

Legal Bulletin

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ROUTE TO:

Department		
Planning		
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Production		

LEAD IN PAINT -- NEW DEVELOPMENTS

A. NEW FEDERAL LAW

1. Lead-Based Paint Poisoning Prevention Act. One of the last acts of the 91st Congress was the passage of the "Lead-Based Paint Poisoning Prevention Act" -- the first federal legislation designed to reduce the incidence of lead poisoning of children. The President signed the bill on January 13, 1971, thus it became effective on that date. However, as discussed later in this Bulletin, all provisions of the Act require implementing action by the Secretary of HEW and/or HUD. A copy of this new law (P. L. 91-495) is attached for information. (Attachment A)

2. Legislative History. Because of the significance of this legislation and the complex developments related thereto, the legislative history is set forth in some detail as an attachment hereto. (Attachment B.) It should help to explain the probable direction and actions that may be taken by the Secretaries of HEW and HUD in preparing the implementing regulations for which they are responsible under the Act.

3. Synopsis of the Act.

Title I. Authorizes the Secretary of HEW to make grants to units of general local government in any State for the purpose of assisting such units in developing and carrying out local programs to detect and treat incidents of lead-based paint poisoning. A total of \$10 million is authorized to be appropriated to carry out the provisions of Title I -- not to exceed \$3.33 million for fiscal year 1971 and \$6.66 million for fiscal year 1972.

Title II. Authorizes the Secretary of HEW to make grants, as in Title I, for the purpose of assisting in developing and carrying out programs that identify those areas that present a high risk to the health of residents because of the presence of lead-based paints on interior surfaces, and then to develop and carry out programs to eliminate the hazards of lead-based paint poisoning. A total of \$15 million is authorized to be appropriated to carry out the provisions of Title II -- not to exceed \$5 million for fiscal year 1971 and \$10 million for fiscal year 1972.

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Subparagraph 201 (a)(2) provides for "the prompt elimination of lead-based paints from all interior surfaces, porches, and exterior surfaces to which children may be commonly exposed, of residential housing..."

Title III. Directs the Secretary of HUD, in consultation with the Secretary of HEW, "to carry out a demonstration and research program to determine the nature and extent of the problem of lead-based paint poisoning in the United States, particularly in urban areas, and the methods by which lead-based paint can most effectively be removed from interior surfaces, porches, and exterior surfaces to which children may be commonly exposed, of residential housing." Also directs the Secretary, within one year, to make a complete report of his findings and recommendations developed pursuant to such program, with statement of any legislation which should be enacted or changes to existing law which should be made, in order to carry out such recommendations. A total of \$5 million is authorized to be appropriated to carry out the provisions of Title III -- not to exceed \$1.67 million for fiscal year 1971 and \$3.34 million for fiscal year 1972.

Title IV. Directs the Secretary of HEW "to take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated after the date of enactment of this Act by the Federal Government, or with Federal assistance in any form." (Underlining supplied.)

provides for the purpose of Title III that lead-based paint be removed.

Title V. Defines terms used in the Act, including that for "lead-based paint." The latter is defined as "any paint containing more than 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint already applied." Also provides for consultation with other departments or agencies, and specifies funds to be authorized, as discussed earlier.

4. Significance of the New Lead Law.

a. The provisions of Title I and II are the purposes for which the original legislative proposals on the subject were introduced early in the 91st Congress, and -- they reflect the legislative intent before the focus was changed, as a result of environmental hysteria, to include language prohibiting the use of modern lead-based paints in future construction and rehabilitation.

For years NPVLA has cooperated with public health officials and other representatives of government at all jurisdictional levels in support of the efforts addressed in Titles I and II. NPVLA strongly supported these provisions of the bill from the beginning, and -- it was so stated for the public record.

b. The Federal demonstration and research program, provided for in Title III of the Act, also is deemed to be of the greatest importance and should be pursued with top priority. NPVLA strongly supports this provision and long has been a proponent of Federal assistance (both guidance and funding) to help solve the serious problem of lead poisoning of children. At Senate hearings on the bill in November 1970, NPVLA witnesses stated that Federal legislation on this subject would demonstrate a leadership on the part of the Government and would provide the additional funds needed to assist the states and cities in this mammoth task.

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c. Title IV is of the greatest significance and will have a direct and continuing impact on the industry. However, the full impact of Title IV will not be known until such time as the Secretary of HEW has developed and promulgated the implementing regulations.

Note. Until such time as the implementing regulations are published, the new law does not require any changes in use of lead-based paints. However, for production planning for the future, members should keep in mind that the legislative intent of P. L. 91-695 -- as expressed in the Senate Committee Report -- is to further restrict the use of lead-based paints (as defined in Title V) to prohibit its use on "porches, and exterior surfaces to which children may be commonly exposed, of residential housing."

This new prohibition, which can be expected, is in addition to those restrictions currently existing under the voluntary standard now being followed by industry (ANSI Standard Z66.1 - 1964) for interior surfaces, as well as toys and children's furniture.

Paints containing lead pigments always have been considered safe for application and use on exterior surfaces. No toxic hazard from the use of these paints, under the Federal Hazardous Substances Act, has been shown or claimed. However, it has been contended that some lead poisoning of children has resulted from the use of modern exterior paints, and the point has been made that, in spite of proper labeling precautions, these may be used on interior surfaces. Therefore, pressures have been exerted to have lead removed from all exterior house paints. This does not appear to be the case with industrial maintenance coatings, such as steel primers, etc.

d. The definition of "lead-based paint" provided for in Title V of the Act is consistent with that contained in ANSI Standard Z66.1 - 1964 and industry practice.

5. Prognosis. In view of the careful attention being given today to all environmental matters, it is expected that the government agencies, charged with responsibilities under P. L. 91-695, will proceed without delay in initiating implementing action. It should be noted, however, that the funds authorized by the new law have not yet been appropriated. (Several bills for this purpose were introduced early in the 92nd Congress by Rep. Ryan and others.)

Unfortunately, this lack of funds and the reduced amounts authorized by the Act may prevent or delay the Secretaries of HEW and HUD from carrying out their responsibilities under Titles I, II and III, which should be given earliest possible attention. On the other hand, no additional funds are needed for the Secretary of HEW to develop regulations implementing Title IV. Available information indicates that the latter is being accomplished. And, as a matter of fact, other agencies (e.g., HUD and GSA) are reviewing their own instructions and bulletins with a view to reducing or eliminating the use of lead in paints, possibly going further than that required by the law.

In this regard, NPVLA has addressed letters to both the Secretary of HEW and the Secretary of HUD confirming its very great interest in the matter and requesting permission to meet with appropriate agency officials in order to provide technical and other assistance in the development of implementing regulations. NPVLA will make every effort to establish and maintain an effective dialogue with all government agencies having responsibilities under the new lead law and regulations.

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It is not known at this time whether actions taken under Titles I and II will await development of programs and/or be dependent upon the evaluation of findings determined by Title III provisions. However, these sections of the Act are believed to be independent, and -- It is expected that implementation of Titles I and II will proceed as soon as funds can be made available, to be modified and improved as information may be developed from Title III programs.

In response to the NPVLA letter, the Secretary of HUD has advised that it will not be necessary to develop formal regulations in order to carry out the studies (or programs) for which he is responsible under Title III. He has indicated that these studies will be under the cognizance of Mr. Harold Finger, Assistant Secretary for Research and Technology, HUD. Accordingly, NPVLA assistance will be offered to Mr. Finger's office.

6. Summary. The new Lead-Based Paint Poisoning Prevention Act has been effective since January 13, 1971; however, no additional prohibitions (or restrictions) on the use of lead-based paints yet have been imposed. The extent and nature of these will be dependent on the implementing regulations to be developed by the Secretary of HEW.

All government agencies are examining critically all uses of lead-based paints, and -- are tending to initiate actions which will reduce significantly (possibly eliminate) the use of lead in Federal construction and rehabilitation, as well as in Federal specifications generally.

B. STATE AND LOCAL LAWS AND ORDINANCES

The new Federal lead law and increased publicity on lead poisoning of children can be expected to cause additional states and cities to enact legislation on the subject. Since some of these jurisdictions may tend to incorporate unnecessary restrictive provisions, all such legislative proposals should be brought to the attention of NPVLA immediately. Staff assistance will be provided, whenever feasible, to attempt to obtain some measure of uniformity.

C. LABELING FOR LEAD-BEARING PAINTS

The NPVLA Labeling Committee currently is reviewing all recommended precautionary labels used by the industry, particularly for those products in which lead compounds may be used. Information regarding modifications and recommended changes will be promulgated at the earliest possible date. However, it should be recognized that it would be prudent to wait until the regulations implementing Title IV of the new lead law have been promulgated and it can be determined just what additional restrictions on the use of lead-bearing paints may be desired.

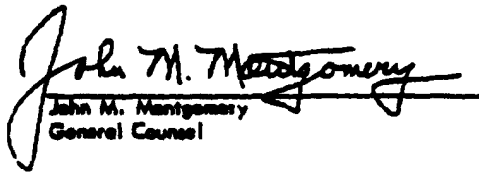
D. TINTING AT POINT OF SALE

One significant matter relating to labeling should be emphasized at this time. While NPVLA Recommended Labels still are considered adequate to fulfill requirements under the Federal Hazardous Substances Act and consistent with the voluntary ANSI Standard (Z46.1 - 1964), modern industry practice today involves a substantial and increasing amount of adding tinting pigments at point of sale. This introduces a new problem for, if lead pigments are used for tinting, the end product delivered to the customer may contain more than the 1% lead allowed. In such cases, while precautionary labeling was not required initially, it now would be necessary.

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In view of the foregoing, it is suggested that manufacturers provide their dealers with pressure sensitive labels to be applied to the container when the tinting pigments added at point of sale may result in more than 1% lead in the total non-volatile content of the finished paint. The dealer should be given full instructions as to the labeling requirements with respect to the particular colorants involved, and instructed to attach such a label whenever appropriate.

This matter is addressed in the NPVLA Labeling Book (Paint Industry Labeling Laws and Regulations) at page 59, and a sample label is shown. These procedures and the sample label are recommended until such time as changes may be dictated by regulations implementing the new Federal lead law or by other relevant laws or ordinances.


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attachments

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