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Samuel M. Hart, Director, Chicago Area Office

Michael A. Brown, General Counsel

Responsibility for Maintaining and Providing Production and Distribution Records of Electrically Operated Toys.

This is in response to your memorandum (date undiscernible) asking whether private label retailers are responsible under 16 CFR 1505.4(a)(3) for keeping and making available to the Commission records relating to the production and distribution of articles subject to the electrically operated toy regulations under the Federal Hazardous Substances Act.

We believe that the term "manufacturer" as used in this paragraph of the regulations was not intended to be interpreted so broadly as to include private labelers, even where the articles are manufactured to the specifications of the private labeler. Further, we believe that it would be unreasonable to require the retailer to maintain and make available records which are generated by the manufacturer and which may include trade secret information. Therefore, the private labeler's responsibility should, in our opinion, be limited to providing the Commission with the name of the firm that manufacture the article. If production and distribution records are needed, the Commission should seek these directly from the manufacturer.

In response to a direct telephone inquiry, this opinion was expressed to Mr. [redacted] Government Affairs, [redacted]

DSLemberg:mg:5-15-74

CC: Secretary
Executive Director
C. Boehne (for distribution to Field Offices)
BCM
OSCA
GC Files
GC Chron
GC Reading

ADVISORY OPINION

SSMSG 740430/1045
SSORG CHI
SSRTE BTH
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TO : GENERAL COUNSEL (MIKE BROWN) THRU RUSS ADEL, OFC
INFO: BOC/DIE (DALE MILLER)

PART 1505.4, MANUFACTURING REQUIREMENS, REQUIREMENTS FOR ELECTRICALLY OPERATED TOYS..., STATES THAT THE MANUFACTURER SHALL MAINTAIN CERTAIN RECORDS FOR A 3-YEAR PERIOD AFTER THE PRODUCTION OF EACH LOT. IN GIVING COVERAGE TO OWN LABEL DISTRIBUTORS OF TOYS SUBJECT TO PART 1505, ARE THEY REQUIRED TO FURNISH US WITH THE DATA REQUIRED UNDER 1505.4 OR SHOULD WE GO DIRECTLY TO THE MANUFACTURER FOR THIS INFORMATION?

FOR EXAMPLE, [redacted] PRODUCES A MODEL [redacted] FOR [redacted] UNDER THE LATTER'S OWN LABEL. IS [redacted] OBLIGATED TO GET US THE 1505.4 INFORMATION OR DO WE REQUEST IT FROM [redacted] IF THE MANUFACTURER IS REQUIRED TO MAINTAIN AND FURNISH THIS INFORMATION, IT APPEARS TO US THAT REQUIRING THE OWN LABEL DISTRIBUTOR TO ALSO DUPLICATE THE MANUFACTURERS EFFORTS MAY BE UNNECESSARY. MAY WE HAVE YOUR COMMENTS?
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SIGNED--SAMUEL M. HART, DIRECTOR, CHICAGO AREA OFFICE
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SSEND OF MESSAGE