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DATE: JAN 8 1974

TO : Mel Doxie, Assistant Executive Director

FROM: Steve Lemberg, Office of the General Counsel

THRU: David Schmeltzer, Assistant General Counsel for Standards Development

SUBJECT: December 28, 1973, Memorandum from Hal Weisman, Bureau Economic Analysis Regarding the Sale of Gasoline in Portable Containers by Gasoline Stations.

As discussed in our telephone conversation of January 4, 1974, neither a comprehensive legal opinion on this subject, nor a detailed suggested regulatory approach is possible at this time because of the paucity of information contained in the memorandum. After a complete hazard analysis is available which pinpoints the cause of the problem, detailed regulatory approaches can be more readily discussed.

However, a few general observations can be made, as follows.

(1) Department of Labor regulations on the subject do exist. Section 29 CFR 1910.106(g)(1)(v) states:

> Dispensing into portable containers. No delivery of any Class I liquids shall be made into portable containers unless the container is constructed of metal, has a tight closure with screwed or spring cover, and is fitted with a spout or so designed that the contents can be poured without spilling.

It might be possible for the CPSC to cooperate with the Department in enforcing this provision.

(2) There are labeling requirements under the FHSA and 16 CFR 1500.14(a)(3) regarding petroleum distillates as modified by 16 CFR 1500.83(a)(14). These requirements could be beefed up and added to by regulation.

(3) Authority may exist under section 4(f) of the FHSA to prohibit the sale of gas in reused food, drug, or cosmetic containers or in new containers identifiable as food, drug, or cosmetic containers. However, this provision may realistically be impossible to adequately enforce as to sales by gas stations in customers' own containers.

(4) Authority may exist under FHSA for declaring gasoline sold in portable containers banned irrespective of any labeling requirements. This step would appear to be rather drastic unless the regulations spelled out requirements for containers in which the product would not be banned.

(5) Authority exists under CPSA to ban or set standards for portable gasoline containers. Banning such containers, however, might be too drastic a step for the situation, and could lead to increased use of extemporaneous containers.

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cc: S. Lemberg
D. Schmeltzer
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