FDA Confirms .5% Lead Level; Defers Action on .06%

[illegible] Drug A[illegible]stration (FDA) [illegible] issued [illegible] confirmed the .5 [illegible] level for [illegible] paints to become effective December 31 1972

Published August 10 in the Federal Register the new Order implements the .5[illegible] provision contained in the March 11 FDA Order which classified certain paint products as banned hazardous substances The [illegible] Order does not however take any action on the .06 provision also [illegible] in the March 11 Order but [illegible] that this [illegible] will be the subject of a separate ruling

[illegible] the new Order FDA noted [illegible] and objections filed in [illegible] the March 11 Order Of the [illegible] level and will be ruled [illegible] time Of the objections concerning the .5% level the FDA ruled as follows

1 The Agency rejected requests for additional time (up to 18 months) to comply with the .5% provision because it [illegible] that a sufficient supply of paint al[illegible] which meets the .5 level

2 Requests from retailers and distributors for an additional 18 months to dispose of existing inventories was refused on the grounds that these groups had known since March 11 that paint above the .5% lead level would be banned and thus "had sufficient opportunity to eliminate non-conforming paint from their inventories

3 The Agency ruled that the comments filed by the Georgetown University Law Center (Professor Page et al) on repurchase were not supported by grounds legally sufficient to justify a public hearing This action leaves the repurchase issue still in question since no implementing regulations to Section 15 of the Federal Hazardous Substances Act (FHSA) have yet been issued.

According to NPCA General Counsel John M Montgomery "in the absence of more restrictive language in the most recent Order or any amplifying comments the qualified repurchase requirement contained in the March 11 Order should control" This provision is being interpreted to mean that only those products exceeding the .5% lead level which are shipped in interstate commerce after the December 31, 1972 deadline date should be subject to repurchase

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Attach #2

Recently there has been much legislative activity with regard to the use of lead in paint products. Although the outcome of this is uncertain, it is nevertheless appropriate that I report to you what we at The Sherwin-Williams Company are doing to provide you with products which will be in compliance with these laws.

On March 11, 1972, FDA issued an order which declared that paints containing more than .5% lead after December 31, 1972 and more than .06% lead after December 31, 1973 were declared to be a banned hazardous substance and could not be shipped in interstate commerce. As of this date, FDA has not implemented this order although they are expected to do so very soon.

The Senate has adopted an amendment to the Lead-Based Paint Poisoning Prevention Act which would prohibit the use of paints containing more than .5% lead after December 31, 1972 and .06% lead after December 31, 1973 on surfaces of Federally funded housing. The companion bill introduced by Representative Ryan in the House of Representatives is still in committee, so the outcome of this legislation is uncertain although it is expected to be adopted by the Congress.

In addition to the Federal legislative activity, various states and municipalities have adopted ordinances relating to the sale and use of coatings containing lead. Chicago recently passed two ordinances which prohibited the sale and use of coatings intended for use on interior household surfaces and containing more than .06% lead and more than .05% other toxic heavy metals (selenium, cadmium, mercury, arsenic, and antimony) after July 1, 1972. Other states are expected to adopt similar legislation.

The Sherwin-Williams Company recognized several years ago that legislation restricting the use of lead in paints would probably be adopted. As a consequence, we began to routinely reformulate our products to remove the lead content. As a result of this foresight, I can report to you that all interior coatings currently manufactured by The Sherwin-Williams Company contain less than .06% lead and less than .05% other toxic heavy metals. In addition, all other Trade Sales products, including those designed for exterior surfaces on dwellings, are being reformulated to less than .06% lead. We expect to be down to less than .5% lead content by October 1, 1972 and to less than .06% lead content soon thereafter.

We currently are putting the following letter suffix after the manufacturing date on all containers to indicate the lead and other toxic heavy metal content of the coatings:

X less than .06% lead and .05% other toxic heavy metals

V less than .5% lead and .05% other toxic heavy metals

Z more than .5% lead and .05% other toxic heavy metals

Attach. #3 (1 of 2)

Lead-in-Paint Rules, Legislation Finally Moving Toward Resolution

Stagnant for the past few months while industry leaders conducted quiet negotiations in an attempt to provide for fair and equitable settlement for both the manufacturers and retailers, the lead-in-paint question is finally moving toward resolution in both the Food and Drug Administration (FDA) and in the Congress.

A small victory for the paint industry can be claimed in the recently published FDA regulations implementing its March 31 order banning lead-containing paints, while the fight continues in the Congress as the National Paint and Coatings Association (NPCA) attempts to change some language within Sen. Edward (Ted) Kennedy's amendment to the Lead-Based Paint Poisoning Prevention Act, passed by the Senate in mid-June 82-0, and currently being considered by House Committee on Housing as part of its Omnibus Housing Bill.

According to the FDA notice in the Federal Register in early August, the re-purchase of paint will not be required under the FDA regulation. The agency took the position that re-purchase of products containing more than .5 percent lead which are banned effective Dec. 31, cannot be enforced by the federal agency and is therefore inappropriate for the government to include in its formal order. This doesn't mean, however, that the matter is entirely resolved. Consumerists can and may challenge the FDA ruling in the federal courts, although no such movement is visible at this time.

What does this mean to retailers? Simply stated, dealers will not be required to buy back from consumers any paints manufactured before Dec. 31, regardless of the lead content. It also means that retailers need not expunge their shelves of paints containing more than .5 percent if the products were purchased prior to Dec. 31.

Rudy Vignone, director of the Office of Compliance for the FDA's Bureau of Product Safety, states that individual retailers need not expect on-site inspections by FDA inspectors. Instead, he continues, "our field force will go to the points of production to determine whether or not there are violations." In the case of violations, seizure will be the first step taken by Vignone's office. Should this fail, violators would face fines and jail sentences ranging from $500 and 90 days or both, to $3000 and a year, or both. WARNING — This FDA order does not supersede or replace local or state lead laws.

Still the center of controversy is the .06 percent lead limit which is scheduled to take effect Dec. 31, 1973. The FDA order confirming the end-of-1972 deadline at the .5 percent level added fuel to industry demands for some changes in this ruling pursuant to a proposed HEW eight-month study which is contained in Sen. Kennedy's bill. The FDA's position is that it will shelve industry requests for hearings and its implementation of the .06 percent lead level until such a study is completed by HEW.

The paint industry is, for the most part, pleased with the FDA's approach to the .06 percent question, noting that such a study should establish once and for all solid data on what lead levels are really proper.

There are, however, some problems which revolve around the proposed HEW study and the Kennedy bill as passed by the Senate. While calling for the study, the Kennedy bill does not defer action on the banning of lead-based paints at the .06 percent level after Dec. 31, 1973. NPCA is attempting to amend the Kennedy amendment while it's being considered in executive session of the House Committee on Housing to at least conform to the Senate bill.

In addition to the conforming language, NPCA has requested additional changes, including a provision to defer the .06 percent standard until the research called for under the Kennedy bill has been conducted by HEW and then fully evaluated by both the government and the paint industry. The point, according to NPCA Executive Vice President Robert Roland, is that to enact the .06 percent standard before research is completed would negate the practical value of the research, "especially if the data shows a higher standard to be safe in residential paints."

Another significant change, Roland states, is the inclusion of a full pre-emptive section in the federal law. The industry, he points out, has been plagued by state and local lead ordinances at differing levels of lead content and with different timetables for enactment than that proposed either by the FDA or by the Congress.

Under the Kennedy amendment to the Lead-Based Paint Poisoning Prevention Act, an appropriation of some $100 million in preventive and study funds will be authorized. HEW is directed by the Kennedy bill to conduct its study and report back to the Congress on its findings no later than eight months after its enactment. This, according to highly placed Congressional authorities, is considered to be sufficient time by Sen. Kennedy and his followers to change the .06 percent lead level should it be determined that a higher level is safe.

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NPCA which is conducting its own study on the safe level of lead in paint [illegible], pointing out that manufacturers need [illegible] reformulate, and that this action would [illegible] be taken [illegible] before the results of the HEW [illegible]. Should the study [illegible] lead [illegible] paint [illegible] formula [illegible] and whole [illegible].

Report on Local and State Lead Laws Shows Foolishness Abounds

[illegible] describes [illegible] actions of the [illegible] state [illegible] enacted a lead law that [illegible] standard of .5 percent but created [illegible] legislative procedure that confounds [illegible] most knowledgeable political [illegible].

Through [illegible] the series of legislative steps to amend [illegible] to conform to the federally proposed .06 percent lead level, the final language in the Louisiana bill [illegible] of .06 percentum" — or a practical standard of 6.0 percent. Action by NCPA in conjunction with retailers and other interested parties in the [illegible] result in the act being placed on call by the governor for further consideration by the state legislature [illegible] convened Aug. 20. The act, according to NPCA, contains labeling provisions that are inconsistent with those under the Federal Hazardous Substances Act and are, therefore, preempted by the federal law.

There have been, according to NPCA, no serious difficulties in Chicago where a lead law calling for the .06 percent standard and special labeling requirements has already gone into effect. Information gathered by NPCA indicates that most manufacturers and retailers have applied self-sticking warning labels to products on shelves or have removed non-conforming goods from retail outlets. There have been, NPCA reports, no indication of violations or citations by the city government.

Problems Arise for Wallcoverings Dealers Under California Label Law

While most of the decorating products industry focused its attention on the lead-in-paint problem, two wallcoverings outlets in California were jolted when the state ordered wallcoverings packages with nonconforming labels removed from their inventory. Standard Brands Paint and Sinclair have been identified by the state as not complying with the California statutory and regulatory requirements.

Section 12607, Chapter VI, of the California Business and Professions Code requires disclosure of the net quantity of contents on the packages of all consumer products. According to information received from the Wallcoverings Wholesalers Association's attorney David Murchison, the state's interpretation of this law requires disclosure on the outside of the package of the length, width and square footage.

Further, states [illegible] report that neither U.S. nor Canadian [illegible] are complying with the law. In order to comply with the law, state officials say, the [illegible] should be used) — ONE [illegible] 2 [illegible] yards more [illegible].

[illegible] at the [illegible] wallcoverings industry should [illegible] of such legislation [illegible] and state [illegible] federal level.

Senate, Pay Board's Wage Rulings May Create Problems for Retailers

Two separate moves, one by the Cost of Living Council's Pay Board and the other by the Senate, could create problems for retailers in the area of employees' wages. In late July the Cost of Living Council exempted from wage controls more than 30 percent of all employees in the retail industry. The decision to exempt workers making less than $2.75 an hour, coupled with the Senate's passage of a minimum wage act that would raise the minimum to $2 per hour in 60 days after enactment and to $2.20 two years later for retailers covered by the 1961 minimum wage amendments, would, according to the National Retail Federation, dump an excessive load on the nation's retailers.

Under the Senate-passed Minimum Wage Bill, Retailers covered in 1966 would receive wage increases of $1.80, then $2 and finally $2.20. Scheduled to go into conference in a joint House-Senate committee, the Senate bill would also eliminate the $250,000 "establishment" test and make the figure applicable to retail "enterprises", thus forcing multi-store retailers to aggregate all sales volume to see whether the minimum applies to them.

Little hope is held out by Washington observers for an adequate compromise between the less stringent House measure (See Washington Scene — June-July) and that passed by the Senate, especially considering that this is an election year.

Oddly, the Cost of Living Council has indicated it is working on formulas to provide relief for retailers hard-hit by the expected increase in the federal minimum wage. Special attention, according to staff members, is being paid to permitting retailers to raise prices to cover expected higher operating costs.

No word has been heard from the council, however, in regard to any formulas which would aid retailers in meeting the higher operating costs that will result from exempting workers making less than $2.75 from salary restrictions. The council's decision came less than a week after a U.S. District Judge ruled that the council had erred in setting the exemption figure at $1.90 in attempting to carry out a Congressional mandate that members of the "working poor" not be covered by the Pay Board's 5.5 percent guidelines.

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