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ADVISORY OPINION

Mr. Gregory G. Kruszka
Corporate Director
Quality & Liability Control
Emerson Electric Co.
8100 Florissant
St. Louis, Missouri 63136

Dear Mr. Kruszka:

This is in reply to your letter of March 14, 1974, concerning the applicability of the substantial product hazard notification regulations issued in the FEDERAL REGISTER of February 19, 1974 (39 F.R. 6061).

Under the regulations, a manufacturer who received information prior to May 14, 1973, which reasonably supports the conclusion that his product contains a substantial product hazard would not be required to notify the Commission of the defect. However, if the manufacturer receives further information after May 14, 1973, related to a defect in a product for which he already took voluntary corrective field action, the manufacturer would be required to notify the Commission of the defect in accordance with terms of the regulation.

The reasoning behind this interpretation is that the fact that you are receiving further information involving accidents or the continued presence of uncorrected products in the marketplace or in the hands of consumers is some indication that the corrective action taken does not effectively resolve the problem. For example, in a given instance, pre-May 14, 1973, corrective action could have been limited to recalling products. The facts may be that only 64 of the 100,000 products manufactured which might contain a substantial product hazard were recalled, while the balance are still in the hands of consumers. Accordingly, if subsequent information indicates a substantial number of products with a defect which could create a substantial risk of injury are still in the hands of consumers after May 14, 1973, the manufacturer would be required to so inform this Commission.

However, we wish to emphasize that notification under section 15(b) of the regulation does not necessarily indicate that a substantial product hazard does exist or that further remedial action is necessary.

In reporting under the regulation it would be appropriate for the manufacturer to describe the history of the incident including a description of the steps previously taken by the manufacturer.

Sincerely,

Michael A. Brown
General Counsel

DSchmeltzer:clb:4/10/74

cc: Executive Director
BCM
OSCA
OFC (to be distributed to Area Directors)
D. Schmeltzer
GC Files
GC Chron
GC Reading
Secretary

ADVISORY OPINION

EMERSON

GREGORY G. KRUSZKA

March 14, 1974

Sadye E. Dunn, Secretary
Consumer Product Safety Commission
Washington, D. C. 20207

In the Federal Register notice of February 19, 1974, announcing the regulations for substantial product hazard notifications, in subsection L (additional requests), a statement is made (copy attached) on which I would appreciate a clarification. I am aware that for any consumer product manufactured prior to May 14, 1973, and for which we receive information after May 14, 1973, which reasonably supports the conclusion that this product contains a substantial hazard, notification to CPSC is required. However, in clarification of the marked sentence (attached) please explain whether the following hypothetical examples would require notification to CPSC (in the example, assume that the product was produced prior to May 14, 1973):

> Information is received prior to May 14, 1973, which reasonably supports the conclusion that the product contains a substantial product hazard. Corrective field action was taken, but the program was not completed by May 14, 1973. Additional accidents occur after May 14 (and the corrective program continues) but the additional information received does not vary in substance from the pre-May 14 information.

Because determination of the existence of a substantial product hazard was made prior to May 14, 1973, even though accidents occur after May 14, notification to CPSC is not required. If this is not the intended meaning of the marked sentences (attached), what is the meaning of that sentence?

G. G. Kruszka
Corporate Director
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GGK/kw

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