

federal register

Area Code 202 Phone 535-2626

Title 16—Commercial Practices CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION SUBCHAPTER B—FEDERAL HAZARDOUS SUBSTANCE ACT REGULATIONS

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES ADMINISTRATION AND ENFORCEMENT REGULATIONS

Lead-Containing Artistic Paints and Related Materials Exemption From Banning

In the matter of exempting lead-
containing artistic paints and related
materials from classification under 16
CFR 1500.17(a)(8)(1) as banned haz-
ardous substances:

In the Federal Register of January 4,
1973 (38 FR 799), the Food and Drug
Administration, for reasons given, issued
a proposal in the above-captioned mat-
ter. The banning regulation involved,
§ 1500.17(a)(8)(1), was promulgated
March 11, 1973 (37 FR 5971), and, except
for subdivision (1)(a) thereof, was con-
sidered as having become effective
April 26, 1973, by an order published At-

tach 10, 1973 (37 FR 14678). One in a
revenue/transfer license published
September 27, 1973 (38 FR 27617), 21
CFR 191.9 was reclassified as 16 CFR
1500.17.

The portions of 21 CFR 191.9(a)(8)(1),
now 16 CFR 1500.17(a)(8)(1), that be-
came effective directly as a banned haz-
ardous substance any paint or other
similar surface-coating material un-
mixed, or packaged in a form suitable
for use in or around the household that
is stored in interstate commerce be-
tween December 31, 1972, and Decem-
ber 31, 1973, and that contains lead
compounds of which the lead content
calculated as the metal is in excess of
0.5 percent of the total weight of the
contained solids or dried paint film.

The proposed exemption notice of
January 4, 1973, contained a provision
suspending application of the effective
portions of 21 CFR 191.9(a)(8)(1), now
16 CFR 1500.17(a)(8)(1), to artists'
paints and related materials pending
promulgation of an order acting on the
proposal.

The subject proposal was issued by the
Food and Drug Administration pursuant
to provisions of the Federal Hazardous
Substance Act and under authority
delegated to FDA by the Department of
Health, Education, and Welfare. The
proposal, however, is being acted on by
the Consumer Product Safety Commis-
sion because effective May 16, 1973, sec-
tion 30(a) of the Consumer Product
Safety Act (Public Law 93-373, 96 Stat.
1231; 15 U.S.C. 2079(a)) transferred
functions under the Federal Hazardous
Substance Act from the Secretary of
Health, Education, and Welfare to the
Consumer Product Safety Commission.

In response to the proposal of Janu-
ary 4, 1973, 26 comments favoring the
subject exemption were received from
individual artists (amateur and profes-
sional), associations of artists (amateur
and professional), art educators, inter-
ested persons, and manufacturers, dis-
tributors, and retailers of artists'
supplies. No adverse comments were
received.

The critical responsive arguments in
the responses are as follows:

1. The use of lead carbonate (also
known as white lead, basic white, cream
white, and silver white) is essential
for certain techniques used by artists
who work in the oil paint medium, and
no substitute is available for such lead
carbonate.

2. Because of the relatively high cost
of artists' paints these materials are un-
likely to be used as household paints.

3. Artists' paints and related mate-
rials are not likely to be ingested by chil-
dren after the paints have been applied
to masonry or other artwork surfaces.

The comments and other relevant
material having been considered, the
Commission concludes that the proposed
exemption should be adopted; however,
artists' paints and related materials
shall continue to be subject to all other
applicable provisions of the Federal Haz-

ardous Substance Act and regulations
thereunder.

Therefore, pursuant to provisions of
the Federal Hazardous Substance Act
(am. 21(2)(1)(A) (q), 74 Stat. 373, 374,
as amended 90 Stat. 1204-06, 15 U.S.C.
1261(2)(1)(A), (q)) and the Federal
Food, Drug, and Cosmetic Act am.
791(e), (f), (g), 52 Stat. 1038-44, as
amended 70 Stat. 619, 72 Stat. 549, 21
U.S.C. 371(e), (f), (g)) and under au-
thority vested in the Commission by the
Consumer Product Safety Act (am.
30(a), 96 Stat. 1231; 15 U.S.C. 2079(a))
it is ordered That § 1500.17(a)(8)(1)
of 16 CFR (38 FR 27617) be amended by ad-
ding thereto a new subdivision (1)(D), as
follows:

§ 1500.17 Banned hazardous substances.

- (A)
- (B)(1)
- (D) The provisions of paragraph (a)
(1) (1) of this section do not apply to ar-
tists' paints and related materials.

Any person who will be adversely af-
fected by the foregoing order may, on or
before November 1, 1973, file with the
Secretary, Consumer Product Safety
Commission, Washington, D.C. 20207,
written objections thereto. 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 objection. If a hear-
ing is requested, the objections must state
the issues for the hearing, and such ob-
jections must be supported by grounds
legally sufficient to justify the relief
sought. Objections may be accompanied
by a memorandum or brief in support
thereof. All documents shall be filed in
triplicate. Received objections may be
seen in the Office of the Secretary, sev-
enth floor, Air Rights Building, 715 Wil-
son Avenue, Bethesda, Md., during
working hours, Monday through Friday.

Effective date. This order shall become
effective on December 2, 1973, except as to
any provisions that may be stayed by the
filing of proper objections. Notice of the
filing of objections or lack thereof will be
given by publication in the Federal Reg-
ister.

The suspension of application of effec-
tive portions of 21 CFR 151.9(a)(8)(1),
now 16 CFR 1500.17(a)(8)(1), to artists'
paints and related materials, announced
in the proposal of January 4, 1973, and
mentioned in the preamble of this docu-
ment, shall continue pending confirma-
tion of the effective date of this order.
(am. 21(2)(1)(A), (q), 74 Stat. 373, 374, as
amended 90 Stat. 1204-06, 15 U.S.C. 1261(1)
(1)(A), (q); am. 791(e), (f), (g), 52 Stat.
1038-44, as amended 70 Stat. 619, 72 Stat. 549,
21 U.S.C. 371(e), (f), (g); am. 30(a), 96 Stat.
1231, 15 U.S.C. 2079(a))

Dated September 26, 1973.

SAUL E. DINE,
Secretary, Consumer Product
Safety Commission.

(FR Doc. 73-2289 Filed 10-5-73; 40 FR)

0007-SWP-036818

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