

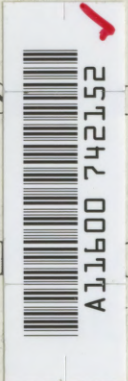
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90-6 MAILING OF UNSOLICITED SAMPLE DRUGS AND OTHER
POTENTIALLY HARMFUL ITEMS

GOVERNMENT
Storage



HEARING
BEFORE THE
COMMITTEE ON POSTAL OPERATIONS
OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

FIRST SESSION
ON

H.R. 3954

A BILL TO AMEND TITLE 39, UNITED STATES CODE, TO
PROHIBIT THE MAILING OF UNSOLICITED SAMPLE DRUG
PRODUCTS AND OTHER POTENTIALLY HARMFUL ITEMS,
AND FOR OTHER PURPOSES

APRIL 19, 1967

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CONTENTS

Statement of—	Page
Daly, John Jay, vice president, Direct Mail Advertising Association—	26
Dulski, Hon. Thaddeus J., a Representative in Congress from the State of New York-----	2
Hoge, James F., general counsel, the Proprietary Association-----	4
May, Timothy J., General Counsel, Post Office Department-----	14
Moss, Hon. John E., a Representative in Congress from the State of California-----	13
Letters submitted by—	
Gold, Bill, reporter, Washington Post, letter dated April 15, 1967, to Hon. Robert N. C. Nix-----	22
O'Neil, Hon. Thomas P., a Representative in Congress from the State of Massachusetts, letter dated April 19, 1967, to Hon. Robert N. C. Nix, with enclosures-----	22

MAILING OF UNSOLICITED SAMPLE DRUGS AND OTHER POTENTIALLY HARMFUL ITEMS

WEDNESDAY, APRIL 19, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON POSTAL OPERATIONS OF THE
POST OFFICE AND CIVIL SERVICE COMMITTEE,
Washington, D.C.

The subcommittee convened at 10 a.m., in room 346, Cannon Building, Hon. Robert N. C. Nix (chairman) presiding.

Mr. Nix. The subcommittee will come to order.

We will conduct hearings today on a bill by Mr. Dulski, chairman of the Post Office and Civil Service Committee. We will also consider bills by other Members of the House who are interested in the problem of the unsolicited mailing of drugs and other dangerous items through the mails. These bills have been introduced by Hon. John E. Moss, of California, Hon. Thomas P. O'Neill, of Massachusetts, and Hon. Henry Helstoski, of New Jersey.

These bills are directed against the danger of persons, and especially children, misusing drugs and other items sent through the mail as samples. Many of these products are new and being introduced to the public for the first time. A mass distribution of a defective product could injure vast numbers of people. But, what is more important to our inquiry is the fact that unless packaging is done according to some minimum set of safety standards, children will be able to obtain such samples and injure themselves. There may also be some danger to the health of postal employees because of mass mailings.

The experimenting with the salability of drugs and other new products is a valuable commercial technique. Drug businesses and others have used sampling techniques for years. They will argue that there is little or no evidence of injury. We will weigh all of the evidence, including the possibility of the injury to children. No one can evaluate or place a money value on the death or serious injury of a child. One may well ask whether or not drugs should be merchandised the same way candy is merchandised.

(The bill, H.R. 3954, follows:)

[H.R. 3954, 90th Cong., first sess.]

A BILL To amend title 39, United States Code, to prohibit the mailing of unsolicited sample drug products and other potentially harmful items, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 51 of title 39, United States Code, is amended by adding at the end thereof the following new section:

"§ 4009. Unsolicited sample drug products and other potentially harmful items

"(a) The Postmaster General shall not accept for mailing and delivery any of the following unsolicited sample items, whether at the bulk third-class rates

or at the single piece first-, third-, or fourth-class rates, except those items mailed from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians:

"(1) drugs, devices, cosmetics, and pesticide chemicals, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321);

"(2) razor blades; and

"(3) such other items as the Postmaster General by order determines to be potentially physically harmful to, or dangerous to the life or health of, minor children.

"(b) A determination by the Postmaster General under subparagraph (3) of subsection (a) of this section that any item shall not be accepted for mailing and delivery on the ground that such item is potentially physically harmful to, or dangerous to the life and health of, minor children, shall be published and shall not become effective until the expiration of the period of sixty days immediately following the date of publication of the determination.

"(c) Any person adversely affected by such determination shall have the opportunity, within such sixty-day period, to file objections thereto with the Postmaster General stating the grounds of such objections and requesting a public hearing on such objections. If objections are filed, the Postmaster General shall stay the effective date of the determination.

"(d) The Postmaster General shall, after due notice, hold such public hearing as promptly as possible for the purpose of receiving evidence relevant and material to the issues raised by such objections. As soon as practicable after the conclusion of the public hearings, the Postmaster General shall by order act on such objections and shall publish such order. Such order shall set forth in detail the findings and conclusions on which the order is based and shall specify the effective date of the order, except that such order shall not be effective prior to the sixtieth day following the date of its publication.

"(e) Any person adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit where such person resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia, within sixty days after the publication of the order, a petition to set aside the order in whole or in part. The clerk of the court shall transmit to the Postmaster General a copy of such petition. The Postmaster General shall file with the court a record of the hearing on which he based his order, as provided in section 2112 of title 28, United States Code.

"(f) Upon the filing of the petition, the court shall have jurisdiction to affirm or set aside the order of the Postmaster General in whole or in part.

"(g) The judgment of the court affirming or setting aside, in whole or in part, the order of the Postmaster General shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(h) This section shall not affect the authority of the Postmaster General under section 1716 of title 18, United States Code."

SEC. 2. The table of contents of chapter 51 of title 39, United States Code is amended by adding at the end thereof the following:

"4009. Unsolicited sample drug products and other potentially harmful items."

Mr. Nix. Now we have the pleasure and privilege of welcoming the chairman of the full committee, Mr. Dulski, a former member of the Subcommittee on Postal Operations. Mr. Dulski, you may proceed.

STATEMENT OF HON. THADDEUS J. DULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. DULSKI. Thank you, Mr. Chairman.

I am very happy to have the opportunity to testify before the Subcommittee on Postal Operations.

Mr. Chairman, I sponsored H.R. 3954, to prohibit the use of the U.S. mails for the mailing of unsolicited samples, except when mailed to certain professional people, of drugs, devices, cosmetics, and pesticide chemicals; razor blades; and such other items as the Postmaster

General determines to be potentially physically harmful to minor children.

I have joined with Mr. O'Neill of Massachusetts, Mr. Moss, of California, and others, in sponsoring this legislation because I am convinced, as they are, that the items outlawed from the mail by my bill are dangerous and extremely hazardous when they fall into the hands of small children. I need only refer to one of the many cases that has been forwarded for the official files of our committee:

On April 20, 1966, our two-year old daughter found the unopened mail on the kitchen table. Among the letters was an attractive envelope containing "money saving coupons" with an added small note on the back that they were designed for adult use. There was no other indication of the contents. Unfortunately, the child cannot read. In her mother's brief absence from the room, she opened and swallowed the contents of a small foil sample package containing two new types of long-acting aspirin, which contained ten (10) grains of aspirin each . . . double the amount in an ordinary aspirin. Quick action saved her from possible harm.

During the past months we have also received samples of razor blades, mouth wash, antihistamines, toothpaste, and liquid cleaning agents. The "Classification and Special Service Division" of the Post Office Department recently informed us they cannot refuse to "accept and offer for delivery mailable matter on which postage has been properly prepaid at the legal rate. The patent medicine is considered a mailable item."

Also, I have received correspondence on the use of the mails for such unsolicited items from the Better Business Bureau of Western New York, and from Bill Gold, columnist of the Washington Post, who called attention to the many hazards resulting from sending these articles through the U.S. mail.

The sampling of consumer products by manufacturers and distributors is a time-honored method of bringing many items to the attention of prospective purchasers. A prospective customer has the opportunity to try a product without committing himself to the purchase of it, and the seller has the opportunity to demonstrate the worth and marketability of his products without expending unusually large sums of money in advertising.

The U.S. mails have been one of the prime means of distribution used by the manufacturers and distributors in conducting such sampling of consumer products. It has been one of the most effective methods of sample distribution. I am most reluctant to stop this means of promoting new items. However, I was convinced when I sponsored the legislation, H.R. 3954, that the dangers and hazards to minor children when unsolicited sample products are delivered to their homes, are of such magnitude that steps need to be taken to remove the hazards being imposed on our children.

If the only way to remove these hazards is by legislation, then I will support the legislation 100 percent. Should these hearings develop information showing that there are other means by which the hazards can be removed, then the necessity for the restrictive legislation may also be removed.

Mr. Chairman, I am confident that this subcommittee will give this matter the most extensive consideration, and be able to recommend to the full committee the action that will best meet the needs of the postal service and remove the unnecessary hazards that have been imposed on our minor children.

Thank you very much, Mr. Chairman.

Mr. Nix. Thank you, Mr. Chairman.

Mr. Chairman, would you go into the question of the approximate number of injuries or complaints of injuries that have come to your attention as a result of this type of mailing?

Mr. DULSKI. I received several letters when this legislation was introduced. A typical case is cited in my opening statement.

Mr. NIX. Do you have any information as to how long a time there have been insistent objections to this practice?

Mr. DULSKI. About 4 years in my case.

Mr. NIX. I understand that not only because of the variation of the samples, but because of the tremendous increase in this type of mailing the problem has been infinitely more acute. Would you say that, sir?

Mr. DULSKI. Yes; I agree with your statement, Mr. Nix.

Mr. NIX. Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman. No questions.

Mr. NIX. Now our next witness is Mr. James F. Hoge, general counsel of the Proprietary Association. Mr. Hoge, would you take the chair?

We express our appreciation for your appearance here. You may begin as you wish.

STATEMENT OF JAMES F. HOGE, GENERAL COUNSEL, THE PROPRIETARY ASSOCIATION

Mr. HOGE. Well, I thank you, Mr. Chairman, and before I begin I will reciprocate by expressing our appreciation for being here today and having an opportunity to talk to you about this legislation. I have a statement, and with your permission I shall follow it fairly closely. It is not very long, I am glad to tell you.

My name is James F. Hoge. I am a member of the Bar of the State of North Carolina and of the State of New York. I am a native North Carolinian and practiced law at Greensboro in that State for about 8 years before moving to New York in 1930. My address now is 90 Park Avenue, New York City, where I am engaged in the active practice of the law as senior member of the firm of Rogers, Hoge & Hills.

My appearance on the bills presently before the subcommittee is on behalf of the Proprietary Association, the offices of which are here in this city at 1700 Pennsylvania Avenue NW. This association, an unincorporated body, was organized in 1881 and has been in continuous existence since. Its active members—98 in number—are engaged in the manufacture and distribution of proprietary medicines. That is a term, Mr. Chairman, which is applied generally to medicines advertised to the public, medicines which are not restricted to sale on prescription, articles which are packaged and fully labeled in original packages by the manufacturer.

They are classified as over-the-counter items to distinguish them broadly from the prescription class, and as I have said, they are not restricted to sale on prescription.

Illustrative of such articles are many well-known products, such as Vicks Vaporub, Listerine, Bufferin, Castoria, Murine, which is an eye treatment, Phillips' Milk of Magnesia, Band-Aid Adhesive Bandages, and Johnson's Baby Powder.

There are also 140 associate members. The associate members are companies which do not manufacture and distribute proprietary medicines but which are interested therein as suppliers of materials and services, such as advertising agencies, publishers, and the like. Numerous of the members, from time to time, have been involved in the mailing or other distribution to consumers of complimentary samples of proprietary medicines.

H. R. 3954 and the companion bills, if enacted, would prohibit the mailing or unsolicited samples, except to certain enumerated professional addressees, of (1) drugs, devices, cosmetics and pesticide chemicals; (2) razor blades; and (3) such other items as the Postmaster General determines to be potentially harmful to minor children.

The Proprietary Association does not oppose regulation of, or reasonable restriction upon, the mailing of samples of proprietary medicines. I want to make that clear, Mr. Chairman. I suppose we are here in the role of opponents of the bills as drawn, but I do want to tell you that we are not dyed-in-the-wool opponents, if I may use that phrase. We are used to restrictions upon the distribution of medicines, and so, broadly speaking, we are not opposing restrictions.

Our opposition to these bills is grounded on our belief that the outright proscription of the practice is neither necessary nor justified. When I say "we" I mean our association and its members. We also believe—and respectfully represent—that use of the mails, should not be denied to one conducting a legitimate business when there is no danger to the public.

The sampling of consumer products by manufacturers and distributors is a time-honored method of bringing one's wares to the attention of prospective purchasers. The practice is as old as commerce itself and has proven a most effective one—advantageous to both the donor and the donee. I tried, Mr. Chairman, just for the pleasure of it, to see if I could find any biblical support for it. I wasn't able in the time at hand, but there is a lot of biblical support for remedies of this sort being generally used by people, the most famous of which I suppose is the "Palm of Gilead" which is referred to so often in the Bible.

A prospective customer has the opportunity to try a product without committing himself to the purchase of it. And, the seller has an opportunity to demonstrate the worth and marketability of his product without expending the vast sums in advertising which are often necessary to induce the original purchases and get a market started.

I think we know in our own experience of many practices engaged in by local sellers. One very nice practice in New York is that the candy stores there, such as Fanny Farmer's and Barricini's, often when you go in will give you a sample of candy to introduce you to some new flavor or chocolate that they have brought out; and department stores do this sort of thing with perfumes and items of that sort for the ladies to try.

Sellers of consumer items have employed many different methods of sampling through the years. They have distributed their goods to passers-by upon the public streets; they have left them by calling house to house; they have given complimentary specimens in retail establishments as well as on airplanes, in theaters and other public places. Through the years, and as mass merchandising and distribution have grown, they have found the use of the U.S. mails one of the most

effective methods of sample distribution. We urge that this well established promotion method not be denied to the proprietary manufacturer in the absence of a clear showing that a practical hazard is presented by the practice.

Numerous proprietary medicines lend themselves to sampling. The proposed prohibition, however, is all inclusive, and this is where we point principally our objection to these proposed bills. They include all "drugs, devices, cosmetics, and pesticide chemicals, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act."

Now, Mr. Chairman, the definition of "drug" in the Federal Food, Drug, and Cosmetic Act is very broad and includes such items as medicated talcum powder, fluoridated toothpaste, external ointments, antiperspirants, dandruff shampoos, and the like. Certainly there is no valid reason to deny use of the mails to distributors of such products.

I would like to call your attention to this, Mr. Chairman: Embraced in the definition of "drug" in the Food and Drugs Act are all preparations listed in the U.S. Pharmacopoeia and National Formulary. That is to say, any item in the Pharmacopoeia is a drug for the purposes of the Food and Drugs Act. The Pharmacopoeia has a great number of things which you and I at first blush don't think of as drugs—cherry juice, raspberry juice, petroleum jelly, salt—which is sodium chloride—saccharin, sugar, starch, peppermint, peppermint water, syrup—which is sucrose and purified water—cocoa, cocoa sirup, bicarbonate of soda, and a great many more that I don't know.

Likewise the definition of "drug" in the Food and Drugs Act, Mr. Chairman, in order to include everything that it should—and it should include them—has this broad definition, "Anything which is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals." We are dealing here with the animal as well as the human species. The definition also includes, "Anything which is intended to affect the structure or the function of the body of man or other animals. It does exclude food from that category. But anything else that is intended to affect the structure or the function of the body is included. And anything which is intended to be used as a component of the other things in the definition is included. All of these many things are drugs for the purposes of the Food, Drug, and Cosmetic Act.

So, when you include all drugs, that is the range of your inclusion. Likewise the term "devices" includes anything used for the prevention or treatment of disease in man or animal, or anything that is intended to affect the structure or the function of the body. You thus have many items. A toothbrush is either a device or a cosmetic. A hairbrush I suppose is a cosmetic. Dental floss could be either cosmetic or drug, depending upon the purposes for which it is used. Powders of all kinds, creams of all kinds, and so on.

Therefore, when the bills are designed to include all drugs and all devices and all cosmetics they are taking in many, many things which at first wouldn't occur to any of us as being a drug or perhaps as being even a cosmetic. So, that is where we rest our principal complaint against this proposed legislation.

Although we are not aware of any injury having occurred from the mail sampling of proprietary medicines, we are aware that there are some persons and organizations that do not like the practice.

Responsible members of the proprietary drug industry have tried to exercise care in their sampling programs. And, the Proprietary Association has taken affirmative steps to assure that harm or injury will not result from its members' sampling activities. More than a year ago it appointed an ad hoc committee to study the matter.

In November of 1966 the Post Office Department issued a press release, indicating that the sampling of drugs, razor blades, and other items might pose a hazard to minor children. It suggested that new legislation might have to be considered unless voluntary restraints were exercised by mailers. The ad hoc committee of the association immediately conferred with representatives of the Post Office Department and offered its cooperation in devising a plan to minimize the possible risks. These discussions have continued and we have attempted to keep the Department advised of our activities. One result has been the adoption by the Proprietary Association of "guidelines for the bulk mail sampling of proprietary drugs."

We have attached a copy of those guidelines as an exhibit to this statement. I hope that they will be included in this record in full. As I now refer to them—and then pass on—I would like to call your attention to their subject matter.

First, the guidelines would be directed to the container, to the design of it, and to the strength of the closures or other methods for discouraging the opening by children.

And, secondly, the guidelines would relate to the total amount of the drug supplied in any one sample so as thus to minimize the amount of the drug which a child might get.

Then third, the guidelines would relate to the nature of the product so that ingestion of multiple samples might not represent a reasonable hazard to a small child.

Then the guidelines suggest that the outer container should be labeled to show definitely that it is a drug product.

And then—this is very important, in our opinion, and I hope in yours and the Post Office Department's—prior to placing any samples with the U.S. Post Office for mailing, the guidelines call for the Post Office Department being consulted, as well as other Government agencies when necessary.

Then, finally, to be kept abreast of the situation, the guidelines suggest that members of the packaging industry should be consulted periodically.

Now I submit to you, sir, that these guidelines—which we hope may be perfected even more—are indicative of the association's and the proprietary industry's interest in and progress toward self-regulation. We believe that such an approach can achieve a great deal in areas that do not readily lend themselves to congressional action.

It was by this means that so much was recently accomplished in the field of children's aspirin. During the hearings last summer on the Child Safety Act (H.R. 13886), spokesmen for the Proprietary Association and the industry recommended that certain provisions of that bill should be dealt with by a voluntary conference of scientific and industrial representatives. The association pledged itself to accept the recommendations of such a conference. The Committee on Interstate and Foreign Commerce accepted the suggestion and recommended proceeding accordingly.

Such a conference was held, and its recommendations became the Food and Drug Administration's guidelines. It was composed of scientific gentlemen, representatives of the Food and Drug Administration, and qualified representatives of the industry. They met at the offices of the Food and Drug Administration here in town. The recommendations of that conference were published in the Federal Register and the industry is now conforming. We have until July 1 to comply.

Mr. Chairman, as one who has worked with the drug industry for—well, I am in my 33d year now as general counsel to this association—I would like to say to you that I see great hope in that way of proceeding with respect to regulation in the drug industry. We don't really know today how extensively and minutely the drug industry is regulated.

We have a mighty fine Food, Drug, and Cosmetic Act. It was amended in 1962 and again not long ago with respect to stimulant and depressant drugs. There was passed in last year's Congress a packaging law which may redo the entire packaging scheme of foods, drugs, devices, cosmetics—in fact, all consumer items.

I think it is fair to say that even the Food and Drug Administration today does not know the full extent and the extreme detail of all the regulations now written into the statute and potentially to be written into regulations by the Food and Drug Administration. You don't pick up the Federal Register a single day that you don't find some new regulation or administrative statement of policy or some notice or order, or the like. I suppose that, as the country gets larger and our business grows, regulation is going to increase. I don't particularly welcome it, but we must deal with the facts as they are, and with the realities of life; and more regulation is probably in store for the industry.

And so I do view with great encouragement what happened on the so-called aspirin conference, and I think you will find that some of your brethren here in Congress do too, I believe I am free to mention the name of Congressman Rogers of Florida, who in addressing the Pharmaceutical Manufacturers Association 2 weeks ago in Palm Beach, his own home, referred to this. His own committee instigated it, and he referred to it with satisfaction.

And I submit to you that there is an area in which the Government and the industry, as we go into greater regulation, must have a partnership; and I believe I may remind you that the President of the United States in his consumer message, as well as in his state of the Union message, suggested that the time is at hand for a partnership between business and Government in running the commercial affairs of this country.

So, I would like to lay that upon your mind and upon your conscience, if I may. And I will pledge to you here—just as we did on the bills last summer—that the Proprietary Association will work with any representatives of this committee or of the Post Office in trying to develop further guidelines. We will be glad to join in a conference just as the one held last November for seeing what can be worked out.

Now I must bring this to a conclusion. I have probably already trespassed upon your patience a little. Just let me conclude with a paragraph I see here in my statement.

We believe that mail sampling is another area wherein the Congress can look to the affected industry and the regulatory agency to devise a practical method and scheme of self-policing. As stated, such discussions are well underway between the Post Office Department and this association. I am able to report progress. Accordingly, we petition that these bills not pass, and that we be permitted to continue the cooperative endeavors aimed at self-regulation in a manner which will be satisfactory to the Post Office and which will greatly diminish any likelihood of hazard from the practice of mail sampling. In this way we would hope to obviate the necessity of new restrictive legislation which would unnecessarily curtail the use of the mails.

And I will conclude now with this statement, Mr. Chairman, that if, in your judgment, there should be legislation then let us have the opportunity, please, of conferring with you and your staff in a revision of this legislation to overcome some of the extreme extent which I mentioned a moment ago by virtue of its definitions.

I think you very much for this opportunity to talk to you.

Mr. Nix. Thank you, Mr. Hoge. Without objection, the guidelines that you mentioned earlier in your statement will be made a part of the record.

(The guidelines follow:)

GUIDELINES FOR THE BULK SAMPLING OF PROPRIETARY DRUGS

BACKGROUND

Many members of the Proprietary Association engage in the practice of sending free samples of proprietary drugs to consumers through the mail. This practice offers a distinctive advantage for consumers over other forms of product promotion and advertising in that it allows free trial of the product before purchase is made. Use of the mails for this purpose is the most economical and efficient way to accomplish mass product sampling.

This practice has been successfully followed for many years. Accidental ingestion of sample proprietary drugs has been kept to a minimum.

The purpose of these guidelines is to catalog and strengthen standards of care which have evolved in this practice so as to make them available to all members of the Proprietary Association and others who use the mails to distribute free product samples to the public. While these guidelines may be useful under other conditions, they are not intended to govern situations in which mail samples are sent in response to solicitation from consumers or to situations in which samples are mailed to professional persons such as physicians or dentists at their office addresses.

GUIDELINES

(1) The container in which the sample is mailed should be of sufficient design, either through strength of closures or other methods to discourage opening by children.

(2) The total amount of drug supplied in any one sample should not be great enough to cause bodily injury to a child if accidentally ingested.

(3) Where the nature of the product is such that ingestion of multiple samples thereof represents a reasonable hazard to a small child who accidentally ingests such multiple samples, the inner and/or outer container should be of sufficient design either through strength of closures or other methods to inhibit accidental ingestion by a small child.

(4) The outer container of every drug sample must be clearly and conspicuously labeled to show that it is a drug product.

(5) Prior to placing any samples with a U.S. post office for mailing, the Post Office Department should be consulted as well as other governmental agencies where necessary.

(6) Members of the packaging industry should be consulted periodically to insure that the latest advances in the art of safe packaging are utilized in bulk mail sampling.

Mr. NIX. Now the salient points seem to me to be first, the Proprietary Association does not oppose regulations or reasonable restrictions.

Mr. HOGE. That is true, sir.

Mr. NIX. But the Proprietary Association is in opposition to this particular proposed legislation because it covers too much, it is entirely too broad; that the Proprietary Association is anxious to cooperate with the Post Office Department and any other appropriate agency having to do with this type of legislation; that the Proprietary Association recognizes the vast extent of this business and the rapid increase of this type of venture; that the Proprietary Association recognizes the fact that there must and will be restrictions, but that those restrictions should not be such that they would interfere with the time-honored right to deliver drugs and samples and that sort of thing.

I understand that the Proprietary Association recognizes that there might, of course, be instances, and perhaps a great number, in which injury has resulted to people as a result of this type of mailing.

Mr. HOGE. May I just interrupt you a moment there?

Mr. NIX. Yes, of course.

Mr. HOGE. I cannot accept the latter part of your general statement. Rather, I should say this to you—that we have tried to inquire into the subject that before coming here to see you today, and I have been able to find, and my people who helped me have been able to find, only a very small handful. I have some notes, but I think six would include all the reports we have. Now in trying to canvass this we have received reports that some people call it junk mail. I heard that statement by you a moment ago, and we have had reports that people are annoyed by it and don't like it and think it might be harmful. We have had a good deal of that in trying to canvass this. But I really can't point to you from the documentation I have been able to gather more than about a half dozen reports of alleged injury, and I haven't got one of those that was reported as being serious.

Mr. NIX. I might say, Mr. Hoge, that one of the most encouraging things that I have heard in some time is the appointment of an ad hoc committee of your organization not only to study this subject, but to cooperate with the Post Office to make its findings.

Now I take the position that if it is determined that legislation is essential that progress and proper legislation cannot be formulated unless there is that sort of cooperation. I agree that there is in essence a partnership between the legislative agencies of Government and the business community of this country. So I compliment your organization on that forward step.

Mr. HOGE. Well, thank you, Mr. Chairman. I want to compliment you, too, on the statement that you just made. And would you indulge me? I am getting to be kind of an old man, so maybe I take liberties sometimes. One of the happiest—

Mr. NIX. May I interrupt you to say we are in the same class.

Mr. HOGE. Well, we reminisce a little when we get along, and one of the happiest experiences of my life was the work that I did on behalf of this association in the years 1933 to 1938 in the formulation of the Federal Food, Drug, and Cosmetic Act which was passed in June of 1938. The original bill was introduced in June of 1933; took 5 years. And when the bill went through, it went through with the ardent support of this association. It had our ardent support because

we had had the opportunity of sitting down with the Food and Drug Administration and working out the actual language of the controversial parts of the bill. And it was my happy privilege to be the one who carried on those negotiations with the Government for this association.

Mr. Nix. Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman.

Mr. Hoge, I want to commend you for your statement and say to you that I think this bill goes much too far in its attempt to regulate the distribution of samples by mail. I am not fully aware of what is being attempted nor the basis on which it is being attempted. I am not going to ask you Mr. Hoge, for statistics because those ought to come from those who are supporting this bill, including the Post Office Department.

I assume, Mr. Chairman, that if this bill is to be considered further that there will be witnesses from the Post Office Department to substantiate the allegation that there has been trouble with the mailing of samples throughout the country. Thus far there is no evidence, substantial evidence, that that is the case.

Now, Mr. Hoge, isn't there ample criminal law and regulations on this subject now?

Mr. HOGE. Well, Mr. Gross, I don't know that there is when we say ample. May I just back up a moment? When you referred to the bill reaching beyond what it should—and I said that in my statement—I didn't say that with any particular criticism of anybody. Frequently in legislation we draft the bills at first farther out than we end up with them, and we contract them as you have your hearings and learn about them.

Now, Mr. Gross, there is legislation on the books with respect to poisonous drugs. I can give you the citation on that. I believe 18 U.S.C. 1716 declares as nonmailable all kinds of poisons and all articles containing poison, explosives, inflammatory materials, and then poisonous drugs.

Mr. GROSS. There are also postal regulations on this subject.

Mr. HOGE. Yes, and that is where we come into what I was trying to say a moment ago. But you can send some of these poisonous drugs through the mail if you do it pursuant to the regulations which the law permits the Post Office Department to make.

So I am thinking that if you want anything more here it may be some simple amendment to go beyond poisonous drugs; to include, we will say, any drugs which the Post Office finds to be deleterious or injurious to children.

Mr. GROSS. I refer to regulation 125.262, poisonous drugs and medicines, "poisonous drugs and medicines may be shipped only from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, or veterinarians." It seems to me that these products are effectively limited by regulation now.

Mr. HOGE. I think it is, Mr. Gross. I suppose—if I may venture to suppose—I suppose this bill seeks to reach out not so much to get poisonous drugs per se as to reach drugs which may be injurious to children if taken in overdoses or taken the wrong way. I think that is the thrust of what is in this proposed legislation, and it may be that you

have to have something more than what you have got now. I don't want to suggest that nothing is needed.

I must say to you that the investigation that I have made doesn't disclose anything that I can put my hands on except these several little incidents that I have mentioned to you.

Mr. GROSS. While you are not primarily interested in the matter of razor blades, I refer to the Postal Manual, regulation 125.271, which provides that "sharp pointed or sharp edged instruments such as knives, tools, icepicks, razor blades, etc., shall be wrapped to protect their points and edges from cutting through the outer carton in which they are shipped."

It seems to me that there is adequate regulation now.

Mr. HOGE. Well, Mr. Gross, I thank you for that. In thinking about coming here today and of the bill—I do not represent the razor blade people so I don't get into that at all—but I had thought that if one of you should say anything to me about it I would say something just like what you have read there. Surely an exposed razor blade shouldn't be handled even by adults without care. But it is a matter of the packaging which the regulation there deals with. So if it is packaged properly, then that would be all right.

For instance, the regulations and the law now prevent the mailing of reptiles and scorpions and things like that, but there is an exception if they are properly regulated under the regulations of the Post Office Department.

I am not arguing for the razor blades, but you brought up just what occurred to me to say if I had to get into it, and that is the packaging of it which your regulation provides.

Mr. GROSS. In your statement you said:

In November of 1966 the Post Office Department issued a press release, indicating that the sampling of drugs, razor blades and other items might pose a hazard to minor children.

I am surprised that they issued a press release on this subject since they already have the authority in the law and have issued a regulation which seems to me to provide adequate protection if enforced.

I am one of those who has received razor blades through the mail, samples of razor blades. I am now using a certain brand of razor blade because it came as a sample through the mail. And, Mr. Hoge, I have yet to get a sample razor blade through the mail that was not packaged so that it was, it seemed to me, nonhazardous either to those who were handling it in the mail service, or to anyone who might collect the mail at its destination. I think they are very well packaged from the standpoint of being a hazard to anyone.

Mr. HOGE. One very clever advertisement in connection with blades, which introduced them, I am sure, to a lot of people, was that, "Our blade is so good that we can't find words to tell you about it; we will just have to send you one so you can try it." And many people did just what you did, tried it and took it.

Mr. GROSS. Well, I am surprised that the Post Office Department would issue a publicity release on this subject when they already have adequate authority, it seems to me, in law. If not, I want to hear what additional authority is needed, and I will be very much interested when they come before the committee in justification of this proposed legislation.

I believe that is all at this time. I think there are other witnesses that we ought to hear, Mr. Chairman, on this subject if we are going to give serious consideration to the legislation.

Mr. Nix. Thank you.

Mr. Hoge, I want to express our deep appreciation for your appearance today. Thank you.

Mr. HOGE. I thank you, Mr. Chairman, and members of the committee.

Mr. NIX. I understand that Hon. John E. Moss, Member of Congress from California, who was to have presented a statement here today, was unavoidably called to another place. For that reason, if there is no objection, I ask that his statement be made part of the record at this time.

(The statement of Mr. Moss follows:)

STATEMENT OF HON. JOHN E. MOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I am pleased that your subcommittee is conducting this important hearing today on H.R. 3954, the measure introduced by my distinguished colleague, the chairman of the Committee on Post Office and Civil Service, Representative Thaddeus J. Dulski; on my companion bill, H.R. 910, and on other similar measures.

The mailing to householders of potentially hazardous products must be stopped. Our technology progresses at a rapid pace and with it brings an ever expanding hazard potential. For many years, manufacturers and advertisers have been sending into millions of homes throughout the Nation samples of their products which they want to introduce to the consumer public. Oftentimes, these samples are innocuous enough; in many cases, they are even something of a novelty. A sample such as a tiny tube of toothpaste or a miniature package of soap flakes might be a clever gimmick to introduce a new product to the public and would be quite harmless; however, the sample is far from innocuous or harmless when it takes the form of a packet containing even a single razor blade or perhaps a small bottle of some patent medicine or a small can of insecticide spray. In the hands of a small child, these items and others this bill is concerned with can be dangerous and even lethal.

Postal regulations already require that potentially dangerous merchandise be adequately packed and clearly marked to show the nature of the contents. But all of the careful wrapping and most explicit labeling in the world will serve no purpose whatsoever if a small child gets hold of the package; and small children have many such opportunities. If mother is upstairs doing housework or in the kitchen washing dishes when the mail arrives, it is an alarmingly simple matter for a child to see a small package in with the letters and magazines and wonder what it could be. Perhaps the package is gaily wrapped with all the eye-catching attractiveness that modern advertising skill can provide. In any case, the curiosity of a child is notorious and must be satisfied. The child can't read the legend: "Warning: not to be taken internally," or "Danger: razor blades." He just knows that he wants to find out what's inside; maybe he thinks it's going to be a toy of some kind for him. It doesn't take much imagination to picture a child getting into trouble with one of these sample items. The journal of the American Medical Association, in its December 5, 1966, issue quoted Post Office officials who called for legislation of the kind we are considering today. These officials cited the examples of two west coast children who were hospitalized after they drank a patent medicine product received in the mail. One can picture just as easily a child with hands not yet well coordinated cutting himself seriously with a razor blade received in the mail and opened when his mother was not nearby. Our children must be protected from this kind of thing and the best way is to prohibit the mailing of potentially dangerous samples as this bill would do.

Besides the injuring of children, there are other dangerous consequences from the indiscriminate mailing of drug samples. In a speech to the American Pharmaceutical Association in April of last year, Commissioner James L. Goddard, of the Food and Drug Administration, cited one of them. He said that these drug

samples are often discarded without being used; and further that "The Food and Drug Administration has evidence that these discarded samples are often snatched from the trash bins and put into illicit drug traffic." Dr. Goddard went on to say that "As a physician, I speak from personal experience on this matter and I say that the time has come to contain this questionable advertising practice."

President Johnson has also called for legislation on this problem. In his message on consumer interests to congress last year, the President called for legislation to "control the unsolicited distribution of drug samples."

These measures, Mr. Chairman, contain a clause that would, quite properly, exempt from the mailing prohibition unsolicited samples sent by a manufacturer or dealer to certain persons who are lawfully engaged in professional practices or commercial enterprises requiring the use or involving the sale of the products covered by the proposed new law. I say to you and my colleagues on the subcommittee that I would heartily endorse any amendment or clarifying language that might be adopted to delineate more clearly those to whom hazardous products may not be sent. Certainly protection must be provided for all professional persons and professional and business enterprises that lawfully use and/or lawfully handle any products barred from the mails as unsolicited samples.

In conclusion, Mr. Chairman, I strongly support the purposes and objectives of this legislation and urge its approval by your distinguished subcommittee and the Committee on Post Office and Civil Service.

Enactment of this measure will do much to eliminate one of the many hazards that our children must contend with every day in this hazardous world.

Mr. Nix. Now I might state in connection with what the distinguished gentleman from Iowa, Mr. Gross, just said, we intend to have extensive hearings on this proposed legislation. We believe that by its very nature it calls for a wide and intensive inquiry, and we intend to make such an inquiry. We intend to have those people who would seek to justify the enactment of this type of legislation, and anyone who has any doubt about it, we invite them also to come in at that time.

Our next witness is Mr. Timothy J. May, General Counsel of the Post Office Department. We are glad to have you, Mr. May.

STATEMENT OF TIMOTHY J. MAY, GENERAL COUNSEL, POST OFFICE DEPARTMENT

Mr. MAY. Thank you, sir.

We are pleased to have this opportunity to present the views of the Post Office Department on H.R. 3954, a bill to prohibit the mailing of unsolicited sample drug products and other potentially harmful items.

Under this legislation the Department would be prohibited by this measure from accepting for mailing and delivery any of the following unsolicited sample items: (1) drugs, devices, cosmetics, and pesticide chemicals, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act; (2) razor blades; and (3) such other items as the Postmaster General by order determines to be potentially physically harmful to or dangerous to the life or health of, minor children.

An exception is made where items are mailed from the manufacturer or dealer to a licensed physician, surgeon, dentist, pharmacist, druggist, cosmetologist, barber, or veterinarian.

In connection with determinations made under item (3) above, the bill requires publication (presumably in the Federal Register), and provides that such determinations shall not become effective until the expiration of 60 days following publication. Provision is also made for persons adversely affected by a determination to file objections and

have a public hearing. Judicial review is likewise made available to such persons. It is noted that the legislation would not affect the authority of the Postmaster General under section 1716 of title 18, United States Code, relative to injurious articles as nonmailable.

Our postal regulations presently require that potentially dangerous merchandise must be adequately packaged and clearly marked to show the nature of the contents. The regulations, however, were made on the assumption that the mail would be controlled in its distribution, and that children would not have free access to the mail before it reached the parents for whom intended.

I might say that this regulation was designed primarily to protect postal employees in their handling of mail matter while it was in the mail stream, and the regulations did not contemplate the protection of recipients of the mail once it was received.

Unfortunately, many children have had free access to mail intended for the parents, and some have suffered injury in some instances from the handling of the contents that were mailed, such as samples of razor blades, bleaches, patent medicines, and other potentially harmful items.

We have met on two occasions with representatives of the Proprietary Association. This association is composed of about 95 percent of all the nonprescription drug manufacturers in the United States. And we are satisfied that recently instituted procedures in the mailings of drug samples by association members will substantially accomplish the intentment of H.R. 3954 insofar as such items are concerned. For example, the sending of free samples of proprietary drugs through the mails will be under such guidelines as (1) a container of sufficient design to discourage opening by children, and (2), which I think is the most effective protection, the total amount of drug supplied in any one sample will not be great enough to cause harm to a child if ingested. So that if a child were to get hold of this sample, were able to open it, and were to consume the entire contents of the sample, these standards provide that the amount contained in the sample will not be enough to cause harm to the child.

I have been advised that these mailing standards are now being followed by the association member companies who in the past have utilized mail sampling programs, and the association has adopted, on behalf of all its members, these guidelines.

As a practical matter, we are also of the opinion that the various items prohibited under H.R. 3954 should not be lumped together as a class. For example, the relative potential dangers of pesticide chemicals and razor blades may be considerably greater than that of drugs and cosmetics. It may very well develop that there is no practicable way to package poisonous pesticides and razor blades so as to insure their safety in the hands of children. Whereas, the Proprietary Association has adopted a code of conduct which promises, if followed, to obviate any potential for physical harm should such drug samples fall into the hands of children. At any rate, we believe the razor blades and pesticide manufacturers should be given a chance to adopt similar reforms in sampling techniques and packaging before Congress proscribes such samples from the mails.

We believe this self-policing by industry ought to be encouraged. Certainly, the efforts of the Proprietary Association represent the best practice of what has been done up to now in drug sampling by

mail. I think we are all agreed that correction of present practices by voluntary action is preferable to imposition of legislative controls. The Proprietary Association has voluntarily taken the necessary action.

Therefore, the Post Office Department recommends that action on H.R. 3954 be deferred in order to give other affected industries further opportunity to take curative action in this problem area.

Thank you, Mr. Chairman.

Mr. Nix. Thank you, Mr. May. And you do feel that the action taken by the Proprietary Association is the type of thing that should be done throughout the industry, that the industry should have an opportunity to do something about policing itself?

Mr. MAY. Yes, I do, Mr. Chairman. I might point out that some months ago the Post Office Department in a press release indicated that we had some cause for concern within the Department about the possibility of danger to children from these samples, and we invited the various industries to work with the Department or on their own, if they chose, to try to adopt some self-policing standards which would obviate this problem.

The Proprietary Association immediately came forward and worked with their association members to adopt this code of conduct. The other industry associations or the other industry members affected to my knowledge have not as yet been able to agree on any standard of conduct, nor have they been directly in touch with the Post Office Department, which is why I say I think they should be given a further opportunity to adopt some standards on this matter.

I think they have in effect had an opportunity, since they were on notice for the last several months that there was a concern in this area, and I have not detected too much action on their part, certainly nothing comparable to that taken by the Proprietary Association.

I might say as well, though, that the patent medicine people, which are primarily the Proprietary Association members, do have an easier problem to deal with, since by nature these proprietary medicines are not dangerous or poisonous. The big problem would occur in the harmful effects that might come from ingestion of too large quantities of these patent medicines.

On the other hand, a razor blade is just a dangerous weapon in the hands of a child and has got serious potential for harm. A poisonous pesticide is by its nature poisonous, and it may not depend upon the quantity that is ingested. A small quantity might very well be physically harmful for the child.

So the manufacturers of these products have more of a problem than the Proprietary Association had, which may tend to explain why they have not yet been able to, as far as we know, adopt any standards on the matter.

I do think, however, that since there has been such a successful effort by the Proprietary Association that we should give these other affected industries an opportunity to do the same thing before we legislatively prescribe them from the mails.

Mr. Nix. Mr. May, how widespread is the area of complaint?

Mr. MAY. The area of complaint, Mr. Chairman, is quite small. Now, frankly, we more often find out about something like this by reading about it in the paper than we do by an actual complaint from a postal

patron. But matters will come to our attention by newspaper reports about a child being injured by razor blades or consuming the contents of a sample drug or pesticide, and we try to check these out when we hear about these reports. Sometimes we simply can't verify the occurrence. We do have some few instances that this has happened.

I don't think that this necessarily means that it isn't a big problem. All you have to do is have one child die from this sort of thing and that alone would be enough to warrant all of our concern about it, and this is what gives us concern—is that even one child might be seriously harmed from this type of sample.

But to specifically answer your question, the incidence of the accidents to children so far as we know is quite small.

Mr. NIX. Are there already on the books or in existence adequate packaging regulations?

Mr. MAY. The packaging regulations that we already have on the books pertain more or less to the integrity of the packaging while it is in the mail stream, and most of our packaging requirements are designed to insure that while the package is moving through the mail stream that it does not break open and possibly cause harm either to the personnel of the Department or to machinery and equipment in the post office.

Mr. NIX. For the life of me, I find it difficult to envision a situation where we can have a foolproof system of packaging or anything else that is going to prevent my grandson from breaking into it.

Mr. MAY. Well, which is why I say, Mr. Chairman, that I think that these other affected industries have quite a different type of problem. The Proprietary Association standard is so effective because one of its tenets provides that even if your child does get hold of the sample drug the quantity of its contents will not be enough to cause physical harm to the child even if completely ingested, and this is what I think is the most effective part of their self-policing code.

You have a different problem with the razor blade. If a small child can get through the packaging to the razor blade there is a great potential for harm to that child or to other children he may be playing with. The same is true in the case of pesticide chemicals where small quantities of those pesticides are themselves poisonous.

Mr. NIX. Mr. Gross.

Mr. GROSS. Thank you, Mr. Chairman.

Mr. May, in view of your recommendation that action be deferred on this bill—I am not going to press you with some of the questions that I would have asked with respect to valid claims of injuries from all causes through the transmission of samples in the mail. I assume that your statement of a small number of cases applies to mail delivered to homes as well as to those who handle the mail in the Post Office Department. That is, the letter carriers, clerks, et cetera.

I am more concerned Mr. May, by some of the literature that is going through the mail today and reaching the hands of children.

Mr. MAY. Mr. Gross, we are likewise concerned about that problem, and we have endorsed Congressman Olsen's bill which we think would be a very effective means of inhibiting the dissemination of this pandering material that you are referring to.

Mr. GROSS. I believe you presently have the law and the regulations to bring about proper packaging of samples that go through the mails, and I think it becomes largely a matter of enforcement. Perhaps at

some later time there may be need for amendments. In light of your working relationship with the proprietary people and other mailers I think we can go along with this for awhile and without further legislation. I have no further questions. Thank you, Mr. May.

Mr. NIX. Mr. Olsen.

Mr. OLSEN. Mr. Chairman, I just want to thank Mr. May for his statement, and will join the remarks of Mr. Gross. I very much agree with the position Mr. Gross has just stated.

Thank you very much, Mr. Chairman.

Mr. NIX. Mr. Derwinski.

Mr. DERWINSKI. Mr. Chairman, first may I direct a question to you, sir? I assume, judging from the colloquy which Mr. Gross just had with Mr. May and from the statement by the chairman of the full committee that he was amenable to adjustments and practical suggestions that could be made in his bill, and that when these final discussions are held we would either be informed that this legislation isn't necessary or would be advised what the adjustments are. If the adjustments fail, we will then have Mr. May come before us and in a more specific form discuss the bill. Would that be the committee's intention?

Mr. NIX. If the gentleman will yield—

Mr. DERWINSKI. Yes.

Mr. NIX. I think the intention of the committee would be that whatever adjustments, combinations are arrived at, they would report them to the committee, and the judgment as to what to do would be that of the committee.

Mr. DERWINSKI. Now, Mr. Chairman, may I compliment Mr. May on being a very effective and rather busy witness for the Post Office Department. Just out of curiosity, Mr. May, you have a busy assignment as general counsel—do you have time to personally prepare your remarks in detail or does your shop turn out much of your material for you?

Mr. MAY. I get assistance from my staff, and a lot of it I do myself, Mr. Derwinski.

Mr. DERWINSKI. I see. Now I agree with Mr. Gross that we shouldn't extend this question period too long since you indicated that you are going to try to work out another solution. But I can't help but be intrigued by your statement where you point out that the regulations under which you now operate are made on the assumption that the mail would be controlled at its distribution. You state here that children would not have free access to mail; so I have the same concern Mr. Gross has, that you seem to be operating under the assumption that this mail will be controlled, but you evidently don't wish to interfere with any or establish controls in the flow of pornographic material. I mentioned last week I thought you were in contradiction, but I re-emphasize that this morning.

These regulations that you have cover everything from combustible items to sharp edges, unloaded firearms, narcotic drugs, poisonous drugs, et cetera, and these regulations have been intended to be enforced for some time. In what specific area does the breakdown occur?

Mr. MAY. Well, again, Mr. Derwinski, those regulations are designed for the protection of postal personnel and postal machinery. They were not designed for, nor did they contemplate the problem that we do think exists to some limited degree by children's accessibility to these samples.

So we have not really had a breakdown in the regulations that you cite. It is simply that those regulations are not broad enough in coverage to reach the children about whom we are all concerned.

Mr. DERWINSKI. The other day I ran across a cartoon that intrigued me. It showed a post office window, with a clerk and a rather alarmed-looking customer. The clerk was hurling a package across the room toward a container and was saying to the customer: "Yes, I have seen that word 'fragile' before. We intend to look it up in the dictionary some day."

Now my thought is, if you have a real problem with packaging requirements, how are they handled since some youngster couldn't possibly be as industrious in handling packages as some of the post office personnel?

Mr. MAY. Well, the post office personnel are not trying to open the packages. We are assuming that as long as the package is closed that the contents do not represent a potential harm, which is the case. The problem is the small child, once the package is delivered, then tries to open the package. Our postal personnel, contrary to some representations that have been made in the past, are not trying to open packages.

Mr. DERWINSKI. I believe there is some merit in this legislation. It is obvious that material potentially harmful should be a subject of concern. What intrigues me is the broadness—may I ask, if my question doesn't fall into classified grounds, to what degree the Department participated in the preparation and research for these bills?

Mr. MAY. For this particular bill?

Mr. DERWINSKI. Yes.

Mr. MAY. We did not draft the bill for the committee.

Mr. DERWINSKI. Were you consulted prior to the drafting?

Mr. MAY. I was not consulted. I have only been at the Department about 14 months, and it is possible that there was consultation before my being at the Department. But since I have been there I have no recollection of being consulted about this bill. I know there was a bill introduced in the last session of Congress that had a similar purpose.

Mr. DERWINSKI. You did refer to the press release of the Department which was issued about November 20 in which the Department expressed the need for legislation or action in this field. There is obvious relationship between the release of the Department and this legislation. I wonder just how close the liaison may have been.

Mr. MAY. Well, the press release was issued to invite affected industries to see if they could not on their own voluntarily adopt certain standards that would obviate the need of legislation. We certainly had in mind the fact that a bill had been introduced in the prior session and that there was a possibility that the bill would be reintroduced in this session. We hoped that through alerting the industry that a potential problem did exist that they would have adequate leadtime to take some self-corrective measures, and the Proprietary Association responded and they have taken what would appear at this time to be a very effective self-policing code.

Mr. DERWINSKI. In approaching this problem why couldn't you support a bill which would very clearly prohibit specific items such as razor blades in the mail, period, instead of an approach like this.

For example, one section in the bill calls for such other items as the Postmaster General by order determines to be potentially physically

harmful to or dangerous to life or health of minor children. This is about as broad a language as you could possibly have. Why couldn't you just say flatly this type of drug or razor blade or switch-blade knife or specific item, and not have this loose end provision?

You could have a Postmaster General someday who might be a health addict, and he may have the idea that certain foods he considers obnoxious or harmful shouldn't be sent through the mail. I am not really being facetious, but you can see the loose end you have here.

Mr. MAY. Well, in answer to that I would think that if the industries are given an opportunity to see what they can do about this problem prior to any action on legislation and they either fail or don't come up with the right answers, I would think that that is what we would do. We would be trying to be much more specific about which particular items. For example, razor blades; and I don't want to prejudge the razor-blade situation, but it does seem to me that they have a particularly difficult problem. Offhand I don't really know that there is any practical way to package a razor blade to insulate children from its potential harm. If you package it to the extent that the child can't open it, it is very possible that the expense of that packaging will be so great and the difficulty to the adult who wants to open it will be so considerable that it will lose its value as a sampling device.

Now I don't know and I don't wish to prejudge their problem, but I think they have a very serious problem, and it could well be that failing any acceptable answer to that problem that we would want to specifically legislate against razor blades or some poisonous pesticide.

On the other hand, I think speaking to the broadness of this language, I agree it is quite broad in this bill. I believe that sample detergents would be included in the prohibition. But the detergent people inform me that before any child could get poisoned by a detergent he would become sick to his stomach and would regurgitate, so that there would not be anything except the immediate harm of getting sick to his stomach, and this would be the case of practically all detergents.

Mr. DERWINSKI. Excuse me. What you are afraid of is if the child gets hold of this detergent that is mailed he would take it internally rather than use to cleanse himself?

Mr. MAY. Yes.

Mr. DERWINSKI. That is the tendency of children.

Mr. MAY. Yes. But the detergent people tell me that even if he did do that he would become quite ill immediately and simply regurgitate and there would be no lasting effects to it.

Mr. DERWINSKI. Mr. Chairman, when Mr. May returns after this summit conference he will have with interested parties, I will have more questions.

If you will permit me, Mr. Chairman, to direct a personal remark to Mr. May. I have been intrigued by the shirt you are wearing. My wife has tried to buy such colors and have me wear them, but I haven't had the courage to face my colleagues in such a fashion. I wish to commend you for being a very dazzling as well as effective witness.

Mr. MAY. Thank you. My wife would like to give your wife some of my shirts.

Mr. NIX. Mr. White.

Mr. WHITE. Mr. May, not talking about the merits or demerits of the bill itself, I have some questions. You said that you felt the voluntary agreement would be effective, and I am sure that you then have checked into the membership of the Proprietary Association to see whether or not they had sufficient membership to cover adequately the number of senders. What is the percentage of the senders that are in this association?

Mr. MAY. I am informed that the association membership includes 95 percent of those who are in the business, and includes practically all of those who send sampling through the mail. Not all manufacturers of patent medicines do sample through the mail, but I am informed that practically all of those who do are members of this association. And in any event, the association comprises some 95 percent of all such manufacturers.

Mr. WHITE. Have you checked on this? Has anyone in your Department checked on this to verify that this is true that that percentage does belong to the association who are potential senders?

Mr. MAY. We have a list of the membership of the association, and it does seem to be, to us, very comprehensive. We have not gone to the lengths of trying to identify every single manufacturer and then comparing it against this list. We have not gone to those lengths. It is the statement of the association itself, and I have no reason to challenge that statement, that they do represent 95 percent of the manufacturers.

Mr. WHITE. Since the mail goes through the post office you could determine that very easily on a check?

Mr. MAY. Well, we could do it.

Mr. WHITE. Since this is national legislation you could check that point?

Mr. MAY. We could check it, yes.

Mr. WHITE. The other question I had was on the bill itself. I note that you provide for an appeal, but you don't provide for a *de novo* hearing. You provide merely the filing in the circuit court of appeals. There would then be no opportunity for an appellant to submit new evidence or to bring in new experts, as I understand it.

Mr. MAY. No, that is not an unusual proceeding in an appeal from a hearing held under the provisions of the Administrative Procedures Act by an executive branch agency. The normal appeal procedures do not provide for a trial *de novo* in the courts. So that fact determinations are to be made at the hearing procedure, and in effect what you are raising on appeal is the sufficiency of substantial evidence to support your findings and any legal questions that might be raised.

Mr. WHITE. Are there any provisions whatever for any appeal to a U.S. district court from the administrative hearing?

Mr. MAY. I am not aware of any. My recollection—and I was an assistant to a judge on the U.S. court of appeals when I got out of law school—my recollection is that practically every administrative action was appealed directly to the U.S. court of appeals.

Mr. WHITE. Thank you.

Thank you, Mr. Chairman.

Mr. NIX. I want to again reiterate our expression of appreciation to Mr. Hoge, and to you, Mr. May.

Without objection, the record will be held open for additional statements. When received, they will be made a part of the record at this point.

(The material referred to follows:)

THE WASHINGTON POST,
Washington, D.C. April 15, 1967.

HON. ROBERT N. C. NIX,
Chairman, Postal Operations Subcommittee,
Washington, D.C.

DEAR CONGRESSMAN NIX: A large volume of mail from readers reaches my desk every day. It keeps me posted on topics that average men and women consider important.

My mail has made it clear to me that there is great public interest in proposals to regulate the mailing of dangerous, unsolicited sample items.

Scores of mothers have written to me that preschool children are quick to learn that adults look forward to the letter carrier's arrival each day, and that these children like to imitate their elders. So many mothers play the same "game" with their children: they pretend that part of the mail that arrives each day is for the youngsters.

Which part? The circulars, of course.

In these households, it is the practice for mothers to sort through the mail until they come to a circular or two and then announce to the baby: "These are for you." The circulars are turned over to the children unopened.

You can imagine the consternation of these mothers when they later discover that a razor blade or perhaps drug samples were enclosed in the circulars turned over to their children. Some of these mothers have been irate enough to term these circulars "lethal junk mail."

I am sure that no responsible American businessman wants to cause harm to children. I sincerely hope, therefore, that you will be able to devise and obtain support for reasonable regulations governing mailings of this nature. If I can be of any service to you in this endeavor, please call upon me.

Respectfully yours,

BILL GOLD.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 19, 1967.

HON. ROBERT N. C. NIX,
Chairman, Subcommittee on Postal Operations,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am one of the sponsors of the legislation to amend title 39, United States Code, to prohibit the mailing of unsolicited sample drug products and other potentially harmful items, and for other purposes.

This matter came to my attention from Mrs. Keith Thompson, 4 Putnam Gardens, Cambridge, Mass., a neighbor of mine. Since the filing of this legislation I have received numerous letters from those who favor this legislation.

I ask that the enclosed several letters be made part of the official record of the committee and I would also like to include, for the official record, the attached pages from the Congressional Record of February 16, 1966 which cites newspaper articles dealing with this subject.

With every good wish,

Sincerely,

THOMAS P. O'NEILL, Jr.,
Member of Congress.

(Enclosures.)

MASSACHUSETTS SOCIETY FOR THE PREVENTION
OF CRUELTY TO CHILDREN,
Boston, Mass., April 1, 1966.

HON. THOMAS P. O'NEILL, Jr.,
House Office Building, Washington, D.C.

DEAR REPRESENTATIVE O'NEILL: It has been brought to our attention that you have introduced H.R. 12847 which prohibits the mailing of unsolicited sample

drug products and other potentially harmful items except those items mailed from the manufacturer thereof or dealer therein to licensed physicians, surgeons, dentists, pharmacists, druggists, cosmetologists, barbers, and veterinarians.

May I congratulate you on your willingness to introduce this bill which proposes sensible control in a reasonable manner and is worthy of passage if it prevents harmful results to even one child.

Sincerely yours,

ROBERT M. MULFORD,
ACSW, General Secretary.

CONNECTICUT SOCIETY OF HOSPITAL PHARMACISTS,
Thompsonville, Conn., July 11, 1966.

HON. THOMAS P. O'NEILL, JR.,
House of Representatives, Washington, D.C.

DEAR MR. O'NEILL: You are to be congratulated on the introduction of H.R. 12847. The law that would prohibit the junk mailing of unsolicited samples of drugs, devices, pesticides, razor blades and other items which could be potentially harmful to the health of small children is long overdue.

As both a pharmacist, interested in public health measures and as a "resident or boxholder" recipient of much of this junk, I am quite interested in the progress of this bill. I plan to write my own congressman, Bernard Grabowski, to support this measure.

Sincerely yours,

DAVID A. ELLIS.

REMARKS OF HON. THOMAS P. O'NEILL, JR., AS APPEARED IN THE CONGRESSIONAL
RECORD, ISSUE OF FEBRUARY 16, 1966

LEGISLATION TO AMEND TITLE 39, UNITED STATE CODE, TO PROHIBIT MAILING OF UNSOLICITED SAMPLE DRUG PRODUCTS AND OTHER POTENTIALLY HARMFUL DRUG ITEMS

(Mr. O'Neill of Massachusetts asked and was given permission to address the House for 1 minute, to revise and extend his remarks, and to include four newspaper clippings.)

Mr. O'NEILL of Massachusetts. Mr. Speaker, I have today dropped in the hopper legislation to amend title 39 of the United States Code to prohibit the mailing of unsolicited sample drug products and other potentially harmful drug items.

There is in my neighborhood of Cambridge, Mass., an unusual young woman by the name of Mrs. Keith Thompson of 4 Putnam Gardens. She has recently become concerned about the number of accidental poisonings of small children who open sample packages of drugs that are potentially harmful and that have been sent through the mail.

According to Mrs. Thompson, these samples arrive as fourth-class mail and are often stacked in the halls of residential apartments or dropped into door mail chutes. During the last few weeks she has enlisted the aid of over 100 mothers who are holding meetings and soliciting support for Mrs. Thompson's recommendations.

I congratulate Mrs. Keith Thompson and under unanimous consent, I place various newspaper articles concerning the free samples of drugs in the RECORD at this point:

[From the Cambridge (Mass.) Chronicle Sun, Dec. 16, 1965]

MOTHER LEADS WAR ON DELIVERY OF ARTICLES DANGEROUS TO CHILDREN

(By Kay Shreve)

"Now where's that sample I got in the mail?" a pretty young mother asks in a recent television commercial.

These may not sound like fighting words to you, but they do to Mrs. Keith Thompson of 4 Putnam Gardens.

CITES POISONINGS

Mrs. Thompson, wife of an MIT graduate student and the mother of two, recently became concerned about the number of accidental poisonings of small

children who opened sample packages of cough medicine, cold tablets, hair tonics, and detergents, sent through the mails.

According to Mrs. Thompson, these samples arrive as fourth-class mail and are often stacked in the halls of residential apartment buildings, or sent into homes through door mail chutes—within the reach of children.

"I think people should know how many tragedies can and have resulted from this practice," she says.

ORGANIZES MOTHERS

During the past 6 weeks she has made every effort to inform them, including enlisting the support of over 100 mothers in Cambridge, Arlington, Stoneham, Newton, Belmont, and Watertown, and gaining the endorsement of several local doctors.

Perhaps even more important, Mrs. Thompson has received assistance from Dr. Joel Alpert, executive secretary of the Boston Poison Center, and from the Boston Association for Child Birth Education.

FOUR-POINT PROGRAM

She hopes her efforts will eventually lead to legislation on the practice and has compiled a four-point program of her aims which include:

1. To prevent fourth-class mail delivery of sample drugs or any other products that may be harmful to children.
2. To prevent free distribution of these products in homes or residential buildings and to prevent them from being left on door steps, door knobs, in hallways, or any other place to which children might have access.
3. To encourage distribution of such free samples in supermarkets or drug stores where adults may be able to receive them directly and use them if they desire.
4. To make it mandatory to label all drugs and any other product that could be harmful to an infant or child in any way.

Mrs. Thompson asks anyone who is interested in giving support to this program to call her at TR 6-0028.

[From the Health Bulletin]

MAILING OF DRUG SAMPLES TO HOMES OPPOSED

A Massachusetts housewife has spotted a possible health hazard which up to now has escaped detection by public health officials and even the Food and Drug Administration. According to Mr. Keith Thompson, of Cambridge, sample drugs and toxic products including mouth washes and detergents sent or delivered to consumers present a potential danger to children. Pointing out that children usually find these products before parents do, she explained that a child's natural curiosity may lead to accidental poisoning. "I, myself, have learned of close calls of poisoning among children in our neighborhood," Mrs. Thompson told Health Bulletin. "Parents who already have a hard time protecting their children against toxic products in the home now have to look out for mailmen and other outsiders bringing poisons within easy reach of children," she added.

In a telephone interview, Mrs. Thompson told Health Bulletin that her interest in the problem reached the boiling point when she was mailed a sample of a new orange-flavored children's cold capsule. Discovering that neither the Food and Drug Administration nor the Post Office Department has regulations controlling the delivery or mailing of such products to homes, the Massachusetts housewife decided to start her own campaign to prevent this practice. With the aid of other mothers in the area and the support of the Boston Poison Center she set up a platform calling for legislation to ban "third- or fourth-class mail delivery of sample drugs or any other products harmful to children." She is also campaigning for a ban on the hand delivery of these items to homes and apartment buildings.

Using a series of letters and phone calls, the mother of two children has succeeded in gaining the support of individuals and groups ranging from local pharmacists to State senators and even the U.S. Post Office Department. She has raised such a storm that representatives of the Post Office, Cambridge Department of Health and the State food and drug administration have decided to sit down in a public meeting to discuss what should be done about the problem. The meeting is scheduled for January 25 at Massachusetts Institute of Tech-

nology. However, even more important is the fact that her campaign has reached the State lawmakers. According to Mrs. Thompson, there is a good change that a bill controlling the distribution of sample products to consumers may be introduced in the next session of the State legislature.

A similar stand against some of the promotional campaigns of drug companies was taken recently by President Johnson's Special Assistant for Consumer Affairs. In an address to the National Educational Conference last month, Esther Peterson criticized the mass mailing of the same cold capsule which sparked Mrs. Thompson's campaign. Even though warnings that children under 3 should not be given the tablet were included on the drug's packet, "all parents know how small children can get into things, and everyone knows that unsolicited mail is generally not stored away," she said. "It most often is left lying where children can easily get into it. In the eyes of small children the colored tablets, I am sure, look appealingly like candy," Mrs. Peterson concluded.

[From the Boston Globe, Dec. 8, 1965]

ONE POISONED CHILD IS ONE TOO MANY

(By Jean Dietz)

Never underestimate the power of a woman to fight for the safety of her young.

Mrs. Keith Thompson, of 4 Putnam Gardens, Cambridge, is mobilizing other mothers to prevent accidental poisoning of children from sample drugs and detergents.

"The possibility of even one poisoned child is one too many," she says.

Mrs. Thompson thinks legislation will be needed at the State and National level to do the job.

The rash of free samples of cough medicines, cold remedies, mouthwashes, and detergents being left in hallways of city apartment houses and suburban front doors set Mrs. Thompson on her campaign.

Small children can't read the labels which state that some of these items should not be taken internally.

At the suggestion of Dr. Joel Alpert, of the Boston Poison Center, Mrs. Thompson has enlisted the interest of almost 100 women to plan a legislative campaign.

The group has designed a four-point platform of measures to prevent child poisoning. They seek to:

- Prevent fourth-class mail delivery of any samples containing chemicals or materials toxic to children;

- Prevent hand delivery of these items to homes and apartment buildings;

- Encourage distribution of sample drugs and detergents in supermarkets where adults may try new products if they wish;

- Warn parents not to give any drug to an infant or child without checking with a doctor or clinic, so that allergic reactions can be identified and treated if they occur.

Some of the new detergents contain bleach and ammonia, Mrs. Thompson points out, potentially as dangerous to a child as lye.

POSTMAN, KEEP THOSE FREE SAMPLES AWAY FROM OUR DOOR!

(By Thomas McNiff, Jr.)

"What will not woman, gentle woman, dare, when strong affection stirs her heart up?"

Mrs. Keith Thompson, 26, of 4 Putnam Gardens, Cambridge, has taken Southey's quotation to heart in her "legislative campaign" to combat the delivery of product samples by mail, which she says are left in apartment house hallways where children can get at their often dangerous contents.

In a campaign begun 6 weeks ago, Mrs. Thompson has enlisted the aid of State Senators Francis X. McCann and Oliver F. Ames, as well as almost 100 mothers from Newton, Cambridge, Lynn, and Belmont.

The object of Mrs. Thompson's campaign are the detergent, mouthwash, drug, and other samples delivered as advertisements by fourth-class mail.

She does not object so much to their being available as to their being left at the doorways of apartment buildings where children playing beyond their mothers' supervision can get at their contents, which she says are often harmful, if not poisonous.

A U.S. Post Office spokesman said that all such article samples must be labeled, but Mrs. Thompson pointed out that a child of 3 or 4 isn't going to read a label.

"You can't blame the postman," she said. "Those guys have enough junk to carry."

Senator McCann said he has recommended that legislation be proposed by the State public health department's food and drug division.

"I think it's a very creditable," he said. "It's needed doing for a long time."

Dr. George A. Michaels, director of the Food and Drug Division, said, "Kids can get at these samples, and it can be a hazard."

He added that any State legislation could regulate the distribution of samples by firms acting on a contract for advertisers.

But he also said that the Federal Government would have to enact any legislation to control mail delivery.

Mrs. Thompson said she is mainly interested in the State level of legislation because "I felt we should do something as fast as we could."

She said that the problem has been brought to the attention of national medical officials by a Boston doctor, but added that "the going is slow there."

Mrs. Thompson said that the word of her campaign is spreading fast, and that she is receiving reports of instances where the ideas she speaks of have become reality.

She cites the case of a Newton woman who found her pair of 2-year-old twins ready to swallow a sample of mouthwash clearly labeled, "do not take internally."

Besides her political support, Mrs. Thompson is getting endorsements for her campaign from local druggists and doctors.

She has also received aid from the Boston Poison Center and the Boston Association for Child Birth Education.

Mrs. Thompson hopes for four major accomplishments from her hours on the telephone and writing letters.

To prevent fourth-class mail delivery of products that could be harmful to children; to prevent free distribution of these products in homes or residential buildings, particularly where children could get at them.

To encourage the distribution of such products in stores where adults could get them if they wished; and to make it mandatory to label all drugs and any other product that could be harmful to children in any way.

Asked what her husband thinks of her new "interest," Mrs. Thompson replied, "Oh, he's been great support." Mr. Thompson is a Ph. D. candidate in geochemistry at MIT.

And of the campaign itself, she said she hopes to have an organizational meeting in January, at a yet unspecified date.

She said she will not name any organization that comes out of the meeting because "we will be stuck with the name."

"I think mothers as individuals can do an awful lot," she said.

STATEMENT OF JOHN JAY DALY, VICE PRESIDENT, DIRECT MAIL ADVERTISING ASSOCIATION

My name is John Daly and I am vice president of the Direct Mail Advertising Association (DMAA) in charge of the association's Washington office in the National Press Building. DMAA maintains its national headquarters at 230 Park Avenue, New York, N.Y.

Now in its 50th year of service, DMAA is the largest international nonprofit trade association representing the needs and interests of more than 2,500 users, producers, and creators of direct mail advertising who use all classes of mail. Direct mail is the Nation's second largest advertising medium, accounting for direct expenditures of \$2.5 billion annually which, in turn, produces in excess of \$30 billion in contributions to the gross national product.

Mr. Chairman, you can be sure that DMAA shares with the authors of this proposed legislation the understandable concern for safety in the Nation's households and industry. If drugs or other items actually prove dangerous when sent in the small quantities contained in the usual merchandise sample, then, certainly, such items should not be sent unsolicited through the mails.

Clearly, this is compatible with the clearly stated objectives of our association, for, throughout its half century of service, all of DMAA's efforts have been directed toward achieving more effective direct-by-mail advertising.

To this end it is a condition of membership that every one of the more than 2,500 members of DMAA pledge his support of our rigid "Standards of Ethical Business Practice." A copy of this code is attached should you wish to insert it in the hearing record.

Our alert Standards of Practice Committee meets regularly to discuss possible violations which have been reported to DMAA, and, where warranted, appropriate action is taken against both members and nonmembers alike.

Like others who have testified at these hearings, this association believes that, on balance, the most effective protection for the public is a vigorous program of industry self-regulation. Our "Standards of Practice" program is in consonance with this belief.

The history of merchandising sampling has shown it to be one of the most effective marketing methods for manufacturers to introduce new or improved products. Thus, the techniques to achieve this are growing both in volume and sophistication, employing ever-changing packaging and addressing procedures in keeping with the product.

Even though this association is a clearinghouse of news and information in this industry, we have not received any substantiated reports of accidents which can be attributed only to mail sampling. This is why we believe that Federal legislation in this area is not needed at this time. If this committee or any agencies of the Government do have studies or other information which our industry ought to consider, we, of course, would only be too pleased to accord it serious consideration.

Since the product definitions contained in paragraph 4009, subsection (a) (1) of H.R. 3954 are so very broad in their coverage, even items which are intended for internal consumption would be restricted. This has caused us to reevaluate this marketing technique.

In particular we are renewing our inspection of the sampling of sharp objects such as razor blades. We will have our appropriate industry committees reexamine this important area and make recommendations should possible changes be advisable.

With this in mind, it is DMAA's intention to remain ever more alert to possible dangers—either in contents, in quantities, in types and designs of packaging, in methods of addressing or other areas, as well as to present the summation of these hearings to our appropriate industry committees for further study and possible recommendations.

We appreciate being able to present our views to this committee and if further hearings are called we would be interested in the opportunity of making additional comments.

Enclosure.

**STANDARDS OF
ETHICAL BUSINESS PRACTICE
OF THE
DIRECT MAIL ADVERTISING ASSOCIATION**



PREAMBLE

We hold that a responsibility of direct mail users, producers and suppliers is to be a constructive and useful force in business and the economy in general.

We further hold that, to discharge this responsibility, direct mail users, producers and suppliers, must recognize their obligation not only to their clients, but also the public, the media they represent, and to each other.

Finally, we hold that this responsibility will best be discharged if all mail users, producers and suppliers observe a common set of standards of practice.

To this end, the DMAA has adopted the following STANDARDS OF ETHICAL BUSINESS PRACTICE as being in the best interest of the public mail users, producers and suppliers.

These standards are intended to serve as a guide and code to the kind of business conduct which experience has shown to be wise, foresighted, and constructive.

It is recognized that direct mail is a business and as such must operate within the framework of competition. It is further recognized that keen and vigorous competition, honestly conducted is necessary to the growth and health of American business generally, of which direct mail is a part. However, unfair business and unfair competitive practices in the direct mail business weaken public confidence, both in direct mail and the institution of advertising in general.

BUSINESS ETHICS

- (A) Acceptance of these business operative practices and standards is required of all individuals and firms who wish to become or continue to be members of the Direct Mail Advertising Association.
- (B) Conscientious adherence to the letter and spirit of these standards will strengthen direct mail advertising and its effective use as an important part of our business economy.
- (C) The principles of sound business standards shall be observed. As members, we will prepare and/or use direct mail that serves the best interests of the public, for true service is the surest road to profit and satisfaction. Our statements and promises will be clear and understandable; our performance will match our promises, our products will match our claims — for faith grows on good experience. We will be business-like in our handling of mailings and servicing of returns. We will hold to high principles of business. We will not take unfair advantage of the innocence, sympathy or conscience of others.
- (D) We will keep our mailings equal to or above the personal standard of decency as presently observed. Immoral, salacious or offensive mailings make enemies for our entire medium.
- (E) Clear and willful violation of these Standards shall be referred to the STANDARDS OF PRACTICE COMMITTEE of the DMAA for appropriate action as stipulated in the Constitution and Bylaws.

To further the interests of good business, whenever you receive or come across any item of direct mail that violates the principles of truthfulness, honesty, decency, integrity, and/or good taste, please submit such items immediately to the headquarters of DMAA so that proper action can be taken by its Standards of Practice Committee.

— OPERATING STANDARDS OF PRACTICE —

1. Members will make their offers clear and honest. They will avoid misrepresentation of a product, service or solicitation and will not use false, misleading, half-true or exaggerated statements. Members will operate in accordance with the Fair Practice Code of the Association of Better Business Bureaus and adhere to the Postal Laws and Regulations.
2. If merchandise is offered on a satisfaction guaranteed or money back basis, refunds shall be made promptly on request. In an unqualified offer of refund or replacement, the customer's preference shall prevail.
3. Members should be prepared to make prompt delivery of orders solicited in their copy. Unforeseen contingencies which prevent prompt delivery should be reported to the customer with the option of money refunded if the customer chooses.
4. All orders will be acknowledged promptly when delivery is unavoidably delayed; all complaints, all inquiries, all correspondence will be answered as soon as possible.
5. The terms and conditions of guarantee shall be clearly and specifically set forth in immediate conjunction with the guarantee offer. Guarantees of performance shall be limited to the reasonable performance capabilities of the product advertised.
6. Members will not use exaggerated, fictitious price comparisons; non-existent discounts or savings; nor employ list prices known to be false or not current.
7. An article which is offered without cost or obligation to the recipient may be unqualifiedly described as "free." "Free" can also be used conditionally where the offer requires the recipient to purchase some other item, provided all terms and conditions are accurately and conspicuously disclosed in immediate conjunction with the use of the term "free" and further provided that the article required to be purchased is not increased in price or decreased in quality or quantity.
8. Members will not use fictitious testimonials; or testimonials originally given for products other than that offered by the advertiser; or testimonials making statements or conclusions the advertiser knows to be incorrect. If testimonials are used they shall be the testimony of a competent and impartial person containing no misstatement of facts or misleading implications and should reflect the current opinion of the author.
9. If laboratory test data is used in advertising it shall be competent as to source and methodology. Members will not use excerpts of laboratory test material in support of claims which distort or fail to disclose the true test results.
10. Photographs and art work will be faithful reproductions of the article offered.
11. Mailings will not contain vulgar, immoral, profane or offensive matter nor will members use the mails to promote the sale of gambling devices, pornographic material or other matter not acceptable for mailing on moral grounds.
12. Members will not mail unordered merchandise for which payment is requested; nor will they use the pro-forma invoice deceptively.
13. Members shall not make offers which require the purchaser to return a notice that he does not wish further merchandise unless all the conditions are made clear in an initial offer. They will not initiate delivery of such merchandise without a bonafide order.
14. Members will not use false or deceptive devices for collecting money owed by delinquent accounts.
15. Members who sell instruction, catalogs, mailing lists or merchandise for re-sale will not use false or deceptive statements with respect to the earning possibilities, lack of risk, or ease of operation.

The specific provisions set forth above will be observed not only by advertisers but by all in our membership who service them.

Any question as to interpretation of the OPERATING STANDARDS OF PRACTICE will be referred to the President of DMAA. Any matter concerning these Standards which cannot be resolved by the President of DMAA and the member will be referred to the Standards of Practice Committee of DMAA.

FAIR PRACTICE CODE FOR ADVERTISING AND SELLING

1. Serve the public with honest values.
2. Tell the truth about what is offered.
3. Tell the truth in a forthright manner so its significance may be understood by the trusting as well as the analytical.
4. Tell customers what they want to know — what they have a right to know, and ought to know about what is offered so that they may buy wisely and obtain the maximum satisfaction from their purchase.
5. Be prepared and willing to make good as promised and without quibble on any guarantee offered.
6. Be sure that the normal use of merchandise or services offered will not be hazardous to public health or life.
7. Reveal material facts, the deceptive concealment of which might cause consumers to be misled.
8. Advertise and sell merchandise or service on its merits and refrain from attacking your competitors or reflecting unfairly upon their products, services, or methods of doing business.
9. If testimonials are used, use only those of competent witnesses who are sincere and honest in what they say about what you sell.
10. Avoid all tricky devices and schemes such as deceitful trade-in allowances, fictitious list prices, false and exaggerated comparative prices, bait advertising, misleading free offers, fake sales and similar practices which prey on human ignorance and gullibility.

(Association of Better Business Bureaus, Inc.)

**PROCEDURE IN IMPLEMENTATION OF
STANDARDS OF PRACTICE**

DMAA believes most violations of the STANDARDS will be inadvertent and unintentional, and can be disposed of by the DMAA executive staff.

This will be accomplished by an informal exchange of views between the DMAA executive staff and the member who is believed to be in violation of the STANDARDS.

An initial letter will be sent outlining the reasons why the member is believed to be in violation, requesting it be corrected, and inviting rebuttal if the member does not agree he is in violation.

If the question involved cannot be adjusted by the DMAA executive staff, the case will be referred to the STANDARDS OF PRACTICE Committee for further action.

After the Committee has reached a determination, a formal letter will be mailed to the member, if adverse, requiring his answer as

to whether he will make correction, and what steps he will take to accomplish this. If he fails to cooperate, the Committee will recommend suspension or expulsion to the Board of Directors, with subsequent action according to provision of the bylaws.

No publicity will be given on any casework until final action, and then only if no correction is accomplished, with the member either being expelled, suspended, or resigning of his own volition.

A formal report will be made and published in such cases.

The above is the procedure as it applies to DMAA members. When a non-member is thought to be in violation of the STANDARDS, every effort will be made to apprise them of this, and they will be urged to discontinue the violation, in the interests of more effective Direct Mail.

Mr. Nix. I want to state that although there is no specific date for the next meeting of this subcommittee, nevertheless we are going to watch the meetings held between the Post Office, the ad hoc committee of the Proprietary Association, and any other agency that makes a contribution to an accommodation in this field. Whenever we feel that it is the part of wisdom to have a meeting, whenever it is required, or after something can be accomplished by calling a meeting, a meeting will be called.

This meeting is adjourned.

(Whereupon, at 11:25 a.m., the meeting was adjourned.)

