CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

PLAINTIFF'S EXHIBIT
BOND-432

October 12, 1973

Mr. William C. Roemer
Republic Powdered Metals
2678 Pearl Road
Medina, Ohio 44256

Dear Mr. Roemer:

This is in response to your letter of September 17, 1973, concerning an apparent conflict between the Hazardous Substances Act and the Occupational Safety and Health Administration definitions for combustible and flammable liquids.

The OSHA definition for flammable and combustible liquids as set forth on page 22170, FR Vol. No. 202, Wednesday October 18, 1972, is part of a publication made pursuant to the Williams-Stagger Occupational Safety and Health Act of 1970. The purpose, as stated in subpart A of that publication, is to establish, as required by the act, standards with which the industries are generally familiar. The publication contains a variety of industrial standards and the definition for combustible and flammable liquids applies to industrial materials.

The definitions for flammable and combustible liquids for hazardous household substances are fixed by law as set forth in Section 2 of the FHSA. There is an obvious conflict between the OSHA and FHSA definitions, but the intent of the definitions is not in conflict. If you are designing labels for products which are subject to the FHSA, in that they are suitable and intended for consumer use, then the definitions in the Hazardous Substances Act should be used and should be followed in determining whether the products should be labeled as flammable or combustible liquids. If the products for which you are designing new labels are for industrial use only, the definitions in the FHSA do not apply, since such products are not subject to this law.

If you have any further questions concerning this matter, please let us know.

Sincerely yours,

Fred S. Halverson

Fred S. Halverson
Division of Inspection and
Enforcement
Bureau of Compliance

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the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), proposing establishment of an interim food additive tolerance (21 CFR Part 121) of 7 parts per million for residues of the insecticide BHC (benzene hexachloride) in imported paprika.

The interim tolerance is requested to cover residues of BHC in imported paprika being detained by the Food and Drug Administration and in expected imports of the production from the 1973 crop year.

The Reorganization Plan No. 3 of 1970, published in the FEDERAL REGISTER of October 6, 1970 (35 FR 15623), transferred (effective December 2, 1970) to the Administrator of the Environmental Protection Agency the functions vested in the Secretary of Health, Education, and Welfare for establishing tolerances for pesticide chemicals under sections 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 346, 346a, and 348).

Having evaluated the data submitted in the petition and other relevant material, it is concluded that the interim tolerance should be established.

Therefore, pursuant to provisions of the act (sec. 409(c)(1), (4), 72 Stat. 1787; 21 U.S.C. 348(c)(1)(4)), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 FR 9038), Part 121 is amended by adding the following new section to Subpart D:

§ 121.1255 BHC.

An interim tolerance of 7 parts per million is established for residues of the insecticide BHC (benzene hexachlorides) in imported paprika. This interim tolerance expires December 31, 1974.

Any person who will be adversely affected by the foregoing order may by October 29, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets SW., Waterside Mall, Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date.—This order shall become effective on its date of publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), (4), 72 Stat. 1786; 21 U.S.C. 348(c)(1), (4).)

Dated September 20, 1973.

HENRY J. KOZE,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-20739 Filed 9-27-73;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER N—MISCELLANEOUS

PART 133—DISPOSAL OF SURPLUS

Property Located in Foreign Areas

CROSS REFERENCE: For transfer of Part 308 of Chapter II of Title 44 to this Title see the editorial note to Title 44 on page 27049 of this issue.

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

PART 301—PROCEDURE AND ADMINISTRATION

CFR Correction

In the April 1, 1973, edition of 26 CFR Parts 300–499, the following should be added to § 301.6103(a)–1 immediately after paragraph (a)(3)(i):

(ii) *Other terms.* Any word or term used in this section, other than the word "return", which is defined in any chapter of the Code shall be given the definition contained in the chapter which is applicable to the particular return made.

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Definitions of "Flammable Liquid" and "Combustible Liquid;" Determination of Flashpoints

On June 15, 1972, a notice was published in the FEDERAL REGISTER (37 FR 11901) of proposed amendments regarding the definitions of "flammable liquid" and "combustible liquid," and the procedure for determining flashpoints in 29 CFR 1910.106. The other proposed amendments to §§ 1910.106 and 1910.108 concerned conforming changes to preserve the requirements of the existing standards.

After the receipt of several comments and a request for a hearing, a notice of informal hearing was published in the FEDERAL REGISTER on August 15, 1972 (37 FR 16507) with a list of the following issues:

(1) Whether the procedure described in proposed § 1910.106(a)(14)(i) is reliable and suitable for determining the flashpoints of the liquids defined therein;

(2) Whether the procedure described in proposed § 1910.106(a)(14(ii) is (a) reliable and suitable for any of the liquids defined therein, and (b) is reliable and suitable for all the liquids defined therein;

(3) Whether the procedure described in proposed § 1910.106(a)(14)(iii) is reliable and suitable for determining the flashpoint of the mixtures of compounds defined therein;

(4) Whether proposed paragraph (a)(18) and (19) of § 1910.106, would, if adopted, cause, a significant change in present requirements; whether such changes are reasonably necessary or appropriate to assure a safe place of employment; and whether the proposed "99 percent" provision is adequate; and

(5) Any other issue closely related to the objections raised, and within the scope of the proposal.

An informal legislative hearing was held on November 8, 1972, before Administrative Law Judge Samuel A. Chaitovitz, for the purpose of receiving oral data, views, and arguments concerning the issues. The certified record includes the prehearing written comments, the transcript of the oral presentations made at the hearing, exhibits received during the course of the hearing, and further comments received before the close of the record on December 5, 1972.

The primary contentions concern the procedures specified in the Standard Method of Test for Flashpoint by Tag Closed Tester (ASTM D 56–70) and the Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester (ASTM D 93–71).

The objections relate to a controversy concerning the comparative reliability, suitability, and reproducibility of the "open" and the "closed" test procedures.

It is to be noted that the proposed amendments related solely to an up-dating of the closed test procedures already required, and not to a change from an "open" procedure to a "closed" procedure. Even so, it is worthwhile to state that the closed-cup method has been accepted, due to its greater reliability, by the National Fire Protection Association, the National Academy of Sciences, the United Nations Intergovernmental Maritime Consultative Organization (IMCO), and many western european industrial countries, including Great Britain, France, West Germany, Sweden, and the Netherlands. See 37 FR 11899.

The essential changes concerning test procedures for determining flashpoints were (1), in § 1910.106(a)(14)(i), from the Standard Method of Test for Flashpoint by the Tag Closed Tester, ASTM D–56–69, to the updated version of the same method, ASTM D–56–70, and (2) in § 1910.106(a)(14)(ii), from the Standard Method of Test for Flashpoint by the Pensky-Martens Closed Tester, ASTM D–93–69, to the updated version of the same method, ASTM D–93–71.

The argument was presented during the proceeding that a class of material does not lend itself to flashpoint testing, and that, in fact, such testing might cause an explosion even before a flashpoint could be determined. The comments have been assimilated, and provision for organic peroxides, which undergo autoaccelerating thermal decomposition, has been made in § 1910.106(a)(14)(iv) by excluding such substances from any of the flashpoint determination methods.

The point was raised during the proceeding that a special note is made in ASTM D–93–71, Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester (Note 1), providing for different test methods for the determination of the flashpoint of drying oils, solvent-type liquid waxes, and cut-back asphalts or bitumens. The amended § 1910.106(a)(14)(ii) provides for the use

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the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), proposing establishment of an interim food additive tolerance (21 CFR Part 121) of 7 parts per million for residues of the insecticide BHC (benzene hexachloride) in imported paprika.

The interim tolerance is requested to cover residues of BHC in imported paprika being detained by the Food and Drug Administration and in expected imports of the production from the 1973 crop year.

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Effective date.—This order shall become effective on its date of publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), (4), 72 Stat. 1786; 21 U.S.C. 348(c)(1), (4).)

Dated September 24, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-20739 Filed 9-27-73;8:45 am]

Title 22—Foreign Relations

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER N—MISCELLANEOUS

PART 139—DISPOSAL OF SURPLUS

Property Located in Foreign Areas

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Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Definitions of "Flammable Liquid" and "Combustible Liquid;" Determination of Flashpoints

On June 15, 1972, a notice was published in the FEDERAL REGISTER (37 FR 11961) of proposed amendments regarding the definitions of "flammable liquid" and "combustible liquid," and the procedure for determining flashpoints in 29 CFR 1910.106. The other proposed amendments to §§ 1910.106 and 1910.108 concerned conforming changes to preserve the requirements of the existing standards.

After the receipt of several comments and a request for a hearing, a notice of informal hearing was published in the FEDERAL REGISTER on August 15, 1972 (37 FR 16507) with a list of the following issues:

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