THE CHILD PROTECTION ACT OF 1966

HEARINGS

BEFORE THE

CONSUMER SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3298

A BILL TO AMEND THE FEDERAL HAZARDOUS SUBSTANCES LABELING ACT TO BAN HAZARDOUS TOYS AND ARTICLES INTENDED FOR CHILDREN, AND OTHER ARTICLES SO HAZARDOUS AS TO BE DANGEROUS IN THE HOUSEHOLD REGARDLESS OF LABELING, AND TO APPLY TO UNPACKAGED ARTICLES INTENDED FOR HOUSEHOLD USE, AND FOR OTHER PURPOSES

AUGUST 24 AND 26, 1966

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THE CHILD PROTECTION ACT OF 1966

WEDNESDAY, AUGUST 24, 1966

U.S. SENATE,
COMMITTEE ON COMMERCE,
CONSUMER SUBCOMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 11 a.m., in room 5110, New Senate Office Building, Senator Warren G. Magnuson (chairman) presiding.

Senator MAGNUSON. The committee will come to order.

The chairman apologizes for the late start this morning, but Senator Cotton and I had an emergency matter involving the Commerce Committee which required us to meet with the Rules Committee for an hour this morning. I regret it. We will proceed.

The chairman has a short statement on this bill and general matters pertaining to this new Consumer Subcommittee.

There is no more appropriate legislation for the first hearing of the subcommittee than the Child Protection Act, S. 3298, on which we will hear witnesses this morning.

The protection of consumers, particularly children, from poisonous, flammable, or explosive substances for which there are no adequate safeguards is the very type of concern which led the committee to establish this new subcommittee.

The Federal Hazardous Substances Labeling Act, which was introduced by myself and other members of the committee in 1959, was reported favorably and passed the Congress and was signed by the President on July 12, 1960. Passage of this act was prompted by evidence that thousands of children were being poisoned annually through contact with unlabeled or inadequately labeled hazardous household products. In the intervening 6 years, thousands of children's lives have been spared through the rigorous labeling program conducted by FDA under the provisions of the act.

This morning we expect to hear from Dr. Goddard, Commissioner of the Food and Drug Administration, and our other witnesses, some dramatic testimony supporting the need for expansion of the Hazardous Substances Labeling Act. Their testimony is based upon their experience since the act was passed.

The bill itself would authorize the FDA to ban outright the sale of hazardous toys and other hazardous articles intended for use by children and to ban the sale of certain other articles which are so hazardous in nature that they cannot be made suitable for use in or around the household even with cautionary labeling. The bill would

Staff counsel assigned to this hearing: Michael Pertschuk.

also extend coverage of the act to unpackaged, as well as packaged, hazardous articles intended for household use and would make it clear that household products treated with pesticides are not exempt from the act.

The chairman hopes that the committee will also explore several of the gaps which still remain in our national safety protection legislation, even when S. 3298 would be passed. We want to establish, for the subcommittee record, additional areas in which hazardous household products are presently beyond the reach of effective safety standards or other regulation.

I wish to insert in the record at this time the text of S. 3298 and the agency comments:

[S. 3298, 89th Cong., 2d sess., as passed by Senate]

AN ACT To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes

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

TITLE I—AMENDMENTS TO THE FEDERAL HAZARDOUS SUBSTANCES LABELING ACT

SHORT TITLE

SECTION 1. This title may be cited as the "Child Protection Act of 1966."

APPLICATION OF FEDERAL HAZARDOUS LABELING ACT TO ARTICLES BEARING OR CONTAINING PESTICIDES, AND TO UNPACKAGED HAZARDOUS SUBSTANCES

SEC. 2. (a) Section 2(f)(2) of the Federal Hazardous Labeling Act (15 U.S.C. 1261(f)(2)), which excludes "economic poisons" subject to the Federal Insecticide, Fungicide, and Rodenticide Act and certain other articles from the term "hazardous substance", is amended by inserting before the period at the end thereof the following: ", but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison".

(b) So much of section 2(n) of such Act (15 U.S.C. 1261(n)), defining the term "label", as precedes the semicolon is amended to read as follows:

"(n) the term 'label' means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto."

(c)(1) Paragraph (p) of section 2 of such Act (15 U.S.C. 1261(p)), defining the terms "misbranded package" and "misbranded package of a hazardous substance", is amended by changing so much of such paragraph as precedes subparagraph (1) thereof to read as follows:

"(p) The term 'misbranded hazardous substance' means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, which substance, except as otherwise provided by or pursuant to section 3, fails to bear a label—".

(2) Such paragraph (p) is further amended by striking out, in subparagraph (1), all of clause (J) through the word "and" and inserting in lieu thereof the following: "(J) the statement (i) 'Keep out of the reach of children' or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and".

(d) Section 3(b) of such Act (15 U.S.C. 1262(b)), authorizing the Secretary to establish reasonable variations or additional label requirements necessary for the protection of the public health and safety, is amended by changing so much of such subsection as follows the semicolon to read as follows: "and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance."

(e) Subsection (d) of section 3 of such Act (15 U.S.C. 1262(d)), authorizing the Secretary to except containers of hazardous substances with respect to which adequate requirements satisfying the purposes of such Act have been established by or pursuant to another Act, is amended by inserting "hazardous substance or" before "container of a hazardous substance".

(f) Section 4 of such Act (15 U.S.C. 1263), setting forth prohibited acts, is amended as follows:

(1) Paragraphs (a), (c), and (g) of such section are each amended by striking out "misbranded package of a hazardous substance" and inserting in lieu thereof "misbranded hazardous substance";

(2) Paragraphs (b) and (f) of such section are each amended by striking out "being in a misbranded pacakage" and inserting in lieu thereof "being a misbranded hazardous substance".

(g) Subsection (b) of section 5 of such Act (15 U.S.C. 1264) is amended by striking out "in misbranded packages" in clause (2) thereof and inserting in lieu thereof "a misbranded hazardous substance".

(h) Section 6(a) of such Act (15 U.S.C. 1265(a)) is amended by striking out "Any hazardous substance that is in a misbranded package" and inserting in lieu thereof "Any misbranded hazardous substance".

(i) Section 14(a) of such Act (15 U.S.C. 1273(a)) is amended by striking out "in misbranded packages" in the second sentence thereof and inserting in lieu thereof "a misbranded hazardous substance".

EXCLUSION, FROM INTERSTATE COMMERCE, OF TOYS AND OTHER CHILDREN'S ARTICLES CONTAINING HAZARDOUS SUBSTANCES, AND OF OTHER SUBSTANCES SO DANGEROUS THAT CAUTIONARY LABELING IS NOT ADEQUATE

SEC. 3. (a) Section 2 of such Act (15 U.S.C. 1261) is further amended by adding at the end thereof the following new paragraph:

"(q)(1) The term 'banned hazardous substance' means (A) any toy, or other article intended for use by children, which is a habzardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Secretary by regulation classifies as a 'banned hazardous substance' on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Act for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Secretary, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), aand provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that he determines that such articles can be adequately labeled to protect the purchasers and users thereof.

"(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of section 701 (e), (f,) and (g) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That if the Secretary finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, he may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use,

shall be deemed to be a 'banned hazardous substance' pending the completion of proceedings relating to the issuance of such regulations."

(b) Subsections (a), (b), (c), and (g) of section 4 of such Act, as amended by section 2 of this Act, are each further amended by inserting "or banned hazardous substance" after "misbranded hazardous substance".

(c) Clause (2) of section 5(b) of such Act, as amended by section 2 of this Act, is further amended by striking out "within the meaning of that term" in such clause and inserting in lieu thereof "or a banned hazardous substance within the meaning of those terms".

(d) Section 6(a) of such Act, as amended by section 2 of this Act, is further amended by inserting "or banned hazardous substance" after "Any misbranded hazardous substance".

(e) Section 14(a) of such Act, as amended by section 2 of this Act, is further amended by inserting "or banned hazardous substance" after "misbranded hazardous substance" in the second sentence thereof.

EFFECT UPON STATE LAWS

SEC. 4. (a) Section 17 of such Act (15 U.S.C. 1261, note) is amended by inserting "(a)" immediately after the section designation and adding at the end thereof the following new subsection:

"(b) It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in sections 2(f) (2) and (3) of this Act) which differs from the requirements or exemptions of this Act or the regulations or interpretations promulgated pursuant thereto. Any law, regulation, or ordinance purporting to establish such a labeling requirement shall be null and void."

(b) The title of such section is amended to read as follows:

"EFFECT UPON FEDERAL AND STATE LAW"

CHANGE IN SHORT TITLE OF ACT

SEC. 5. Section 1 of the Federal Hazardous Substances Labeling Act is amended by striking out "Labeling".

TITLE II—NATIONAL COMMISSION ON HAZARDOUS HOUSEHOLD PRODUCTS

STATEMENT OF PURPOSE

SEC. 201. The Congress hereby recognizes that the American consumer has a right to be protected against unreasonable risk of bodily harm from products purchased on the open market for the use of himself and his family, and that manufacturers whose products are market substantially in interstate commerce are entitled to a reasonable degree of uniformity in the application of safety regulations to such products. Federal, State, and local laws relating to consumer protection against such hazardous products are widely divergent and fail to provide adequately for consumer protection. It is the purpose of this title to establish a commission to review the scope, adequacy, and uniformity of existing legislation and to make recommendations for appropriate remedial action by the President, the Congress, and the States.

ESTABLISHMENT OF COMMISSION

SEC. 202. there is hereby established a National Commission on Hazardous Household Products (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of seven members appointed by the President from among persons who are specifically qualified to serve on such Commission by virtue of their education, training, or experience.

(c) Any vacancy in the Commission shall not affect its powers.

(d) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Commission.

(e) Four members of the Commission shall constitute a quorum.

DUTIES OF THE COMMISSION

SEC. 203. (a) The Commission shall conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against injuries which may be caused by hazardous household products. Such study and investigation shall include consideration the following:

(1) the identity of household products, except such products excluded in section 207, which are determined to present an unreasonable hazard to the health and safety of the consuming public;

(2) the extent to which self-regulation by industry affords such protection;

(3) the protection against such hazardous products afforded at common law in the States, including the relationship of product warranty to such protection; and

(4) a review of Federal, State, and local laws relating to the protection of consumers against such hazardous products, including the scope of coverage, the effectiveness of sanctions, the adequacy of investigatory powers, the uniformity of application, and the quality of enforcement.

(b) The Commission may transmit to the President and to the Congress such interim reports as it deems advisable and shall transmit its final report to the President and to the Congress not later than March 1, 1968. Such final report shall contain a detailed statement of the findings and conclusions of the Commission together with its recommendations for such legislation as it deems appropriate.

POWERS OF THE COMMISSION

SEC. 204. (a) The Commission, or any two members thereof as authorized by the Commission, may conduct hearings anywhere in the United States or otherwise secure data and expressions of opinions pertinent to the study. In connection therewith the Commission is authorized by majority vote—

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

(2) to administer oaths;

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

(4) in the case of disobedience to a subpena or order issued under paragraph (a) of this section, to invoke the aid of any district court of the United States in requiring compliance with such subpoena or order;

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

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

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

(c) The Commission is authorized to require directly from the head of any Federal agency available information deemed useful in the discharge of its duties. Each Federal agency is authorized and directed to cooperate with the Commission and to furnish all information requested by the Commission to the extent permitted by law.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(e) When the Commission finds that publication of any information obtained by it is in the public interest and would not give an unfair competitive advantage to any person, it is authorized to publish such information in the form and manner deemed best adapted for public use, except that data and information which would separately disclose the business transactions of any person, trade secrets,

or names of customers shall be held confidential and shall not be disclosed by the Commission or its staff *Provided, however,* That the Commission shall permit business firms or individuals reasonable access to documents furnished by them for the purpose of obtaining or copying such documents as need may arise.

(f) The Commission is authorized to delegate any of its functions to individual members of the Commission or to designate individuals on its staff and to make such rules and regulations as are necessary for the conduct of its business, except as herein otherwise provided.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 205. Each member of the Commission who is appointed by the President may receive compensation at the rate of $100 for each day such member is engaged upon work of the Commission, and shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently.

ADMINISTRATION

SEC. 206. (a) The Commission is authorized, without regard to the civil service laws and regulations or the Classification Act of 1949, as amended, to appoint and fix the compensation of an executive director and the executive director, with the approval of the Commission, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Commission, but no individual so appointed shall receive compensation in excess of the rate authorized for GS–18 under the Classification Act of 1949, as amended.

(b) The executive director, with the approval of the Commission, is authorized to obtain services in accordance with the provisions of section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates for individuals not to exceed $100 per diem.

(c) The head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission under this Act.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services. Regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46c) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of said Administrator for the administrative control of funds (31 U.S.C. 665(g)) shall apply to appropriations of the Commission, but the Commission shall not be required to prescribe such regulations.

(e) Ninety days after submission of its final report, as provided in section 203(b), the Commission shall cease to exist.

DEFINITION

SEC. 207. As used in this title the term "household products" means products customarily produced or distributed for sale through retail sales agencies or instrumentalities for use by a consumer or any member of his family. Such term does not include motor vehicles or products regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Hazardous Substances Labeling Act (15 U.S.C. 1261 et seq.), the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331 et seq.), and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.).

AUTHORIZATION

SEC. 208. There are authorized to be appropriated such sums, not to exceed $2,000,000, as may be necessary to carry out the provisions of this title.

Passed the Senate September 1, 1966.

Attest:

EMERY L. FRAZIER, *Secretary.*

[S. 3298, 89th Cong., 2d sess., as introduced in Senate]

A BILL To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Protection Act of 1966".

APPLICATION OF FEDERAL HAZARDOUS LABELING ACT TO ARTICLES BEARING OR CONTAINING PESTICIDES, AND TO UNPACKAGED HAZARDOUS SUBSTANCES

SEC. 2. (a) Section 2(f)(2) of the Federal Hazardous Labeling Act (15 U.S.C. 1261(f)(2)), which excludes "economic poisons" subject to the Federal Insecticide, Fungicide, and Rodenticide Act and certain other articles from the term "hazardous substance", is amended by inserting before the period at the end thereof the following: ", but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such an economic poison".

(b) So much of section 2(n) of such Act (15 U.S.C. 1261(n)), defining the term "label", as precedes the semicolon is amended to read as follows:

"(n) the term 'label' means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto."

(c)(1) Paragraph (p) of section 2 of such Act (15 U.S.C. 1261(p)), defining the terms "misbranded package" and "misbranded package of a hazardous substance", is amended by changing so much of such paragraph as precedes subparagraph (1) thereof to read as follows:

"(p) The term 'misbranded hazardous substance' means a hazardous substance (including a toy, or another article intended for use by children, which is, bears, or contains a hazardous substance), intended, or packaged in a form suitable, for use in the household or by children, which substance, except as otherwise provided by or pursuant to section 3, fails to bear a label—".

(2) Such paragraph (p) is further amended by striking out, in subparagraph (1), all of clause (J) through the word "and" and inserting in lieu thereof the following: "(J) the statement (i) 'Keep out of the reach of children' or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and".

(d) Section 3(b) of such Act (15 U.S.C. 1262 (b)), authorizing the Secretary to establish reasonable variations or additional label requirements necessary for the protection of the public health and safety, is amended by changing so much of such subsection as follows the semicolon to read as follows: "and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance."

(e) Subsection (d) of section 3 of such Act (15 U.S.C. 1262(d)), authorizing the Secretary to exempt containers of hazardous substances with respect to which adequate requirements satisfying the purposes of such Act have been established by or pursuant to another Act, is amended by inserting "hazardous substance or" before "container of a hazardous substance".

(f) Section 4 of such Act (15 U.S.C. 1263), setting forth prohibitied acts, is amended as follows:

(1) Paragraphs (a), (c), and (g) of such section are each amended by striking out "misbranded package of a hazardous substance" and inserting in lieu thereof "misbranded hazardous substance";

(2) Paragraphs (b) and (f) of such section are each amended by striking out "being in a misbranded package" and inserting in lieu thereof "being a misbranded hazardous substance".

(g) Subsection (b) of section 5 of such Act (15 U.S.C. 1264) is amended by striking out "in misbranded packages" in clause (2) thereof and inserting in lieu thereof "a misbranded hazardous substance".

(h) Section 6(a) of such Act (15 U.S.C. 1265(a)) is amended by striking out "Any hazardous substance that is in a misbranded package" and inserting in lieu thereof "Any misbranded hazardous substance".

(i) Section 14(a) of such Act (15 U.S.C. 1273(a)) is amended by striking out "in misbranded packages" in the second sentence thereof and inserting in lieu thereof "a misbranded hazardous substance".

EXCLUSION, FROM INTERSTATE COMMERCE, OF TOYS AND OTHER CHILDREN'S ARTICLES CONTAINING HAZARDOUS SUBSTANCES, AND OF OTHER SUBSTANCES SO DANGEROUS THAT CAUTIONARY LABELING IS NOT ADEQUATE

SEC. 3. (a) Section 2 of such Act (15 U.S.C. 1261) is further amended by adding at the end thereof the following new paragraph:

"(q) (1) The term 'banned hazardous substance' means (A) any toy, or other article intended for use by children, which is or bears a hazardous substance, or which contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended or offered for household use, or so packaged as to be suitable for such use, which the Secretary by regulation classifies as a 'banned hazardous substance' on the basis of a finding that the hazard involved in the use of such substance in households is such that cautionary labeling would not be an adequate safeguard against substantial personal injury or substantial illness occurring during or as a proximate result of any customary or reasonably foreseeable handling or use of such substance: *Provided*, That the Secretary shall by regulation exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved and which are intended for use by children who have attained sufficient maturity to read and heed the directions and warnings in the labeling of such article.

"(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of sections 701 (e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That if the Secretary finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, he may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be demed to be a 'banned hazardous substance' pending the completion of proceedings relating to the issuance of such regulations."

(b) Subsections (a), (b), (c), and (g) of section 4 of such Act, as amended by section 2 of this Act, are each further amended by inserting "or banned hazardous substance" after "misbranded hazardous substance".

(c) Clause (2) of section 5(b) of such Act, as amended by section 2 of this Act, is further amended by striking out "within the meaning of that term" in such clause and inserting in lieu thereof "or a banned hazardous substance within the meaning of those terms".

(d) Section 6(a) of such Act, as amended by section 2 of this Act, is further amended by inserting "or banned hazardous substance" after "Any misbranded hazardous substance".

(e) Section 14(a) of such Act, as amended by section 2 of this Act, is further amended by inserting "or banned hazardous substance" after "misbranded hazardous substance" in the second sentence thereof.

CHANGE IN SHORT TITLE OF ACT

SEC. 4. Section 1 of the Federal Hazardous Substances Labeling Act is amended by striking out "Labeling".

DEPARTMENT OF AGRICULTURE,
Washington, D.C., August 23, 1966.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your letter of May 4, 1966, requesting our views on S. 3298. The bill is entitled "To amend the Federal Hazardous

Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes."

This Department supports the objectives of S. 3298 which are in accord with the President's Message (H. Doc. 413, 89th Congress, 2nd Session) relative to a program recommending legislation to further protect the consumer's interest.

This Department has no objection to S. 3298 since its enactment would not affect our jurisdiction over products coming within the purview of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135–135k) administered by this Department.

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

Sincerely yours,

JOHN A. SCHNITTKER,
Acting Secretary.

DEPARTMENT OF THE ARMY,
Washington, D.C., August 22, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on S. 3298, 89th Congress, a bill "To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose.

The Department of the Army on behalf of the Department of Defense interposes no objection to the bill.

Banning hazardous substances in items intended for use by children and improvements in labeling of hazardous items should benefit servicemen, civilian employees, and the dependents of both by reducing the likelihood of accidental exposure to harmful and dangerous items.

Enactment of this legislation will cause no apparent increase in budgetary requirements of the Department of Defense.

This report has been coordinated in the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely yours,

STANLEY R. RESOR,
Secretary of the Army.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 30, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to S. 3298, a bill "To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes."

S. 3298 would amend the Federal Hazardous Substances Labeling Act by bringing within its purview any toys or articles intended for children which bear or contain poisonous or hazardous substances. The bill would require appropriate labeling of such articles, and ban from interstate commerce any toy or other

article intended for use by children which contains a hazardous substance and any hazardous substance intended for household use, if the Secretary, Department of Health, Education, and Welfare determines that cautionary labeling would not provide adequate safeguard against substantial personal injury or illness. The Secretary would be authorized, to exempt, by regulation, articles such as chemical sets, which necessarily contain hazardous substances, intended for use by children mature enough to read and heed warning labeling.

This Department has no objection to the enactment of S. 3298.

It is a constructive measure and represents a forward step in correcting existing deficiencies in the Federal laws for the protection of public health. Its enactment should have the effect of increasing consumer confidence in the products of the industry, and of stimulating research for the development of products that would meet the requirements of the Act as it would be amended.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT E. GILES,
General Counsel.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 22, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of May 4, 1966, for a report on S. 3298, the "Child Protection Act of 1966."

This bill would carry out recommendations, contained in the President's Message on Consumer Interests of March 21, to extend "legal protection for the safety of all our citizens, especially our children," through legislation to:

"Bring all hazardous substances, regardless of their wrapping, under the safeguards of the Federal Hazardous Substances Labeling Act.

"Ban from commerce those household substances that are so hazardous that warning labels are not adequate safeguards.

"Ban the sale of toys and other children's articles containing hazardous substances, regardless of their packaging."

For the reasons stated in the President's message and the more detailed presentation that will be made before your Committee in our forthcoming testimony, we urge enactment of this bill.

Sincerely,

WILBUR J. COHEN,
Under Secretary.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 23, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3298, a bill "To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes."

The proposed Act would amend the Hazardous Substances Labeling Act by making the provisions of that Act applicable to unpackaged hazardous substances as well as to those contained in packages, and by authorizing the exclusion from interstate commerce of toys and other articles intended for use by children that are so hazardous that cautionary labeling does not afford adequate protection.

Whether this legislation should be enacted involves questions as to which the Department of Justice defers to the Department of Health, Education, and Welfare.

The Bureau of the Budget has advised us that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

DEPARTMENT OF STATE,
Washington, August 23, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This report on S. 3298, a bill introduced by you "to amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes", is submitted in response to your request of May 4, 1966.

The Department is aware that the President recommended such a bill in his message to Congress on consumer interests, March 21, 1966, after there had been a number of accidents and deaths from hazardous substances not covered by the Federal Hazardous Substances Labeling Act. The Department defers to the judgment of the Food and Drug Administration concerning the desirability and adequacy of the safety provisions of the bill. It understands that S. 3298, as well as the Federal Hazardous Substances Labeling Act which it would amend, applies equally to domestic and imported goods and that the bill would therefore be consistent with the international obligations of the United States.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS MACARTHUR II,
Assistant Secretary for Congressional Relations.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., August 24, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3298, "To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes."

The proposed legislation would amend the Federal Hazardous Substances Labeling Act to broaden its application to articles bearing or containing pesticides, and to unpackaged hazardous substances, and to exclude, from interstate commerce, toys and other children's articles containing hazardous substances, and of other substances so dangerous that cautionary labeling is not adequate.

Since the proposed legislation relates to matters not primarily within the jurisdiction of this Department, the Treasury has no recommendation to make on the merits of the bill.

This Department anticipates no administrative difficulties in carrying out its responsibilities under the bill insofar as importations are concerned.

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

Sincerely yours,

FRED B. SMITH,
General Counsel.

FEDERAL TRADE COMMISSION,
Washington, D.C., August 23, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of June 20, 1966, requesting the Commission's comments on S. 3298, 89th Congress, 2d Session, a bill "To amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous in the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes."

The bill would amend the sections of the Federal Hazardous Substances Labeling Act by providing for cautionary labeling of articles containing economic poisons and toys or other articles containing hazardous substances introduced into interstate commerce and suitable for use in the household or by children.

It would also amend that act by banning from interstate commerce toys and other articles intended for use by children and substances for household use when cautionary labeling would not adequately safeguard the user.

With reference to the cautionary labeling requirements of the subject bill, the failure to label consumer products so as to adequately warn users thereof of potential dangers involved in their use may, in a proper case, be a deceptive act or practice in violation of section 5 of the Federal Trade Commission Act. The Commission has exercised jurisdiction under this section with respect to cigarettes (*Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking* (issued June 22, 1965)); swimming aids, *Kirchner* v. *Federal Trade Commission*, 337 F. 2d 751 (9th Cir. 1964); toys, *James B. Tompkins*, Docket 8567 (Dec. 6, 1963); electrical appliances, *Master Mechanics Mfg. Co.*, 59 FTC 792 (Oct. 16, 1961); products poisonous if ingested or if fumes inhaled, *The Martin-Senour Co.*, 61 FTC 425 (1962); products injurious in contact with skin, *The L. R. Oatey Co.*, 60 FTC 1642 (1962), *The Martin-Senour Co., supra.*

The Commission has had considerable experience in banning articles from commerce that are so hazardous that labeling would not adequately protect the user of the product. This is the essence of the Flammable Fabrics Act, which is administered by the Commission (15 U.S.C. 1191). Section 3 of that act provides that the introduction into commerce of fabrics so highly flammable as to be dangerous when worn by individuals shall be unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act. (See *A. Robbin & Co.* v. *Federal Trade Commission*, 337 F. 2d 441 (7th Cir. 1964)).

Our experience indicates that effective protection of the public against hazardous consumer products can best be achieved by conferring on the administering agency specific authority to require in advance of sale cautionary labeling of these products and to ban them from commerce where cautionary labeling is not a sufficient protection.

While the objectives of this bill possibly could be achieved by an amendment of the statutes which are administered by the Commission, we do not object to the approach of this bill which seeks to obtain the legislative objective through an amendment of the Federal Food, Drug and Cosmetic Act and the Federal Hazardous Food, Drug and Cosmetic Act and the Federal Hazardous Substances Labeling Act.

The Commission supports the objectives and purposes of S. 3298.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

Commissioner Elman's Concurring Statement is attached.

N. B. Pursuant to regulations, this report was submitted to the Bureau of the Budget on August 4, 1966, and on August 23, 1966, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

JOSEPH N. KUZEW,
Acting Secretary.

CONCURRENT STATEMENT OF COMMISSIONER ELMAN

(Re: S. 3298, 89th Con., 2d Sess.)

While I concur in the Commission's endorsement of this bill, I believe that broader and more comprehensive legislation dealing with the subject-matter is

necessary. The bill concerns a specific problem affecting the public safety. While its enactment would undoubtedly be in the public interest, I am concerned by the large gaps of coverage in the field of safety legislation in general.

An example of such a gap in existing legislation is provided in the Flammable Fabrics Act. In its present form the Flammable Fabrics Act applies only to articles of wearing apparel. Hats, gloves, and footwear are specifically excluded. The Commission has recommended that the coverage of the Act be expanded to include blankets. But if blankets are to be included, why not all bed linen? Should not the Act apply to all home or household furnishings that may be dangerously flammable? What about upholstered furniture, carpets, curtains, draperies, and other household articles containing "fabrics" that may be ignited? And children's toys and dolls, plush animals, etc.? Why should cotton or orlon mittens be excluded as "gloves"? Why should skating caps be excluded as "hats"? Why should flammable handkerchiefs (not used as wearing apparel) be excluded?

The obvious result of the patchwork nature of existing safety legislation is that the public is amply protected in some areas, but wholly unprotected in others. Moreover, the existence of a large number of safety statutes, of which the public is only dimly aware, may lead many persons to believe that federal safety legislation is more inclusive than it actually is. Many people may rely on "the government" for adequate protection when, in fact, existing legislation affords no such protection.

The Commission has authority, under Section 5 of the Federal Trade Commission Act, to require cautionary labeling on dangerous products, but I do not believe that our remedial powers are sufficient to protect the public. Under the Federal Trade Commission Act, the Commission may require warnings on dangerous products, but it may not ban any products, however dangerous, from interstate commerce. Moreover, violation of a Federal Trade Commission order is enforceable only by the imposition of a civil penalty. To protect the public adequately from dangerous products, I believe that more effective remedies and sanctions, such as those provided in the Federal Food, Drug, and Cosmetic Act, are necessary.

In my view, Congress should consider enacting a broad and general Dangerous Products Act covering all consumer products (except for food, drugs, cosmetics, and articles containing a hazardous substance, which are adequately covered under existing legislation). Such an Act could provide for (a) limitations on the methods of distribution of dangerous products, (b) banning those products too dangerous to be allowed in commerce, (c) requiring adequate disclosure in labeling and advertising of other less hazardous products, (d) establishing appropriate enforcement and administrative remedies and procedures, etc.

JULY 26, 1966.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 19, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 4, 1966, invites our comments on S. 3298, a bill to amend the Federal Hazardous Substances Labeling Act to ban hazardous toys and articles intended for children, and other articles so hazardous as to be dangerous to the household regardless of labeling, and to apply to unpackaged articles intended for household use, and for other purposes.

We have no special information regarding the desirability of the legislation. Consequently, and since it appears that the matter is primarily a question of policy for determining by the Congress, we offer no recommendations concerning the merits of the bill.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

Senator MAGNUSON. Our first witness this morning is Dr. Goddard, Commissioner of the Food and Drug Administration; and, Doctor, you are accompanied by Mr. Goodrich, your Assistant General Counsel, and Mr. Kinslow. Is that correct?

Dr. GODDARD. That is correct, sir.

Senator MAGNUSON. Director of the Office of Legislative Services. We are glad to hear from you.

STATEMENT OF DR. JAMES L. GODDARD, COMMISSIONER, FOOD AND DRUG ADMINISTRATION, HEW

Dr. GODDARD. Thank you, Mr. Chairman. I also have on my far right Mr. Eugene L. Lehr, the deputy chief of the accident prevention program of the Public Health Service.

Mr. Chairman and members of the committee, I am very pleased to appear here today to support S. 3298, the Child Protection Act which the chairman introduced on May 3 of this year.

President Johnson, in his March 21 message to consumer interests said:

> Too many children now become seriously ill—too many die—because of accidents that could be avoided by adequate labeling and packaging of dangerous substances. This is a senseless and needless tragedy.

The Child Protection Act will prevent much of this needless tragedy by extending coverage and closing loopholes in the present Federal Hazardous Substances Labeling Act.

The bill would do this by banning interstate commerce in hazardous toys and other hazardous articles intended for use by children; by authorizing the Secretary of Health, Education, and Welfare to ban some other household articles, such as highly explosive mixtures, that are so hazardous that they are not suitable for use in and around the household, even though they bear cautionary labeling; and by applying the act to unpackaged hazardous articles intended for household use. The name of the law would be changed to the Federal Hazardous Substances Act. The act now applies only to products that are packaged in containers intended or suitable for household use. And it is, simply, a labeling law.

It does not apply to unpackaged substances; it does not ban the sale of some extremely dangerous products, as long as they bear cautionary labeling.

Articles intended for use by children that would be very likely to cause substantial injury to them when used for their anticipated purposes can be sold if labeled "Keep out of the reach of children." Such a warning is, of course, inconsistent with the whole purpose of sale of the article. It makes no sense to label a toy, for example, "Keep out of the reach of children."

We have had several striking examples of hazardous substances that are not packaged, and thus not required by law to be labeled with warnings about their hazards. During recent Easter seasons, several stores throughout the country were selling imported toy ducklings prepared from the skins of slaughtered ducklings. The stuffing material of these ducklings had been treated with an insecticide, primarily benezene hexachloride. These articles posed a substantial hazard in the course of their handling by young children. But because they were not sold in a package, FDA had no jurisdiction over them.

And here, Mr. Chairman, I have one of these toy ducklings of the type I described.

We have also encountered imported Jequirity beans. These brightly colored scarlet and black beans are actually the seed of Indian licorice. They are grown in India, Africa, and in the Caribbean countries. They are extremely poisonous if ingested and can cause death within a matter of hours. They have been offered for introduction into this country as dolls' eyes, decorations on swizzle sticks, and as beads in necklaces.

Here, Mr. Chairman, is the Jequirity bean made into necklaces.

These dangerous products are sold loose or as unpackaged articles. The Federal Hazardous Substances Labeling Act is inadequate to prevent these poisonous beans from being brought into the United States, even though we know their extreme danger.

The authority to require label warnings on either packaged or unpackaged materials is not adequate to provide all of the necessary protection. Some hazardous substances are simply too dangerous for use in and around the household, and their distribution for household use should not be permitted. A good example of this was a water repellant sold widely under the trade name X–33. It was intended for use by the do-it-yourself handyman in painting his basement walls to prevent water leaks. It was offered as a remarkable new product by a company in Chicago which called itself the Wilmington Chemical Co., and its label said that it contained Dupont Tyzor.

When this product first appeared on the market, it had a flash point of about 40° below zero. This meant that it was more explosive than gasoline. It was not labeled with the warnings required by present law. X–33 was sold on consignment through filling stations, hardware stores, and other outlets all over the United States. Not long after it appeared on the market we received reports of deaths and injuries caused by X–33 explosions. When we first learned of explosions resulting from the use of this product, we called upon the manufacturer to stiffen his warnings. But even that was not sufficient, and we learned that additional injuries were occurring from the use of the article with both the old and the new warning labeling. It seemed clear to use that X–33 had no place in the households of this country. Its danger was much too great.

A woman in Minnesota was killed while using X–33 in painting her basement walls. Although all the windows were open and no pilot lights were on, an explosion occurred which was so great that the roof of the garage over the basement was blown off. The victim's husband was upstairs in the garage and was severely burned.

When more reports of X–33 explosions and deaths came to us, we asked the manufacturer to recall X–33 from the market. The company sued us for an injunction to prevent us from requiring the stiffened warnings on all of the containers that were then in the channels of distribution, and to enjoin us from requiring the removal of the product from the market. We were successful in moving to dismiss the action.

The company was then either unable or unwilling to recall the product from the hands of dealers, and it was necessary for us to make about 600 seizures which involved 50,000 gallons with an invoice value of $350,000. Most of these seizures were made possible because the manufacturer would not stiffen its label warnings on the cans that were in the channels of trade, as we asked it to do.

We asked the firm to warn the householder not to use the article without first consulting a professional expert familiar with the handling of highly explosive mixtures. We asked the firm to warn against its highly explosive nature. Had this labeling been adopted, X–33 might perhaps still be sold. But we would have had no assurance that this labeling would prevent injuries or deaths. It seems clear to us that this is a product that should be banned from household use.

Mr. Chairman, I have over on the side here a demonstration which Dr. E. W. Ligon, the Chief of our Hazardous Substances Labeling Branch, is prepared to present to the committee as a matter of interest to show you how explosive this is. We have done this before, and I can assure you it will be done in a safe fashion.

Senator MAGNUSON. Proceed.

Senator COTTON. Keep it on the Democrat side, will you? [Laughter.]

Dr. LIGON. Mr. Chairman, I have three different solvents here. One of them is the famous or infamous X–33; one is ordinary cigarette lighter fluid, and the third is a material sometimes referred to as safety solvent or Stoddard solvent or varasol, which does appear to be suitable for use in the household for such things as removing wax from floors.

Now I will place on these beakers little glass dishes and we will use very small quantities of these materials.

This material which is considered suitable for use as a cleaner in the household doesn't light. It does burn on the tip of the match; it adds to the flame of the match, but at room temperature it does not of itself continue to burn. This is a material which is considered nonflammable and does not pose much of a hazard.

This is a flammable material, ordinary cigarette lighter fluid, and at ordinary room temperatures it will light; it will continue to burn, and it will, I think, burn out in just a second.

Then this X–33 material; I'll put two or three drops of it in, and in this case the material is so volatile I won't have to get very close to it with a match. It lights before I touch it with the match. These are quite safe to handle with the quantities I am dealing with out in the open air.

I will take the same sort of thing and put the watch glasses on ice.

Senator COTTON. I didn't understand what you said.

Dr. LIGON. I am putting the lighter fluid now on ice, and simply by reducing the temperature of that material to the temperature of ice we can see that this material does not now readily light with the match. It will contribute to the burning of the match, but the liquid does not continue to burn when I remove the match. This is a material which is classified as flammable and when properly used is suitable for certain limited purposes in the household.

If we repeat that, placing two or three drops of X-33 on ice, even at this low temperature the material should readily ignite and burn. So that well below ordinary room temperatures this material will volatize sufficiently that the atmosphere around the liquid is flammable and does burn.

If there are no questions concerning this material, give me just about 2 or 3 minutes and I will remove these props and place before you a plastic tube which I will call a basement for the purposes of this

demonstration. Likewise for the purpose of demonstration I will use a source of flame which is comparable to the pilot light on a gas burner. There is no point in trying it with the safety solvent. I am sure that I couldn't get it to burn.

I will put a couple of drops of the lighter fluid in, and under these circumstances the lighter fluid does not develop a flammable atmosphere.

Now the vapors of these solvents are all heavier than air.

Let me move around to the back side of this. I think I can handle this without getting in the path of your vision.

On the other hand, if I put two or three drops of X–33 in there, the material does vaporize. The vapors are heavier than air and they flow down toward the candle and can ignite and burn.

Now there are several things about this that I think you can see more readily with a slightly modified setup. But rather regularly we can produce a flame. This lower portion is open. We have cut the tube so that it is open, and if you notice, the flame will move rather slowly to this point. Then once it reaches the confinement of this less open portion of the tube the speed of travel builds up and it does flash upward much more rapidly.

The first thing that I would like to show you is simply that I can pass air through a material of this type in a small container and the vapor which comes out, being saturated, will burn in open air. This is so saturated, so completely filled with the solvent vapors that it will simply burn with an ordinary yellow flame.

Now if I mix some of that same vapor with air in this tube and allow it to go down I think you can see the characteristics of that burning a little more clearly; so that as these vapors in a basement did build up, did reach a source of flame, you did get the explosive mixture, and with a whole basement, or something of that kind, it is quite possible for the material to produce quite a violent explosion.

Senator COTTON. That was the substance that the company sued you for an injunction?

Dr. LIGON. That is the substance.

Senator COTTON. It wasn't the Du Pont Co.?

Dr. GODDARD. No, sir; it was not the Du Pont Co.

Dr. LIGON. This is a material which is, as I have shown you, much more flammable than ordinary cigarette lighter fluid; and in fact, I think that we have data which show that it was more flammable than most——

Senator MAGNUSON. Aren't some cleaner fluids as volatile as that?

Dr. LIGON. I know of none that volatile commonly in use in the household.

Senator MAGNUSON. Because they have warnings on cleaning fluids.

Senator COTTON. Exactly what is this substance used for?

Dr. GODDARD. It was proposed and sold for use in waterproofing basement walls. It was a "do-it-yourself" application.

I think the significance that Dr. Ligon points out is that the householder would buy this by the gallon and then apply it to the walls. You can see with the ability to vaporize as it is being applied, the basement would soon be filled with this gas, and if there was a pilot light or spark of any kind it would ignite and explode. This is what caused the deaths associated with the use of the product and the injuries.

Senator MAGNUSON. There were some cases that you have documented?

Dr. GODDARD. Yes, sir; there were.

Senator MAGNUSON. And I suppose there might have been cases that weren't documented.

Dr. GODDARD. That is correct.

Senator MAGNUSON. Minor burns or something?

Senator COTTON. Well, this woman was painting the walls of the basement?

Dr. GODDARD. That is correct.

Senator COTTON. It exploded, killed her, and blew the roof off and burned the husband upstairs?

Dr. GODDARD. That's right. A highly explosive product.

More recently, we have had a great many seizures of "cracker balls" which are small torpedo-like firecrackers. These "cracker balls" were imported from Formosa and Hong Kong. They are brightly colored, resembling candy or breakfast cereal. They were obviously intended for use by young children. They were sold singly and in pliofilm bags. The small size of the "cracker balls" and the bags made it difficult or impossible to provide a meaningful warning against the hazards of these substances. The "cracker balls" were used singly, and when they were removed from the bags, or when they were sold singly, they were often mistaken for small pieces of candy by young children. We have reports that at least 25 children were injured when they put these "cracker balls" in their mouths thinking them to be candy. Several of these children had their teeth loosened when the "cracker balls" exploded in their mouths and often they suffered burns and cuts inside their mouths.

When we first encountered "cracker balls" they had essentially no warning labeling. Thereafter, the pliofilm bags in which they were sold contained some warnings—indeed, a statement that the product should be kept out of the reach of children. But that was plainly inadequate to prevent childhood injuries. First, because the "cracker balls" look like candy; and second, because they would not be held in the bag until used.

We told the claimants in the seizure cases that we knew of no way they could legally label the fireworks. We took the view that each individual "cracker ball" was itself a container, the immediate container of the explosive, and that each "cracker ball" would have to be labeled with an appropriate warning statement. A district judge in Houston, Tex., ruled that the individual "cracker balls" were not containers, and that the product might be labeled to bring it into compliance by putting the "cracker balls" into labeled pliofilm bags, each containing only a few of the explosives. The "cracker balls" are not in the bag when used, of course, and it is at this time that they are most dangerous. So the labeling on the bags will not protect children from "cracker balls." We believe that this type of a product is too dangerous for use by small children and should be banned.

I have here, Mr. Chairman, for you and members of the committee an exhibit which shows, I think, rather dramatically the difficulty in identifying "cracker balls" and keeping them straight from candy or cereals. If you would like to take a look at these Mr. Kinslow will pass them out.

Senator MAGNUSON. If you throw them they would explode?

Mr. KINSLOW. Yes.

Senator COTTON. Some of those are candy?

Dr. GODDARD. And some are breakfast cereal. If you look at the similarity between the top panel and the left and the one immediately below it, I think you can see the problem that this would pose.

Recently a question has arisen about fireworks under the clause in paragraph 3 of the bill dealing with "banned hazardous substances." Fireworks are presently covered by the Federal Hazardous Substances Labeling Act and are required to bear labeling which alerts the user to possible hazards associated with their use.

We have reexamined the status of fireworks. On the basis of present knowledge, we would have no objection to the continued sale of reasonably innocuous fireworks, such as those now listed in ICC regulations as class C, provided they are adequately labeled and that local law permits their sale. At the same time, we believe it desirable not to freeze into the law any particular list of exemptions. At the suggestion of the subcommittee counsel, the Department is preparing a letter outlining our understanding of the intent of this provision and enclosing a suggested clarifying amendment to paragraph 3. This would give us the ability to provide for common fireworks to the extent that labeling could assure public protection. We would ban "cracker balls," and any other fireworks as to which experience shows the labeling warnings to be inadequate.

In addition to hazardous toys and fireworks, the bill would authorize the Secretary to impose—after full opportunity for hearing and judicial review—a ban on interstate commerce in other hazardous substances intended or suitable for household use—such as X–33 and jequirity beans—when he finds that the hazard involved is such that cautionary labeling would not be an adequate safeguard for public protection. Where the procedural delay involved in plenary hearings would involve an imminent hazard to the public health, the Secretary would be authorized to suspend the article from the market pending completion of hearings and review. Toys, or other articles intended for children, that bear or contain hazardous substances would be banned by the law itself, and the Secretary would be required to exempt by regulation articles such as chemistry sets, which contain hazardous substances intended for use by older children who are capable of reading and understanding the label instructions and warnings.

Finally, the bill would make it clear that household articles treated with pesticides for their protection are not exempted from the Federal Hazardous Substances Labeling Act. This act now exempts pesticides and other economic poisons that are subject to the Federal Insecticide, Fungicide, and Rodenticide Act which is administered by the Department of Agriculture. Doubts have been expressed whether FDA would have jurisdiction over articles such as the toy ducklings which had been treated by regulated pesticides. This bill would erase those doubts and make clear that the treated household substances were subject to the Federal Hazardous Substances Labeling Act.

Mr. Chairman, I urge enactment of S. 3298. President Johnson said in his message that "Children are our first concern. They are our hope and our future." We believe that the Child Protection Act will be an important step forward in protecting children from accidental injuries and deaths.

I would be happy to answer any questions that you and members of the committee may have.

Senator MAGNUSON. Doctor, we appreciate your testimony, but would it be fair to suggest that these articles which you have exhibited are not the only examples of dangerous products? Some fluids, I would imagine may be locally assembled and may not involve a national trade name or brand. As I understand it, you have described several products here to show what can happen in one that was widely advertised. Is that correct?

Dr. GODDARD. That is correct, Mr. Chairman. In fact, these are but a few examples, and we must constantly keep in our minds that each year brings the introduction of new products.

Senator MAGNUSON. Well, we could go down to your department and find something coming in every day concerning this field.

Dr. GODDARD. Yes.

Senator MAGNUSON. Or complaints.

Now I want to ask just two or three questions. First, would a plastic toy which splinters into sharp fragments or an electric plug-in toy which is hazardous because of its potential shock hazard, be a hazardous substance within the meaning of the act now?

Dr. GODDARD. No, sir.

Senator MAGNUSON. Would this bill take care of that?

Dr. GODDARD. Not unless the toy were such that it——

Senator MAGNUSON. I mean the suggested language.

Dr. GODDARD. Yes; not unless the toy were such that it generated pressure that caused the splintering. But other than that, the mere splintering of a toy through rough usage would not be covered by the act as proposed.

Senator MAGNUSON. So they are not covered as of now?

Dr. GODDARD. No, sir.

Senator MAGNUSON. Another matter which this committee has dealt with for some time concerns household power equipment like power mowers and tools. They are not under any act now, are they?

Dr. GODDARD. That is correct. They are not, sir.

Senator MAGNUSON. We have hundreds of letters, of course, about safety in power mowers. We even had a couple of Senators who had their toes cut off while using the mowers themselves. We ought to have a law to protect them against their own folly in being too good around the house on the weekend. And we have several people who have suggested that they have a foolproof power mower.

But in any event, they are not under the jurisdiction of any Federal law now, and I do not know whether there are any State laws on it. Maybe your counsel could tell us?

Dr. GODDARD. You are correct, sir, they are not under the jurisdiction of any Federal laws, and they do constitute a hazard and have for a number of years.

Some 10 years ago I was chief of the accident prevention program of the Public Health Service, and we were aware of them and concerned with the problem then, and this is why I brought Mr. Lehr with us, who can give you in brief form some statistics concerning the problems associated with power mowers and tell you whether there are any State laws.

Senator MAGNUSON. Well, I think in all fairness the makers of power mowers are trying to do everything they can to make them as safe as possible, but there may be some being sold that haven't reached that point and there would be no indication on the motor or by the salesman. They are sold all over, including nurseries and chainstores, and very essential items in the American home today. Isn't it correct that there would be no indication as to how safe they are or are not?

Dr. GODDARD. That is correct, sir.

Senator MAGNUSON. And unless you are an expert in their use or well trained, you could have some trouble?

Dr. GODDARD. That is true not only with that particular piece of equipment, but also with many other kinds of equipment normally found around the household.

Senator MAGNUSON. I don't suggest that the manufacturers aren't doing everything they can.

Dr. GODDARD. They have made many improvements. But, Mr. Lehr, how many manufacturers now produce power mowers, to your knowledge?

Mr. LEHR. There are at least several hundred, I would say.

Senator MAGNUSON. And this would be something that would not interfere with them but would assist them in achieving what I am sure their objective is; namely, to make it safer.

Now what about other electrical appliances, heaters, blankets, and broilers, and so forth? Are there consumer hazards existing in this field?

Dr. GODDARD. There certainly are. If you would like, I think Mr. Lehr can speak more specifically.

Senator MAGNUSON. Go right ahead.

Mr. LEHR. We don't know the total extent of the problem.

Senator MAGNUSON. Would you please talk a little louder?

Mr. LEHR. We do not know the total extent of the problem, but some studies carried on by the Division of Accident Prevention of the Public Health Service give a hint as to the magnitude. For example, our Epidemiology Branch estimates that about 100,000 people are injured each year by power mowers; by power tools in the home—I mean the saws, the drills, the various home power equipment—probably 125,000 injuries.

A common article that many of us thought was disappearing from the market is the old-fashioned washer with the wringer, with a power wringer. There are probably some 100,000 people injured each year still in these power wringers despite the manufacturers again——

Senator MAGNUSON. The old-fashioned wringers?

Dr. GODDARD. That is correct.

Mr. LEHR. That is correct.

Senator MAGNUSON. There is one thing about the chairman—when I was younger I couldn't get my fingers caught because I was the guy who had to turn the crank.

Dr. GODDARD. They improved them. They have power wringers now.

Senator MAGNUSON. I understand they turn the crank.

Mr. LEHR. Well, we have a team of epidemiologists working in connection with a large city hospital system of the health department in one of our western cities, and they found—and they work with the

hospitals, they look at the records of those that are brought in injured by accidents to the hospital, then they go back to the home and look into the circumstances—based on some of the things they have seen in this area they estimate that probably 80,000 people are burned badly each year just from the home skillet, and little hints that they get are that many of the skillets, for example, don't have a pouring rim so when you attempt to pour the grease with the circular rim you are more apt to get burned. Many, many children are severely burned just by intercepting the electric cord connecting the base plug to the coffee pot. You might say this is carelessness——

Senator MAGNUSON. Now let's get down to the basic facts. I don't think any of us suggest that these articles shouldn't be sold or that they shouldn't be manufactured and that they are valuable and useful. But in many cases the education or the warning or the salesman or even the manufacturer in some cases may be somewhat lax in teaching people or suggesting how these should be used safely or designed—design is most important in this area. You can make some shortcuts in design and the article becomes much more hazardous than the same article in a different design, is that correct?

Mr. LEHR. Yes, sir.

Senator MAGNUSON. I know about two or three instances just personally where they used these bathtub whirlygigs. Well, you have got to be very careful and you have got to know how to handle it and how to put the regular plug in or you can get electrocuted or seriously burned. And as I understand it, this is what we are trying to get at. I don't think we want to hinder or interfere with people in their marketing of valuable, useful household appliances or goods. We do, however, want to insure that we do everything, in cooperation with you or with other people, to see that people use them properly.

Mr. LEHR. The Public Health Service has found that the responsible segments of industry are most anxious to incorporate improvements once they know the facts. We look on this as our function in the Division of Accident Prevention to establish some of the facts.

Senator MAGNUSON. Now I have to leave in about 5 minutes. Another matter that I didn't realize when we set this hearing has come up so we will have to investigate these matters again. First, I would like to ask one other question. In the flammable chemicals the Federal Trade Commission has jurisdiction over wearing apparel under the act we passed here some time ago.

Dr. GODDARD. That is correct.

Senator MAGNUSON. But what about items like baby blankets, drapes, upholstered furniture, carpets, and curtains that are potentially flammable?

Dr. GODDARD. It is my understanding that these are not covered at the present time.

Senator MAGNUSON. They are not covered in the act as you understand it?

Dr. GODDARD. That is correct.

Senator MAGNUSON. Another area which causes me concern are those materials which are sprayed on drapes, couches, or chairs to make them easier to clean or remove spots. Since some of this material is flammable, it may be dangerous if it is not properly labeled. In many cases without the spray the drape may not have burned so fast.

Somebody will have to take a look at that. And the reliable manufacturer, as I understand it, would appreciate assistance in this area.

Dr. GODDARD. That is my understanding, too, as Mr. Lehr expressed; and working with them over the years we found this to be the case.

Senator MAGNUSON. Our purpose is not to harass or interfere or make it difficult for people to sell things that are useful to the American people, particularly in the home or around the home. What we want to do is to be helpful and make these products as safe as possible. And if any bill would be passed it would deal in that spirit.

Now, Doctor, I deeply apologize because I have to leave again.

(Off the record.)

Senator MAGNUSON. Now one other thing. Do you believe that warning labels should be uniform nationally or do you see the advantage in allowing States and cities to make maybe an additional levy?

Dr. GODDARD. This question came up during the hearings on the House side about preemption, and we are preparing a substantive reply to that question.

If we may furnish that for your record, sir, I think we can give you our opinion on this. I am certainly sympathetic with the manufacturers' views on this subject.

Senator MAGNUSON. Well, all right. We will probably have your people come back if we want more details.

Dr. GODDARD. I will be happy to come back.

Senator MAGNUSON. You made your general statement, and particularly your assistant counsel, because we want some guidance as to wording in this legislation and you may have some suggestions to make.

Dr. GODDARD. We will be glad to do so.

(The following was supplied for the record:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 29, 1966.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the course of the recent hearings on S. 3298, the proposed Child Protection Act of 1966, it was indicated to you that we were in the process of preparing a response to the chairman of the House Committee on Interstate and Foreign Commerce with respect to certain amendments to H.R. 13886, title II of which is a companion measure to S. 3298. That letter has now been submitted. Inasmuch as the views and suggestions made in the letter are equally applicable to S. 3298 we are taking the liberty of enclosing a copy of it herewith for your consideration in that connection.

Sincerely,

RALPH K. HUITT,
Assistant Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 20, 1966.

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

DEAR MR. CHAIRMAN: At his appearance of June 24 on H.R. 13886 (the proposed "Child Safety Act") on behalf of this Department, before the Subcommittee on Public Health and Welfare, Dr. Goddard, the Commissioner of Food and Drugs, was asked to obtain for the committee the Department's views on amendments to the bill proposed in a statement of the Chemical Specialties Manufacturers Association. These amendments are concerned with title II of the bill, relating to the Federal Hazardous Substances Labeling Act. Amendment No. 1 proposed by CSMA would insert certain language in clause (B) of

the bill's definition of the term "banned hazardous substance" (p. 10, beginning on line 14). Amendment No. 2 would add to the bill a limited preemption section, discussed below.

Dr. Goddard has also referred to us for reply your letter of July 11, which asks for comment on a letter from the Union Carbide Corp. favoring the bill supporting the preemption provision proposed by the Chemical Specialities Manufacturers Association.

1. Definition of "banned hazardous substance"

Clause (B) of the definition.—A key provision of H.R. 13886 is the proposed definition of "banned hazardous substance." Clause (A), discussed later in this letter, is specifically concerned with toys and other articles intended for use by children. Clause (B), to which the CSMA's proposed amendment No. 1 is addressed, is aimed at those "hazardous substances" (as defined in present law) that, regardless of their labeling, are too dangerous for use in households. Amendment No. 1, as submitted to the subcommittee by the association, would make two changes in clause (B) so as to define a "banned hazardous substance," for the purpose of that clause, as—

"(B) any hazardous substance intended or offered for household use, or so packaged as to be suitable for such use, which the Secretary by regulation classifies as a 'banned hazardous substance' on the basis of a finding that the hazard involved in the use of such substance in households is such that cautionary labeling *on the container* would not *if complied with* be an adequate safeguard against substantial personal injury or substantial illness occurring during or as a proximate result of any customary or reasonably foreseeable handling or use of such substance." [Language proposed to be inserted by amendment No. 1 in italic.]

The first proposed change; that is, insertion of the words "on the container," is inconsistent with another provision of the bill (sec. 201) that would broaden the scope of the Federal Hazardous Substances Labeling Act so as to apply to *unpackaged* articles intended for use in the household or by childlren, as well as to hazardous substances packaged in a form suitable for such use. This change would, therefore, be inappropriate.

The second change; that is, to insert the phrase "if complied with" as above shown, would also be unacceptable to us. The objective of the proposed section 202 of the act is to authorize this Department—under appropriate safeguards and subject to the standard opportunity for judicial review on the basis of the administrative hearing record—to rule a product off the market for household use when the substance is so dangerous that no amount of reasonable cautionary labeling would serve the purpose of this act.

The example we have given is X–33, an extremely volatile substance intended for waterproofing basement walls, which has resulted in many explosions with consequent death, serious injury, and property damage merely because of the presence of the ordinary pilot light in the basement water heater or because of the striking of a match or spark in the basement. In this instance even if it were possible to devise directions which, if complied with to the letter, would prevent an explosion—such as a direction not to have a pilot light going in the basement, not to light a match in basement, and to prevent the generation of a spark in the basement such as might occur from the discharge of static electricity or a spark from walking across the basement floor—it would obviously be unreasonable to expect compliance with such stringent directions by the ordinary user. Moreover, children and others who have not seen the label directions, including strangers such as meter readers, might enter the basement without being aware of the danger, and cause a spark.

Again, there might be offered for household use a hazardous substance which only a skilled operator could be expected to use competently and safely, and the necessary instructions for the safe use of which could not be expected to be understood and followed by the householder. Obviously, therefore, the words "if complied with" would tend to frustrate the purpose of the bill as applied to such substances.

Counsel for the CSMA has since indicated to our staff that his concern with clause (B) is his fear that the language of clause (B) would somehow be read to mean that the mere occurrence of injury or illness, without more, would automatically justify banning the article from the market, even when there is no indication that the cautionary labeling is inadequate or that improved labeling could not adequately serve the purpose. While we believe that such a reading of clause (B) is unwarranted, we would not object to the language but would add to H.R. 13886 the following new section:

"SEC. 203. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in sec. 2(f), (2), and (3) of this Act) which differs from the requirements or exemptions of this Act or the regulations or interpretations promulgated pursuant thereto. Any law, regulation or ordinance purporting to establish such a labeling requirement shall be null and void."

(If favorably considered by the committee, this amendment should be perfected by being cast in the form of an amendment to the basic act itself. Moreover, the words "a container of" should be deleted, since the bill, as above mentioned, would broaden the act so as to apply to unpackaged containers. The section number (203) indicates that the draftsman intended to renumber the present sec. 203 of the bill, which is the last section.)

This provision applies solely to labeling requirements. It would not preclude States and localities from prohibiting altogether the sale, for household use or for use by children, of articles, such as fireworks, covered by the Federal act which State or local authorities consider too dangerous, or too great a public nuisance, for such use regardless of cautionary labeling, even if, after enactment of the bill, we should not feel warranted in imposing such a ban.

It is important to note, further, that, unlike the pervasive preemption provision contained in section 5 of the Federal Cigarette Labeling and Advertising Act, the CSMA's proposed amendment to H.R. 13886 would in effect recognize State and local power to require cautionary labeling but would require that labeling requirements imposed on articles covered by the Federal act be uniform with requirements established by or pursuant to the latter. This approach is in line with that proposed in section 12 of the fair packaging and labeling bills (H.R. 15440 and S. 985 (as passed by Senate)) with respect to the detailed requirements for label declaration of the net quantity of contents envisioned by those bills, and with the approach of the applicable provision in the proposed Traffic Safety Act of 1966 (S. 3005) in both the House and Senate versions.

(*a*) *Safety considerations bearing on the proposal.*—The congressional purpose in enacting the Federal Hazardous Substances Labeling Act was to prevent so far as possible the occurrence of accidental injury or illness resulting from the presence or use of hazardous substances (within its coverage) in households. The principal means chosen to that end was, and will continue to be, effective cautionary labeling, though H.R. 13886 contemplates that a substance be barred from household use altogether where cautionary labeling cannot reasonably be expected to accomplish its purpose. Cautionary labeling cannot, of course, in any event prevent accidents by itself; to do so, it must be read, understood, and followed. From this standpoint, it is highly desirable that such labeling have signal words that stand out and attract attention; that the information not be crowded on the label, and be easy to read and understand; and that for like articles, or articles involving a like hazard, the label warning be uniform, especially in view of the mobility of our population.

The need for uniformity was recognized by the congressional committees reporting on the bill (S. 1283, 86th Cong.) that became the HSL Act (Public Law 86–613). Your committee, in its report, summarized this need as follows:

"The nationwide uniformity in the labeling of potentially hazardous chemicals would be advantageous to everybody. Such a labeling program would facilitate the education of the public in the cautionary use of these products. Informative, uniform labeling would enable physicians to administer antidotes immediately rather than waste precious time in determining the active ingredients of the product.

"The committee hopes that this legislation will help toward the establishment of uniform, adequate, modern labeling requirements by the various States. Such uniformity now exists to a certain degree in some States which have labeling laws and regulations. In the absence of a Federal law, there is a possibility that diverse labeling regulations will be adopted by the States, leading to a multiplicity of requirements and creating unnecessary confusion in labeling, to the detriment of the public." (H.R. Rept. 1861, p. 4.)

The Senate committee, in reporting earlier on the bill, dealt with this point as follows:

"In recent years legislation has been enacted in several States—Colorado, Connecticut, Illinois, Indiana, Kansas, Ohio, Texas, and Vermont—regulating the labeling of hazardous substances suitable or intended for household use, many of which are shipped in interstate commerce. It is desirable that labeling of these substances be regulated when shipped in interstate commerce and that

the standards and requirements of such labels be uniform. Thus, Federal legislation on this subject is needed to require uniform labeling of hazardous substances for household use to require that the labels of such substances: First, warn the user of any hazard in the customary use of the product; and, second, in case of an accident identify the hazardous ingredient for the attending physician." (S. Rept. 1158, p. 3.)

And the American Medical Association had expressed the hope that the Federal legislation would "serve as a model for drafting uniform State laws across the country requiring a declaration of hazardous ingredients and warning statements on labels * * *." Accordingly, in order to stimulate the States in taking uniform action, we developed, and the Council of State Governments published as part of its program of suggested State legislation for 1964 (pp. 13–22), a proposed model State Hazardous Substances Labeling Act, which is patterned after the Federal law. Section 9(b) provides that the administrator of the State law "shall cause the regulations promulgated under this act to conform, insofar as practicable, with the regulations established pursuant to the Federal Hazardous Substances Labeling Act"; however, according to a summary comparison of comparable State laws with the model law, prepared by the Food and Drug Administration in January 1966, only 6 of the 19 laws there listed contain this provision, though it should be noted that the laws of several of the States omitting this provision antedate the Federal act. (A copy of the table is enclosed herewith.)

This is not to suggest that States or localities are free to require labeling incompatible with Federal requirements; it is clear that they are not. However, the potential of nonuniformity (as distinguished from incompatibility) as between Federal and State or local labeling requirements, with consequent detriment to the effectiveness of the federally required warnings, is real and substantial.

(*b*) *Economic considerations bearing on the proposal.*—We are not sufficiently conversant with the economic aspects of this problem to advise to what extent they should enter into the committee's decision on this matter. The committee may wish to consult the Commerce Department and perhaps the Small Business Administration in this connection.

(*c*) *Consideration of duplication of effort.*—Should the principle of nationwide uniformity of cautionary labeling be embodied in the Federal act, this would not foreclose States and localities from passing on to the Federal agency their experience and views as to the need for, or desirability of, changes in Federal requirements. It would, however, enable them to concentrate their resources in areas of activity in which they can be most effective, to the mutual advantage of both State and Federal law enforcement. In this connection, what was said last year on this point in a report of the Public Administration Service to the Commissioner of Food and Drugs may be of interest:

"*Hazardous household substances.*—Like so many of our consumption goods, hazardous household substances are predominantly a part of interstate commerce. However, the variety of such products is potentially so great and the manufacture of some of them relatively so simple that they will doubtlessly continue to be produced in considerable quantity for essentially local distribution. It is questionable whether the States should attempt to register and review and approve the labels of all hazardous household products offered for sale within their boundaries; these tasks may divert State resources that probably could be put to better use. The State effort should instead be directed toward the assurance of proper labeling, in conformance with Federal standards, of products of local manufacture and distribution, and the surveillance of these products at retail." ("A Study of State and Local Food and Drug Programs." Report of Public Administration Service to Commissioner of Food and Drugs, p. 246. Washington 1965.)

(*d*) *Conclusion.*—The arguments advanced by the proponents of a limited labeling preemption provision in this field, which is in line with the approach taken in recent bills, are reasonable, and we therefore believe that the proposed amendment—with the technical language changes we have suggested—would be desirable. It would express in the act itself the original congressional intent to achieve uniformity in the cautionary labeling of hazardous substances within the scope of the act. However, we do not believe that consideration of this proposal should be permitted to result in delaying action on H.R. 13886, which is urgent and pressing.

Sincerely,

RALPH K. HUITT,
Assistant Secretary.

Comparison of State hazardous substances labeling acts with Council of State Governments' recommended uniform State Hazardous Substances Labeling Act (1964)

State	Statute reference enactment date enforcement agency	Definitions section	Authority to—		Prohibited acts section
			Promulgate regulations declaring hazardous substances	Establish exemptions	
California	Art. 12, title 17, secs. 287410, 28755, 28779, 28799, 1961, health.	Essentially uniform	No	Yes	Essentially uniform; also prohibits manufacturing of misbranded products.
Colorado	1960, health	No definition for radioactive substance	Yes	Yes	Do.
Connecticut	Public Act 271, 1958, department of consumer protection.	No definition for: strong sensitizers extremely flammable radioactive substance: labeling requirements less stringent.	No	No	Limited, not uniform.
Illinois	Ch. 111.5, 1960, health	Essentially uniform	Yes	Yes	Uniform also prohibits manufacturing of misbranded products.
Indiana	Ch. 211, 1958, health	do	No	No	Do.
Kansas	Ch. 341, 1957, health	Essentially uniform definition of hazardous substances includes toys.	No	Yes	Limited, not uniform.
Kentucky	Kentucky Rev. Stat. 217.650 217.710, 1960, health.	No definition for: highly toxic, extremely flammable.	No	No	Do.
Maine	Ch. 101 subch. IV, 1965, agriculture	Uniform	Yes	Yes	Essentially uniform, also prohibits manufacturing of hazardous substances.
Massachusetts	Ch. 943, 1960, health	do	Yes	Yes	Uniform also prohibits manufacturing hazardous substances.
Minnesota	1962, agriculture	No definition for radioactive substance	No	Yes	Essentially uniform.
Michigan	Act No. 188, 1965, agriculture	Uniform	Yes	Yes	Uniform.
North Dakota	Ch. 190, 1964, State lab	No definition for radioactive material	No	Yes	Essentially uniform.
Ohio	3716.01 to 3716.07, 1961, health	do	No	Yes	Do.
Oklahoma	Art. 16, sec. 1601	Essentially uniform	Yes	Yes	Uniform.
Tennessee	Ch. 104, 1965, agriculture	Uniform	Yes	Yes	Do.
Texas	Art. 726-1, 1958, health	No definition for radioactive substance, other variations from uniform bill.	No	Yes	Essentially uniform.
Vermont	Title 18, ch. 82, 1959, health	Extremely flammable; strong sensitizer not defined.	No	No	Limited; not uniform.
Virginia	Title 3, ch. 12.1, 1964, agriculture and immigration.	Uniform	Yes	Yes	Uniform.
Wisconsin	Ch. 320, 1965, agriculture	Essentially uniform	Yes	Yes	Do.

State	Penalties	Legal procedures			Authority to—		
		Injunction	Stop sale order	Hearing	Promulgate regulations for efficient enforcement	Check records	Conform insofar as practical to Federal act
California	1st offense $25 to $500 or 6 months; 2d offense up to $1,000, 1 year, or both.	No	Yes	Yes	Yes	No	No.
Colorado [1]	1st offense $500; 2d offense $1,000 and 90 days	No	Yes	No	Yes	Yes; carriers and persons	No.
Connecticut	1st offense $500, 6 months, or both	No	Yes	Yes	Yes	No	No.
Illinois	1st offense, $100 to $1,000, 1 year or both	Yes	Yes	Yes	Yes	Yes; carriers and persons	No.
Indiana [2]	1st offense, $500; for willful disregard, $3,000, 1 year, or both.	No	Yes	Yes	Yes	Yes	No.
Kansas	1st offense, $300, 60 days, or both; 2d offense, $1,000, 1 year, or both.	No	No	No	Yes	No	No.
Kentucky	$100 to $500, 30 days, or both	No	Yes	Yes	Yes	No	No.
Maine	$10 to $100, 11 months, or both	Yes	Yes	No	Yes	Yes; carriers and persons	Yes.
Massachusetts	$2,000, 6 months, or both	No	Yes	No	Yes	Yes	No.
Minnesota [1]	Misdemeanor	No	Yes	Yes	Yes	Yes; persons and carrier	No.
Michigan	do	Yes	Yes	Yes	Yes	Yes; persons and carriers	Yes.
North Dakota	do	No	Yes	Yes	Yes	Yes	Yes.
Ohio	1st offense, $300, 90 days; 2d offense, $3,000 or 90 days	No	Yes	Yes	Yes	Yes	No.
Oklahoma	1st offense $500, 90 days, or both; 2d offense, $3,000, 1 year, or both.	Yes	Yes	No	Yes	Yes; persons and carriers	Yes.
Tennessee	1st offense, $500, 90 days, or both; 2d offense, $1,000, 1 year, or both.	No	Yes	Yes	Yes	No	Yes.
Texas	$1,000, 1 year, or both	No	No	No	Yes	No	No.
Vermont	$1,000, up to 1 year, or both	No	No	Yes	Yes	No	Yes.
Virginia	Misdemeanor	Yes	Yes	Yes	Yes	Yes; persons and carriers	No.
Wisconsin	No provision in law	Yes	Yes	Yes	No	No	No.

[1] Information in our files does not give statute references.
[2] Law requires product registration.

Source: U.S. Food and Drug Administration, Office of Federal-State Relations, January 1966.

(Statement of the Chemical Specialities Manufacturers Association, Inc., and letter from J. O. Graves, director of marketing, Consumer Products Division, E. I. du Pont de Nemours & Co., follow:)

STATEMENT OF THE CHEMICAL SPECIALITIES MANUFACTURES ASSOCIATION, INC., REGARDING S. 3298

This statment is submitted on behalf of the Chemical Specialties Manufacturers Association, Inc., a non-profit trade association representing some five hundred thirty member companies engaged in the sale and distribution of chemical specialties products for household use. The Association actively supported the Federal Hazardous Substances Labeling Act in the 86th Congress and has worked closely with the Food and Drug Administration since the approval of the Act in that agency's regulatory and enforcement program. The Association also supports S. 3298 which will amend this Act, since discussions with the Food and Drug Administration have revealed a need for additional authority to fully implement the purposes of the statute.

The Association submitted to the House Committee on Interstate and Foreign Commerce three proposed amendments to Title II of H.R. 13886, a companion bill to S. 3298. These amendments have been reviewed by the Department of Health, Education and Welfare with counsel for the Association. It is understood that a letter will be filed with the House Committee on Interstate and Foreign Commerce from the Department of Health, Education and Welfare accepting the principle of two of these amendments, technical in nature, but proposing somewhat modified language from that suggested by the Association.

The Association is in full accord with the language to be recommended by the Department of Health, Education and Welfare and hopefully these amendments will be submitted by the Agency prior to the hearing on S. 3298, or at least prior to final consideration of the bill by the Committee. In view of this, the Association does not feel it necessary to detail the reasons for these technical amendments, although if the Committee so desires, a statement explaining the principles, the reasons, and the recommended amendments, will be submitted.

The hearing on the Federal Hazardous Substances Labeling Act before this Committee on August 13, 1959, was chaired by Senator Hartke. The hearing record reflects the full support and cooperation of this Association in the development and passage of the Act.

"Mr. LARRICK . . . I also would like to call to your attention the fact that we have heard this morning a large number of important industries that are recommending that they be regulated in the interest of public health . . ." Hearing on S. 2813, Aug. 13, 1959, p. 32.

"Senator HARTKE . . . I think it was a very complimentary thing you do to say about industry that it was requesting regulation in the interest of the public and I think this speaks very highly of the industry as well as what you say and I think they are to be complimented for this." *Id.* at 44.

During the hearing Senator Hartke was concerned with the need for federal legislation in view of the existing state and local regulation in this field.

"Senator HARTKE. In your opinion, is it possible for the states to adequately legislate to cover this field without federal legislation?

"Mr. LARRICK. My opinion is that the states need legislation, and that to the extent that the states can and will do the job, that the federal government should not do it. I am convinced, however, that (1) *to provide a uniform pattern*, (2) to deal with interstate commerce, and (3) to provide leadership, that the federal government should also help the states in this endeavor.

"Senator HARTKE. You do not feel that this is an unnecessary duplication?

"Mr. LARRICK. No sir, I do not . . ."

The primary purpose of the Federal Hazardous Substances Labeling Act was to provide a uniform pattern for the labeling of household chemical specialties products sold throughout the United States for household use. It was conceded by everyone that the consumer and the industry were entitled to uniform caution statements on labels of these products.

"Senator HARTKE. Do you feel that state laws are inadequate to properly enforce this measure?

"Dr. OSBORNE. I believe they probably are because if it is left solely to the states and each of the 49, 50 states adopts its own laws, there would be so much non-uniformity in the multitude of laws that I think it would be about impossible to handle." *Id.* at 26–27.

70–820—66——5

The Senate Commerce Committee Report recognized the uniform labeling requirement as a basic purpose of the Act. Under the heading "Purpose of the Legislation" the Report states in part:

"In recent years legislation has been enacted in several States—Colorado, Connecticut, Illinois, Indiana, Kansas, Ohio, Texas, and Vermont—regulating the labeling of hazardous substances suitable or intended for household use, many of which are shipped in interstate commerce. It is desirable that labeling of these substances be regulated when shipped in interstate commerce and that the standards and requirements of such labels be uniform. Thus, Federal legislation on this subject is needed to require uniform labeling of hazardous substances for household use . . ." Senate Report No. 1158, 86th Cong., 2d Sess. 3.

It is quite likely, in view of this legislative history, that the Federal Act supersedes and pre-empts local and state laws on this subject, at least to the extent that a state or local requirement differs from a federal requirement. Yet, the Act has not succeeded in establishing the desired and necessary uniformity since some state and local requirements still differ from federal requirements and it would be necessary to pursue expensive and time consuming litigation to establish the pre-emption of the federal act. This can be avoided by an appropriate amendment to S. 3298 incorporating the same type of pre-emption amendment which this Committee has already approved in S. 985, the Fair Packaging and Labeling Bill and S. 3005, the Traffic Safety Act of 1966.

A proposed amendment to S. 3298 which would meet the Supreme Court's requirement for a clear and unambiguous statement as to the Congressional intent is submitted with this statement. Unquestionably, there is a sufficiently clear and demonstrated need for uniformity in this field to meet the criteria established by the Supreme Court for a valid pre-emption provision. Clearly, the same reasons for pre-emption in the Fair Packaging and Labeling Bill as to net content statements, in the Traffic Safety Act as to motor vehicle standards, and in the Cigarette Labeling and Advertising Act pertain here and justify a clear statement of pre-emption in this Act.

The House Committee Report on the Federal Cigarette Labeling and Advertising Act states in part:

The Committee feels, however, that it is desirable that the *Federal Government—upon which persons have come to rely for cautionary labeling of hazardous substances*—should take affirmative action which would manifest its concern.

* * * * * * *

"There was general agreement among the witnesses appearing before the committee, whether or not they favored a warning requirement on cigarette packages, that if the committee took any action in this field, such a requirement as to labeling should be uniform; otherwise, a multiplicity of States and local regulations pertaining to labeling of cigarette packages *could create chaotic marketing conditions and consumer confusion.* Thus, the committee bill, by preempting the field, precludes any Federal, State, or local authority from requiring any statement other than that required by this bill relating to smoking and health on cigarette packages." [House Rept. No. 449, 89th Congress, 1st Session, June 8, 1965, pp. 4–5] [Emphasis supplied.]

No attempt will be made to detail all of the inconsistencies existing at the local and state level which impose a severe burden on industry and the consumer, who should expect to become familiar with uniform caution statements and to observe in the same manner the cautions directed, anywhere in the United States. The mobility of our society demands that consumers be favored with the same cautionary statement on a product, regardless of where it may be purchased in the United States.

Inconsistencies do exist and the potential is unlimited. A few illustrations might be helpful. It is impossible to write a cautionary statement for methanol antifreeze which will meet the requirements of all state laws, many of which were adopted during the period of prohibition in the late 1920's and early 1930's. The New York City Fire Department requires its own special form of labeling on containers of liquids having a flash point of up to 300° F. (the accepted control level by the Federal government and all comparable state laws is 80° F.) The location, typography and wording of this labeling is specified without regard to the Federal Regulations. The New York City Fire Department also requires a certificate of approval for these products and insists that the number of the certificate appear on the label preceded by "N.Y.F.D. C. of A. No. ———." This requirement dates from approximately 1915 and certainly New York City has

no greater right to this than any other city in the United States. The chaos which would result from similar requirements in other cities or states is obvious.

It must also be recognized that the evaluation of hazards in a chemical mixture requires expertise in the fields of chemistry, toxicology, pharmacology and related sciences. Adequate resources, both human and financial, to make these evaluations exist primarily at the federal level.

The question is not whether there should be pre-emption of this field. The fact is that any state or city with a different point of view than the federal government can and has pre-empted the field. A manufacturer must meet all requirements, regardless of the source, since once products are shipped in channels of trade it cannot be assured that a particular product will not appear in a particular city, county or state which may have its own peculiar labeling requirement different from the federal requirement. Since the Federal Act was passed a number of bills have been introduced in state legislatures with provisions differing from the Federal Act. Fortunately, the efforts of this Association to maintain uniformity have been generally successful, but considerable time, effort and money has been expended in this program.

There is no suggestion that the states should not control intrastate commerce nor that the states should not participate in enforcement of these uniform standards, but certainly the standards must be uniform. Any state, county or local official who feels that the federal regulations should be modified has a clear right to make this request to the Food and Drug Administration, a privilege which is available to industry or any other person. Section 191.201 of the Interpretive Regulations issued by the Food and Drug Administration under the Act provides in part:

"The Commissioner may, upon his own initiative or upon the petition of any interested person, showing reasonable grounds therefor, propose the issuance, amendment, or repeal of any regulation provided for in section 3(a) of the act, declaring particular substances to be hazardous substances."

Approval of a pre-emption provision in this Act would constitute implementation of the primary purpose of this Act as shown by the legislative history and would only constitute the Food and Drug Administration as the final arbiter of differences of opinion that might exist rather than to allow each state and local political subdivision a free rein to adopt whatever labeling requirements it chooses. While it seems clear that pre-emption is established by the basic legislative history of the Act, uniformity has not been achieved and expensive and time consuming litigation can be avoided by a pre-emption section which would establish a clear and unambiguous statement of intent which the Supreme Court has said is the key to pre-emption.

Respectfully submitted.

A. A. MULLIKEN,
Secretary, Chemical Specialties Manufacturers Association, Inc.

AMENDMENT TO S. 3298 SUBMITTED BY THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION, INC.

"SEC. 5. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in section 2(f)(2) and (3) of this Act) which differs from the requirements or exemptions of this Act or the Regulations or Interpretations promulgated pursuant thereto. Any law, regulation, or ordinance purporting to establish such a labeling requirement shall be null and void."

EXPLANATION

The primary purpose of the Federal Hazardous Substance Labeling Law is to ensure uniformity of precautionary labeling of household products. Since these products move in interstate commerce, pre-emption is applicable. Presently any state, county or city may by law, regulation or ordinance preempt the field by its own requirements. Since a manufacturer cannot control distribution, every product must meet every requirement. The Federal Act covers every hazard which requires precautionary labeling and uniformity is in the best interest of the consumer as well as the industry.

E. I. DU PONT DE NEMOURS & CO., INC.,
Wilmington, Del., August 19, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: This letter is in regard to S. 3298, The Child Protection Act of 1966, which is currently pending before your Committee. Generally speaking, we support the purposes of S. 3298. However, we wish to call your attention to one important area where we believe the bill can be improved.

Six years ago, when it enacted the Federal Hazardous Substances Labeling Act as a logical and modern development of the area first touched under the Federal Caustic Poison Act of 1927 (44 Stat. 1406), the Congress stated that the purpose of the act was "to provide nationally uniform requirements for adequate cautionary labeling" of hazardous substances packaged in containers intended or suitable for household use. (House Report No. 1861, 86th Cong., 2d Sess., accompanying S. 1283, 86th Cong., p. 1, 1960 U.S. Code Cong. & Adm. News, p. 2833) see also Senate Report No. 1158, 86th Cong. "The labeling requirements," continued the Report, "should also provide a pattern which States may follow in enacting similar legislation." (*ibid*). Over and over again, it was acknowledged that the adoption by the States of "diverse labeling requirements" would lead "to a multiplicity of requirements" and create "unnecessary confusion in labeling to the detriment of the public," whereas "nationwide uniformity in the labeling of potentially hazardous chemicals would be advantageous to everybody." (*ibid*, p. 2835).

In our judgment, labeling practices have improved substantially during the past six years. Our experience teaches, however, that it is doubtful whether substantial nationwide uniformity will ever be achieved in the labeling of household containers so long as each state and municipality has the power to impose labeling requirements which depart from federal standards. Moreover, the state or municipality which departs from the federal standard by imposing a different or more restrictive labeling standard sets the standard for all, since suppliers cannot economically or effectively adopt different labels tailored to each jurisdiction. The net result is that a kind of premium is awarded to those states which act the earliest in breaking away from the federal standard; since they pre-empt the available label space and thus succeed in imposing their own labeling pattern on their sister states.

To our knowledge, there are six (6) different groups of state and local laws which impose labeling requirements likely to vary from the federal standards currently imposed on household products by the Food and Drug Administration. These classifications or groups may be described as follows:

(1) Methyl alcohol (methanol) and "wood alcohol" laws. There are over fifty (50) state and local laws and regulations affecting the sale of and prescribing labeling for methyl alcohol and products containing methyl alcohol. Varying label requirements are inevitable in this situation (Example 1, Attachment).

(2) States and municipalities have often adopted their own hazardous household substances labeling laws or regulations. While generally similar to the federal law and regulations, this is not necessarily, or even likely, to be so in specific jurisdictions (Example 2, Attachment).

(3) The New York City Fire Department has adopted flammability and labeling standards which depart in significant ways from the federal standards (Example 3, Attachment). Since no supplier who sells nationally can afford to ignore the New York City market, the standards adopted by this one municipality have a significant impact.

(4) The former model fire code of the National Fire Protection Association has been adopted by twenty-five hundred (2,500) municipalities and four (4) or five (5) states. The Association is now sponsoring a proposed revision of its labeling standards to conform to its revised basic classification of flammable liquids. Among other things, the revision changes the methods set forth in the former code for determining flammability. This will create a conflict with the test methods currently specified by the Food and Drug Administration and the states and municipalities following the former model code. At the least, this will cause needless confusion and unnecessary expense. At the worst, the decision as to whether products will be labeled, for example, to be "not flammable" or "flammable" will turn on the test method used (Example 4, Attachment).

(5) Some states adopted caustic poison acts modeled on the Federal Caustic Poison Act of 1927, *supra*, but broadened their acts to encompass more than the

twelve (12) substances covered by the federal law. Typically, the states would specify that the act was to apply to any other substance "substantially as caustic" as the named substances. The regulations under the Federal Hazardous Substances Labeling Act retain the label word "poison" in lieu of any signal word for produtcs containing specified minimum percentages of the substances formerly covered by the Caustic Poison Act (21 CFR Sec. 191.109). However, other labeling changes were required. Unfortunately, not all states have put through similar changes to their caustic poison acts (Example 5, Attachment).

(6) "Poisonous pharmaceutical" laws. Here, the state or municipality attempts to regulate the sale or dispensation of poisonous, toxic, or potentially poisonous or toxic products which are commonly sold by retail drug stores but which are not prescription drugs. Typically, the law or regulation will specify a particular labeling which differs from and exceeds the federal standard (Example 6, Attachment).

For all of the above reasons, we strongly support the pre-emption amendment which has been proposed by the Chemical Specialties Manufacturers Association in its statement submitted to your Committee. This proposed pre-emption amendment reads as follows:

"It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States and political subdivisions thereof insofar as they may now or hereafter provide for the precautionary labeling of any substance or article intended or suitable for household use (except for those substances defined in Sec. 2(f) 2 and 3 of this Act) which differs from the requirements or exemptions of this Act or the Regulations or Interpretations promulgated pursuant thereto. Any law, regulation or ordinance purporting to establish such a labeling requirement shall be null and void."

It is especially important that the pre-emption clause not be limited to cases of express conflict between federal and state or local laws and regulations. The pre-emption clause in favor of the federal standard should also apply where the Food and Drug Administration has the power to act but by action or inaction concludes that no hazard is present and does not prescribe labeling. State and local regulators should not be permitted to impose a different or higher standard in these situations.

Very truly yours,

J. O. GRAVES,
Director of Marketing, Consumer Products Division.

[Attachment to statement on S. 3298]

EXAMPLES OF FEDERAL AND STATE OR LOCAL CONFLICT IN LABELING

Example 1. We know of no substance which is the subject of regulation in more jurisdictions than is methyl alcohol. As with all harmful substances, the likelihood of harm varies with the amount of methyl alcohol to which the human organism is exposed. Thus, a product which is 98% methyl alcohol is much more likely to be harmful than one which is 2% methyl alcohol, all other things being equal. Under federal standards, a mixture containing four per cent (4%) or more by weight of methyl alcohol must be labeled with, among other things, the words "poison" and "danger" and the skull and crossbones symbol (21 CFR § 191.7 (a) (5), (b) (2)). However, many state and local laws prescribe different threshold levels. According to the laws of the State of California, for example, any preparation containing more than one per cent (1%) or more methyl alcohol must bear the word "poison" and the skull and crossbones symbol (Deering's California Codes, B. & P.C.A. § 4160, Schedule B(1), § 4161, § 4168). In Massachusetts, on the other hand, the signal word "poison" must be used if a drug or medicine contains *any* methyl alcohol (Ann. Laws of Mass., c. 94 § 303C). Therefore, a product containing one half of one per cent (½%) methyl alcohol must have the word "poison" if it is to be sold in Massachusetts, but the threshold for such labeling is one per cent (1%) in California and four per cent (4%) under Federal law.

Example 2. (a) Under federal standards, products containing five per cent (5%) benzene (benzol) by weight must be labeled with the words "danger," "poison," and "vapor harmful," and the skull and crossbones symbol. Additional labeling is prescribed for products containing ten per cent (10%) or more of benzene. (21 CFR § 191.7(a) (4), (b) (3) (i)). Under Massachusetts law, however, a product which contains *any* amount of benzene (benzol) must be labeled "danger," "poison," and "vapor harmful," but the skull and crossbones symbol is never required in connection with benzene (Mass. Dept. of Labor and Industries,

Div. of Ind. Safety and Dept. of Public Health, Industrial Bulletin No. 11, App. B, p. 7 (1957)).

(b) Under federal standards, preparations containing ten per cent (10%) toluene by weight must be labeled with the signal word "danger" and rather elaborate additional wording must be used, but the skull and crossbones symbol is not required (21 CFR § 191.7(a)(4), (b)(3)(ii)). Recently, a proposed California law which died in the Assembly would have required the skull and crossbones symbol on any glue or cement containing toluene (Assembly Bill A. 2162, cf. Deering's California Codes, B. & P.C.A. § 4160 Schedule D(a), § 4168).

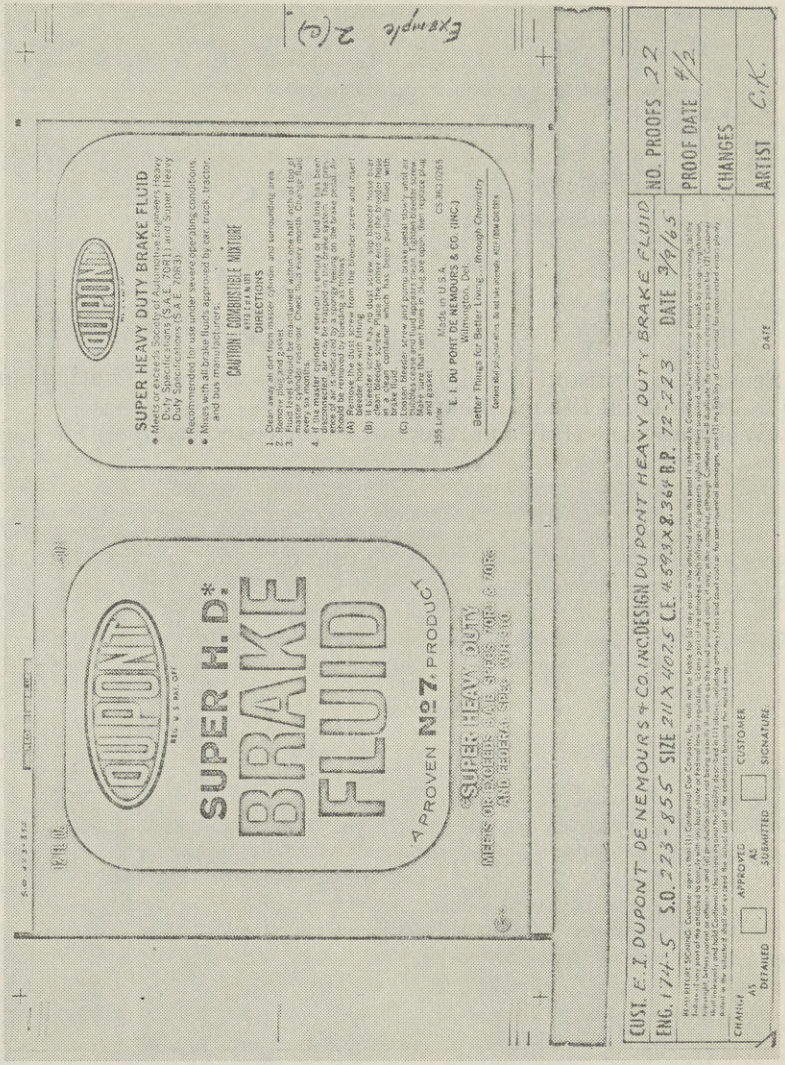
(c) Under federal standards, a substance is toxic if a single oral dose of more than 50 milligrams but not more than 5 grams per kilogram of body weight kills 50% or more of a given test group of adult white rats. (21 CFR § 191.1(f)(1)). Under Indiana state administrative standards, however, a substance is toxic if a single oral dose of up to 10 grams per kilogram of body weight kills 50% of a similar test group. The result is that a substance which does not amount to a lethal oral dose in 50% of the test animals unless 8 grams per kilogram of body weight is administered is considered toxic in Indiana but is not considered toxic anywhere else. Thus, many brake fluid labels must bear the legend, "Contains alkyl poly glycol ethers. Do not take internally," or something similar, if the product is offered for sale in Indiana. As a practical matter, the Indiana labeling standard has become the national standard, because of the practical and economic impossibility of adopting a special label just for Indiana (Sample label attached).

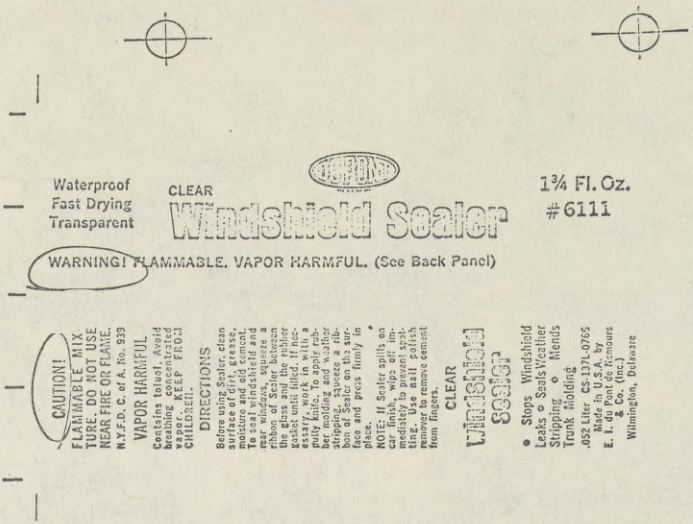
Example 3. Under federal standards, products which have flash points of above 20° F. to and including 80° F. when tested by a prescribed method are considered to be flammable and must bear the front panel statement "Warning—Flammable" (21 CFR § 191.1(j)(2)). Products which flash at above 80° F. need not be labeled as flammable. Under New York City Fire Department regulations, products which have flash points of up to 100° F. to 300° F. are said to be combustible (Chap. 19, Administrative Code, City of New York, § C19–2.0, Subdivisions 11 and 22). The signal word "caution" must be used in labeling both classes of products. The result is that household products which flash at 80° F., for example, must bear a front panel notice reading "Warning—Flammable" because of federal requirements, and a back or side panel notice stating "Caution—Flammable Mixture" because of New York City's peculiarities. Household products which flash at 120° F., for example, need not bear any front panel warning as to flammability, but must carry the notice "Caution—Combustible Mixture" if they are to be sold in New York City (Sample label attached).

Example 4. Current federal flammability standards are based on the determination of flash points by the Tagliabue *open* cup tester (21 CFR § 191.13). The National Fire Protection Association is currently sponsoring a different method of determining flash points (and thus a different standard for classifying flammable liquids) utilizing the Tagliabue *closed* cup tester (N.F.P.A. Publication No. 321). The Association also requires the determination of boiling points as a guide to classification. One result would be that a number of products, including gasoline, would be classified as "flammable" under Association standards, while continuing to be classified as "extremely flammable" under federal standards (FDA Publication No. 17, Feb., 1963).

Example 5. Sulfamic acid is corrosive under federal standards, but is not among the twelve (12) substances formerly covered by the Federal Caustic Poison Act and now given special treatment under the Federal Hazardous Substances Labeling Act requiring the word "poison" on the label. However, it is used in household bowl cleaners and is substantially as corrosive to the eyes as acetic acid—one of the special twelve (21 CFR § 191.109(g)). Thus, it is a "caustic acid" under the laws of some states, such as New Jersey (Title 24, Subtitle 1, Chap, 8, N.J. Stat. Ann.). Therefore, under federal law household products containing sulfamic acid are labeled in accordance with the standards for "corrosive" substances, whereas under New Jersey law the word "poison," among other things, must appear on the label of products containing sulfamic acid.

Example 6. Soldering fluxes for home use are likely to contain more than five per cent (5%) of zinc compounds soluble in water, such as zinc chloride. Under federal law, these products would be labeled with the signal word "danger" and with a warning concerning the hazards of ingestion and skin and eye contact (Notices of Judgment Under the Federal Hazardous Substances Labeling Act, Nos. 12–17, dated August 12, 1963). Under California pharmacy laws, however, such products must be labeled with the word "poison" (Pharmacy Laws of California and Administrative Rules of the Board of Pharmacy, January 1, 1962, p. 59).


DUPONT
SUPER H.D.* BRAKE FLUID
A PROVEN No 7 PRODUCT
SUPER HEAVY DUTY
MEETS OR EXCEEDS SAE J1703 AND ASTM D1249
SUPER HEAVY DUTY BRAKE FLUID
CAUTION: COMBUSTIBLE MIXTURE
DIRECTIONS
E. I. DU PONT DE NEMOURS & CO. (INC.)
Wilmington, Del.
Better Things for Better Living ... through Chemistry
CUST. E. I. DUPONT DE NEMOURS & CO. INC. DESIGN DU PONT HEAVY DUTY BRAKE FLUID
ENG. 174-5 S.O. 223-855 SIZE 2¼ X 4.625 C.E. 4.593 X 8.364 B.P. 72-223 DATE 3/9/65
NO. PROOFS 22
PROOF DATE 4/2
CHANGES
ARTIST C.K.
Example 2(c)



Senator MAGNUSON. All right, with that we will recess until Thursday, August 26, at 10 a.m. Thank you.

(Whereupon, at 11:40 a.m., the subcommittee recessed.)

THE CHILD PROTECTION ACT OF 1966

FRIDAY, AUGUST 26, 1966

U.S. SENATE,
COMMITTEE ON COMMERCE,
CONSUMER SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m., in room 5110, New Senate Office Building, the Honorable Howard W. Cannon presiding.

Senator CANNON. The hearing will come to order.

I understand you have some questions for Dr. Goddard. He is back here today to answer those questions.

Senator COTTON. My questions aren't important enough for him to come back to answer them, but it is a fine statement, Dr. Goddard, and I was very much impressed by it. There is one point that I wanted to inquire about.

FURTHER STATEMENT OF DR. JAMES L. GODDARD, COMMISSIONER, FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY WILLIAM W. GOODRICH, ASSISTANT GENERAL COUNSEL FOR FOOD AND DRUGS; MAURICE D. KINSLOW, DIRECTOR OF THE OFFICE OF LEGISLATIVE SERVICES, FOOD AND DRUG ADMINISTRATION; AND EUGENE LEHR, DEPUTY CHIEF, DIVISION OF ACCIDENT PREVENTION, PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Senator COTTON. You say on the basis of present knowledge we would have no objection to the continued sale of reasonably innocuous fireworks such as those now listed in ICC regulations as class C provided they are adequately labeled and that local law permits their sale. It is not quite clear to me, at least I have forgotten just exactly the effect of our former legislation on sale and transportation, and so forth, of explosives.

My own State, for instance, has a law absolutely forbidding the use, sale of fireworks except for public exhibitions when they are handled by people who receive a license and permit to put on a public exhibition at night or some other time, but no private use of any fireworks. What is the situation as regards transporting fireworks into a State that has such a law?

Dr. GODDARD. As I understand it, Senator Cotton, under the ICC regulations, the State law would have preeminence and this would not be permitted.

Senator COTTON. In other words, could it be shipped by any carrier? Do you know how many States exhibit fireworks?

Dr. GODDARD. If you wish, we can submit that for the record. I think Mr. Goodrich has a tabulation on that.

Mr. GOODRICH. We haven't obtained all the State laws, but we have enough of them to have a representative group. We have some State laws such as in your State which absolutely prohibit. We have some State laws in Louisiana and Arkansas, for example, which allow class C. We have laws such as in the State of Washington which prohibit a number of products in class C and allow the so-called safe and sane, and there are other prohibitions. We will be glad to supply the total list for you if you would like it in the record.

Senator COTTON. Well, if the Chair permits, I would like to have it in the record.

Senator CANNON. Without objection, all right.

(The information follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 29, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: At the Hearing last Friday on S. 3298, Senator Cannon asked that we provide a statement as to the status of dynamite caps under the Federal Hazardous Substances Labeling Act.

The type of fused cap that is available for sale to a farmer would be classified as a substance intended or suitable for household use, since it is likely to be stored and used around the farm house. Under existing law, if these products are packaged, they are required to bear precautionary labeling. Under S. 3298 which would extend the law to unpackaged substances, each cap would have to be labeled by outside markings or by a tag to give notice of the hazard and the other cautionary information.

Senator Cotton asked that we provide a summary of State laws regulating fireworks.

Twenty-nine States, as listed below, prohibit the sale and use of fireworks except for display purposes. A few of these States allow sparklers, and Wyoming allows sparklers, fountains, and soft shell firecrackers less than 1 inch long and less than ⅛ inch diameter.

Alabama	Massachusetts	Ohio
Colorado	North Carolina	Oregon
Connecticut	Kentucky	Pennsylvania
Delaware	Maine	Rhode Island
Florida	Michigan	Utah
Georgia	Minnesota	Vermont
Idaho	New Hampshire	West Virginia
Illinois	New Jersey	Wyoming
Indiana	New Mexico	Wisconsin
Iowa	New York	

Nine States, listed below, permit "Class C" common fireworks.

Arkansas	Missouri	South Carolina
Louisiana	North Dakota	Tennessee
Mississippi	Oklahoma	Texas

Three States, Washington, California, and South Dakota, allow so-called "safe and sane" fireworks.

Three States, Nebraska, Montana, and Virginia, allow specified types of fireworks, less than the "Class C" list.

Hawaii, Nevada, and Kansas provide for nuisance restrictions.

Xerox copies of the State laws are attached.

In the short time available, we have not been able to check the laws of Alaska, Arizona, and Maryland.

Sincerely,

RALPH K. HUITT,
Assistant Secretary for Legislation.

Senator COTTON. What is class C?

Dr. GODDARD. Class C is defined in the Code of Federal Regulations. They are the so-called common fireworks. Some examples of them would be roman candles, skyrockets, cylindrical fountains, cone fountains, dip sticks, illuminating torches, firecrackers, and salutes that do not exceed an inch and a half in length or a quarter inch in diameter and don't have more than 2 grains in the fireworks itself. Under each of these categories there are limitations as to size and total grainage in general.

These are the so-called common fireworks and, as Mr. Goodrich mentioned, some of the States do permit those listed under class C of the Interstate Commerce Commission Code.

Senator COTTON. Do you have any figures on the—annual figures on the number of persons injured by fireworks?

Dr. GODDARD. No, we don't. Perhaps Mr. Lehr, from the Division of Accident Prevention of the Public Health Service, could supply those.

Mr. LEHR. The National Fire Protection Association has estimated that there are around 5,000 injuries per year in the country from fireworks in one form or another.

Senator COTTON. I am rather interested in this problem. We have a wonderful woman in New Hampshire and she is now over 90—I must remember some day to say something on the floor of the Senate about her—she crusaded as a member of the State legislature, both house and senate, for years, to get this prohibitory law. It was her mission in life.

I remember I was serving in the legislature, floor leader, speaker of the house, when that fight was going on and very naturally, of course, there was a terrific lobby by the fireworks manufacturers who felt they were being put out of legitimate business territories—being deprived of them unjustly.

I don't know how many hands and eyes have been saved since—in the years since New Hampshire has rather successfully suppressed all use of fireworks by private persons. The uncontrollable desire that boys had when I was a boy, and that I shared, to get hold of firecrackers and the bigger the better, and paper-cap pistols and so on; the fact that they don't have them, that they have been precluded from having them, has worked very successfully.

Now, I am not reproaching you at all. I can understand you have to handle these things from a reasonable standpoint and I suppose I am one of the Members of the Senate who is labeled at least as having considerable regard for private initiative and private enterprise and business interests.

But when you say on the basis of present knowledge we would have no objection to continued sale of reasonable innocuous fireworks, is your feeling somewhat affected, and most naturally, I am not suggesting improperly, by the terrific opposition that would be aroused if any attempt were made for some Federal, rather sweeping prohibition of fireworks for private use?

Dr. GODDARD. I can't say I feel that way.

Senator COTTON. Do you recognize there would be——

Dr. GODDARD. I recognize there would be opposition to a complete ban of fireworks, but in this instance we feel the States have adopted

positions with respect to the use of either the common fireworks or the so-called safe and sane, and we feel that by careful observation of the usage and what injuries may occur with respect to them, this list can be appropriately modified in the future.

I think in this way we can accommodate the desires of the States and yet provide protection to the citizens as we move forward.

Senator COTTON. Your statistics as to actual injuries and by what kind of fireworks caused them, I gathered from your reply, are not too complete.

Mr. LEHR. That's correct, sir.

Dr. GODDARD. But as we learned of instances where injury takes place—let's use the crackle ball as an example. Here is a particular type of firework that is exceedingly dangerous to small children because it is not recognized as a firework, and we have no hesitancy in such a case in recommending a complete ban on their sale.

Now, as the Accident Prevention Division of the Public Health Service, through some of its programs, one of which is collecting data from emergency rooms in hospitals on types of injuries, can provide specific information which illustrates the need for changing this C schedule of approved fireworks, we would not hesitate to suggest revision.

Senator COTTON. Well, I won't pursue the subject, but I have a feeling that even though fireworks are recognized as fireworks and recognized as dangerous, that many, many children are injured in the United States and injured seriously.

I remember from my own recollection of playmates of mine, a classmate of mine who has a disfiguring scar burned into his face simply from a paper-cap pistol that he carried all his life. An extremely disfiguring scar. Eyes put out, hands and fingers lost.

I have had the answer that they would devise these bombs and fireworks if the safer, public, regularly manufactured and controlled fireworks were denied them, and I suppose that is true. A page had part of his hand blown off by some kind of improvised bomb only last year.

But it is a problem that appeals to me as requiring a good deal of attention. I think Congress should consider pretty carefully what it wants to do about the transportation at least of fireworks in interstate commerce.

Would you agree to that, Dr. Goddard?

Dr. GODDARD. Yes; I would say that is a reasonable approach, Senator Cotton. I would like to point out there have been rather dramatic decreases in the numbers of injuries that have occurred over the past two decades. In part this is related to the restriction the States have imposed and the Interstate Commerce Commission restrictions on the schedule C list of fireworks by decreasing the grainage. In part it is related to the better labeling now required which advises they are to be used under the supervision of adults. And the educational efforts have been important. I think parents are generally much more aware of the potential dangers and there is a greater degree of supervision.

As I said earlier, this does not mean that the present list would not be revised if the need were demonstrated.

Senator COTTON. Well, there certainly has been a dramatic decrease in my State because there have been practically no injuries at all. None at all now for a long period of years.

After spending all day yesterday and the day before nearly in the conference committee working on this matter of constructing safe automobiles, it seems to me to be a little incongruous that we should be battling that down the line and permit absolute explosives to get into the hands of young children anywhere. But I recognize the problem.

Is there any likelihood that you may be compiling some more figures about the number and nature of injuries from fireworks?

Mr. LEHR. Yes, sir. We are continuing to compile these. We also have available data from national organizations such as National Fire Protection Association. They give some rather interesting figures with respect to deaths and injury rates, comparing a place like the District of Columbia by area which has relatively relaxed control of fireworks where in 1965 they say the fireworks injuries per 100,000 persons were approximately 7.2. And then they go to Maryland, 1.4. New Jersey, 0.4. Less than half an injury per 100,000.

Maine is the closest to New Hampshire we have listed here, and I presume the laws are similar, 0.1.

Senator COTTON. Of course, the injuries from fireworks, they are injuries usually rather than deaths. It is somewhat rare that you hear of a death. But there are injuries. And the injuries occur largely to a segment of our population perhaps between the ages of 10 and 14 or 9 and 15 or somewhere so that you are taking a comparatively small segment of our population when you compile the figures. So that the apparent insignificance of these percentages are not—may not be quite as significant as—I mean the insignificant may not be as significant as otherwise might be true.

I am curious about the actual number of injuries in 1 year from fireworks in the United States, and I suppose there is no way that is obtainable.

Mr. LEHR. The best estimate we have is approximately 5,000 per year.

Senator COOPER. 5,000 in the country?

Mr. LEHR. Yes.

Senator COTTON. And that ranges from minor burns to serious injuries? You don't ever hear of someone who just burned their finger.

Mr. LEHR. This includes only those cases that receive medical attention or are hospitalized, serious enough to be hospitalized. No, you don't hear of the burn that is dressed at home.

Senator COTTON. Well, I won't pursue that any further, but if you have any or should acquire any more significant information, I wish, if it is convenient, sometime in the future, that you would send it to the committee.

Dr. GODDARD. We would be happy to.

Senator COTTON. Thank you.

Senator CANNON. Doctor, referring to your statement on page 1, where you quote from President Johnson saying too many children now become seriously ill, too many die because of accidents that could be avoided by adequate labeling and packaging of dangerous substances. Now, certainly we would all agree that one is too many, and I am wondering if you have any statistics on either one of those points to support that statement.

Dr. GODDARD. Again, sir, we have incomplete statistics. We can provide for the record the available statistics from the data from the

National Clearinghouse for Poison Control Centers. I would underline the fact that these are incomplete and represent a minimal number rather than the maximum number.

Senator CANNON. And would those statistics cover the ones that become seriously ill as well as those that result in deaths?

Dr. GODDARD. Yes, sir. The seriously ill generally are hospitalized, Senator Cannon, and in that fashion we learn of them.

We must point out that we can't, at this point in time, speak with precision as to how many of these will be prevented. We are going under the assumption that better labeling will assist in reducing the number. I think that is a reasonable assumption.

Senator CANNON. Could you supply for the record then the statistics as best you can?

Dr. GODDARD. Yes, I will be happy to.

Senator CANNON. Directed to each of the points covered by the bill. First this matter of labeling and packaging, and in addition to the statistics would you supply some type of an estimate as to what you think might be accomplished in that field? Then, if you could do that also in the unpackaged articles——

Dr. GODDARD. Yes, we will do our best to be responsive to that, Senator.

Senator CANNON. Have you supplied for the record any statistics on these so-called articles too dangerous for household use?

Dr. GODDARD. Such as X–33?

Senator CANNON. Yes.

Dr. GODDARD. We have statistics on that particular compound.

Senator CANNON. I think that is already in the record. At least a number of those examples are in the record.

Dr. GODDARD. Yes.

Senator CANNON. But if you could supply any cumulative statistics as to that classification of articles, I think it would be helpful, as well as an estimate as to what you think might be saved. Theoretically, of course, maybe all of those would be saved. I don't know.

Dr. GODDARD. I will attempt to do so.

Senator CANNON. The toys and fireworks would probably be covered in Senator Cotton's request.

(The information follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
FOOD AND DRUG ADMINISTRATION,
Washington, D.C., August 29, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: When we appeared before the Consumer Subcommittee on August 26, 1966, during hearings on S. 3298, the Child Protection Act, we were requested to supply for the record statistics concerning injuries and deaths relating to each of the provisions of the bill. I indicated such statistics as are available would be submitted.

As you know, S. 3298 is designed to extend the coverage and close loopholes in the basic Federal Hazardous Substances Labeling Act. At the time the basic Act was under consideration, your committee heard testimony describing the large numbers of children killed and injured each year from the accidental ingestion or other contact with unlabeled or inadequately labeled substances commonly found around the household. The enactment of that legislation has no doubt saved the lives and spared needless suffering of countless numbers of

children throughout the Nation by requiring cautionary labeling which alerts parents to the potential hazards of many household products.

Since the passage of the basic Act in 1960, however, we have encountered several products that have not been amenable to adequate control under the provisions of the legislation. We have encountered unpackaged articles (not covered by the Act), toys and other articles too hazardous for use by children (subject only to cautionary labeling), and extremely hazardous articles intended for home use (subject only to cautionary labeling even though such labeling may not adequately protect the user.) Fortunately there have been relatively few of these products. Nevertheless, deaths and injuries have been caused by them and unless the law is amended, there remains the potential for more deaths and injuries.

While we are not aware of any statistics which are collected in such a way as to give gross figures concerning deaths and injuries by category of products as covered by the bill, i.e., unpackaged hazardous substances, children's toys or other articles which are hazardous, or products which are too hazardous for household use, we do have statistics on some specific articles within these categories.

UNPACKAGED ARTICLES

You will recall that during our testimony we discussed the highly poisonous jequirity beans. The Division of Accident Prevention of the Public Health Service reports that for the years 1959–1965 there have been an annual average of 7 to 10 cases of jequirity bean ingestion reported. In 1963 a 2 year old child in Florida died from such ingestion.

TOYS AND FIREWORKS

My prepared statement related the problems associated with "cracker balls" which injured at least 25 children who put them in their mouths thinking they were candy.

In 1963 the Food and Drug Administration received about 1,600 reports of skin rash suffered by children associated with the use of three similar plastic molding toys. These products made from partially polymerized synthetic rubber were subject to the Federal Hazardous Substances Labeling Act but did not bear warning labeling. If the manufacturers had wished to continue marketing the products, they could have been required to label these toys "Keep Out of the Reach of Children" but the products could have remained on the market.

ARTICLES TOO DANGEROUS FOR HOUSEHOLD USE

The highly explosive water repellant, X–33, also was discussed in my statement. This product caused at least 3 deaths and over 30 injuries.

Undoubtedly there have been many other injuries and some fatalities from products such as those described above. However, in the absence of a reporting system designed to collect such data, cummulative figures do not exist. Nevertheless, we believe the examples cited clearly justify the prompt passage of S. 3298.

Sincerely yours,

JAMES L. GODDARD, M.D.,
Commissioner of Food and Drugs.

Senator CANNON. Now, on page 6 you mention here that at the suggestion of the subcommittee counsel the Department is preparing a letter outlining our understanding of the intent of the provision that had been discussed just prior to that. Have you prepared that letter?

Dr. GODDARD. It is not completed. It is in the first-draft form and should be forthcoming within a week.

Senator CANNON. When you do furnish that to us it will be made a part of the record.

Dr. GODDARD. I will be happy to.

Senator CANNON. Thank you very much.

(The information follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
August 29, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are writing to you with respect to certain questions that have been raised as to the status of fireworks under section 3 of S. 3298, the proposed Child Protection Act. (Fireworks, when intended, or packaged in form suitable for, use in the household or by children, would be within the coverage of the basic act.)

1. *Common fireworks.*—Section 3 of the bill would amend the Federal Hazardous Labeling Act—which is to be renamed as the Federal Hazardous Substances Act—by excluding from interstate commerce any "banned hazardous substance," a term defined by two clauses in the bill. Clause (A) includes in the term "banned hazardous substance" "any toy, or other article intended for use by children, which is or bears a hazardous substance, or which contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted * * * *Provided*, That the Secretary shall by regulation exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved and which are intended for use by children who have attained sufficient maturity to read and heed the directions and warnings in the labeling of such article."

Representatives of the American Pyrotechnical Association have expressed concern lest these provisions would result in the ban, from interstate and foreign commerce, of all or some of the so-called common fireworks defined and listed in section 73.100(r) (49 CFR 73.100(r)) of the current regulations (under the heading "Class C Explosives; Definitions") issued by the Interstate Commerce Commission under the Transportation of Explosives Act (18 U.S.C. 834). A copy of that list is enclosed herewith for your convenience.

As indicated by the Commission of Food and Drugs in the course of his testimony on S. 3298, the question whether such fireworks—which do not include items, such as "crackerballs," that are likely to be confused with candy or other food—can be adequately labeled for the protection of purchasers and users so as not to make necessary a Federal ban thereon when they are so labeled, has been reviewed by the Food and Drug Administration's technical experts concerned with this matter. On the basis of their advice and of present knowledge, we have, as also indicated in the Commissioner's testimony, concluded that we would have no objection to the continued sale of such fireworks with adequate labeling. (This is subject to a qualification with respect to the last item in sec. 73.100(r) of the ICC regulations, i.e., "Novelties consisting of two or more devices enumerated in paragraph [(r)] when approved by the [ICC's] Bureau of Explosives." We cannot, of course, foretell whether new novelties in this category devised in the future could be adequately labeled for the protection of the ultimate purchaser or user; ICC approval, which would be for the purpose of assuring safety in interstate transport, would, of course, not be conclusive on this point.)

Two things should be clearly understood. In the first place, we believe that States and localities should continue to be left free, so far as Federal law is concerned, to ban or restrict the sale of any such common firework even though Federal law and regulations be observed. There is a wide variance among the States in this connection, ranging all the way from complete prohibition to little, if any, restriction. Secondly, we would feel constrained to object, as unsound and inconsistent with the principles of the basic act, to any amendment that would freeze into the Federal act, by actual listing or by reference to the ICC list, an exemption of a particular list of fireworks, such as those in class C, and thereby foreclose regulatory action that further knowledge or experience may require.

We have also reviewed the above-quoted clause (A), and proviso thereto, of the definition of "banned hazardous substance" to determine whether it needs amendment so as not to require us to ban class C fireworks when we determine them to be adequately labeled for the protection of purchasers and users. While we believe that the clause and proviso, when read together, need not result in such a ban, we believe that amplification and clarification of the proviso would be desirable in this respect (coupled, incidentally, with some clarification with respect to children's articles other than fireworks). We therefore recommend that the proviso (p. 6, lines 5–11, of S. 3298) be revised to read as follows:

"*Provided*, That the Secretary, [shall] by regulation, (*i*) *shall* exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved, and which *bear labeling giving adequate directions and warnings for safe use and* are intended for use by children who have attained sufficient maturity, *and may reasonably be expected*, to read and heed [the] *such* directions and warnings [in the labeling of such article], *and* (*ii*) *shall exempt from clause* (*A*), *and provide for the labeling of, common fireworks* (*including toy paper caps*) *to the extent that he determines that such articles can be adequately labeled for the protection of purchasers and users thereof.*" (Deleted matter is shown in brackets; new matter is in italic.)

2. *Agriculture and wildlife fireworks.* A witness appearing on S. 3298 has suggested that section 3 be amended by adding a subsection to exempt "from the requirements established by or pursuant to this act fireworks used for agriculture crop protection and depredation control." (The reference to "this act" could be read to refer to the basic HSL Act and thus exempt such fireworks even from the regular cautionary labeling requirements that apply.) As explained by the witness, fireworks are used to prevent or reduce animal and bird depredation of agricultural crops.

We are opposed to this amendment. Such fireworks are not intended for use by children and hence are not within the scope of the above-quoted clause (A) of the definition of "banned hazardous substance." Nor are we aware of any facts—and surely the proponent of the exempting amendment does not suggest that there are facts—that show that such fireworks satisfy the requirements of clause (B) of that definition, which would be applicable only to hazardous substances that are so dangerous that nothing less than a complete ban, rather than appropriate cautionary labeling, could adequately serve the objective of the basic act. This is a severe limitation and, as explained by the Commissioner of Food and Drugs in his testimony, is coupled with procedural safeguards, including judicial review.

Sincerely,

RALPH K. HUITT,
Assistant Secretary.

§ 73.100(r) OF INTERSTATE COMMERCE COMMISSION REGULATIONS

(r) Common fireworks are fireworks devices suitable for use by the public and designed primarily to produce visible effects by combustion. Some small devices designed to produce audible effects are also included in this class. The types, sizes and amount of pyrotechnic contents of these devices are limited as enumerated in this paragraph. No component, of any device listed in this paragraph, which produces or is intended to produce an audible effect shall contain pyrotechnic composition in excess of 2 grains in weight; nor shall such device or component, upon functioning, project or disperse any metal, glass or brittle plasic fragments. (Propelling or expelling charges consisting of a mixture of sulfur, charcoal and saltpeter are not considered as designed to produce audible effects.) Any new device, not enumerated in this paragraph, must be approved by the Bureau of Explosives before being offered for transportation as Common Fireworks. Common fireworks must be in a finished state exclusive of mere ornamentation as supplied to the retail trade and must be so constructed and packed that loose pyrotechnic composition will not be present in packages in transportation. Fireworks, except articles defined in paragraphs (s) through (y) inclusive, of this section, other than common fireworks as defined in this paragraph, and those forbidden for transportation in § 73.51, are classed as Special Fireworks (see § 73.88(d)):

(1) Roman candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed ⅜ inch.

(2) Sky rockets with sticks, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed ½ inch. The rocket sticks must be securely fastened to the tubes.

(3) Helicopter type rockets, total pyrotechnic composition not to exceed twenty grams each in weight. The inside tube diameter shall not exceed ½ inch.

(4) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter shall not exceed ¾ inch.

(5) Cone fountains total pyrotechnic composition not to exceed fifty grams each in weight.

(6) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred and forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed ½ inch.

(7) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.

(8) Dipped sticks, the pyrotechnic composition of which contains any chlorate or perchlorate shall not exceed 5 grams. Sparklers, the composition of which does not exceed 100 grams each and which contain no magnesium or magnesium and a chlorate or perchlorate, are not subject to the regulations in Parts 71–78 and 197 of this chapter.

(9) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed forty grams each in weight.

(10) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one-half inches in length or one-quarter inch in diameter, total pyrotechnic composition not to exceed two grains each in weight.

(11) Novelties consisting of two or more devices enumerated in this paragraph when approved by the Bureau of Explosives.

Senator CANNON. In addition, if statistics concerning household articles treated with pesticides are not already included in the various categories that we have asked for and you have any on that particular point, would you also supply those for the record?

Dr. GODDARD. Yes, sir.

Senator CANNON. All right, do you have anything else to add, Doctor, at this time?

Dr. GODDARD. No, sir.

Senator CANNON. Thank you very much for coming back. We appreciate it.

Mr. Block?

STATEMENT OF MELVIN BLOCK, ATTORNEY, BROOKLYN, N.Y.

Mr. BLOCK. Good morning, sir.

Senator CANNON. Mr. Block, we are under a time limit on the floor today. I see they have a quorum going now, so our time may be limited. I am wondering if you would like to submit your statement for the record where it would be printed in full and then summarize from it so that we could conclude with your testimony in approximately 10 minutes.

Mr. BLOCK. Senator, I appreciate that. This is the second time I have been down here. I was down here on Wednesday. I am an individul. I don't represent any association, any industry, or any group, and I am coming down under my own time and expense because I feel that what I have to say is very important. It involves a product which has, over the years, maimed, blinded, and killed children. I will try to be as brief as possible, but I would appreciate it if I could be fully heard, and I will bear in mind the Chair's admonition. I appreciate that and I will try to adhere as much expediency as possible without in any way curtailing the presentation.

My name is Melvin Block. I am an attorney engaged in the private practice of law and formerly was acting police judge and prosecuting attorney of Massapequa Park, N.Y.

I here represent no one but a love of children, a duty to my profession, and my own conscience.

Once in a while in the hurly-burly of an active practice, after a case is completed, there still remains a moral urgency so compelling to do something to remedy a wrong which gave rise to the case, that something should be done, and in response to that moral directive I am here.

Of course, I am in favor of the present bill insofar as it goes.

Dr. Goddard spoke about fireworks. I have with me here a statement from Dr. Nauheim, a chairman of the antifireworks committee of the Long Island Association of Ophthalmologists, which will give you statistics that were called for during your inquiry of Dr. Goddard. But I am here personally about asking the committee to amend the present Federal Hazardous Substances Labeling Act so that individual dynamite blasting caps are included.

During the course of representing two children against one of the major manufacturers in a case that has been concluded and a request to impound the record was refused and in the course of processing another matter against another manufacturer now pending, material and statistics obtained disclose that over the years children are rendered blind, maimed, deaf, killed, and otherwise injured because of lack of proper labeling and warning on dynamite blasting caps. There are hardly any minor injuries. They are all either fatal or result in blinding.

Some examples are as follows:

In an Iowa classroom, an 11-year-old boy traded a notebook for a small object one of his friends had found in a neighboring field. The object was a shiny metal cylinder and the boy was anxious to find out what it contained.

About the time school was to be dismissed, he took out his pocketknife and began to investigate. Suddenly there was an explosion that rocked the classroom. The boy was killed. He had traded his notebook—and his life—for a dynamite cap.

In Oklahoma, three cousins were blinded in both eyes after exploding a dynamite blasting cap.

In one of our Southern States a boy found a blasting cap, bit into it, and was killed.

In Coram, Long Island, N.Y., three farm boys found blasting caps which had been stored on the farm for many years. One of the boys hit one with a hammer. The 10-year-old boy was killed, the 8-year-old boy was blinded in both eyes, and a 3-year-old boy was rendered blind in one eye.

After contacting your committee, I read an AP dispatch in the New York Times of August 1, 1966, which states:

> Two boys were killed and three injured yesterday when a box of detonator caps exploded in a group of boys playing near a refuse dump.

There is no need to go on with the chronicling of this toll of tragedy. The statistics and newspaper clippings which I offer as a part of the record are eloquent testimony of the havoc worked upon the young and their families.

These newspaper clippings are for just a 3-year period and were obtained pursuant to discovery proceedings. They show that no State is immune, no area, rural, urban, or suburban. The toll of tragedy is tremendous.

A prior study of the statistics of the National Association for the Prevention of Blindness reveals that 11 percent of traumatic blindness suffered by schoolchildren is caused by dynamite blasting caps and dynamite.

I understand, because I received a copy of the letter from the organization, that the National Association for the Prevention of Blind-

ness has sent a letter to Senator Magnuson recommending passage of this amendment. With the Senator's permission, and with the association's permission, I will submit it for the record.

Senator CANNON. Very well.

Mr. BLOCK. Your honorable committee is here today discussing, among other things, the regulation of aspirin and other items. I respectfully submit to you that there is no more dangerous product in a child's hands than when a child is literally—and we don't need quotes for this—playing with dynamite. The lost eye, the blown-off hand, and the dead child is a fait accompli—final, irreversible.

I have annexed statistics to this report and clippings that I say reveal no area and no child is immune in any corner of the country. I also have other statistics which I will submit for the record showing the sex and age groups of all the incidents, so these statistics are complete and I think the committee can work very readily from them and see that this is a universal hazard.

All these accidents have a tragic common denominator: The children do not know what these shiny, innocent-looking objects really are and their lethal consequences. I venture to say that many members of this committee, and perhaps the majority, cannot identify a dynamite blasting cap. Ask your children and your grandchildren and see what response you obtain. I venture to say that they do not know what it looks like.

I have here, Senator, dummies of blasting caps if you would care to look at them at this juncture.

Senator CANNON. You don't need to show them to me because I come from a State where we use a lot of them, and I am quite familiar with them myself and familiar with the dangers inherent in them.

Mr. BLOCK. May I say this: a representative by the name of Clifton Young—around 1955—from Nevada, introduced a bill to amend the Flammable Fabrics Act so blasting caps could be labeled as dangerous and set forth thereon the hazards involved to children. That bill never got out of the Interstate Commerce Committee of the House.

Now, the amount of mayhem set forth in the following statistics tabulated by the Institute of Makers of Explosives, the trade organization of the makers, are in large measure a result of the demise of that bill and I don't have to read them. They are detailed in order, chronologically. These are not mere finger burns. They are blown-off hands, total loss of vision, and loss of eyesight and deaths.

The amount of mayhem is set forth in the following accident statistics tabulated by the Institute of Makers of Explosives who obtain their statistics from a press clipping service and its member companies:

1947 ---------- 99	1951 ---------- 74	1955 ---------- 86
1948 ---------- 58	1952 ---------- 88	1956 ---------- 110
1949 ---------- 68	1953 ---------- 132	1957 ---------- 137
1950 ---------- 66	1954 ---------- 190	

(Tables follow:)

Blasting cap accidents: Children injured—by States in order of frequency

State	1958	1959	1960	1961	1962	5-year total
Pennsylvania	26	8	6	4	9	53
California	9	3	8	6	9	35
New York	3	6	9	8	1	27
Texas	4	18	4	0	1	27
Ohio	6	6	7	3	1	23
Michigan	9	6	2	3	1	21
Florida	4	2	9	1	2	18
Tennessee	5	4	2	5	1	17
West Virginia	2	8	1	3	2	16
Virginia	5	7	2	0	1	15
Wisconsin	5	5	1	2	2	15
New Jersey	5	1	3	4	0	13
Washington	6	2	2	0	3	13
Connecticut	2	1	6	3	0	12
Indiana	4	3	3	2	0	12
Minnesota	8	1	2	1	0	12
North Carolina	2	3	4	3	0	12
Arizona	3	3	3	2	0	11
Georgia	0	5	2	4	0	11
Oregon	1	3	5	1	0	10
Arkansas	0	6	0	0	3	9
Idaho	4	1	1	0	3	9
Colorado	0	6	2	0	0	8
Illinois	4	1	2	1	0	8
Kentucky	2	0	2	1	3	8
Massachusetts	2	4	0	2	0	8
Iowa	4	2	1	0	0	7
South Carolina	1	0	0	1	5	7
Kansas	3	1	2	0	0	6
Oklahoma	1	0	0	1	3	5
Rhode Island	1	3	1	0	0	5
Missouri	0	1	2	0	1	4
New Mexico	2	0	2	0	0	4
Alabama	2	1	0	0	0	3
Maine	0	2	1	0	0	3
Nevada	0	3	0	0	0	3
Hawaii	0	0	1	1	0	2
Louisiana	0	1	0	1	0	2
New Hampshire	1	0	1	0	0	2
Wyoming	2	0	0	0	0	2
Delaware	0	0	0	0	1	1
Mississippi	0	0	0	1	0	1
Montana	1	0	0	0	0	1
Utah	0	1	0	0	0	1
Vermont	0	0	0	0	1	1
Total	139	128	99	64	53	483

Blasting cap accidents: Children injured

State	1963	1964	1965
Pennsylvania	11	12	6
California	5	4	8
New York	8	5	4
Ohio	5	6	7
Tennessee	1	3	2
West Virginia	2	3	0
Georgia	4	0	0
Massachusetts	2	3	1
Washington	2	1	2
Idaho	0	0	3
Michigan	0	1	1
South Carolina	0	0	0
Virginia	3	2	0
Wisconsin	1	0	1
Florida	2	0	0
Arizona	2	0	1
Illinois	2	1	1
Kentucky	1	0	0
Minnesota	4	0	0
New Jersey	0	1	0
North Carolina	0	2	0
Oklahoma	0	0	1
Texas	0	0	4
Connecticut	0	0	1
Arkansas	0	0	0
Colorado	1	0	2
Maryland	1	0	2
Missouri	1	0	1
Alaska	0	0	2
Hawaii	0	0	1
Indiana	0	0	0
Mississippi	0	1	0
Vermont	1	0	0
Delaware	0	0	0
Kansas	0	0	1
Louisiana	0	0	0
Maine	0	0	1
Rhode Island	0	0	1
Oregon	0	0	0
Utah	0	0	1
Wyoming	0	0	1
Total	59	45	56

NOTE.—3-year total, 160.

Mr. BLOCK. You will note that the statistics pertain to children up to the age of 17. We do not know how many more involve children over the age of 17 and adults. It is fair to assume that every accident does not make the newspapers. What about the many near-misses where devastation has been averted in the nick of time? The majority of reported cases involve children who are able to read. The average age is 11.

The manufacturers have been derelict and to blame because since the inception of the industry they know that blasters would lose, displace, cache away blasting caps and children would find them with the inevitable end result. They also know that sometimes children would pilfer these items with the same woeful ending.

Foreseeing all this, they did nothing to label their caps and their tags with an adequate warning identifying it and stating the harm and injury it could cause.

Here are industry's own words on its literature, which they send out to schools and scout camps on a sporadic basis. Unfortunately these kids don't find these cards and posters and here the words on the posters should be affixed to the cap and embossed on the cap itself. This is the recommendation of the former supervisory blasting in-

spector of the city of New York and the present chief blasting inspector.

These read:

Don't touch. These are blasting caps. They are dangerous. High explosives. They can hurt—blind—even kill. Blasting caps are used to explode dynamite. *They're no playthings.* If you find one, tell a policeman, fireman, sheriff, military unit. Remember—Leave blasting caps alone—don't touch.

Hi, kids. This is Mickey Mantle. Here you see me hitting out a few in batting practice. Some sports writers refer to this as blasting (photo).

There's another kind of blasting that's necessary for America's progress. It's the kind you see here (photo).

Dynamite for that big explosion was set off by little blasting caps like these (photo).

Sometimes caps are lost around construction jobs, around mines, on farms, other places (photo).

If you see one, don't touch it. Call a sheriff, or a policeman or a fireman and tell him where it is. Again, don't touch it—it is dangerous (photo).

It's so powerful that if one were exploding at home base, it could hurt someone standing as far away as center field (photo).

Don't ever play with a blasting cap. Save your hands and eyes—you need them (photo).

More than 100 million blasting caps are used every year in the United States for construction and building, for mining and quarrying. Without them, heavy industry would be impossible. In industry, blasting caps are used only by explosive experts, men highly trained to handle these sensitive explosives safely. Men who see to it that they're stored, handled and transported with the greatest security and safety possible. But despite their efforts, a few of the 100 million blasting caps do manage to become lost, strayed or stolen. And when they get into the wrong hands, the results can be tragic.

When handled improperly, blasting caps can cause serious injury, or even death. The one and only way for you to avoid this danger is not to handle them. This poster shows what blasting caps look like, full-size. If you see one, don't touch it. Call a policeman, fireman or sheriff. He will contact someone who can safely and properly dispose of it.

Remember, in untrained hands, blasting caps can be very dangerous. So if you find one, don't touch. You may end up with nothing to touch with.

All blasting caps are dangerous when held by uninformed, untrained, or careless hands.

Each blasting cap contains a highly sensitive and powerful explosive. This is required since these little caps must pack a big enough wallop to set off dynamite and blasting agents which are necessary in various types of mining and construction work.

Heat from friction (rubbing), a flame (matches, candles, or stove) can cause a blasting cap to explode.

A jolt (from dropping on a hard surface) or a blow (from a hammer or shoe heel), even a light rap, can cause a cap to blow up.

Picking at the cap's contents (with an ice pick or screw driver or a stick) will cause it to detonate.

Electric current from a flashlight battery or household lighting system or any source will make a cap explode.

These are the most common things children do to make blasting caps "go off," intentionally or accidentally, almost always with tragic results. Boys and girls must be taught that blasting caps are not playthings, no matter how shiny and attractive they may appear to a child's searching eyes and inquisitive fingers.

What to do when you spot a blasting cap:

Note carefully where it lies—Don't Touch It! If accompanied by a friend, send him to report "the find" to a policeman, fireman, sheriff, or other adult. You stand guard to prevent anyone from disturbing the blasting cap.

If alone when you find a blasting cap, don't touch it! Mark the spot by dropping your handkerchief, and carefully note features of the nearby area such as trees, paths, rocks or bushes that will guide you back to where the cap lies. Then immediately report it to a law enforcement officer or an adult.

Blasting caps should only be removed by a competent, informed adult. Don't try to move or pick up the cap yourself. Leave it to an expert.

Why 'Don't touch it!'?

An exploding blasting cap can maim, blind, deafen, even kill. Yes, the shattering explosion of this little metal tube, a blasting cap, can do all these things. When it detonates, a blasting cap may throw hundreds of small fragments in all directions for a distance of several hundred feet with sufficient force to cause painful puncture wounds. Held in the hand, an exploding blasting cap can tear off fingers. Injuries caused by a blasting cap can be tragic beyond one's imagination. And all such accidents are needless and preventable.

Be smart!

Be safe!

Don't touch blasting caps!

What good this does to an uninformed kid I don't know, because there is no such warning on the blasting cap. He doesn't find a placard or poster. This is all on posters, not on the tag affixed to it.

I agree accidents are preventable if the kids are adequately warned.

But even the best safety practices cannot eliminate all accident hazards. That's because of the "human factor." A thoughtless workman may leave a cap unaccounted for. Mischievous boys may break into storage magazines and steal them. More often caps are lost, misplaced, or hidden away presumably out-of-reach.

Yet children do find these caps and play with them. The result can be serious injuries. Some children lose fingers, hands, or toes. Others are blinded. Some have been killed.

The Institute of Makers of Explosives have a film entitled "Blasting Cap—Danger!" The following is its description of the safety message mentioned in the film:

The safety information is constructively presented in this episode: Chuck, 12, and his pal, Tag, 11, find a blasting cap while playing in a field. They plan to toss it into an outdoor grill during a birthday celebration and scare Kathy, 8, a neighbor's child. The boys know the cap will make a 'big noise', but not that it could seriously injure all of them. The story has considerable drama and suspense, but the ending is happy and positive.

This is all on film, posters, placards, but not on the cap. Unfortunately there are many parents and children today who, not in filmdom but in actuality, are living a more unhappy ending, one with sightless eyes, missing hands, and a memory of a child at a certain age.

This has come about because the individual companies, by agreement, have abdicated their safety responsibility in the design and labeling of their own individual products and shifted the manufacturer's safety responsibility to the Institute of Makers of Explosives, its legislative and public relations arm, as witness this statement by an institute and company official:

Well, we find it impractical to imprint on the cap itself anything that would and we have never found a suitable way to do it, so we have felt we're doing a better job in this area by putting our money into advising people, the children and others in the field, of the proper use of these instruments, than trying to mark something that might not stay on the cap.

The same source stated that in 1959 approximately $40,000 was spent by the Institute of Makers of Explosives for its blasting cap safety campaign.

This is $40,000 for safety so they won't retool, won't have to redesign, and this $40,000 is spent by such monoliths of industry as Du Pont, American Cyanamid, Hercules, Olin Mathieson, and Atlas, Senator, so it comes out to maybe $5,000 a company and even less because there are more companies. In that way they have curtailed their retooling and redesigning and abdicated responsibility to the

trade association and the public suffers because there is no individual competition for safety.

The industry consisting of the largest chemical and explosives companies in the world, continued to manufacture and design their caps without any warning and allocating a portion of its trade association budget for safety until some time in 1964.

A tragedy occurred in the State of Ohio in 1963, when a boy found a shiny object and asked his father what it was and his father did not know. It was subsequently set off by some means by the boy resulting in almost total loss of vision of both eyes. The Lions Club of Ohio, an organization interested in sight conservation vigorously pursued the matter through a very fine, dedicated, and conscientious lawmaker who had been instrumental in passing antifireworks legislation and ultimately gained the enactment of a dynamite blasting cap labeling law which reads as follows:

Ohio Code Supp. Section 3442.091: "No person shall normally sell or distribute any blasting cap or electric blasting cap after January 1, 1965, unless the words 'Dangerous Explosive' are legibly printed thereon."

This may be the only State, to my knowledge, which has a law.

Though the effective date of this legislation was October 10, 1963, in March of 1963 the industry requested that the cutoff date be January 1, 1965, in order to exhaust their inventory. No problem in design or retooling was mentioned.

In that interim period approximately a hundred kids were killed, maimed, and blinded because the industry wanted to exhaust their inventory. Though the State of Ohio has taken a first step, the wording it requires is inadequate to describe the true dangerous nature of the product or the product itself. "Dangerous explosive" is not enough for a kid. It may mean a cap pistol or firecracker. This is dangerous enough. Labeling of both the cap and a tag with wording which states: "This will kill"—"This will blind"—"This will maim"—"Do not touch"—"Call police"—"Dynamite"—and a graphic display of injured children being blasted is in order and should be required. An appropriate symbol should be included. The present wording required by the State of Ohio in and of itself to a child may mean nothing more in terms of potency than the type of cap children use in a cap pistol.

Many of the blasting caps used in the industry today do have tags with the manufacturer's name and a numeral on it to indicate to the blaster the amount of time involved between the ignition and the explosion. Hence, the industry itself is using the tag for a means of communication. It should be used to communicate to the children the true nature of the instrumentality.

It's no excuse to say there is not enough room on the cap. There is already a tag on the cap. The entire cap should be redesigned so as to make it impossible for one not having expert knowledge of the product to detonate it and to adequately label and emboss it. Further, one of the children whom I represented was rendered blind in one eye and still has fragments of the cap in his eye. The fragments cannot be removed because they are nonmagnetic.

There is no reason for that. It should be designed so that the fragments can come out of the eye. Here it can't, and he is one of the 11

percent of traumatically blind schoolchildren because of the blasting cap situation. The need for Federal regulation in this area is—

1. To provide a uniform pattern;
2. To deal with Interstate Commerce;
3. To provide leadership for the States in this endeavor.

Ohio already acted.

Now I have letters annexed here which show the need for Federal legislation. A letter from Du Pont states that—and this is subsequent to the Ohio law, where the industry has said they had no objection to the Ohio law except as to the coloring of the lettering. Du Pont subsequently in response to a letter I sent to them says there is no reliable material which a cap can be marked with and also they say that these children detonate the caps because they want to. That is a non sequitur if ever there was one, because their own literature states that the caps were detonated because the kids do not know what they are, and they are shiny and attractive.

The Commonwealth of Pennsylvania, subsequent to the Ohio law, states by its secretary of state that the boxes in which the caps come are labeled. The boxes in which the caps come are labeled and hence they see no need to label the individual caps but the kids don't find the boxes. They find the individual caps. The U.S. Department of the Interior states in a letter that the manufacturers are going to label, "Dangerous Explosive," and that is because of the Ohio law. This is at the same time Du Pont says they can't see any reason to label. These full letters are enclosed:

E. I. DU PONT DE NEMOURS & CO., INC.,
EXPLOSIVES DEPARTMENT, SALES DEVELOPMENT,
Wilmington, Del., September 12, 1963.

Mr. MELVIN BLOCK, Esq.,
Brooklyn, N.Y.

DEAR MR. BLOCK: Your letter to the Du Pont Company requesting information on labeling blasting caps has been referred to me, and I find that there has been no successful effort in the past to label individual blasting caps with a warning or description of their dangerous nature, mainly due to the lack of space on the cap and no reliable material for making a legend readable. Of course, the boxes in which caps are sold contain appropriate warnings.

There is also room for doubt that any wording adopted would deter either children or adults from carelessly handling caps or endeavoring to detonate them, since experience has shown that accidents involving caps are usually the result of intentional efforts to explode them.

Yours very truly,

N. G. JOHNSON,
Industry Manager, Sales Development Section.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF LABOR AND INDUSTRY,
Harrisburg, September 12, 1963.

Mr. MELVIN BLOCK,
Attorney at Law,
Brooklyn, N.Y.

DEAR SIR: This will acknowledge receipt of your letter of August 30, 1963, addressed to the State of Pennsylvania, Bureau of Mines, and forwarded to this office for disposition.

The Regulations governing manufacturing, sales and the disposition of electric blasting caps clearly indicate that each explosives' package must be labeled before it can be shipped or transported interstate or intra-state. However, the Division of Mines, Quarries and Explosives would not be in favor of each individual cap

being identified by either imprinting or by other means that it is an explosive article.

Rules and Regulations of the Commonwealth of Pennsylvania fully cover this situation by clearly stating and making it mandatory that all explosives used within the Commonwealth of Pennsylvania must be kept or maintained within a State approved, licensed and locked magazine.

Very truly yours,

WILLIAM P. YOUNG,
Secretary of Labor and Industry.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF MINES,
Washington, D.C., October 2, 1963.

Mr. MELVIN BLOCK,
Brooklyn, N.Y.

DEAR MR. BLOCK: Your letter of August 30, 1963 to the Federal Coal Mines Safety Board of Review has been referred to this Agency by Mr. Back, Secretary of the Board.

I am pleased to report that the manufacturers of blasting caps in this country are now preparing to alter their manufacturing process to include marking the shell of every cap. The words "Explosives, Dangerous" will be placed on each cap in letters as large as possible. They estimate that it will be six months to a year before their plants will be completely prepared for the new marking procedure.

We appreciate your interest in this problem and hope that the new warning will assist in preventing these deplorable accidents.

Sincerely yours,

GLENN H. DAMON,
Staff Research Coordinator—Explosives,
Office of the Director—Coal Research.

A bill was introduced in the House in 1955 (84th Cong., 1st sess., H.R. 3721) by Clifton Young, of Reno, requiring the labeling of blasting caps. It never got out of committee. The statistics submitted are a result in part of the demise of that bill. Who knows what other bills there were.

Mr. Chairman, members of the committee, if you believe as I do in the sentiment expressed by the Irish playwright, Sean O'Casey, that it is against the law of nature for parents to bury their children; children should bury their parents, then I beseech you for our own sake and our children's sake to amend the Federal Hazardous Substances Labeling Act so as to include the proper design and labeling of blasting caps as set forth in my statement as a minimum standard.

The item itself may very well be deemed a household item in that it is stored and used on farms for blasting of stumps and rocks, soil and subsoil blasting, tree planting, drainage, foundation and excavation chores, water holes, digging post and pole holes, and splitting logs. The statistics and newspaper clippings submitted herewith show the frequency of accidents to young farm boys.

In any event, an amendment is needed.

For the children's and God's sake, do something.

(Attachments to prepared text follow:)

FIREWORKS, FOLLY, AND FATALITIES—AN UNGLORIOUS FOURTH

(By J. S. Nauheim, M.D., chairman, Fireworks Committee, New York State Ophthalmologic Society)

It was the day after the Fourth of July, a fine warm summer day, the kind on which it is great to be alive and twelve years old. He was sauntering down the street when he spied a red cylindrical object. This was his day, it was an

unexploded firecracker. It just fit into the shell casing that was nestled in the odds and ends he carried in his pocket. He ran home and got a pack of matches. From there, it was over to the empty lot a block away. The firecracker was carefully placed in the shell casing which had been set upright on the ground. The fuse was lit and he ran away to be at a safe distance. You couldn't be too careful with an explosive. He waited expectantly as the fuse burned down. Then—nothing happened. It must be a dud. He walked over and bent down to look at it. In an instant his world was shattered by the roar of the "dud"—a sharp pain shot through his right eye—the universe exploded into a sheet of crimson.

They rushed him to the hospital where an eye surgeon carefully examined the jagged tears in his eyelids and the gaping wound in what had been a good eye. There followed a series of operations, pain, hospitalizations, consultations, worry, anguish and despair. For, despite all efforts, the eye was lost and he was permanently mutilated. A high price to pay for a little fun.

The story of injury, mutilation and even death as a result of the use of fireworks is told again and again annually. In July, of 1965, a 13 year old Long Island, N.Y., boy took the powder from several firecrackers, put it into a four inch copper tube, sealed one end and stuffed several match heads in the open end. It exploded as he was trying to hammer the open end closed. The result was the loss of his right hand. In December, of 1965, all four children of a rural storekeeper in Madison, South Carolina, died when his stock of fireworks exploded and fire destroyed his store. The children ranged in age from three to seven. In July, of 1963, a young father of two children started swimming toward a canoe of teenagers who had lobbed a cherry bomb into a group of swimmers—minutes later he was found dead, his skull crushed, apparently by another cherry bomb that exploded under water. In July, of 1964, five persons died in Vienna, Virginia, in an apartment fire that started when a child tossed a firecracker against the wood stoop at the foot of a stairway to a second story apartment. The above summaries are but a few representative cases randomly selected to underscore the serious nature of the problem.

According to the National Fire Protection Association, during the first thirty years of this century more people were killed celebrating the Nation's Independence than in the War of Independence itself. Fireworks killed 4,290 persons and severely injured 120,000, as compared with the Revolutionary War toll of 4,044 dead and 6,000 wounded. In 1903, an AMA survey revealed 466 deaths (most of them children) and 3,983 injuries resulting from the use of fireworks. Unfortunately collection of annual figures was discontinued in 1946 when in large part as a result of anti-fireworks legislation, deaths reached a record low of 6 and injuries 896. Despite the apparent "good record" the National Fire Protection Association estimates as many as 5,000 persons each year suffer injuries ranging from minor cuts and bruises to maiming.

While nationwide statistics are not available, an idea of the present scope of the fireworks problem may be obtained from a few random local surveys. In 1951, the Illinois Society for the Prevention of Blindness recorded 56 eye injuries for their state alone, and in 1952 the count was 55. During these two years, 13 children lost the sight of an eye or the eye itself.

A 1965 survey of July Fourth hospital emergency room admissions from the New York suburban counties of Nassau and Suffolk, conducted by the Long Island Ophthalmological Society, revealed 42 injuries, of which 10 were eye injuries and 24 were hand injuries. Of these cases, 9 required hospital admission. In order to simplify reporting these statistics were gathered for July Fourth only. It is well known that the danger period extends from weeks before Independence Day to days afterward. The police department of Nassau County alone reported 42 persons injured by fireworks between May 1 and July 6, of 1965. In 1964 the same organization reported 23 serious injuries. 35 lacerations and 47 minor injuries due to the same cause. If these statistics from this one county of a million inhabitants can be considered even partially representative of the other counties in this nation of 180 million inhabitants, a conservative estimate of nationwide fireworks injuries would be in excess of 7,200 annually.

An analysis of 327 fireworks incidents reported to the National Fire Protection Association from the last week of June through the end of July, 1964, revealed 9 deaths and 322 injuries. Injuries were serious enough to require medical attention in 241 of the incidents reported. Two-thirds of the injured were innocent bystanders most of whom were victims of cherry bombs maliciously tossed into

crowds or at individuals. Of the 331 fatal and non-fatal injuries, 11 resulted in mutilation and 12 ended in loss of sight. Over ⅔ of the victims were under twenty-one and half were under sixteen years of age.

The individual case stories are horrifying. The statistics, while they do not make as interesting reading, are impressive. This is especially so when one realizes that, because a large proportion of fireworks injuries go unreported, these statistics are incomplete. This, despite the fact that 27 states have laws prohibiting the unauthorized use of fireworks and 21 states limit the types of fireworks that can be sold. The toll in misery, death and property damage annually reaches proportions equivalent to a Latin-American Revolution. The difference is that we blandly accept the former while the latter makes headlines. Why does this situation persist? Where have we failed in protecting our children and ourselves from this unnecessary hazard?

Part of the answer lies in the fact that 21 states and the District of Columbia have only partial, ineffective laws restricting the types of fireworks allowed and Nevada and Alaska have no restrictions at all. Thus it becomes a rather simple matter for those bent on what they consider fun or profit to circumvent the law in these states and bootleg them in states where general use of fireworks is forbidden. This situation makes possible the tragic story of the father who on his way back to Oregon after buying fireworks in Washington, stopped the car to light an aerial bomb. His wife yelled at him to drop it, fearing it might explode in his hand. As he did so it went off, entered the car and exploded, killing his baby.

To be sure, there is a federal law prohibiting the transporting of fireworks into any state for use outlawed by that state. Offenders are subject to a maximum fine of $1,000 or a year's imprisonment or both. Since 1954 when the law came into effect, 154 cases have been tried, but there hasn't been a single conviction.

It is true that when bootleggers are apprehended in states having strong anti-fireworks legislation, they are fined, but the fines are so small that they merely represent a minor business expense to the professional bootlegger who can anticipate a profit of $6,000 to $7,000 for his five or six weeks illegal activities. In Illinois, for example, a bootlegger set up a stand in the trunk of his car on a busy highway. This state has strong anti-fireworks laws. Business was so good that he didn't see a police car pull up. He was fined $50 by a local judge. That same afternoon he was arrested in another town and fined $100. Undaunted, he replenished his supply and opened for business on another highway. His first customer was a 12 year old boy from Wisconsin. The youngster lit a cherry bomb and threw it to the ground. It exploded with such force that it injured the boy's eye and resulted in blindness. The professional bootlegger moves fast. He has access to a multitude of roads and highways. He is difficult to apprehend and when caught can well afford the paltry fine.

Even a greater menace is the amateur bootlegger, especially good old Dad bent on bringing in a few goodies for the kids. It is virtually impossible to detect and apprehend the private citizen bent on a day's folly. For example, in a two-mile stretch of road outside of St. Louis, a row of gaudy stands sell fireworks legally to people from surrounding states. On their way home they may cross any one of seven bridges leading out of the area. In order to make a thorough check, the police would have to stop and search every car crossing every bridge. The result would be a massive traffic jam. It is no problem for tourists to pick up a bit of folly in any of the many stands found in states having only partial legislation. These are Alabama, Arkansas, Alaska, California, Colorado, Hawaii, Iowa, Kansas, Louisiana, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Washington, and Wyoming. Unless these State Legislatures are persuaded to tighten up their fireworks laws and outlaw all fireworks except those for supervised displays, bottlegging will continue.

The problem will obviously not be eliminated by effective laws, vigorous enforcement and strict penalties alone. One need only look at the history of Prohibition or narcotics addiction to realize this. To borrow a quote from an article in "Safety Education", "If strict enforcement doesn't work, what will? The best solution is an education program aimed squarely at children." I might add that informing Mom and Pop also has some value. We must get the message across that there are no safe fireworks. Even the lowly sparkler burns at 1,650 degrees Fahrenheit (three times as hot as the flame on a kitchen stove) and has been known to cause severe injury and start destructive fires.

Education begins at home. We as parents must accept the responsibility of informing our children of the dangers inherent in the use of fireworks. We must have the common sense not to contribute to the death and mutilation of our children by purchasing or condoning the purchase of fireworks. We must have the fortitude to say "no you may not have fireworks" despite the pleas of those bent on self destruction. We must support anti-fireworks legislation in all states. We must foil those who profit from death and misery by reporting fireworks bootleggers.

Education belongs in school where time should be spent each spring to explain the dangers of using fireworks. The children should be made aware of local fireworks laws and ordinances. They should be warned not to patronize unscrupulous bootleggers. An annual assembly at which representatives of the Police Department Bomb Squad, local Medical Society, National Safety Council or local Society for the Prevention of Blindness discuss the hazards of fireworks is particularly effective.

Education is the responsibility of the community. Effective anti-fireworks legislation in all states will be close when local organizations make it indisputably clear that they oppose all but licensed public fireworks displays. Dr. John W. Ferree, Executive Director of the National Society for the Prevention of Blindness has stated that his organization needs the help of local organizations in persuading local radio stations, newspapers, television and other communications media to support anti-fireworks campaigns. An excellent project for a service club is exemplified by a contest sponsored by the Long Island Ophthalmologic Society in the elementary and junior high schools of Nassau County. The children will be asked to prepare essays and posters demonstrating the hazards of using fireworks. The outstanding contributions are to be awarded suitable cash prizes. A local service club could conceivably make the award presentations at a public fireworks display. This serves several purposes in alerting the children to the danger of fireworks, giving them an alternative to private pyrotechnics and raising the money for the awards.

Only a concerted drive based in the educational efforts in the home and community, supported by strict law enforcement and dependent upon effective legislation will eliminate the threat that hangs over us early each summer. We must accept this challenge. It is too late when a loved one is lying on a stretcher with a limb blown off or an eye blown out. It is later than that when his epitaph reads "Here lies Johnny Jones born 1955 died 1966, a victim of our folly."

Accidents to children from playing with blasting caps, Oct. 1, 1957, to Dec. 31, 1957 (total injured, 4th quarter, 27)

Date	Name	Age	Location	Where found	How exploded	Type of injury
ALABAMA						
Oct. 20	Carolyn McDonald David McDonald Tommy McDonald James Evans	8 5 7 14	Birmingham.		Wall socket	Tommy lost a finger and thumb. Others suffered burns and cuts.
CALIFORNIA						
Oct. 29	Wm. Mueller	16	Anaheim			Lost fingers on left hand.
Nov. 29	Wm. Dresbach	12	Santa Rosa	Construction area	Match	Left hand severely burned.
Dec. 11	David Carlson	15	San Francisco.	Basement work bench	Nail	Ripped off 2 digits of left hand; imbedded main part of casing in right hand and threw bits of metal into face.
CONNECTICUT						
Nov. 19	Albert Fontano	7	Waterbury			Slight injuries.
ILLINOIS						
Nov. 9	Kay Winstead Ellen Algood Cathy De Perno	13 5 4	Dewitt	Pasture	Hammer	Kay sustained cuts and burns to both legs, face, and lost tip of 1 finger. 2 others burned.
KENTUCKY						
Oct. 9	Garry Wayne Akin	5	Louisville		Throwing or striking with object	Suffered loss of thumb and adjoining 2 fingers of left hand.
Do	Chas. Hall, Jr	16	Whitesburg			Lost eye.
MARYLAND						
Nov. 4	Marjorie Ann Sleeman.	8	Cumberland.		Threw in stove	Sustained injury to right eye.
Dec. 4	Russell E. Moats	?	Hagerstown	Shack	Match	Burned on left arm.

Accidents to children from playing with blasting caps, Oct. 1, 1957, to Dec. 31, 1957 (total injured, 4th quarter, 27)—Continued

Date	Name	Age	Location	Where found	How exploded	Type of injury
MASSACHUSETTS						
Oct. 4	James A. Trask	13	Burlington	Construction project	Battery	Probably lose sight of 1 eye and possibly the other. Fragments in eyes, hands, arms, and chest.
NEVADA						
Nov. 5	Ina Jean Leavitt	4	Las Vegas	Sandpile		Blew off tip of finger and cut cheek.
NEW YORK						
Oct. 11	Douglas Distus Robert East	12 12	Kingston			Douglas suffered loss of fingertips on right hand, burns of face. Robert suffered severe injuries on right side of body, back, leg, and arm.
Dec. 12	Vincent Vaughn Wenche Ingebrightsen	10 10	Oyster Bay		Battery	Vincent may lose 2 fingers of right hand. Wenche suffered burns of face.
PENNSYLVANIA						
Oct. 29	Albert Miller	13	Wyndmoor		Match	Died.
VIRGINIA						
Oct. 30	Thos. E. Connor Daniel R. Connor	4 2	Oakton	Shed	Match	Thos. lost end portions of right thumb and 2 fingers. Daniel suffered minor abrasions and contusions of leg.
WASHINGTON						
Oct. 9	Larry Crampton	15	Bremerton	Abandoned shack	Ballpoint pen	Lost ½ of his 3d and 4th fingers and ⅓ of his thumb on left hand.
Nov. 26	Jerry McConnell Timothy McConnell	11 9	Spokane	Barn		Timothy's left hand was mangled and wounds covered his body. Jerry's right knee, right forearm, and a finger were injured.

Accidents to children from playing with blasting caps: Reports of accidents which should be added to quarters previously issued

Date	Name	Age	Location	Where found	How exploded	Type of injury
			TEXAS			
1956 Oct. 5	Willie McCurdy James Owings	12 13	Waco	Construction	Hammer	Both were blinded and Willie lost both hands.
			WISCONSIN			
1957 June 3	Carl L. Lemuell	15	Racine	Shed	Tried to take apart	Took off 1st joint of right thumb and right forefinger.
			OHIO			
July 31	Paul Eyer	?	Norton		Playing	Lost 2 fingers.

Accidents to children from playing with blasting caps, Jan. 1, 1959, to Mar. 31, 1959 (total children injured 1st quarter, 46; total accidents 1st quarter, 23)

ALABAMA

Date	Name	Age	Location	Where found	How exploded	Type of injury
Feb. 23	Dennis W. Reno	8	Birmingham		Playing	Lost 3 fingers and suffered forehead injuries.

CALIFORNIA

Feb. 4	Sherry Nielson	12	Chico	Sewing basket	Needle	Blew off 1 finger, mangled her left hand, and blasted metal into face and chest.

FLORIDA

Feb. 24	Andy Learner	7	Miami	Shack		Blew off finger and caused cuts and burns over body.

IOWA

Mar. 17	David Miller	9	Oelwein	Basement	Battery	Explosion sprayed chest, arms, and legs with bits of metal.

MAINE

Mar. 31	Michael Russo Dennis Russo	9 12	Portland	Street	Electrical outlet	Michael suffered ruptured liver. Dennis face injuries.

MICHIGAN

Feb. 22	James VanderSlute Glen Hartley David Hartley	14 9 11	Muskegon	Greenhouse	Wire	James suffered loss of left thumb and 2 fingers on left hand and right hand injured. Glen received head concussion and cuts on left jaw. David sustained cuts above right eye and right chin.

NORTH CAROLINA						
Jan. 14	Sammy Davis	12	Lenoir	Woodshed	Match	Left eye removed. Right eye may be saved. Suffered burns on left hand.
OHIO						
Jan. 15	Robert Fisher	14	Wakeman	Abandoned house	Battery	Had left eye removed.
Mar. 3	James Workman	8	Killbuck		Threw on stove, rolled into oven, exploded.	Suffered injuries to head and chest.
LOUISIANA						
Jan. 28	Darryl Johnson	8	Berwick		Hammer	Fragments in face and leg. Left eye injured.
PENNSYLVANIA						
Jan. 15	Zharka Rajacich	16	Blairsville	Alley	"Squeezed"	Index finger and part of thumb on right hand amputated. Also injured 2 fingers on left hand.
TENNESSEE						
Feb. 23	Lonnie Farmer, Jr	14	Knoxville			Blast blew off portions of thumb, 1st, 2d, and 3d fingers on left hand. Also suffered injuries to right hand, chest, neck, and chin.
TEXAS						
Feb. 10	Michael Swinney	12	Odessa	Alley	Battery	Part of Michael's finger on right hand blown off and metal particles imbedded in face, hands, and chest. Other 2 boys had metal particles embedded in faces and hands.
	Ronald Forrester	11				
	Donald Forrester	11				
Feb. 19	Bobby Watts	(1)	Killeen	Science class	do	3 boys hospitalized. Other 4 sent home after receiving clinical treatment.
	George Chastine	(1)				
	Charles Burrow	(1)				
	Ronney Dockery	(1)				
	Johnny Hammond	(1)				
	Mickey Britten	(1)				
	Norris Watkins	(1)				
	Rodger Watkins	(1)				
Mar. 27	Wilbert Lehnert	14	San Angelo	do	do	Fragments of cap struck eyes of Wilbert and Tommy. Glenda and Dwight suffered cuts about the face.
	Tommy Jackson	15				
	Glenda Thomas	14				
	Dwight Capp	13				

[1] 4th grad pupils.

Accidents to children from playing with blasting caps, Jan. 1, 1959, to Mar. 31, 1959 (total children injured 1st quarter, 46; total accidents 1st quarter, 23)—Continued

VIRGINIA

Date	Name	Age	Location	Where found	How exploded	Type of injury
Jan. 22	Cythia Isaebelle	4	Roanoke	Shed		Killed.
Jan. 19	Chas. Wallace	11	Covington		Battery	Charles had piece of metal penetrate eyeball. May lose sight in eye. Wm. treated for multiple injuries to right thigh. Cobbs hit by flying fragments.
	William Walker, Jr.	11				
	Darnell Cobbs	10				
Mar. 5	Samuel Love	5	Chase City		Hit with pipe	Blew off Samuel's little finger on left hand and ring finger required grafting. John and Ruth suffered fragment burns.
	John Love	10				
	Ruth Love	6				

WASHINGTON

Feb. 15	Donald Powell	10	Mabton		File	Injured 2 fingers and received bruises on body.
Feb. 22	Gordon Lamont	14	Bellington	Abandoned house		Treated for facial and chest abrasions and 2 split fingers.

WEST VIRGINIA

Jan. 30	Harley Thompson	14	Elizabeth	School ground		Harley suffered loss of ends of left thumb, index, 2d and 3d fingers and burns on right hand. Jimmie received small pellets in hands and face.
	Jimmie Wine	13				
Feb. 11	Douglas Justice	6	Williamson	Near mail box	Rock	Both suffered cuts and burns on legs, bodies, arms, heads, and faces.
	Phyllis Justice	5				
Mar. 19	Walter Martindill	14	Bethany Pike.		Match	Walter required surgery left hand and eye. The girl received shrapnel injuries on back and James had injuries to side and cut above left eye.
	Linda Buchanan	11				
	James Buchanan	16				

INSTITUTE OF MAKERS OF EXPLOSIVES,
New York, N.Y., March 25, 1963

Mrs. BERNICE K. MACKENZIE,
Ohio House of Representatives, Columbus, Ohio:

After canvassing members of the Institute of Makers of Explosives in connection with Ohio House Bill No. 315, we wish to advise that our industry does not stand in opposition of the bill's principal feature, that is, the requirement that blasting caps be imprinted with the words, "Danger—Explosives."

We would like to point out, however, that the specification for "red letters" probably is unrealistic and should be removed from the bill as it is now offered. It is the practice of one industry member to print the warning in different colors as a means of identifying various types of caps. Furthermore, red is not a good color to use on a copper shell from the standpoint of visibility. Black, for example, is much better. Thus, color should be left to the manufacturer's better judgment, and not be established by legislation.

May we also point out that an effective date of January 1, 1964, is entirely too early from the standpoint of the ability of the trade to consume or otherwise dispose of blasting cap stocks now in distribution channels. It would work a severe hardship to require compliance within the relatively few months that remain between now and January, 1964. An effective date of January 1, 1965, would be much more realistic.

We hope you understand our interest in and sympathy for the objectives of the legislation you have proposed. We stand ready to assist at any time in all matters concerning safety in the handling and use of products of the industry we represent.

Cordially,

HARRY L. HAMPTON, Jr., *Secretary.*

NATIONAL SOCIETY FOR THE PREVENTION OF BLINDNESS, INC.,
New York, N.Y., August 22, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee, Washington, D.C.

DEAR SENATOR MAGNUSON: The National Society for the Prevention of Blindness is deeply concerned about eye injuries caused by dynamite blasting caps. These tragic accidents are *preventable* causes of blindness.

Proper labelling of dynamite caps emphasizing the dangers involved would offer some protection.

I respectfully urge that your committee consider an amendment to the present Federal Hazardous Substances Labeling Act, P.L. 86-613, Sec. 17 to cover proper labelling of blasting caps.

Cordially yours,

JOHN W. FERREE, M.D.,
Executive Director.

MERRICK, N.Y., *August 1, 1966.*

SENATE COMMITTEE ON CHILD WELFARE,
Washington, D.C.

DEAR SIRS: A significant number of young people are seriously injured each year as a result of the use of fireworks. One of the factors contributing to the availability of these explosives even in states where laws prohibit their use is the lack of uniformity and anti-fireworks legislation from state to state. Since the individual states have failed to adequately control this situation, it would appear to be the responsibility of the federal government to intervene in behalf of the safety of our children. The problem is one of transportation of fireworks from states with less stringent laws to those in which the use of fireworks is prohibited. Legislation controlling the production and import of these agents is essential. Consideration should be given to the federal licensing of importers and manufacturers of fireworks with inspection of their records to insure that these products are supplied only to those licensed to utilize fireworks for public display. We are aware that there is a law on the books that prohibits the interstate transportation of fireworks between states with little effective anti-fireworks legislation and those with stringent anti-fireworks laws. It should be pointed out that this law as it stands has proven to be unenforceable.

Enclosed are photographs of the eyes of young people who sustained severe injuries as a result of playing with fireworks. It should be pointed out that useful vision is hopelessly lost in most of these eyes. Photographs of those killed or maimed are just as horrifying as these. There is no esthetic beauty to these injuries no matter how valiant the attempts to restore normal appearance and function. The best cure is prevention. Prevention of fireworks injuries can only be achieved by adequate uniform fireworks safety codes, strict enforcement and education of the general public as to the dangers involved in using these "toys".

If additional information is desired on this subject, I shall be glad to make myself available.

Sincerely,

J. S. NAUHEIM, M.D.

Report of blasting cap accidents by age group and sex, 1957 through 1962

Age	1957		1958		1959		1960		1961		1962	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
1 to 4	5	2	6	0	0	2	2	1	0	0	3	0
5 to 9	42	6	42	6	37	2	29	5	12	0	19	6
10 to 14	58	4	69	2	64	5	49	5	40	6	22	0
15 to 16	19	1	14	0	18	0	8	0	6	0	3	0
Total	124	13	131	8	119	9	88	11	58	6	47	6
Yearly total	137		139		128		99		64		53	

NOTE.—The above data is based upon clippings provided by a professional news reading service which contracts to scan carefully every daily and weekly newspaper published in the United States. This service forwards reports on every explosion and blast appearing in print. Among doctors and hospitals it is the practice to advise police of treatment of wounds that result from explosions, without regard for the blast source or seriousness of the injury. Police records are reviewed daily by news reporters and almost invariably find their way into print.

Thus, within reasonable limits of time, expense, and practicable survey methods, this statement is presented as the most complete report that can be rendered on numbers of accidents involving youth under age 17 suffering injury from a blasting cap explosion.

Report of blasting cap accidents by age groups and sex, 1961 through 1965

Age	1961		1962		1963		1964		1965	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
1 to 4	0	0	3	0	0	1	0	0	1	1
5 to 9	12	0	19	6	20	2	10	1	9	0
10 to 14	40	6	21	0	31	0	26	0	30	0
15 to 16	6	0	3	0	5	0	8	0	15	0
Totals	58	6	46	6	56	3	44	1	55	1
Yearly totals	64		52		59		45		56	

Senator CANNON. Thank you, Mr. Block, for your very fine statement. I personally am aware of many of these accidents that have occurred, and as I said, I come from a part of the country where these items are used more than they are probably in many parts of the country. It's my understanding now that the position is taken officially that these do come within the Federal Hazardous Substances Labeling Act, and I think that is a new departure now in the view of the Commissioner, but it's my understanding that that is their present position.

Mr. BLOCK. I am glad because I have alerted the Commissioner to the danger and I thought the committee should definitely have this material because when we talk about aspirin and we talk about other household items in the majority of cases sometimes something can be done; but this is a fait accompli. When the devastation happens it can't be undone, it can't be ministered to, there could be nothing given. It's a death; blinding; lost hand.

Senator CANNON. I am going to ask our counsel to contact the Commissioner and have him submit a statement in writing for us in these hearings, and, of course, if they do take that official position now as a matter of record, there would be no need for us to amend the act. If not, we can consider it at the proper time. And specifically we will inquire as to whether or not they do have authority under the act now to do, to carry out some of the recommendations that you have made.

Mr. BLOCK. Well, I am very glad if it can be done departmentally, so much the better, but if it cannot be done—I hope it can be done because Dr. Goddard is a fine gentleman who is very safety conscious—then I ask you if it cannot be done according to the views of the Senate by regulation under the present law, then I sincerely ask that the amendment be fought for and adopted. Furthermore, as to the aspects of the bill, consider my statement the strongest possible endorsement of them.

Senator CANNON. Thank you very much for giving us your views. Mr. Fringer, you may proceed.

STATEMENT OF ROBERT C. FRINGER, NEW JERSEY DEPARTMENT OF AGRICULTURE, DIVISION OF PLANT INDUSTRY, TRENTON, N.J., REPRESENTING NEW JERSEY SECRETARY OF AGRICULTURE PHILLIP ALAMPI

Mr. FRINGER. I will keep this very short and stay right on my statement.

My name is Robert Fringer. I am appearing as a representative of the Honorable Phillip Alampi, secretary of the Department of Agriculture of the State of New Jersey. I should also identify myself as the principal wildlife manager working on the recently created blackbird control program in New Jersey.

Mr. Chairman and members of the Senate Commerce Committee, I appreciate and welcome this opportunity to request for the addition of an amendment to Senate bill S. 3298. We are fearful that without this additional amendment the use of agricultural fireworks will soon be forbidden.

Each year millions of dollars are lost through animal and bird depredations upon our agriculture crops. These losses would be con-

siderably higher if repellent devices were not used. For a number of years both State and Federal agencies have recommended the use of fireworks for crop protection. The need of fireworks will continue until better materials and techniques can be found. Fireworks have been most effective in alleviating crop damage and the loss of the use of them will deal a severe blow to the entire agriculture industry of the United States. We strongly urge that you consider our plea for the continued use of these highly effective devices.

Although it may not be the intent of the committee to ban fireworks for agricultural use, the wording of bill S. 3298 is such that this might occur. For this reason, we ask than an amendment be added to S. 3298. Section 3 after subsection (d) of such act (15 U.S.C. 1262) is further amended by adding at the end thereof the following new paragraph:

(e) The Secretary shall exempt from the requirements established by or pursuant to this Act fireworks used for agriculture crop protection and depredation control.

I thank you, Mr. Chairman, for the opportunity to present this statement for Secretary Alampi. I sincerely hope that the committee will see fit to provide S. 3298 with the additional amendment.

Senator CANNON. Thank you very much, Mr. Fringer.

How widespread is the use of fireworks in your State for this purpose?

Mr. FRINGER. In our State it is quite small. We have been using carbide exploders, but for the small farmer this is the only way they are using them.

Senator CANNON. How do they detonate? What is the method?

Mr. FRINGER. They use what they call a fuse rope—merely a rope, and the fireworks are inserted into this rope at various intervals along the rope and the rope is ignited and as it burns up it ignites the firecrackers.

Senator CANNON. So it sort of an automatic continuing process then to give you the protection?

Mr. FRINGER. Right.

Bird behavior is a difficult thing to work with, but we found with carbide exploders they are an automatic thing and just bang, say at 5-minute intervals—you can adjust this.

Senator CANNON. I think these would not be considered a household product, but it would certainly be well for us to check with the Commissioner and find out whether or not they would so interpret it.

Mr. FRINGER. I think this interpretation has been vague at times and this is what our concern is, exactly under who they are going to be covered and regulation established on these.

Senator CANNON. Is the representative from the Department prepared to comment on that now or would you prefer to submit something for the record?

Mr. MURPHY. My name is Jerome Murphy, Special Assistant to the Assistant Secretary for Legislation.

I think these particular products would not be covered by the provision calling for the banning of certain fireworks, because that provision is aimed at those products which are intended for use by children, and these particular products Mr. Fringer refers to are not.

Senator CANNON. Are these products different enough in character from the products that would be banned so there would be no question about it, Mr. Murphy?

Mr. MURPHY. I believe that is true. We would like to work this out, and submit a letter for the record.

Senator CANNON. Would you check that out thoroughly and then submit a letter for the record so that we will know completely what your position is? Because if there is any doubt about whether or not they would or would not be covered, the committee may desire to take action on it in connection with the bill.

Mr. MURPHY. Yes, sir.

(See letters of August 29, 1966, from Assistant Secretary Huitt to Senator Magnuson, pp. 38, 44.)

Senator CANNON. Thank you very much.

Thank you again, Mr. Fringer, for your statement.

That concludes the hearings.

(Whereupon, at 11 a.m., the subcommittee was adjourned.)

(The following was received by the committee for inclusion in the record:)

Brooklyn, N.Y., October 20, 1966.

Re Child Protection Law.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing to you to supplement my statement and my testimony given before your subcommittee on August 26, 1966 pertaining to dynamite blasting caps. More particularly this supplement is in response to a letter from the Institute of Makers of Explosives dated August 31, 1966 which appears in the printed record of the hearing of the House Subcommittee on Public Health and Welfare. I would appreciate it if it is at all possible to have this letter included in the printed record of the hearings and filed with the documents pertaining to the bill.

The letter of Harry Hampton, Secretary of the Institute of Makers of Explosives is significant in its omission in answering my charge that until compelled to do so by the Ohio Legislature, the manufacturers of dynamite blasting caps did not identify the caps as explosives and dangerous until January 1, 1965 despite the fact that their trade organization has been in existence for over 50 years.

In regard to their statement that they wish to reduce the number of blasting caps accidents to zero, why in the past have they continually and continuously opposed the adequate labelling and design of blasting caps, all the time claiming that there was no adequate method of doing so. This is hard to swallow because of the fact that their members include such chemical and engineering giants of industry such as DuPont, American Cyanamid, Hercules, Atlas Chemicals and Commercial Solvents to name a few of the 13 members which they state they have. It strains one's credulity to accept such statements as there is no "reliable material for making a legend readable" as stated in a letter of *October 12, 1963* by N. G. Johnson, Industrial Manager, Sales Development Section of DuPont and which appears in my original testimony and statement to the committee because this statement was made subsequent to a letter sent on *March 25, 1963* by Mr. Hampton, himself, to the Ohio House of Representatives (annexed hereto) stating that a warning could be placed on the cap. Aside from the color of the warning which he stated should be left to the discretion of the individual manufacturer his only compaint at that time was that he desired the effective date of the legislation to be January 1, 1965 instead of January 1, 1964 so that the manufacturers could exhaust their inventory which were then in trade channels.

A manufacturer truly concerned about the safety of the public would withdraw his product from the market until it conforms with meeting the safety needs of the public. This certainly does not show the concern to have the number of

children and persons injured reduced to none as stated in Mr. Hampton's letter to your Committee, but rather a concern for economic gain.

This is eloquent testimony to the fact that the manufacturers could and will mark their product safer only when required to do so when they did by the Ohio Legislature. The Ohio law set forth in my original statement is a first step. The product should be labelled and redesigned in accordance with the suggestions in my statement.

It is a sad commentary on their industry and in the period between the time a Ohio boy was blinded in both eyes which gave rise to the Ohio law and the time the industry sought to exhaust inventory and then label their caps in accordance with Ohio Law, hundreds of children were killed, blinded, maimed and otherwise injured.

In the light of the prior statement by Mr. Hampton to the Ohio Legislature, I ask the committee to evaluate the statement of Max E. Colson, Vice-President and General Manager of the Explosives Division of Atlas Powder Co. and Vice-President of the Institute of the Makers of Explosives and later its President, made in a deposition dated November 10, 1961 in an action by two seriously injured boys against his company predicated upon a failure to warn, and later settled virtually on the eve of trial in a substantial sum, to wit—$127,500 and $37,500. "Well we find it impractical to imprint on the cap itself anything that would state and we have never found a suitable way to do it so we have felt we are doing a better job in this area by putting our money into advising people, the children and others in the field of the proper use of these instruments, than trying to mark something that may not stay on a cap". He further stated that approximately $40,000, was spent by the Institute of Makers of Explosives in its blasting cap safety campaign. This amount of $40,000 from approximately 13 companies such as DuPont, Atlas, American Cyanamid, Hercules, Olin Mathieson, Commercial Solvents and others. Wouldn't you say that this was truly a munificent sum It all just doesn't jell with Mr. Hampton's letter of March 25, 1963 which was just concerned over the color of the warning and the effective date of the legislation extending the hiatus of the effective date an additional year so that inventory could be exhausted. My statement shows the industries statistics of children under 17 injured during this period.

The tragic toll of death, blindness, and mayhem has come about because of the individual companies by agreement have abdicated their safety responsibiilties in the competitive design and labelling of their product and have attempted to mollify the safety needs of innocent children and the public by allowing their legislative and public relations department, their trade association and the Institute of Makers of Explosives to send out placards and posters. A truly safety concerned industry would not be interested in exhausting an inventory which bears no identification whatsoever on its dangerous product and no adequate warning. Is this consistent with the avowed purpose "to reduce the number of blasting cap accidents to zero" as set forth in Mr. Hampton's letter of August 31, 1966? In so far as the statistics of the industry are concerned, it is reasonable to assume that they do not reflect all tragic accidents since all tragic accidents are not recorded or reported. I personally represent a boy who sustained a serious eye injury and was treated in a hospital and same was not "reported" anywhere. Furthermore, industry statistics do not record accidents to children 17 years of age and over and they do not report accidents of adults. They do not record the "near misses". The statement that since 1958 there has been substantial reduction in accidents each and every year is just not true according to the industry's own statistics as set forth in the record of these hearings. There has been a rise and decline in the industry's own statistics both prior and subsequent to 1958.

The fact that the accident toll may have declined somewhat in recent years may logically be attributed to better magazine laws, licensed blasters and control of distribution of the explosives by legislation.

Still there are too many of these tragic accidents. The fact that through the first six months of 1966 the industry recorded eight accidents is no reflection of credit on them since it cannot be an exact figure nor does it take into account the summer months when children are more vulnerable because of play and being out-of-doors. In fact it may be a discredit because this figure is a figure subsequent to the effective date of the Ohio law January 1, 1966, when a first step was taken in identifying blasting caps by the Ohio Legislature. This is a sequence of time which the principals of the explosive industry should well mull over while looking at their children or grandchildren and search their hearts and consciences.

The statement in Mr. Hampton's letter that the Institute program reaches every school in America when taken in conjunction with his statement that a certain number of schools respond annually requesting supplies for blasting caps safety posters does not seem to indicate an organized campaign of distributing blasting cap information directly to each and every child. I reiterate the simple fact that children find blasting caps and do not find posters. The adequate protection of our children from these dangerous explosives as powerful as hand grenades should not be left to the whim of a teacher or the attendance of a child in school to be shown a poster of a blasting cap with the prayer that he will remember it. Proper and adequate labelling and design belong on the blasting cap and not on the poster despite the industry's desire to cut costs and justify the management of the explosives departments of the individual firms. Mr. Hampton states that all the wording suggested in my statement to the committee is taken from the industry's utterances of the past two decades. I quite agree with the statements taken from their literature. However, statements should be properly placed on the explosive dynamite electric and fuse blasting caps where they belong—informing children "This will kill," "This will blind," "This will maim," "Do not touch," "Call police." It may be cheaper for the industry to send out posters and not adequately label and design the caps to contain the warnings, legends and graphic illustrations I suggested in my testimony. It is far dearer to the innocent victims.

Furthermore, if I were an industry spokesman I would not be too proud of the fact that the wording has been on posters for over two decades in an industry with a trade association that has been in existence for over half a century.

I would not be too proud of the fact that I knew all about death, destruction and mayhem and my organization lobbied against bills such as the one in 1955 which would have added adequate labelling and design of blasting caps, and amended the Flammable Fabrics Act.

I would not be too proud of the fact that the industry maintained labelling of blasting caps could not be done and later started to do so when compelled to do so by the Ohio Legislature after a boy was blinded in both eyes.

I would not be too proud of the fact that in an industry in existence over 50 years and after thousands of deaths, blindness, lost hands and maiming, I first put a label identifying my blasting caps in 1965 whereas before it was totally blank.

I would not be too proud of the fact that an extensive industry containing the largest chemical departments in the world did nothing to label and redesign their product stating it couldn't be done.

I would not be too proud of the fact that a manufacturer who settles a case virtually on the eve of trial for a substantial sum, asks that the record be impounded and was refused.

However, if I were a young, vigorous safety conscious executive with the power to make decisions in a company in the explosive industry and say this has gone far enough. I would say, let us accept Mr. Block's suggestions and thus we can save our children and also attempt to save our souls, then perhaps I would be proud.

Mr. Hampton states in an obviously callous attempt to imply that the blame for the injuries of the innocent children is on their tampering. "We also wish to point out that no blasting cap explodes by itself. To explode a blasting cap it must be subjected to a high heat or flame or severe friction, to a shock of considerable magnitude such as a hammer blow or to an electric current."

Well, it is sad some cannot have their cake and eat it. He had stated that all the wording in my statement is copied from the Institute's educational posters and I ask him to re-read it and see how his own posters which emanate from his own offices and statements which sometimes appear over his own signature jibe with the self-serving remarks in his letter. I will not repeat the many other statements of the industry appearing in my testimony. These are just a few. "If, you see one, Don't Touch It"—"It is so powerful that if one explodes it could hurt someone standing as far away as centerfield"—"The one and only way for you to have this danger is not to handle them"—"Remember in unprotected hands blasting caps can be very dangerous so if you find one, don't touch, you may end up with nothing to touch with"—"Even a light rap can cause a cap to blow up"—"Heat from friction in (rubbing a flame, matches, candles or stove) can cause a blasting cap to explode"—"Electric current from a flashlight battery or household lighting system or any source will make a cap explode"—"Note carefully where it lies—don't touch

it!"—"Injuries caused by a blasting cap can be projected beyond one's imagination and also accidents are needless and preventable" Be smart! Be safe! Don't touch blasting caps!

Those are but a few of the many statements of the manufacturers made about blasting caps. Others refer to them "as powerful as hand grenades". Mr. Hampton's statement wants us to accept these injuries as the children's fault and not the manufacturers. For shame!

Why he must know that his own accident reports show that workmen have been killed by carrying blasting caps around in their shirt pocket and they are so sensitive that they exploded through body heat and perspiration.

All sensible humane people would agree that it is far better for government to go on a "regulation kick" as industry is so fond of saying, than industry going on its own "non-regulatory kill". Somehow, industry always states that it wishes a bill with which it can live. There is nothing in my suggestions that will not let industry live. In fact, a new breed of executives may be able to live with clear consciences. Besides, I am more interested in a bill and/or regulations which would allow children to live.

Respectfully yours,

MELVIN BLOCK.

P.S.—The concern of the Institute in their letter concerning rust of their product indicates their knowledge that the product will be exposed for long periods of time and hence susceptible to coming into possession of children and others.

MAY 9, 1966.

Dr. ABRAHAM B. BERGMAN,
Director, Outpatient Services,
The Children's Orthopedic Hospital and Medical Center,
Seattle, Wash.

DEAR DR. BERGMAN: Knowing of your work at the Children's Hospital, I wondered whether you had come across any cases of hazardous toys or other similar products which the Commerce Committee should consider in formulating appropriate protective legislation. The bill, which I am enclosing, has been requested by the President and the statement has been supplied by HEW. But I would like to know, for myself, whether there are additional problems in this area which should be brought to our attention.

Kindest regards.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

THE CHILDREN'S ORTHOPEDIC HOSPITAL AND MEDICAL CENTER,
Seattle, Wash., May 28, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Thank you very much for your letter of May 9th concerning S. 3298. I have circulated the bill to some of my colleagues at the Children's Orthopedic Hospital and Medical Center and in the Department of Pediatrics at the University of Washington. We would all agree that the bill as introduced is a very excellent one. I have no specific changes to suggest whatsoever. You should be aware, however, that the problem of dangerous toys has not been a marked one in this area, so I cannot speak from first-hand experience in witnessing serious illness or injury due to dangerous toys.

A much more serious problem in our eyes is that of flammability of children's clothing (not infant blankets). In the past year we have had four or five cases where little girls' dresses or costumes have caught fire and flared up causing very serious burns. As you probably know the cost in terms of life, morbidity, and finances is tremendous in these burn cases. At Stan Sender's suggestion I am in the process of attempting to gather some local statistics on these burns due to extremely flammable children's clothing. I understand that the accident prevention division of the U.S. Public Health Service has attempted to get some voluntary cooperation from clothing manufacturers to

include a flame-retardant substance in all children's clothing. It is my understanding that good children's clothing is treated with this substance which causes the clothing to smolder rather than flare if it catches on fire. Unfortunately, the lower income families that would be most apt to buy cheap children's clothing also have more space heaters which set off such fires. I am sure the people in the accident prevention division of the U.S.P.H.S. would be glad to furnish you with more specific information. I know they had an excellent exhibit on this topic at the last meeting of the American Academy of Pediatrics in Chicago.

In summary then, I believe that S. 3298 is an excellent bill and I would recommend that you consider the inclusion of a provision banning sale in interstate commerce of highly flammable children's clothing.

I certainly appreciate your great help in the problem of power lawnmower injuries. The industry finally sat up and listened following your Senate speech after many years of inactivity. I enclose a recent editorial in Northwest Medicine on the subject.

Kind personal regards,

Sincerely,

ABRAHAM B. BERGMAN, M.D.,
Director Outpatient Services.

JUNE 21, 1966.

Hon. PAUL RAND DIXON,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: I would like very much to have your comments on the enclosed letter from Dr. Abraham B. Bergman, Director of Outpatient Services, The Children's Orthopedic Hospital and Medical Center, Seattle, Washington, with reference to S. 3298, the so-called "Child Protection Act of 1966."

Kindest regards.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

JULY 8, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am in receipt of your letter of June 21, 1966, in which you asked for my comments on the letter you enclosed from Dr. Abraham B. Bergman, Director, Outpatient Services, The Children's Orthopedic Hospital and Medical Center, Seattle, Washington, which referenced S. 3298, 89th Congress, 2d Session.

As to the proposed legislation, the Commission is currently preparing its views on S. 3298, as requested in your letter of June 20, 1966.

The problem relating to the flammability of children's clothing, mentioned by Dr. Bergman, is indeed a serious one. The Flammable Fabrics Act, in the passage of which you took a most important part, has been quite efficacious in removing highly flammable items of wearing apparel from the market place. However, in its present form, there is no requirement that clothing be flameproofed or that flame spread rate must be minimal.

As you know, at your request, the Commission has recently suggested that certain changes be made in the Flammable Fabrics Act, and in the Commercial Standards promulgated by the Secretary of Commerce which relate to the Act. However, we have not as yet made suggestions regarding flameproofing. At this juncture, we do not know enough about the subject to make an informed judgment respecting any form of proposed legislation.

It is our intention to initiate a study of the problem of the flammability of clothing, particularly those sold for use by children. In the course of such study, we shall most likely work closely with the Public Health Service, Accident Prevention Division, of the Department of Health, Education and Welfare, and with the Department of Commerce—particularly its Bureau of Standards. We have already made contact with the Accident Prevention Division and have been promised the information to which Dr. Bergman referred.

I found the article on "Flame-Retardant Treatment of Fabrics" of the National Safety Council, a copy of which Dr. Bergman attached to his letter, most

interesting and informative. We most certainly will give full consideration to Standard 701, "Flameproofed Textiles" of the National Fire Protection Association.

I can assure both you and Dr. Bergman that we at the Commission, as rapidly as possible, shall attempt to determine the best manner in which to protect the public from the horrendous effects which may possibly occur from wearing flammable articles of clothing.

Sincerely yours,

PAUL RAND DIXON, *Chairman.*

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
August 23, 1966.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR WARREN: I am forwarding a letter from the Indiana State Health Commissioner, Dr. A. C. Offutt, who strongly objects to an amendment suggested by the Chemical Manufacturing Association, Inc. to H.R. 13886, the Child Safety Act.

Dr. Offutt believes that adoption of this amendment would seriously limit Indiana's efforts to label hazardous household products. May I respectfully request that your committee consider Dr. Offutt's suggestion in its hearings next Wednesday and perhaps enter the letter in the hearing record.

Your consideration in this matter is appreciated.

Best regards.

Sincerely,

BIRCH BAYH.

STATE OF INDIANA,
STATE BOARD OF HEALTH,
Indianapolis, August 15, 1966.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: We are writing to you in regard to H.R. 13886 introduced by Representative Staggers. This bill is to be known as the "Child Safety Act of 1966" and has considerable merit for its passage.

However, on June 24th the Chemical Specialities Manufacturing Association, Inc., presented an amendment which reads as follows:

"SEC. 203. It is hereby expressly declared that it is the intent of the Congress to supersede any and all laws of the States, and political subdivisions thereof, insofar as they may now, or may hereafter provide for the labeling of a container of any hazardous substance covered by this Act which differs from the requirements of this Act or the Regulations promulgated pursuant thereto. Any new regulation, or ordinance purporting to establish such a labeling requirement shall be null and void".

Indiana pioneered in this field of labeling hazardous household products and you will note by a copy of our enclosed act, that Indiana's law preceded the Federal Hazardous Substances Labeling Act by two years.

In addition, the Indiana law requires the manufacturer, seller or distributor to file formulation data on each product. In this way Indiana is able to evaluate the hazards of a product with the manufacturer and also to serve as a poison information center for Indiana hospitals and physicians. The federal law and all other state laws require only labeling of a hazardous product.

Those manufacturers and their organizations that support the proposed amendment claim that one state or one city may require special warning statements on a label that, in effect, require the firm to label for the entire country. This may be true on occasion, but such rulings are not made without merit and may be based on formulation data which are furnished as required by the Indiana law. Often these rulings are later adopted by the various federal agencies.

Passage of this amendment would nullify much of the protection now available to Indiana citizens under the Indiana Hazardous Household Product Act. The evaluation of product formulations allows us to discuss potential hazards of certain chemicals or combinations of chemicals with the manufacturer and to come to an agreement as to proper labeling of his product. Since the federal law

and all other state laws do not require the submission of formulation of potentially hazardous products, those regulatory agencies do not have this advantage unless the manufacturer volunteers the information. Therefore, in many cases, the labeling of a substance represents the appraisal of hazard by the manufacturer alone and the formulation has not been evaluated by any official agency.

Under the provisions of the amendment, we could still require manufacturers to submit formulations but if our evaluation would indicate labeling at variance with labeling accepted by federal authorities who had not had the benefit of the examination of the formula, we would be forced to accept labeling which was, in our opinion, contrary to the provisions of Indiana law. For this reason, we feel that it is important the proposed amendment be deleted from the bill.

It is respectfully requested that you review this important matter and take what action you deem proper for the best good of the people in Indiana. We would favor the passage of H. R. 13886 but not the amendment.

Sincerely,

A. C. OFFUTT, M.D.,
State Health Commissioner,
Indiana State Board of Health.

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