#165

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DEC 24 1974

6(b) CLEARED: 3/15/84 RC

____ No Mfrs Identified

X Excepted ____

____ Mfrs Notified

Comments Processed

Not under our jurisdiction

Tony Guida
Manager, Marketing Technical Support
1600 Arch Street
P. O. Box 7728
Philadelphia, Pennsylvania 19101

Dear Mr. Guida:

You requested in your letter dated October 3, 1974, an advisory opinion on the extent to which lead acid storage batteries are covered by the Consumer Product Safety Act.

Whether lead acid storage batteries are subject to regulation under the Consumer Product Safety Act is dependent upon whether those products are consumer products. The term "consumer product" is defined in section 3(a)(1) of the Act (15 U.S.C. 2052(a)(1)) as meaning any article or component part thereof produced or distributed for sale to or use by consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. Those items specifically excluded from the definition of consumer product include motor vehicle equipment as defined by section 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966; aircraft, aircraft engines, propellers, or appliances as defined in section 101 of the Federal Aviation Act of 1958; certain boats or vessels and equipment, including associated equipment, as defined in section 3(8) of the Federal Boat Safety Act of 1971 to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under that Act.

ADVISORY OPINION

Automotive and truck batteries would not be subject to regulation under the Consumer Product Safety Act because of the specific exemption in section 3(a)(1)(c) of that Act for motor vehicle equipment. However, the Federal Hazardous Substances Act (15 U.S.C. 1261) and the Poison Prevention Packaging Act (15 U.S.C. 1471), two other Acts this Commission administers, do not include a similar exclusion and automotive and truck batteries could be subject to the provisions of those Acts. This issue has been covered in Advisory Opinion 93 (enclosed).

Batteries used in privately owned boats and aircraft to power those products appear to be excluded from the Commission's jurisdiction under the Consumer Product Safety Act by section 3(a)(1)(F) and (G) of the Act. These batteries could, however, be subject to regulation under the Federal Hazardous Substances Act and Poison Prevention Packaging Act, if under reasonably forseeable conditions of purchase, storage, or use, they are likely to be found in or around the household and if they contain sulfuric acid (see Advisory Opinion 93).

Original and replacement lawnmower batteries are subject to regulation under the Federal Hazardous Substances Act or Poison Prevention Packaging Act for hazards associated with the sulfuric acid contained in the battery. Other hazards associated with lawnmower batteries could be regulated under the Consumer Product Safety Act since a lawnmower battery, as a component of a consumer product (a lawnmower), is considered a consumer product under section 3(a)(1) of the Act.

Emergency lighting used in schools, hospitals, churches and other institutions could be considered consumer products if sold to or used by consumers. However, in order to provide a more definitive response we would need additional information in regard to the type of products you have in mind in this area.

As previously indicated, section 3(a)(1)(C) of the Consumer Product Safety Act excludes from the Commission's jurisdiction under that Act motor vehicle equipment as that term is defined in section 102(4) of the National Traffic and Motor Vehicle Act of 1966. If jumper cables are used exclusively in conjunction with motor vehicles, we would consider them to be motor vehicle equipment and, therefore, exempt from the Commission's jurisdiction under the Consumer Product Safety Act.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Original signed by
Michael A. Brown

Michael A. Brown
General Counsel

Enclosure

AHSchoem:pm:12/6/74

cc: AHSchoem
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