17 agency's objections. The Administrator may file a complaint
18 in court to enforce its rights under this subsection in the
19 same manner and subject to the same conditions as a com-
20 plainant under section 552 (a) (3) of title 5, United States
21 Code.

22 (c) Consistent with the provisions of section 7213
23 of the Internal Revenue Code of 1954 (26 U.S.C. 7213),
24 nothing in this Act shall be construed as providing for or
25 authorizing any Federal agency to divulge or to make

1 known in any manner whatever to the Administrator, from
2 an income tax return, the amount or source of income,
3 profits, losses, expenditures, or any particular thereof, or
4 to permit any Federal income tax return filed pursuant to
5 the provisions of the Internal Revenue Code of 1954, or
6 copy thereof or any book containing any abstracts or par-
7 ticulars thereof to be seen or examined by the Administrator,
8 except as provided by law.

9 LIMITATIONS ON DISCLOSURES

10 SEC. 11. (a) The Agency shall not disclose to the
11 public or to any State or local agency—

12 (1) any information (other than complaints pub-
13 lished pursuant to section 7 of this Act) in a form
14 which would reveal trade secrets and commercial or
15 financial information as described in section 552 (b) (4)
16 of title 5, United States Code, obtained from a person
17 and privileged or confidential; or

18 (2) any information which was received solely
19 from a Federal agency when such agency has notified
20 the Agency that the information is within the exceptions
21 stated in section 552 (b) of title 5, United States Code,
22 and the Federal agency has determined that the infor-
23 mation should not be made available to the public;
24 except that if such Federal agency has specified that
25 such information may be disclosed in a particular form

1 or manner, the Agency may disclose such information in
2 such form or manner.

3 (b) No authority conferred by this Act shall be deemed
4 to require any Federal agency to release to any instrumen-
5 tality, created by or under this Act, any information the
6 disclosure of which is prohibited by law.

7 (c) In the release of information pursuant to the author-
8 ity conferred in any section of this Act, except information
9 released through the presentation of evidence in a Federal
10 agency or court proceeding pursuant to section 6, the fol-
11 lowing additional provisions shall govern:

12 (1) The Administrator, in releasing information
13 concerning consumer products and services, shall deter-
14 mine that (A) such information, so far as practicable, is
15 accurate, and (B) no part of such information is pro-
16 hibited from disclosure by law. The Administrator shall
17 comply with any notice by a Federal agency pursuant
18 to section 11 (a) (2) that the information should not be
19 made available to the public or should be disclosed only
20 in a particular form or manner.

21 (2) In the dissemination of any test results or
22 other information which directly or indirectly disclose
23 product names, it shall be made clear that (A) not all
24 products of a competitive nature have been tested, if
25 such is the case, and (B) there is no intent or purpose

1 to rate products tested over those not tested or to imply
2 that those tested are superior or preferable in quality
3 over those not tested.

4 (3) Notice of all changes or additional information
5 which would affect the fairness of information previ-
6 ously disseminated to the public shall be promptly dis-
7 seminated in a similar manner.

8 PROCEDURAL FAIRNESS

9 SEC. 12. In exercising the powers conferred in section 5
10 (b) (4) and section 7, the Agency shall act pursuant to
11 rules issued, after notice and opportunity for comment by
12 interested persons in accordance with the requirements of
13 section 553 of title 5, United States Code, so as to assure
14 fairness to all affected parties, and provide interested persons
15 with a reasonable opportunity to comment on the proposed
16 release of product test data, containing product names, prior
17 to such release.

18 PROTECTION OF THE CONSUMER INTEREST IN
19 ADMINISTRATIVE PROCEEDINGS

20 SEC. 13. Every Federal agency in considering any
21 Federal agency action which may substantially affect the
22 interests of consumers including, but not limited to, the is-
23 suance or adoption of rules, regulations, guidelines, orders,
24 standards, or formal policy decisions, shall—

25 (1) notify the Agency at such time as notice of



1 the action is given to the public, or at such times and
2 in such manner as may be fixed by agreement between
3 the Administrator and each agency with respect to the
4 consideration of specific actions, or when notification
5 of a specific action or proceeding is requested in writing
6 by the Agency; and

7 (2) consistent with its statutory responsibilities,
8 take such action with due consideration to the interest
9 of consumers.

10 In taking any action under paragraph (2), upon request of
11 the Agency or in those cases where a public announcement
12 would normally be made, the Federal agency concerned
13 shall indicate concisely in a public announcement of such
14 action the consideration given to the interests of consumers.
15 This section shall be enforceable in a court of the United
16 States only upon petition of the Agency.

17 SAVING PROVISIONS

18 SEC. 14. (a) Nothing contained in this Act shall be
19 construed to alter, modify, or impair the statutory respon-
20 sibility and authority contained in section 201 (a) (4) of
21 the Federal Property and Administrative Services Act of
22 1949, as amended (40 U.S.C. 481 (a) (4)), or of any pro-
23 vision of the antitrust laws, or of any Act providing for the
24 regulation of the trade or commerce of the United States, or

1 to prevent or impair the administration or enforcement of
2 any such provision of law.

3 (b) Nothing contained in this Act shall be construed as
4 relieving any Federal agency of any authority or respon-
5 sibility to protect and promote the interests of the consumer.

6 TRANSFER OF CONSUMER PRODUCT INFORMATION

7 COORDINATING CENTER

8 SEC. 15. (a) All officers, employees, assets, liabilities,
9 contracts, property, and records as are determined by the
10 Director of the Office of Management and Budget to be em-
11 ployed, held, or used primarily in connection with the func-
12 tions of the Consumer Product Information Coordinating
13 Center in the General Services Administration are trans-
14 ferred to the Agency and all functions of the Administrator
15 of General Services administered through the Consumer
16 Product Information Coordinating Center are transferred
17 to the Agency.

18 (b) (1) Except as provided in paragraph (2) of this
19 subsection, personnel engaged in functions transferred under
20 this section shall be transferred in accordance with applicable
21 laws and regulations relating to transfer of functions.

22 (2) The transfer of personnel pursuant to this section
23 shall be without reduction in classification or compensation
24 for one year after such transfer.

DEFINITIONS

SEC. 16. As used in this Act—

(1) The term "Agency" means the Agency for Consumer Protection.

(2) The words "agency", "agency action", "party", "person", "rulemaking", "adjudication", and "agency proceeding" shall have the same meaning as set forth in section 551 of title 5, United States Code.

(3) The term "consumer" means any person who uses for personal, family, or household purposes, goods and services offered or furnished for a consideration.

(4) The term "interests of consumers" means any concerns of consumers involving the cost, quality, purity, safety, durability, performance, effectiveness, dependability, and availability and adequacy of choice of goods and services offered or furnished to consumers; and the adequacy and accuracy of information relating to consumer goods and services (including labeling, packaging, and advertising of contents, qualities, and terms of sale).

(5) The term "State" includes any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

CONFORMING AMENDMENT

SEC. 17. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

“(62) Administrator, Agency for Consumer Protection.”.

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

“(99) Deputy Administrator, Agency for Consumer Protection.”.

EXEMPTIONS

SEC. 18. This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force) and the Energy Research and Development Administration, or to a labor dispute within the meaning of section 13 of the Act entitled “An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes”, approved March 23, 1932 (29 U.S.C. 113) or of section 2 of the Labor Management Relations Act (29 U.S.C. 152), or to a labor agreement within the meaning of section 201 of the Labor Management Relations Act, 1947 (29 U.S.C. 171).



1 SEX DISCRIMINATION

2 SEC. 19. No person shall on the ground of sex be ex-
3 cluded from participation in, be denied the benefits of, or be
4 subjected to discrimination under any program or activity
5 carried on or receiving Federal assistance under this Act.
6 This provision will be enforced through agency provisions
7 and rules similar to those already established, with respect
8 to racial and other discrimination, under title VI of the
9 Civil Rights Act of 1964. However, this remedy is not
10 exclusive and will not prejudice or cut off any other legal
11 remedies available to a discriminatee.

12 APPROPRIATIONS

13 SEC. 20. There are hereby authorized to be appropri-
14 ated to carry out the provisions of this Act such sums as
15 may be required for the fiscal year ending June 30, 1976,
16 for the transitional period July 1, 1976, through September
17 30, 1976, for the fiscal year ending September 30, 1977,
18 and for the fiscal year ending September 30, 1978.

19 EFFECTIVE DATE

20 SEC. 21. (a) This Act shall take effect ninety calendar
21 days following the date on which this Act is approved, or
22 on such earlier date as the President shall prescribe and
23 publish in the Federal Register.

24 (b) Any of the officers provided for in this Act may
25 (notwithstanding subsection (a)) be appointed in the man-

1 ner provided for in this Act at any time after the date of the
2 enactment of this Act. Such officers shall be compensated
3 from the date they first take office at the rates provided for
4 in this Act.

5 SEPARABILITY

6 SEC. 22. If any provision of this Act is declared un-
7 constitutional or the applicability thereof to any person or
8 circumstance is held invalid, the constitutionality and ef-
9 fectiveness of the remainder of this Act and the applicability
10 thereof to any persons and circumstances shall not be affected
11 thereby.



94TH CONGRESS
1ST SESSION

H. R. 7575

A BILL

To establish an Agency for Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes.

By Mr. BROOKS, Mr. ROSENTHAL, and
Mr. HORTON

JUNE 4, 1975

Referred to the Committee on Government Operations



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Date:

6/24/75

TO:

Jim Cannon

F.Y.I.

FROM: Deputy Director

Knowing of your great
and continuing interest
in this subject, I am
sending you a pre-
published copy of my
CPA testimony

Paul Chern

TABLE OF CONTENTS (Cont'd)

STATEMENT OF:PAGEMR. PAUL H. O'NEILL

Deputy Director

Office of Management and Budget

182

File /
Consumers



1 to hammer out the exact language of this legislation.

2 Mr. Ahart. Thank you, Mr. Chairman.

3 Mr. Brooks. Our next witness is a very distinguished and
4 able public servant, Mr. O'Neill.

5 I see we have a copy of your statement. We have always
6 made it a practice, not always a wise practice, to give people
7 an opportunity to summarize their statements. If they wanted
8 to put their complete statement in the record we will accept
9 it in that fashion.

10 Then if you want to summarize it we certainly would under
11 stand.

12 We are delighted to have you, Mr. O'Neill. You may
13 proceed.

14 STATEMENT OF MR. PAUL H. O'NEILL, DEPUTY DIRECTOR, OFFICE OF
MANAGEMENT AND BUDGET

15 Mr. O'Neill. Mr. Chairman, it is a pleasure to be here.
16 I must say I appreciate very much your being understanding
17 about the time situation today. I appreciate that very much.

18 With your permission I would like to put my short state-
19 ment in the record and use the time for summary to do one
20 thing, and that is to read briefly what I consider to be the
21 key sentences from the President's letter to you and your
22 colleagues on the other side indicating his position on the
23 legislation you have before you.

24 If I may I will quote.

25 The President said, "I do not believe that we need yet

1 another Federal bureaucracy in Washington, with its attendant
2 costs of 60 million dollars for the first three years and
3 hundreds of additional Federal employees, in order to achieve
4 better consumer representation and protection in Government.
5 At a time when we are trying to cut down on both the size and
6 the cost of Government, it would be unsound to add another
7 layer of bureaucracy instead of improving the underlying
8 structure.

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

12 I think those words sum up in a very good way the position
13 which the President has taken on this bill and the position of
14 the Administration on this bill.

15 ~~The~~ ^{is not} ~~is not a~~ question whether we can appropriately
16 modify the provisions of S. 200 or whether we can appropriately
17 modify the provisions of H.R. 7575, but it is, ^{instead} ~~is not~~ a
18 straight forward issue as to whether or not we can make the
19 institutions of Government which have already been established
20 do the job which we believe ~~by~~ the Congress and the executive
21 branch and the people of the country expect them to perform.

22 We believe that there are sufficient legislative
23 authorities, ^{in fact} ~~in fact~~ that there are mandates from the Congress,
24 that the existing institutions of Government take into account
25 the public interest, the consumer interest, and it is our job



1 to make those institutions do their jobs in a way which would
2 be a credit to the people who pay their way.

3 Mr. Brooks. Mr. O'Neill, I want to thank you for a fine
4 statement and for your usual forthright and candid comments
5 on legislation upon which we ask you to testify.

6 I want to say as an observation that I think you will
7 find almost all the members of Congress share the hope that
8 the existing Government operations of Government agencies can
9 do their job better, more efficiently, more effectively, at
10 less cost to the Government, with more service to its people.
11 I share that feeling. This Committee has worked on that
12 premise for 20 years to my certain knowledge.

13 I would be very pleased if I felt that one or all of our
14 Government agencies could be so attuned to public responsi-
15 bility and consumer requirements that they could use the
16 existing organizations.

17 On paper it looks as though you already have offices and
18 already have overhead and it sounds as though it would make
19 sense to have each of these agencies wake up every morning and
20 say, "My God, in addition to looking after the railroads I will
21 look after consumers today. In addition I will look after the
22 interstate gas lines and pipelines and I will also think about
23 consumers. In addition to airlines regulation we will think
24 about passengers."

25 Then with regard to the SEC they say, "In addition to

1 problems in New York we will think about consumers."

2 I don't believe in reality that that can be done. This
3 is my conviction.

4 I would just say that it is hard to give confidence to the
5 American consumer that one of the existing agencies is now
6 going to wake up, like a goose in a newworld, and say, "My
7 God, they have consumers in this country. Look at them out
8 there, all over us." I just don't believe we can sell that
9 bill of goods to consumers.

10 What we need is not just the mechanization for giving them
11 a voice in industry, with industry, and in Government deci-
12 sions that are going to have to do with consumer opportunities
13 to buy reasonable goods.

14 You not only have to give them the mechanization for that
15 voice. We have to give them additional confidence that American
16 business is giving them a good fair deal for what they pay
17 for.

18 I will give you a current example. You know that if you
19 buy an electrical appliance which costs under 25 dollars and
20 it does not work you might as well throw it away. It is
21 almost impossible to get it repaired unless your brother-in-
22 law is a pretty good electrician, as mine is.

23 I have a mower and it is on the blink. I sent it back
24 to the man to repair it because I cannot work on a gasoline-
25 powered lawnmower.

1 The man indicated it might be that the valves have to be
2 ground and that the gasket is bad.

3 It had been running fine up until the time he saw it.

4 I told him, "Don't fix a thing until you tell me what it
5 costs because the odds are that it will cost me" -- we will
6 know before the hearing is over -- "It will probably cost 75
7 dollars to 100 for the repairs." The mower, brand-new, cost
8 only 189 dollars.

9 Therefore, they are making uneconomic the repair of
10 commodities which cost up to 150 dollars. This is the kind of
11 deal I think we can improve upon.

12 There are others. I am not trying to be unreasonable
13 about it. I don't hit too many rocks with that mower.

14 That is the problem. People need confidence. I would
15 not say, Mr. O'Neill, that we have distrust in our manu-
16 facturers. I like them. We buy from them. We trust them.
17 Our friends work for them.

18 However, I think the American public is entitled to an
19 opportunity to participate -- not to run the companies and
20 not to run the Government except through elected representatives.
21 But I think we owe them at least a voice, just one voice that
22 might point out their problems as all these other agencies
23 look after the manufacturers. They have lawyers, lobbyists,
24 representatives, agents, and they come themselves and represent
25 themselves. However, the average consumer just does not have

1 that opportunity.

2 Mr. Erlenborn. Would the gentleman yield?

3 Mr. Brooks. I will be pleased to yield to my distinguished
4 and able friend. I regret that the witness before last did
5 not have more time to visit with you.

6 Mr. Erlenborn. I thank the gentleman for yielding.
7 I make the observation it is an appealing argument you made.
8 I don't think the Consumer Protection Agency, even as con-
9 ceived by the gentleman from Texas, will be involved in the
10 design and manufacturer of toasters or lawnmowers.

11 Mr. Brooks. No, I don't think they will design them,
12 but they might point out that every time you buy one, if you
13 buy the X, Y, Z toaster and the average life is three weeks,
14 I think people will get that word. You can put that word out
15 pretty fast that X, Y, Z toasters are dogs and people will
16 quit buying them. Then we will buy A, C, C toasters and they
17 last about a year and a half.

18 Mr. Erlenborn. I understood we were going to prohibit
19 the Government stamp of approval. Are you suggesting we will
20 have a Government stamp of disapproval?

21 Mr. Brooks. No, I just want a little sunshine. We are
22 all for sunshine now.

23 Mr. O'Neill, I enjoyed having you. I don't want to burden
24 you with all this but that is the gist of what I had to say
25 about this bill.



1 Does OMB really believe that the Federal agency is
2 adequate to protect consumers now?

3 Mr. O'Neill. I think we are making progress. I think
4 we are on the verge of making a significant leap forward.

5 As I ^{have} thought about this issue, it ^{has} seemed to me that the
6 reality of where we are is a reflection within ^{the} regulatory
7 and other executive branch agencies of what it was we ~~expected~~
8 ~~as~~ ^{expected of them.} citizens, as executive branch people, as members of
9 Congress. My experience in government has been that agencies
10 live up to what it is we expect them to do.

11 I think the proof of the pudding in that ^{notion} is ~~just in~~ ^{found in}
12 ^{ring} ~~observ~~ what has taken place in the last six months or so as
13 the President has made this a public issue, ^{and} as many of you
14 have made the actions of the regulatory agencies a public
15 issue.

16 It seems to me if you look at the statements of the mem-
17 bers of the regulatory bodies, if you listen to what people
18 are saying, if you look at the editorials which our newspapers
19 and our other media publish, it is fairly clear that the
20 people are saying they are not going to stand for government
21 that does not pay attention to " " the people.

22 I think that message will be reflected very clearly in the
23 actions of regulatory agencies, especially with a concerted
24 push from the executive branch; ^{with} ~~and the presence of~~ the President
25 insisting that every executive branch agency ~~that he has come~~

1 ~~control over~~ is going to prepare a specific action plan with
2 specific action steps to see that the public and the consumer
3 interest is represented in the cases where actions are taken
4 in the name of we the people.

5 Mr. Brooks. I understand that statement. However, has
6 OMB taken steps to assure that those Federal agencies will
7 strengthen their consumer practices?

8 Mr. O'Neill. Mr. Chairman, the lead in developing those
9 action plans has been given to Virginia Knauer, the President's
10 Special ^{Assistant} ~~Counsel~~ for Consumer Affairs. We ~~had~~ have been
11 working with Virginia and with the other people ⁱⁿ ~~around~~ the
12 executive branch to get this executive action plan in place
13 and get it operating.

14 I have with me a list of assignments ^{that} which have been made (-)
15 kick-off sessions which are to be held between Virginia Knauer
16 and each of the cabinet and agency heads, with specific steps
17 they are to take.

18 Mr. Brooks. How many has she talked to already?

19 Mr. O'Neill. My list indicates she should have talked to
20 10 through today.

21 Mr. Brooks. We will put that into the record if you wish.

22 In the fiscal 1976 budget now pending how much money has
23 OMB approved for inclusion in the Federal agency budgets to
24 increase consumer protection?

25 I say I assume your budgets previously were not flabby and



1 that somebody was doing something for each dollar.

2 If we are to take on additional responsibility called
3 consumer protection, we found all those people out there one
4 morning when we woke up, what money and what energy and what
5 people will we assign to look after them as you say you will do?

6 Mr. O'Neill. Mr. Chairman, as I am sure you and the mem-
7 bers of the Committee know, there is not an object classifica-
8 tion in the traditional budget documents for so-called "consumer
9 representation." I think there is a good reason for that.

10 Mr. Brooks. You think what?

11 Mr. O'Neill. There is a very good reason for that. Let's
12 take a specific agency as a case in point.

13 Let's take the Food and Drug Administration. It has a
14 budget this year of over 200 million dollars. Its responsibility
15 not ^{only} to the executive branch but to the Congress and to the
16 people is to protect the public interest and to protect the con-
17 sumer interest.

18 I think ^{can} ~~in a way~~ one ~~could~~ say that the dollars provided
19 to ^{the} ~~these~~ regulatory agencies and to many of the executive branch
20 agencies are for nothing more than public representation, re-
21 presentation of the public interest and the consumer interest.

22 While it is fair to say there is not an object classifica-
23 tion in a nice little schedule which said this specific amount
24 is for consumer representation I submit to you that, properly
25 viewed, one could make a case there are hundreds of millions of

1 dollars recommended by the President and provided by the Con-
2 gress to insure that the public interest is served.

3 Mr. Brooks. But not earmarked as such for consumer pro-
4 tection.

5 Mr. O'Neill. To the extent we provide 200 million dollars
6 for the Food and Drug Administration I would say that is an
7 indication of earnest on the part of the executive branch and
8 the Congress that ~~we~~ we intend to protect the consumer
9 interest in the use of drugs.

10 Mr. Brooks. How much was that?

11 Mr. O'Neill. One hundred eighty to 185 million dollars,
12 so it is up 15 to 20 million dollars.

13 Mr. Brooks. That increase is not earmarked for consumer
14 protection but earmarked for increases in salary, increases
15 in travel, and for other justified expenses which you have
16 already approved or you would not come down here and ask for
17 it.

18 Mr. O'Neill. There is a real increase aside from the
19 change in the cost of living in the FDA budget. I think it is
20 fair to say that all of those dollars are there because of laws
21 passed by the Congress which indicate it is our intent, as a
22 people, to protect the consumer interest in the use of drugs
23 and in the use of foods.

24 Mr. Rosenthal. I think the point that should be restated
25 is that what we are talking about here is not perceived by you

1 yet. This is a functional change in government because of
2 the inadequacy of the present arrangement and structure.

3 Regardless of how much additional money you put into this,
4 you are putting good money after bad money under this
5 functional arrangement.

6 What this Committee is trying to do with the enactment of
7 this legislation is to understand that organization makes
8 policy, and the present organization is inadequate and in-
9 effective. That is what we are trying to do.

10 We appreciate the effort you have made. We appreciate
11 the large numbers of people you have given Mrs. Knauer's office
12 to make this inquiry and the effort you put forth. We
13 appreciate that and it is to be commended.

14 However, it does not go to the core of the problem. It
15 is a philosophical appreciation of the functional inadequacy
16 of the present consumer representation system.

17 Frankly, from where I sit, nothing more needs to be said.

18 Mr. O'Neill. Mr. Rosenthal, if I may respond to that.
19 It seems to me from an organization and management point of
20 view that the idea of a Consumer Protection Agency really sug-
21 gests that rather than correcting the defects we see in the
22 current system we will dodge the problem by creating a new
23 organization.

24 It seems to me, at least as an individual consumer and as
25 an individual citizen, that I have a representative to work with



1 me and represent my interest with all of the departments and
2 agencies of Government. I have a chance to elect him every *two*
3 years.

4 Mr. Rosenthal. Who is that?

5 Mr. O'Neill. My representative from my District.

6 Mr. Rosenthal. You cannot be serious honestly. I have
7 heard this rhetoric for 10 or 12 years.

8 I know a man of your intellectual capacity cannot be
9 serious in that. When you suggest to this Committee we are
10 spending 200 million dollars for the Food and Drug Administra-
11 tion, do you know how much the drug companies spend on market-
12 ing and promotional activities and and what percentage of that
13 is --

14 Mr. O'Neill. I know it is a big number.

15 Mr. Rosenthal. Do you want to take an outside wild and
16 improbable guess?

17 Mr. Brooks. Go ahead.

18 Mr. O'Neill. I am sure it is a big number, but I think
19 frankly it is beside the point. I don't see what bearing it
20 has on the issue at all.

21 What difference does it make --

22 Mr. Rosenthal. You are looking for roses because the Food
23 and Drug Administration is up to 200 million dollars.

24 Mr. O'Neill. I am not looking for roses. I was asked a
25 question and I indicated conceptually that I think certainly it



1 is the intent of Congress, "I think it is, that the Food and
2 Drug Administration represents the interest of the people of
3 the United States, not of some specific interest group, not of
4 any specific interest group.

5 What is being ^{implied} granted with the idea ^{that} we must have a Consumer
6 Protection Agency is that we the Congress and we the executive
7 branch can ^{not} make a creature of our own making do the public
8 business.

9 Mr. Rosenthal. Have you ever been to a regulatory
10 hearing? Have you yourself personally ever been to a regula-
11 tory hearing?

12 Mr. O'Neill. Yes, but not recently.

13 Mr. Rosenthal. What was the last time?

14 Mr. O'Neill. Two or three years ago.

15 Mr. Rosenthal. Have you seen the format of the room that
16 the commission uses, the Federal Trade Commission and the
17 Federal Power Commission?

18 Mr. O'Neill. Yes.

19 Mr. Rosenthal. They sit like judges. People seeking the
20 rate increase are usually well represented by lawyers,
21 economists, and so forth.

22 How is the consumer's point of view represented at that
23 hearing? By whom is it represented?

24 Mr. O'Neill. I think as a general proposition under past
25 practice it has not been well represented. However, that does

1 not suggest to me that rather than deal with that issue and
2 correct the deficiency we see in creatures we have made that we
3 create another agency as a ~~s~~xop to the people we are all trying
4 to help.

5 Mr. Rosenthal. Would you please for the sake of this
6 inquiry eliminate the rhetoric, please? We have in these quasi-
7 judicial hearings one empty chair. One chair is filled by the
8 proponents of the rate increase, the CAB airline certification,
9 and so on.

10 The other chair representing the consumer interest is empty.

11 You cannot ask the judges to jump off the bench as I am
12 supposed to now and start advocating one of the parties to the
13 proceeding.

14 Mr. O'Neill. Would you yield?

15 Mr. Rosenthal. No. It is unethical to do that. It is an
16 absurdity.

17 To appoint a consumer advocate within the agency you have
18 an in-house built-in conflict of interest.

19 I am astounded that you do not understand, or I perceive
20 you do not understand, the nature of the organizational change
21 we are trying to make.

22 We are trying for 15 to 20 million dollars a year make
23 the hundreds of millions of dollars a year spent for regulatory
24 agencies work. We are trying to get a geometric progression of
25 leverage on the situation.

1 I don't know whether or not it will work but it is the
2 best proposal I have seen in the 14 years I have been in Con-
3 gress.

4 For a man of your capacity to come here and deliver to us
5 the kind of rhetoric we have heard today -- larger government,
6 another agency, billions of dollars, cause inflation -- we can
7 find anybody to do that out in the street and not a high level
8 Deputy Director of OMB. You must have a better presentation
9 than the one you have made today.

10 Mr. O'Neill. Mr. Congressman, I would say the crux of
11 my argument is this, and it is a very key question of govern-
12 ment -- are we going to make the creatures and agencies that
13 we have together created do the public business or are we going
14 to fool the people by creating something else that looks as
15 though it solves the problem and tell that little agency, "Fix
16 up hundreds of millions or billions of dollars worth of
17 problems." It is beyond me why the Congress does not insist,
18 as the President says he will insist with the agencies that he
19 has control over, that they do the public business and not some
20 special interest group's interest.

21 Mr. Erlenborn. Would the gentleman yield?

22 Mr. Rosenthal. If you feel like.

23 Mr. Erlenborn. The gentleman said there was an empty
24 chair in the regulatory hearings. Why not two or three? Who
25 is there speaking for the taxpayer?

1 Who is there speaking for the environmentalists? I am
2 sure if we turned our attention to it we can think of several
3 other interests not represented.

4 The gentleman seems to think in all these hearings you
5 have big business represented in one chair and there is one
6 other chair empty. You show a certain amount of myopia in being
7 able to see only that far.

8 Mr. Rosenthal. What we are dealing with, if the chair will
9 permit, what we are dealing with essentially is in a techno-
10 logical developing society where you have 210 million Americans.
11 We are interested essentially in interstate commerce.

12 The Congress in its wisdom saw fit to establish a number
13 of regulatory agencies to generally represent the public
14 interest and to specifically represent the consumer interest --
15 Food and Drug Administration in terms of economic and health and
16 safety, Federal Power Commission, Federal Trade Commission, CAB,
17 Securities and Exchange Commission, and so on.

18 The taxpayers are loosely represented there but specifically
19 those agencies have the mission of representing consumers.

20 All these agencies started out accepting that with the
21 perspicacity and will.

22 Over the years we have found out that the one group they
23 were presumably going to represent was inadequately represented.

24 I am not saying anybody intended it that way. I am not
25 suggesting there are any ghosts in the closet. I am saying it

1 is a functional system we created which is inadequate.

2 If you ask at a CAB hearing whether the consumer's point
3 of view is represented the answer is no because it is a contest
4 between competing airlines.

5 Is the consumer's point of view represented at the Federal
6 Power Commission? The answer is no because it is a contest
7 between giants building transmission lines between Oklahoma and
8 the East Coast somewhere.

9 The point of view is that at these regulatory rate hearings
10 there is no consumer representative.

11 In the District of Columbia General Services Administra-
12 tion, the landlord for the Government, is a subscriber for
13 electricity from Pepco, has four lawyers doing the very thing
14 we are talking about. They have a consumer advocate in GSA to
15 represent the interests of the Federal Government before the
16 Public Service Commission in the District of Columbia. Never-
17 theless, they have already decided what we are trying to find
18 out by way of legislation.

19 All we are suggesting is that in the billions and hundreds
20 of billions of dollars this Government spends each year, we
21 spend 20 million dollars a year to hopefully represent the
22 interests of consumers so that the consumer's voice can be heard
23 before regulatory agencies. That is all.

24 These agencies are quasi-judicial. We are suggesting that
25 the empty chair purportedly representing the consumer's interest



1 be filled by a knowledgeable source which has the voice and
2 effect of the Federal Government.

3 It seems to me the most elementary equation ever evolved
4 from this City of Washington.

5 Then you come in here and think you are doing the job and
6 talking to us in rhetoric.

7 I probably said more than my share.

8 Mr. Brooks. Let me just say this: Don't you also mean
9 that the regulatory agencies after that representation of the
10 consumers will still have the authority to make the decisions
11 they are responsible for?

12 Mr. Rosenthal. Absolutely. Why did some of these agencies
13 do this? Some became arbiters of competing industries.
14 Some became the center of gravity for Washington lobbyists.

15 We tried to create an agency which has no decision-making
16 power at all, the right of advocacy.

17 If the Food and Drug Administration does not agree with
18 the consumer advocate they can rule against him. If he does
19 not agree they will take an appeal to the court.

20 What's more judicial than that? What is more proper than
21 that?

22 That is the point of the whole story -- a non-regulatory
23 agency so that the infestation of lobbyists will not occur.

24 This agency will produce the biggest bang for the buck we
25 ever got in Washington.

1 Mr. O'Neill. It seems to me that the logical conclusion
2 of what you are saying is that there is no redemption for the
3 regulatory agencies ^{-- that,} although we created them ^{to serve} in the public
4 interest, we ^{have} found ~~that I will reluctantly grant~~ ^{that} they are ^{now}
5 the creatures of the special interest groups and we recognize
6 that for what it is and we will try to create a counter force.
7 It seems to me, as a private citizen, that is untenable because
8 that is not what the law says those agencies are supposed to
9 be doing.

10 Mr. Rosenthal. I presume you are not a lawyer.

11 Mr. O'Neill. I am not.

12 Mr. Rosenthal. Perhaps that is the difference in our
13 understanding and our ability to see the problem.

14 I just think that the basic Anglo-Saxon system of justice
15 in a quasi-judicial hearing suggests both sides should be
16 represented. It just comes down to that. That is the bottom
17 line.

18 Mr. Brooks. Mr. O'Neill, nobody says all regulatory
19 agencies are bad. They are not. They are not representing
20 just the railroads or the power companies or what have you,
21 nor are they representing just the big oil companies. They are
22 theoretically representing consumers, just as you think.

23 What I am saying is that this kind of an agency will give
24 them the information they need. It will point that up for them
25 They have had a slight tendency over the years to neglect

1 those people. This does not mean they will be totally non-
2 receptive to consumer interests.

3 The very concept of the consumer agency means that the
4 agency will represent a position, a consumer position, a con-
5 sumer interest, and that the regulatory agency, because it has
6 sympathy with it, when it is pointed out to them will take
7 action that will be responsive to it.

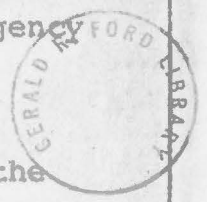
8 If the consumer agency were the only group that had an
9 interest in consumers the regulatory agencies would do nothing.
10 However, the concept of this whole legislation is that somebody
11 will be in there and will tell the regulatory agencies what the
12 problems are with the people buying all this stuff, and they
13 will then take appropriate action as they see fit under their
14 jurisdiction.

15 It does not mean they are not sensitive or have some
16 slight feeling for consumers. After all, their wives go to the
17 stores, too.

18 Mr. Horton?

19 Mr. Horton. Mr. O'Neill, I know you are very familiar
20 with this legislation. I would like to ask you whether it is
21 your understanding that this is not a regulatory agency and
22 perhaps you can confirm that this is not a regulatory agency
23 but that it is, pure and simple, an advocacy agency?

24 Mr. O'Neill. Yes, sir. I think in the design of the
25 bill that you put together that it is clear it is your intent



1 it not be a regulatory agency.

2 Mr. Horton. In the statement of the President which you
3 read you indicated that it would be unsound to add another
4 layer of bureaucracy.

5 I am at some loss to understand how this can be called
6 another layer of bureaucracy because it is not regulatory.
7 It is an advocate to appear before different agencies. I do
8 not see it interfering by way of a bureaucracy. I see it
9 appearing before a regulatory agency but I do not see it as
10 another layer of bureaucracy.

11 Perhaps it is a matter of semantics and perhaps it is not,
12 but perhaps you can explain what is understood by that language
13 in that part of the statement.

14 Mr. O'Neill. I think ~~it is~~ ^{it is} another layer of
15 bureaucracy in the sense, as you indicate, that it represents
16 several hundred additional people ^{paid} ~~involved~~ with Federal dollars
17 with the taxpayers' money ^{involved} in the deliberations of the day-to-
18 day work of Government. In that way it represents another
19 level of bureaucracy.

20 Mr. Horton. You mean that because it is an agency it is
21 therefore another level of bureaucracy?

22 Mr. O'Neill. In a way it is another hurdle.

23 If you do not mind ^a digression, it seems to me ^{as I have} ~~to be~~ observing,
24 ~~as I have been~~ ^{have been} what we ~~are~~ doing in Washington for the last 15
25 years ~~I have been here~~, we have been following Congressman

1 Rosenthal's approach, turning ourselves into a society which
2 spends all of our time in hearing processes, before the courts,
3 ^{to the point that} ~~it~~ it is virtually impossible to do anything, anymore without
4 months and years and sometimes it seems to be eons of discus-
5 sions and deliberations. In that way I think the ACP represents
6 another real layer of bureaucracy.

7 Mr. Horton. You made a statement where you indicated that
8 the President was going to impose this concept of having the
9 Federal agencies be more responsive to the interests of con-
10 sumers, you said, to every executive branch agency over which he
11 has control.

12 Is it not a fact that most of these regulatory agencies
13 are independent agencies?

14 Mr. O'Neill. The President has taken steps in that
15 area that you may not be aware of.

16 Last Friday he met with ^{the} ~~A~~ bi-partisan leadership and he
17 asked ^{the} ~~this~~ leadership to appoint 10 members from each body to
18 meet with him on the 25th day of June with the regulatory
19 members to try to urge on them the same voluntary action pro-
20 cess that he has proposed for the agencies which fall directly
21 under his control.

22 He recognizes ^{that} he does not have the same relationship to the
23 ^{to} ~~in~~ regulatories that he does ~~in~~ other executive branch agencies,
24 so he has asked, and I think your leaders have agreed, to a
25 cooperative process of sitting down with the regulatory agencies

1 and talking to them in the same way he has talked with his own
2 executive branch ~~and~~ department, ^{and} agency heads, indicating to them
3 he is conscious of and aware of a need for fair, straight for-
4 ward representation of consumer and public interest in the
5 day-to-day business of Government. And he is going to do every-
6 thing he can in his power to get the regulatories, with the
7 cooperation and consent of the Congress, to approach the
8 problem in the same way, taking aggressive action steps to see
9 that we make good on his promise that Government is going to
10 perform.

11 Mr. Horton. What you are saying is that the President
12 has indicated this program and policy will be carried out
13 in the executive agencies but the area in which the ACF would
14 be involved, namely the regulatory agencies, he acknowledges
15 that he has no control over them and he is making efforts to
16 try to get them to adhere to his thought. In other words, he
17 does not have direct control over them so that whole area of
18 regulatory agencies is left out of his program.

19 Mr. O'Neill. Perhaps I do not understand the full power
20 and sweep of H.R. 7575.

21 Were you suggesting that the only agencies that would be
22 under the purview of this bill are regulatory agencies?

23 Mr. Horton. No. If I left that impression I do not mean
24 to because that is not so. However, this bill does apply to
25 all of the regulatory agencies. That is where most of the

1 action will take place. That is where most of the difficulties
2 have taken place in the past.

3 The point is that the President does not have control over
4 the regulatory agencies. That is correct.

5 Mr. O'Neill. Would the Congressman propose that all
6 except the regulatory agencies be exempted from the provisions
7 of the bill?

8 Mr. Horton. No, but you did not answer my question.

9 Mr. O'Neill. Let me answer your question directly. The
10 President clearly does not have the same kind of power over the
11 regulatory agencies he does have over those more traditional
12 executive branch departments and agencies.

13 The President has indicated he will do everything in his
14 power ~~that he can~~ to see that the public interest and the
15 consumer interest are fairly and adequately and clearly repre-
16 sented in the day-to-day business of those departments and
17 agencies.

18 In addition, as I have indicated, he has called for a
19 cooperative effort with the Congress to work ^{with} on the regulatory
20 agencies to get them to move voluntarily in the same direction
21 of better representation.

22 He has also called for ^a regulatory reform commission. He
23 did that last October and as yet we have seen no action on that.
24 He very much would like to have that because he thinks it sets
25 in motion a good process. We have not gotten that out of



1 Congress yet.

2 Mr. Horton. I introduced a bill at the request of the
3 Administration. This year I did not even get a request to
4 introduce the bill.

5 I stand ready to. As a matter of fact, I have indicated
6 personally to the President and I have indicated publicly and
7 I did this morning, when I gave my opening statement, when you
8 were not present so you could not know exactly what I said, but
9 I indicated that I thought it was important that we have reform
10 of the regulatory agencies.

11 I also indicated, and I want to indicate again, that that
12 is an important step forward. However, I do not think that
13 the ACP is an alternative to that. I think it is a supplement
14 to that.

15 As the gentleman from New York, Mr. Rosenthal, has already
16 indicated, these agencies, these independent agencies,
17 especially the regulatory agencies, primarily are quasi-
18 judicial. They should, at least, have all views presented.
19 The consumer is a broad mass of people who are not well defined,
20 are not unified.

21 I have heard it said that the environmentalists should have
22 somebody there and some other group should have someone there,
23 et cetera. However, I think the consumer interest can encom-
24 pass all of those views.

25 The point is that consumers are taxpayers. They are

1 environmentalists, small businessmen, farmers, all these people.

2 The language that we have in here defining the consumer
3 and consumer interest can include those types of interests in
4 my opinion.

5 It is also my view that it is very important to have that
6 voice heard before the various agencies that are involved.

7 Take the FIA. You were talking about them. How many new
8 people will they put on as a result of this new policy to repre-
9 sent the consumer?

10 Mr. O'Neill. As I indicated to Mr. Rosenthal, it seems
11 to me that the bound duty of all of the people, however many
12 they may be who work for the FDA, have a sworn responsibility
13 to carry out the law. As I understand the law, the FDA is
14 charged by the Congress with overseeing and being responsible
15 for protecting the public health and safety over matters they
16 have responsibility for. That seems very clear to me.

17 Every individual in that agency has the responsibility you
18 are calling for.

19 Mr. Horton. Would you explain the process whereby we get
20 things like these interlock seatbelts and that sort of thing?

21 Mr. O'Neill. I am not familiar with the process involving
22 that particular item.

23 I think it is fair to say that in retrospect we have seen
24 cases where regulatory agencies have taken positions that look
25 foolish -- in retrospect. Let me hasten to add that I am not

1 sure, there is any organizational-bureaucratic device known to
2 the mind of man that can stop things that appear to be stupid
3 on their face after we have been some distance down the road
4 and can look back on it and see it just did not make sense.

5 Frankly I don't think ACP, CPA or anything else in the
6 world will stop human folly, so I don't think we will stop
7 safety belt interlocks and all that. We will have those things
8 foisted off on us and what seemed to be a good idea will prove
9 in practice to be a very bad idea.

10 Mr. Horton. Do you have any feel for the amount of
11 money spent by industry lobbyists before the FDA, for example?

12 Mr. O'Neill. Which lobby?

13 Mr. Horton. FDA, industry lobby.

14 Mr. O'Neill. I have no idea. However, it seems to me, as
15 I said to Mr. Rosenthal, it is not a key question. The key
16 question is whether people in that agency understand the
17 charge which has been placed on them by the Congress and by the
18 President to protect the public interest, to protect the con-
19 sumer interest.

20 If we cannot count on those people, in good faith, to repre-
21 sent the consumer and the people, then what we have admitted
22 in effect is that we have created governmental entities that
23 are beyond the control of the Congress and the executive branch
24 and it just seems to me we cannot come to that position.

25 Mr. Horton. I have no further questions.

1 Mr. Brooks Mr. Erlenborn?

2 Mr. Erlenborn. Thank you, Mr. Chairman.

3 Let me thank you for your testimony, Mr. O'Neill, which
4 originally was very brief and very much to the point. I think
5 you were invited here as a witness. You have done well.

6 However, you have also been the subject of some lectures.
7 I don't know that you anticipated that when you came.

8 My recollection is that in the past hearings on this sub-
9 ject we have sometimes had statements from executive agencies
10 and departments and independent agencies. I am not certain that
11 that process has been gone through in the House hearings this
12 year.

13 Are you aware of any requests by this Committee for state-
14 ments from the various departments and agencies which have been
15 affected?

16 Mr. O'Neill.. No, sir, I am not.

17 Mr. Erlenborn. I guess the Chairman can tell us whether
18 they have been asked for.

19 I have been concerned that the very people who would be
20 most affected, the regulatory agencies, the departments, whether
21 it be the Department of Justice which has somebody from ACP
22 looking over their shoulder when they institute an anti-trust
23 action, or some independent regulatory agency, they have not
24 really been asked for an expression as to how this would affect
25 them.



1 Because of my concern I inquired of the Administration
2 whether these witnesses would be made available. I have been
3 advised they would be.

4 Are you aware of this?

5 Mr. O'Neill. Yes, sir. I know for a fact that the
6 President has indicated to the cabinet members and agency heads
7 that he would like very much for them to present their impact
8 views on this particular legislation.

9 Mr. Erlenborn. I think this is extremely important.
10 It is an element which is not in the existing record. I
11 think the record we make here is important because we have a
12 new Congress. We have a bill similar but not identical. We
13 have more than a dozen new members of this Committee alone
14 as well as almost 100 new members of the House.

15 Just this afternoon I furnished a letter to the Chairman
16 of our Committee signed by eight members of the Government
17 Operations Committee asking that he extend the hearings and
18 invite representatives of the departments and agencies which
19 would be affected to testify.

20 I am glad to have you confirm the fact that the President
21 has asked them to make themselves available. I hope the Chair-
22 man will accede to our request.

23 Mr. Brooks. Friday morning we will expect them all. You
24 can write eight different statements.

25 I just got that letter at four o'clock from my distinguished

1 and able friend, Mr. Erlenborn.

2 At 4:55 I signed eight letters to the Secretaries of
3 these various departments -- Commerce, Justice, State, Agricul-
4 ture, Communications, Power Commission, Trade Commission, and
5 ICC. We invited them for Friday. We may go into Saturday
6 morning.

7 Mr. Erlenborn. I thank you. That is certainly prompt
8 action.

9 Of course, that seems to be the rule on this bill. I
10 think it has not even been introduced two weeks yet, or close
11 to it. We may even get it on the Floor before --

12 Mr. Horton. I will not be here Saturday morning. I have
13 to be in my District. However, I will be here Monday.

14 Mr. Fuqua. We have had before us the Consumer Affairs
15 Advisor, Mrs. Knauer. I don't know whether or not she has been
16 invited. I don't know who has been invited. It has been
17 difficult to find out who has been invited to testify.

18 Where is she now? Is she still working for the Government?
19 I saw her on television the other day.

20 Mr. O'Neill. Yes, sir.

21 Mr. Fuqua. She is supporting this position? What is her
22 position? She supported creation of an agency before. I wonder
23 about her position now, or is it somewhat precarious?

24 Mr. O'Neill. I don't think it is at all. She has
25 discussed this with the President. When the President



1 indicated to the cabinet members and agency heads that he
2 wanted an action plan, that he wanted to see the executive
3 branch make progress in representing the consumer and public
4 interest, Virginia Knauer made ^{the} presentation.

5 For the last month or six weeks she has been working very
6 hard to follow through on the directive given by the President.

7 Mr. Fuqua. If this bill goes to the President's desk
8 either as introduced in the House or S. 200, would you recommend
9 that the President veto it?

10 Mr. O'Neill. I would like to reserve judgment and see
11 what is produced by Congress.

12 Mr. Fuqua. Either this bill in its present form or S. 200
13 in its present form as passed by the Senate.

14 Mr. O'Neill. As to my own personal recommendation, yes,
15 I think I would recommend a veto. I hope I would be able to
16 show by the time that event might occur that the executive
17 branch has made real and substantial progress in getting the
18 executive branch agencies to do that which I believe the Congress
19 all along has intended they do, and that is to represent the
20 consumer and public interest.

21 Mr. Fuqua. Thank you, Mr. Chairman.

22 Mr. Brooks. I want to thank you very much, Mr. O'Neill.
23 We enjoyed it.

24 The hearing will be continued at two o'clock tomorrow, same
25 place.