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FEB 27 1974

Mr. George G. Tooker
Casualty Claim Prevention
and Control Engineer
Appalachian Insurance Company
Allendale Park
P. O. Box 7500
Johnston, Rhode Island 02919

Dear Mr. Tooker:

Edward Finch, Director of the Bureau of Compliance, has referred to me your letter dated February 1 in which you request an interpretation of the reporting and recordkeeping requirements under the Consumer Product Safety Act. You also request a clarification of how the requirements apply to the soft drink industry.

Section 15(b) of the Consumer Product Safety Act ("Act") states:

> (b) Every manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product—
>
> > (1) fails to comply with an applicable consumer product safety rule; or
> >
> > (2) contains a defect which could create a substantial product hazard described in subsection (a)(2),
>
> shall immediately inform the Commission of such failure to comply or of such defect, unless such manufacturer, distributor, or retailer has actual knowledge that the Commission has been adequately informed of such defect or failure to comply.

The term "substantial product hazard" is defined in section 15(a) to mean

> (1) a failure to comply with an applicable consumer product safety rule which creates a substantial risk of injury to the public, or
>
> (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

ADVISORY OPINION

Those failing to comply with the requirements of section 15(b) are subject to the civil and criminal penalties set forth in sections 20 and 21 of the Act.

On February 19, 1974, the Commission published in the Federal Register (39 F.R. 6061) regulations for the submission of information by manufacturers, distributors, and retailers under section 15(b). These regulations require initial notification to the Commission within 24 hours after obtaining information which reasonably supports the conclusion that a defect or a failure to comply with an applicable consumer product safety standard has occurred.

Section 16(b) of the Act gives the Commission the authority to set recordkeeping requirements for manufacturers, private labelers or distributors of consumer products to implement the Act or to determine compliance with rules or orders prescribed under the Act. The Commission has not yet issued such requirements, however, interested persons will have an opportunity to comment on proposed recordkeeping requirements before the Commission sets final rules.

As to your question regarding the application of the Act to the soft drink industry, the Act applies to the manufacturers, importers, distributors, retailers, and private labelers of consumer products. "Food," as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act is excluded from the definition of consumer product by section 3(a)(1)(I) of the Act. Therefore, soft drinks themselves would not appear to be within the Commission's jurisdiction under the Act. However, the containers in which soft drinks are sold to consumers would be consumer products under the Act.

For your information, the Commission is preparing to hold a public hearing to discuss the safety of carbonated-beverage bottles, both soft-drink and malt. The hearing, which will take place in late April or early May, will be announced in the Federal Register approximately 30 days in advance, in order that those who wish to do so may prepare statements for the hearing.

Please let me know if you have any further questions.

Sincerely,

/S/ MAF

Michael A. Brown
General Counsel

Enclosure

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cc: Executive Director
E. Finch, BCM

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