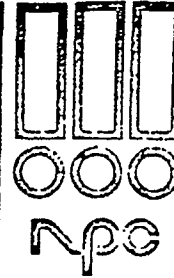


LEGAL & LEGISLATIVE BULLETIN



NATIONAL
PAINT &
COATINGS
ASSOCIATION

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PLAINTIFF'S EXHIBIT

BOND-155

No. 46

September 1, 1977

ROUTE TO:
Department

Finance		
Administration		
Sales		
Technical		
Production		
Law		

- TOPICS:
- A. CONSUMER PRODUCT SAFETY COMMISSION -- Update on proposed rulemakings
 - B. LABELING -- First Aid instructions
 - C. LEAD IN PAINT -- Final CPSC regulations

Executive Synopsis

This Bulletin provides an update on proposed rulemakings by CPSC which would ban consumer patching compounds containing respirable free-form asbestos and "extremely flammable" contact adhesives. Expresses serious concern over possible broad scope and application of both proposals.

This Bulletin also comments on continuing controversy regarding label statements for First Aid instructions for inducing vomiting. Observes that "salt as an emetic" may be out, but -- no agreement yet on substitute statement.

FINALLY, and of greatest importance, this Bulletin reports final lead-in-paint "banning" regulation by CPSC and action on "exemptions." Applies to products manufactured on or after March 1, 1978.

CONTACT AT NPCA. Legal and Government Relations Division.

A. CONSUMER PRODUCT SAFETY COMMISSION -- Update on proposed rulemaking

1. Patching Compounds

"L&L" Bulletin No. 45 reported that the Commission (on July 21, 1977) had approved a proposed ban on consumer patching compounds containing respirable free-form asbestos and artificial emberizing materials The proposed rulemaking was published in the Federal Register on July 29, 1977 (42 F.R. 38782-91).

While the proposed ban is limited to consumer patching compounds containing respirable free-form asbestos, the scope and application of the ban could have very broad impact. Some of the proposed definitions, included on the Attachment hereto, should be noted carefully.

As proposed, the ban would apply to the manufacture, sale, offering for sale and distribution in commerce of consumer patching compounds "containing respirable free-form asbestos" thirty days after publication by the Commission of a final rule. However, with regard to the latter, the Commission has received comments requesting that the effective date be changed so that the ban would become effective upon publication of a final rule. Such an action would result in declaring all "consumer patching compounds containing respirable free-form asbestos" as banned hazardous substances on the date of publication of the final rule in the Federal Register. The latter would include products in commerce, at the point of manufacture, in distribution or at retail.

Members should be aware that Section 19 of the Consumer Product Safety Act (CPSA) makes it unlawful for any person to "manufacture for sale, offer for sale, distribute in commerce or import into the United States any consumer product which has been declared a banned hazardous product by a rule under this Act." The effect of this section is to require that all such banned products be eliminated/removed from all channels of commerce.

Any person who knowingly violates Section 19 of CPSA shall be subject to a civil penalty not to exceed \$2,000 for each such violation. A violation of Section 19 shall constitute a separate offense with respect to each consumer product involved, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations.

We understand that issuance of the final banning rule is a "top priority" matter with the Commission. Therefore, if your company would be adversely affected as a result of a possible change, advancing the proposed effective date, or if you feel the proposed 30 day effective rule should be extended, or if you believe the "definitions" in the proposal should be clarified, you are urged to comment. While the official comment period closed on August 29th, your comments might be considered if filed immediately -- by telegram or other communication -- to: Secretary, Consumer Product Safety Commission, 1111 - 18th Street, N. W., Washington, D. C. 20207.

2. Contact Adhesives

"L&L" Bulletin No. 45 reported proposed rulemaking to classify as banned hazardous substances "extremely flammable" contact adhesives and similar consumer products in containers of more than one-half pint. That bulletin also reported that the Commission stated, in proposed rulemaking, that it was especially interested in receiving comments concerning the need to extend the proposed ban to include all flammable contact adhesives having a specified flashpoint between 20 degrees F and 80 degrees F.

If after considering comments on this matter, the Commission finds that flammable contact adhesives present an unreasonable risk of injury, the Commission might ban such products. Presumably, an additional proposed rulemaking would be required. However, several commenters, including some industry members, already have urged the extension of this ban to include the contact adhesives with flashpoints in the flammable range. The impact of such an extension could be most significant.

Members are reminded that the comment period on this proposed rulemaking (42 F.R. 35983-84; July 13, 1977) is open until September 12, 1977. Comments should be addressed to the: Office of the Secretary, Consumer Product Safety Commission, 1111 - 18th Street, N.W., Washington, D.C. 20207.

B. LABELING -- First Aid Instructions

1. General Comment

With further reference to the continuing controversy over substitute language for labeling for First Aid instructions for inducing vomiting, NPCA representatives met with representatives of CPSC on August 23rd in an effort to obtain some clarification of the Commission's views. (See "L&L" Bulletin No. 45.) This meeting was requested specifically because a number of our members had received letters from CPSC Area Offices on this subject, with the suggestion that such manufacturers begin immediately to use a specific statement on the label which included the use of "ipecac syrup" to induce vomiting.

NPCA pointed out that such a specific instruction was confusing to industry members because of conflicting guidance. (See Section 10 of Appendix to Part I of the LABELING GUIDE, quoted verbatim in "L&L" Bulletin No. 45.) Of greater significance, however, the labeling suggested by CPSC was based on a proposed rulemaking.

While very few industry members have commented on the rulemaking proposed in the Federal Register on June 23, 1977 (42 F.R. 31808-09), several commenters have expressed serious concern over the use of ipecac syrup as a substitute for salt.

2. Staff Comment

NPCA staff still is attempting to obtain a consensus of our members on this subject. Until this consensus, NPCA cannot comment on the subject; and, as previously stated, NPCA does not plan to recommend a new label statement until final rulemaking by the responsible agency/agencies.

Note. In view of the revocation of the recommended First Aid labeling for Methyl-Alcohol base radiator antifreeze (42 F.R. 31773; June 23, 1977) and confirmation by NPCA that CPSC is convinced by medical authorities that First Aid instructions for inducing vomiting should not include a recommendation for using salt as an emetic, you may wish to discuss with company counsel a plan to initiate action to remove such language from certain of your labels. However, you are reminded that no substitute language yet has been approved (or even specifically recommended) by CPSC.

In this regard, remember that the revocation applies only to methanol-containing antifreeze, but -- the proposed statement of policy is not so limited. The proposed statement of policy suggests that the general principal is intended to apply to all chemical products with an ingestion hazard.

Finally, while the NPCA label recommendations may be changed upon publication of a final rule (or policy statement), NPCA cannot yet make a specific recommendation on the subject. Therefore, a member of the CPSC Washington staff has suggested, you should manage your label inventory very carefully!

C. LEAD IN PAINT -- Final rulemaking

1. CPSC Final Regulations

The Consumer Product Safety Commission has published -- in the Federal Register of September 1, 1977 (42 F.R. 44192-202) the final lead-in-paint regulations for consumer products and for certain other uses for which regulations were mandated by the 1976 amendments to the Lead Based Paint Poisoning Prevention Act (LBPPPA). Action on the "exemptions" for several categories of special-purpose coatings, first requested by NPCA in 1972, is reflected in these final regulations.

These regulations are based on the August 10, 1976 Commission proposal to ban lead-containing paint toys, other articles intended for children and furniture articles bearing such paint to regulate under the Consumer Product Safety Act (CPSA) and to revoke existing regulations under FHSA. (See "L&L" Bulletin No. 40.)

: As previously reported ("L&L" Bulletin No. 43), CPSC determined (on December 16, 1976) "that the available data and information did not support a finding that a level of lead in paint above 0.06 percent but not over 0.5 percent is safe." Accordingly, the congressionally-established definition of "lead-based paint" under LBPPPA (as paint having more than 0.06 percent lead) became effective automatically on June 23, 1977.

Three specific final regulations were promulgated:

- a. 16 CFR Part 1145 - is the requisite "finding" that it is in the public interest to regulate lead in paint issues under CPSA rather than FHSA.
- b. 16 CFR Part 1303 - contains the "banning" regulations which apply to:
 - (1) Paint and similar surface-coating materials for consumer use that contain lead in excess of 0.06 percent (referred to as "lead-containing" paint);
 - (2) Toys and other articles intended for use by children that bear "lead-containing paint" and,
 - (3) Furniture articles for consumer use that bear "lead-containing paint."

Note. In its final action, the Commission stated that these products were declared to be "banned hazardous products" under CPSA "in order to eliminate or reduce the unreasonable risk of injury associated with lead poisoning in children." More-detailed comments on these regulations are included in 2. below.

- c. 16 CFR Part 1500 - is the revocation of relevant lead-in-paint regulations [16 CFR 1500.17 (a) (6)] under FHSA.

EFFECTIVE DATE. These regulations become effective on February 28, 1978 ("180 days after publication in the Federal Register") and apply to all products manufactured after the effective date. Thus, the new regulations will apply to all "covered" products manufactured on or after March 1, 1978.

2. The Specific Regulations (16 CFR Parts 1303.1-1303.5)

a. General Comment.

As mentioned in 1. above, these regulations establish as "banned hazardous products" those products currently regulated under section 1500.17 (a) (6) of the FHSA regulations, but -- certain specific exemptions are approved. The regulations also contain a new sub-section, required by LBPPPA, as amended, covering "furniture articles" bearing lead-containing paint. Appliances and certain other named items are specifically mentioned as not included in this new regulation. (See sub-section (f) below.)

b. Exemptions for special-purpose coatings.

The following products are specifically exempted from the scope of the aforementioned ban [16 CFR 1303.3 (b)], provided requisite labeling is used:

- (1) Agricultural and industrial equipment refinish coatings.
- (2) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.
- (3) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).
- (4) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.
- (5) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

The following additional products are specifically exempted from the ban [16 CFR 1303.3 (c)], and no cautionary labeling is required:

- (1) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.
- (2) Artists' paints and related materials.

c. Exemptions for special-purpose coatings not approved.

The requested exemptions for exterior rubber-based roof coatings and for exterior primer coatings for wood siding containing extractives (products marketed solely for application on redwood and cedar) were not approved.

Note. In denying the latter exemption, the Commission stated that "the surfaces to which these primers are applied are accessible to children and non-lead substitutes are readily available and are produced by the leading paint manufacturers."

d. Special-purpose coatings excluded from the "banning" regulation.

Automotive refinish and touch-up coatings and exterior marine coatings for small craft application are completely excluded from the "banning" regulation because the Commission ruled that such product categories were outside the statutory definition of "consumer product" and, thus, not within the jurisdiction of the Commission under CPSA. The Commission stated that no exemption for these product categories needed to be granted since such "coatings" are outside the scope of this regulation.

Section 1303.1(b) of the regulation reads, in pertinent part, as follows: "Paints and coatings for motor vehicles and boats are not included within the scope of the ban because they are outside the statutory definition of 'consumer product'."

e. Labeling requirement.

Labeling for the five classes of exempted products listed in b. is prescribed. [16 CFR 1303.3 (a)] This is the same labeling recommendation developed and submitted by NPCA in its original petition to FDA (predecessor agency to CPSC) in 1972. (See NPCA Recommended Label 14 -- Part I of Paint Industry LABELING GUIDE, 1972.)

f. Furniture article.

This is defined as "Those movable articles, (i) used to support people or things; (ii) other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console televisions, and sofas. The term 'furniture article' does not include appliances, such as ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers; fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; household items such as window shades, venetian blinds, or wall hangings and draperies."

Note. The industry request for an exemption for metal furniture was not approved for the reason, stated by the Commission, that it "had not received sufficient data to justify an exemption." However, in its final action, the Commission suggested that "manufacturers of metal furniture may petition for an exemption of such articles" under prescribed procedures.

g. Testing.

No specific method for testing paints for lead content was prescribed. The Commission stated that it recognized that analytical chemistry is a dynamic science and that the inclusion of a specific procedure within the rule might reduce scientific activity and initiative, and -- that it might also delay the use of newer, and possibly simpler, procedures. It was further stated -- "Any scientifically acceptable method can be used to determine the lead content of consumer paints. The Commission, upon request, will supply details of the procedure used by its laboratories for this purpose."

3. Future Exemption Requests

CPSC recognized the possibility that additional exemption requests might be needed in the future, stating that it would consider other exemption requests that are brought to its attention. Such requests must comply with the Commission's Procedures for Petitioning for Rulemaking under Section 10 of CPSA (16 CFR 1110), and should be "accompanied by technical data establishing such facts as why lead is an essential component of the product(s) and/or why the product(s) presents no risk of ingestion by children."

With such exemption requests, the Commission advised that there should be "A specific description of the product, including the complete chemical formulation and the product's name, the product's characteristics after application, promotional and labeling information, and information on the use patterns of the product." Also, it was pointed out that "it would be helpful to the Commission in evaluating requests if manufacturers would include with their submissions information on their substitute plans should the exemption be denied and information on whether the product is currently being distributed."

Confidential treatment of portions of submitted information can be requested in accordance with the Commission's regulations under the Freedom of Information Act. (16 CFR 1015)

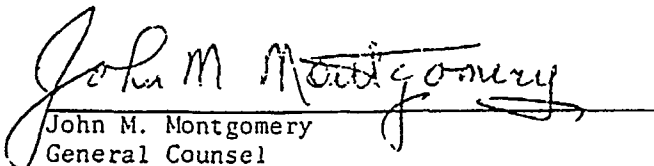
4. Staff Comment

As stated in the Note to 2(f) above, the Commission has suggested that "manufacturers of metal furniture may petition for an exemption of such articles" under prescribed procedures. NPCA is prepared to coordinate this petition, or any other valid requests for exemption, provided interested manufacturers communicate their desires and supply the requisite supporting data. (See 3. above.)

5. Final Comment -- HUD Regulations

"L&L" Bulletin No. 45 reported that NPCA had requested the Secretary of HUD to clarify the HUD lead-in-paint regulations, particularly with respect to factory-applied coatings on metal sidings for residences or on other similar exterior pre-coated metal parts such as gutters, downspouts, etc.

As of this date, no answers yet have been received to the initial NPCA letter of June 16th or a follow-up letter of July 5th. On August 31st a telegram was sent to the Secretary of HUD reminding of the inordinate delay in responding to the Association's request and urging immediate action.


John M. Montgomery
General Counsel

JMM:rw
Attachment

Proposed Rulemaking under Consumer Product Safety Act for
"Consumer Patching Compounds (and Artificial Emberizing Materials)
Containing Respirable Free-Form Asbestos"

(42 F.R. 38782-38791; July 29, 1977)

16 CFR Part 1304 -- BAN OF CONSUMER PATCHING COMPOUNDS CONTAINING
RESPIRABLE FREE-FORM ASBESTOS

Section 1304.1 covers "Scope and application" of the rule, and reads; in pertinent part, as follows:
".... the Consumer Product Safety Commission declares that consumer patching compounds containing respirable free-form asbestos and designed for use in such a manner that the asbestos fibers can become airborne under reasonably foreseeable conditions of use are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) * ~ *."

Section 1304.3 contains proposed Definitions:

(b) "Asbestos means a group of mineral fibers composed of silica, oxygen, hydrogen and other elements such as sodium, iron, magnesium and calcium in diverse combinations and includes the following minerals: amosite, chrysotile, crocidolite, anthrophyllite asbestos, actinolite asbestos, and tremolite asbestos. .

(c) "Free-form asbestos is that which is not bound, woven, or otherwise 'locked-in' to a product by resins or other bonding agents, or those from which fibers can readily become airborne with any reasonably foreseeable use.

(d) "Patching compounds are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials and a binding material such as asbestos which are sold in a dry form ready to be mixed with water, or such combinations in ready-mix paste form.

(e) "Consumer patching compounds are those that are customarily produced or distributed for sale to or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. The Commission considers that patching compounds for application in these consumer environments are either distributed for sale to consumers or are for the personal use or enjoyment of consumers."

Section 1304.4

proposes to declare as banned hazardous substances ONLY those consumer patching compounds containing respirable free-form asbestos.

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