

LEGAL & LEGISLATIVE BULLETIN



NATIONAL
PAINT &
COATINGS
ASSOCIATION

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Washington D.C.
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*March 9, 1973
NPCA*

No. 9

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Route to
Department

Finance	
Administrative	
Legal	
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Production	
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TOPICS:

- A. Lead in Paint -- Recent Developments
 1. Legislative proposals -- Federal and State
 2. Massachusetts Lead Law -- Exemptions and Labeling Requirements
 3. Detroit Lead Ordinance -- still pending
- B. Poison Prevention Packaging Act
 1. "Special-packaging" proposal for paint solvents
 2. Turpentine and methyl alcohol regulations to become effective April 11th
- C. Federal Legislation -- Consumer Protection Agency bill revived

Executive Synopsis

This Bulletin reports recent developments on the following:

A. Lead in Paint -- Pending legislative and regulatory proposals at Federal, State and local levels which could have significant impact on the industry; labeling requirements proposed by Massachusetts and Detroit which require immediate attention.

B. Child-protection packaging standards proposed for paint solvents (copy enclosed), and -- situation report on standards for turpentine and methyl alcohol, scheduled effective April 11th.

C. Consumer Protection Agency bill revived by 93rd Congress.

ACTION REQUIRED. Parts A. 2 and 3 and B. 2 require immediate attention.

CONTACT AT NPCA. Office of Legal and Government Relations.

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- a. Intervene and participate in virtually all proceedings conducted by other federal agencies, both formal and informal, whenever the proceedings "substantially affect an important interest of consumers "
- b. Request other federal agencies to initiate a proceeding or take other action
- c. Utilize the subpoena power of the "host" agency for summoning witnesses, producing books and papers, copying of documents, etc.
- d. Intervene upon request of local officials in any State or local agency or court proceeding, except criminal matters, whenever an important interest of consumers is involved.
- e. Obtain judicial review of any federal agency action and intervene in any civil proceeding in a U.S. court involving the review or enforcement of a federal agency action. This intervention authority exists even if CPA did not participate in the federal agency action in question unless the court determines that intervention would be detrimental to the interests of justice.
- f. Receive complaints from consumers and forward them to the cognizant agency for action. Such agency must keep CPA informed of action taken. (The complaints are generally also made available for public inspection and copying.)
- g. Conduct research, studies, investigations, and surveys concerning the interests of consumers. (To carry out these functions, CPA is given broad information-gathering powers, including authority to require reports and answers to specific questions from businesses under oath.)
- h. Obtain access to the files of other federal agencies.
- i. Make public disclosure, within certain limitations, of information received.
- j. Make grants to State and local agencies to establish and operate their own consumer protection programs. (The bill authorized \$60 million for two years for this purpose.)

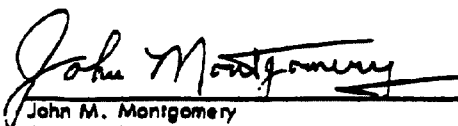
Many businesses at one time or another, and some regularly, have extensive dealings with numerous federal agencies, such as FDA, ICC, NLRB, EPA, DOT, etc. The thought of having a second prosecutor or adversary in any or all of these matters and in any subsequent judicial proceedings is a staggering concept. The impact this legislation could have on the entire business community is tremendous.

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Hearings on S. 707 are scheduled to begin on the Senate side on March 20, but no action has been scheduled on the House side as yet.

As we did during the 92nd Congress, NPCA is participating fully in planning, strategy, and action sessions with many other industry representatives and associations. We will keep the membership advised of future significant developments.


John M. Montgomery
General Counsel

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Attachments

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PROPOSED REGULATIONS FOR THE LEAD POISONING PREVENTION PROGRAM

Authority

These regulations are adopted by the Lead Poisoning Control Director of the Department of Public Health pursuant to G.L., c. 111, s. 190. Where required by G.L., c. 111, s. 196(b), adoption of these regulations has been concurred in by a majority of the Advisory Committee for the Lead Poisoning Prevention Program appointed pursuant to G.L., c. 111, s. 190.

Definitions

1. As used in these regulations the following words shall have the following meanings:
 - 1.1 "Director", the Lead Poisoning Control Director
 - 1.2 "Advisory Committee", the Advisory Committee for the Lead Poisoning Prevention Program
 - 1.3 "Commissioner", the Commissioner of Public Health
 - 1.4 "Department", the Department of Public Health.
2. These regulations shall take effect April 1, 1973. All exemptions granted by these regulations shall remain in effect until the date indicated by these regulations, or, if no date is so indicated, until such exemption is expressly withdrawn.
- 3.1 All exemptions from the prohibitions of G.L., c. 111, s. 196 (b) shall expire January 1, 1974, unless a different date is expressly indicated. An exemption may be renewed beyond that date upon the terms and conditions stated in these regulations.
- 3.2 No lead-paint or other substance shall be exempt from the prohibitions of said s. 196 (b) unless by April 1, 1973, every container of such paint or substance that is sold, exposed for sale, delivered, given away, or possessed with intent to sell, deliver or give away, bears, unless otherwise provided in these regulations, a label meeting all of the following requirements:
 - 3.2.1 The front panel of each such container which is five gallons or smaller shall prominently feature the following notice arranged in the following manner:

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- 3.2.4 Except as provided in these regulations, the placement, conspicuousness and contrast of this labeling shall fully comply with the requirements of the Federal Hazardous Substances Act and regulations now or hereafter issued pursuant thereto.
- 3.2.5 The label shall be firmly attached to either the original or underlying label or the container, and shall not be susceptible of removal without also removing the original or underlying label.
- 3.3 Unless the contrary is expressly indicated, any exemption expiring upon a date certain may be renewed for such term as shall be set by regulation on the following conditions.
- 3.3.1 A party requesting an exemption, if a manufacturer of the substance in question shall file a report with the Director not less than ninety (90) days before said exemption is due to expire, which report shall include:
- 3.3.1.1 a list of all paints or other surface coverings produced by him, not limited to those for which he is requesting an exemption, and the lead content of each, and of all steps he is currently undertaking or considering to reduce such lead content
- 3.3.1.2 a description of the testing and quality control procedures by which he insures that the lead content of each paint or covering is in fact the amount listed in the report and that the labeling of each paint or covering correctly describes the contents thereof and.
- 3.3.1.3 a description of the means other than labeling by which he informs distributors, retailers and consumers of each paint or covering of whatever limitations on use or availability he deems necessary for the particular paint or covering in order to protect the health and safety of the public and particularly of younger children.
- 3.3.2 The information required by regulation 3.3.1 may be submitted by one or more trade associations on behalf of their members, but shall originate with each separate manufacturer and shall be so identified and presented. Each manufacturer who signs the report of such trade association shall be bound by its contents for the purposes of these regulations. A manufacturer signing such a report or filing his own report shall indicate any information which in his opinion qualifies as a "trade secret" within the meaning of applicable law, or which for any other lawful reason should not in his opinion be disclosed to the public.
- 3.3.3 A party requesting an exemption, if a distributor, wholesaler or retailer, shall file a report with the Director not less than ninety (90) days before said exemption is due to expire, which report shall include all information required from the manufacturer of the paint or covering in question and in addition shall describe all steps taken by the party requesting the exemption to limit the use or availability of the paint or covering in question that he deems necessary to protect the health or safety of the public and particularly of younger children.

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- 4.1 The following paints when "lead-based" within the meaning of c.111, s.196 (a), shall be exempt from the prohibitions of G.L., c.111, s. 196 (b), upon the terms and conditions expressly indicated hereunder, which shall be in addition to all other terms and conditions governing such exemptions set forth in these regulations.
- 4.1.1 Original finish paints intended to be factory-applied upon manufactured products and not made available for sale to the general public.
- 4.1.2 Automotive, agricultural, and industrial equipment refinish paints.
- 4.1.3 Industrial, and commercial building, maintenance paints, including traffic and safety marking paints, not made available for sale to the general public.
- 4.1.4 Graphic art paints, including products marketed for application to bill boards, road signs and similar uses, and for identification marking of industrial buildings.
- 4.1.5 Touch-up paints for metal machinery, appliances, vehicles, or watercraft, when sold in containers small enough to preclude any reasonable risk of use on buildings or furniture, when the container bears a label stating, in type as large as the largest type on the label except the product name and in no case smaller than 10 points, POISON, CONTAINS LEAD, Keep Away From Children, Do Not Use On Toys or Furniture, which shall satisfy the requirements of regulations 3.2.1 and 3.2.2 if the container contains less than one-half pint liquid or eight ounces by weight.
- 4.1.6 Exterior marine paints for construction, industrial use, maintenance, and small craft application.
- 4.1.7 Exterior rubber-based roof paints, when the container bears a label prominently stating, in addition to the notice required by regulations 3.2.1 and 3.2.2, Do Not Use This On Any Part of a Building Except the Roof, in type not smaller than 24 points.
- 4.1.8 Latex exterior primers for wood siding containing extractives, provided that this exemption shall not be extended beyond January 1, 1974, and that by July 1, 1973, each manufacturer of this product requesting an exemption beyond the latter date shall file with the Director a report describing by what means he plans to render such primers non-lead-based and how the resulting product shall be tested for fitness for use, and that each container bear a label identical with that required by regulation 3.2 except that it shall indicate that this product may only be used on bare cedar or redwood siding and that only one coat should be used.
- 4.2 Any person in doubt as to the applicability to any product of any of these regulations may request in writing an advisory ruling by the Director pursuant to C. 30A. A copy of all such requests, and all advisory rulings made hereunder, shall be sent by the Director to the Chairman of the Advisory Committee.

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- 5.1 The "amount of lead that produces the danger of lead poisoning" when present in existing paint, plaster or other surface covering, shall be deemed, pursuant to G.L., c. 111, s. 194, to be 0.6 percent lead by dry weight, or 0.9 milligrams lead per square centimeter of surface.
- 5.2 Evaporated, whole or condensed milk or baby food in metal containers shall be deemed to contain hazardous amounts of lead if they contain more than 0.3 parts per million of lead.
- 5.3 Glazed tableware, cooking ware or utensils or other food or drink containers shall be deemed to be lead based if, when tested by being filled with 4 percent acetic acid for eighteen hours with care to prevent evaporation, the acetic acid is found to contain more than 7 parts per million of lead.

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