



# Legal Bulletin

1500 Rhode Island Ave., N.W.

Washington, D. C. 20005

No. 73  
February 16, 1971

ROUTE TO: Department

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## LEAD IN PAINT -- NEW DEVELOPMENTS

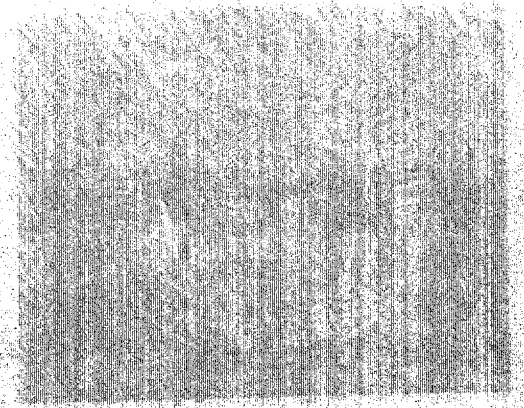
### A. NEW FEDERAL LAW

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. 91-695) 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.

N11694

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 --



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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.

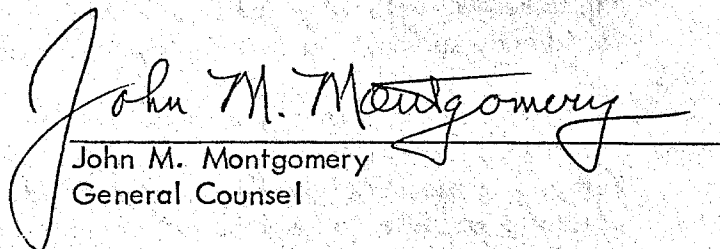
5. Prognosis. In view of the careful attention being given today to all environmental matters, it is expected that the government agencies, charged with responsibilities under P.L. 91-695, will proceed without delay in initiating implementing action. It should be noted, however, that the funds authorized 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.

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.

  
John M. Montgomery  
General Counsel

JMM/ew  
attachments

LEGISLATIVE HISTORY  
of  
LEAD-BASED PAINT POISONING PREVENTION ACT  
(Public Law 91-695)

Early in the 91st Congress (March, 1969), Rep. William F. Ryan (D-N.Y.) introduced the first bill to provide Federal financial assistance to States and their subdivisions for projects involving the detection and treatment of lead poisoning in children and for the rehabilitation of areas found to be seriously contaminated by old lead-based paints. Subsequently, approximately 50 members of both the House and Senate demonstrated a recognition of this serious problem and strong bi-partisan support by introducing similar legislative proposals or joining as sponsor thereof. One of these bills (S. 3941) -- introduced by Senator Richard S. Schweiker (R - Pa.) -- contained a provision making it unlawful "for any person to apply or otherwise use, after the effective date of the Act, any paint with an excess of 1 per centum lead pigments or lead additives on the interior of any dwelling..

The first public hearings on this legislation were not held until July 30, 1970 when the Housing Subcommittee of the House Banking and Currency Committee heard witnesses testify on H.R. 17260, the bill introduced by Rep. William A. Barrett (D - Pa.), Chairman of the Housing Subcommittee. NPVLA submitted a written statement in order to present additional facts relevant to the Subcommittee's review of the bill and to attempt to clarify certain erroneous matters and possible misconceptions on the subject which developed during examination of witnesses at the hearings.

Notwithstanding the testimony of medical witnesses at the hearings and the detailed information provided by NPVLA to emphasize that the lead poisoning of children was being caused by ingestion of flakes or chips of old lead-based paint from the walls and ceilings of poorly-maintained pre-World War II dwellings, the House Committee reported out a bill (H.R. 19172) on September 14, 1970 which contained a new provision prohibiting "the use of lead-based paint in all future Federal construction and rehabilitation . . . . of any building or structure with Federal assistance in any form."

At this time, NPVLA representatives met with Rep. Barrett and pointed out that his modified bill would deny the proper uses of lead-based paints in industrial areas where its rust-inhibiting qualities were of great importance and where no possible hazard to children now or in the future would exist. Rep. Barrett assured that his Committee did not intend to extend the coverage of his bill to that extent. However, the bill passed the House without further amendment on October 5, 1970, and was referred to the Senate Committee on Labor and Public Welfare.

With this development, NPVLA addressed a letter to the Chairman of the Senate Committee and requested permission to testify "in support of amendments deemed vital to make the bill an effective law responsive to the public need." The issue became further clouded by politics about this time, and a provision in the Senate "Omnibus Housing Bill" (S. 4368) -- limiting the restrictions on use of lead-based paint, as defined, to the interior of dwellings subject to the Act -- was not agreed to by conferees from the House and Senate Banking and Currency Committees. As finally approved by the Congress, the "Omnibus Housing Bill" (Housing and Urban Development Act of 1970) contained no provisions relating to the use of lead-based paint.

N11694.01



91st Congress, H. R. 19172  
January 13, 1971

## Am Act

84 STAT. 2078

To provide Federal financial assistance to help cities and communities to develop and carry out intensive local programs to eliminate the causes of lead-based paint poisoning and local programs to detect and treat incidents of such poisoning, to establish a Federal demonstration and research program to study the extent of the lead-based paint poisoning problem and the methods available for lead-based paint removal, and to prohibit future use of lead-based paint in Federal or federally assisted construction or rehabilitation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Lead-Based Paint Poisoning Prevention Act".*

Lead-Based  
Paint Poisoning  
Prevention Act.

### TITLE I—GRANTS FOR THE DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

#### GRANTS FOR LOCAL DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

Sec. 101. (a) The Secretary of Health, Education, and Welfare (hereafter referred to in this title as the "Secretary") is authorized 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.

Limitation.

(b) The amount of any such grant shall not exceed 75 per centum of the cost of developing and carrying out a local program, as approved by the Secretary, during a period of three years.

(c) A local program should include—

(1) educational programs intended to communicate the health danger and prevalence of lead-based paint poisoning among children of inner city areas, to parents, educators, and local health officials;

(2) development and carrying out of intensive community testing programs designed to detect incidents of lead-based paint poisoning among community residents, and to insure prompt medical treatment for such afflicted individuals;

(3) development and carrying out of intensive followup programs to insure that identified cases of lead-based paint poisoning are protected against further exposure to lead-based paints in their living environment; and

(4) any other actions which will reduce or eliminate lead-based paint poisoning.

(d) Each local program shall afford opportunities for employing the residents of communities or neighborhoods affected by lead-based paint poisoning, and for providing appropriate training, education, and any information which may be necessary to inform such residents of opportunities for employment in lead-based paint poisoning elimination programs.

Employment  
opportunities.

### TITLE II—GRANTS FOR THE ELIMINATION OF LEAD-BASED PAINT POISONING

Sec. 201. The Secretary of Health, Education, and Welfare is authorized to make grants to units of general local government in any State for the purpose of assisting such units 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