

Consumer Product Safety Commission

§ 1303.1

labeling, but has found none that would achieve the objective of this ban, consistent with the public health and safety.

(2) The Commission believes that any adverse effects of the ban should be minimal and would be expected to be confined to some shift in distribution patterns to accommodate professional users, including methods of distinguishing between professional users and consumers.

(3) The Commission finds that competition should not be significantly affected by this rule.

(e) *Conclusion.* The Commission finds that this rule, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risk of injury of burns from explosive vapor ignition and flashback fire that is associated with the banned products described in §1302.3(b). The Commission also finds that issuance of the rule is in the public interest. The Commission also finds that no feasible consumer product safety standard under the act would adequately protect the public from the unreasonable risk of injury associated with the product.

§ 1302.6 Effective date.

This rule becomes effective January 18, 1978.

PART 1303—BAN OF LEAD-CONTAINING PAINT AND CERTAIN CONSUMER PRODUCTS BEARING LEAD-CONTAINING PAINT

Sec.

- 1303.1 Scope and application.
- 1303.2 Definitions.
- 1303.3 Exemptions.
- 1303.4 Banned hazardous products.
- 1303.5 Findings.

AUTHORITY: Secs. 8, 9, 86 Stat. 1215–1217, as amended 90 Stat. 506, 122 Stat. 3016, (15 U.S.C. 2057, 2058), Sec. 101, 122 Stat. 3016.

SOURCE: 42 FR 44199, Sept. 1, 1977, unless otherwise noted.

§ 1303.1 Scope and application.

(a) In this part 1303, the Consumer Product Safety Commission declares that paint and similar surface-coating materials for consumer use that contain lead or lead compounds and in which the lead content (calculated as

lead metal) is in excess of 0.06 percent (0.06 percent is reduced to 0.009 percent effective August 14, 2009 as mandated by Congress in section 101(f) of the Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film (which paint and similar surface-coating materials are referred to hereafter as “lead-containing paint”) are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2057, 2058. The following consumer products are also declared to be banned hazardous products:

(1) Toys and other articles intended for use by children that bear “lead-containing paint”.

(2) Furniture articles for consumer use that bear “lead-containing paint”.

(b) This ban applies to the products in the categories described in paragraph (a) of this section that are manufactured after February 27, 1978, and which are “consumer products” as that term is defined in section 3(a)(1) of the Consumer Product Safety Act. Accordingly, those of the products described above that are customarily produced or distributed for sale to or for use, consumption, or enjoyment of consumers in or around a household, in schools, in recreation, or otherwise are covered by the regulation. Paints and coatings for motor vehicles and boats are not included within the scope of the ban because they are outside the statutory definition of “consumer product”. In addition to those products which are sold directly to consumers, the ban applies to products which are used or enjoyed by consumers after sale, such as paints used in residences, schools, hospitals, parks, playgrounds, and public buildings or other areas where consumers will have direct access to the painted surface.

(c) The Commission has issued the ban because it has found that there is an unreasonable risk of lead poisoning in children associated with lead content of over 0.06 percent in paints and coatings to which children have access and that no feasible consumer product safety standard under the CPSA would adequately protect the public from this risk. The 0.06 percent is reduced to

§ 1303.2

0.009 percent effective August 14, 2009 as mandated by Congress in section 101(f) of the Consumer Product Safety Improvement Act of 2008, Public Law 110-314.

(d) Any ban or rule promulgated under 16 CFR 1303.1 shall be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).

[42 FR 44199, Sept. 1, 1977, as amended at 73 FR 77493, Dec. 19, 2008]

§ 1303.2 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) shall apply to this part 1303.

(b) For purposes of this part:

(1) *Paint and other similar surface-coating materials* means a fluid, semi-fluid, or other material, with or without a suspension of finely divided coloring matter, which changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface. This term does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing.

(2) *Lead-containing paint* means paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent (0.06 percent is reduced to 0.009 percent effective August 14, 2009) by weight of the total nonvolatile content of the paint or the weight of the dried paint film.

(3) *Toys and other articles intended for use by children* means those toys and other articles which are intended to be entrusted to or for use by children. This would not include all articles to which children might have access simply because they are present in a household.

(4) *Furniture article* means those movable articles: (i) Used to support people or things; (ii) other functional or decorative furniture articles, including, but not limited to, products such as beds, bookcases, chairs, chests, tables, dress-

16 CFR Ch. II (1-1-12 Edition)

ers, desks, pianos, console televisions, and sofas. The term “furniture article” does not include appliances, such as ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers, and dehumidifiers; fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.

[42 FR 44199, Sept. 1, 1977, as amended at 73 FR 77493, Dec. 19, 2008]

§ 1303.3 Exemptions.

(a) The categories of products listed in paragraph (b) of this section are exempted from the scope of the ban established by this part 1303, provided:

(1) That these products bear on the main panel of their label, in addition to any labeling that may be otherwise required, the signal word “Warning” (unless some other signal word is required) and the following statement: “Contains Lead. Dried Film of This Paint May Be Harmful If Eaten or Chewed.”

(2)(i) That these products also bear on their label the following additional statement or its practical equivalent:

Do not apply on toys and other children’s articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children.

Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

Keep out of reach of children.

(ii) If the statement required by the preceding paragraph (a)(2)(i) is placed on a label panel other than the main panel, the label statement required to be on the main panel by paragraph (a)(1) of this section shall contain the following additional statement: “See other cautions on ___ (insert ‘side’ or ‘back’, as appropriate) panel.”

(3) That the placement, conspicuousness, and contrast of the label statements required by this section (a) comply with the requirements of the Federal Hazardous Substances Act at 16 CFR 1500.121.

(b) The following products are exempt from the scope of the ban established by this part 1303, provided they comply with the requirements of paragraph (a) of this section:

Consumer Product Safety Commission

§ 1303.5

(1) Agricultural and industrial equipment refinish coatings.

(2) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

(3) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).

(4) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.

(5) Catalyzed coatings marketed solely for use on radio-controlled model powered aircraft.

(c) The following products are exempt from the scope of the ban established by part 1303 (no cautionary labeling is required):

(1) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.

(2) Artists' paints and related materials.

(3) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

[42 FR 44199, Sept. 1, 1977, as amended at 43 FR 8515, Mar. 2, 1978]

§ 1303.4 Banned hazardous products.

The following consumer products, manufactured after February 27, 1978, unless exempted by § 1303.3, are banned hazardous products (see definitions in § 1303.2):

(a) Paint and other similar surface-coating materials which are "lead-containing paint."

(b) Toys and other articles intended for use by children that bear "lead-containing paint."

(c) Furniture articles that bear "lead-containing paint."

§ 1303.5 Findings.

(a) *The degree and nature of the risk of injury.* (1) The Commission finds that the risk of injury which this regulation is designed to eliminate or reduce is lead poisoning in children. The adverse effects of this poisoning in children can cause a range of disorders such as hyperactivity, slowed learning ability, withdrawal, blindness, and even death. The final Environmental Impact Statement on Lead in Paint which is on file

with the President's Council on Environmental Quality (and available for inspection in the Office of the Secretary) contains in appendix A a detailed discussion of the health effects of lead in paint. These effects will only be summarized here.

(2) Lead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems. Newer concepts indicate that there are three stages to childhood lead poisoning. The adverse health effects in the first stage are not clinically present but metabolic changes can be observed. During the second stage or symptomatic stage such symptoms as loss of appetite, vomiting, apathy, drowsiness, and inability to coordinate voluntary muscle movements occur. The after effects of this stage include seizure disorders as well as various behavioral and functional disorders which are often included under the heading of minimal brain dysfunction. Studies suggest that this syndrome may include hyperactivity, impulsive behavior, prolonged reaction time, perceptual disorders and slowed learning ability. The adverse health effects of the third stage may be permanent and can include blindness, mental retardation, behavior disorders, and death.

(3) The Commission notes that children with pica are of special concern with regard to lead poisoning. Pica, the repetitive ingestion of nonfood substances, occurs in 50 percent of children between the ages of one and three, and studies indicate that at this age lead is absorbed more rapidly than lead is absorbed in adults. Pica for paint is believed to be episodic and can occur 2 to 3 times a week.

(4) The Commission also notes that there are no reports of injuries caused by lead paint poisoning in the Commission's National Electronic Injury Surveillance System (NEISS) data, which reflect hospital emergency room treatment. Lead paint poisonings result from a chronic hazard rather than from an acute hazard of the type generally treated in emergency rooms; and NEISS reporting, therefore, does not reflect this type of chronic hazard or injuries.

§ 1303.5

16 CFR Ch. II (1-1-12 Edition)

(5) Former U.S. Surgeon-General Jesse L. Steinfeld, however, estimated in 1971 that 400,000 pre-school American children have elevated body lead burdens. The National Bureau of Standards in 1972 estimated that 600,000 young children have unduly high lead blood content.

(b) *Products subject to this ban.* (1) The products banned by this rule are listed in §1303.4.

(2) The term *paint* comprises a variety of coating materials such as interior and exterior household paints, varnishes, lacquers, stains, enamels, primers, and similar coatings formulated for use on various surfaces. Based on 1976 data, the Commission estimates that over 400 million gallons of paint a year valued at approximately \$2.5 billion could potentially be subject to this rule.

(3) All products commonly known as toys and other articles intended for the use of children are subject to this rule. The categories of products within this classification are numerous and include items and equipment for play, amusement, education, physical fitness, and care of children. Retail sales in 1976 of products considered to be toys or other articles intended for use of children are estimated at around \$4 billion.

(4) For the purposes of this rule, furniture articles are certain movable articles used to support people or things or other functional or decorative furniture articles such as couches, beds, tables, chairs, chests, and the like. Appliances and similar equipment, household fixtures, and certain other household items such as window shades, blinds, wall hangings, and the like are not included within the definition of furniture. The regulation applies to furniture for use in households, schools, in recreation, or otherwise. In 1972, the value of shipments of items of furniture such as those named above was as follows: wood household furniture \$2,716 million; metal household furniture \$859 million; wood television and radio cabinets \$293 million; and \$190 million for other household furniture made of plastic, reed and rattan. (Not included in the above are some \$2 billion worth of upholstered furniture

and \$300 million in convertible sofas, chair beds and studio couches.)

(c) *Need of the public for the products and effects of the rule on their utility, cost, and availability.* (1) The public need for paints of various types and for furniture and other articles is substantial and well established. The Commission finds that the need of the public for paint containing more than 0.06 percent lead or for the affected products that are coated with materials containing more than 0.06 percent lead is limited. The Commission has determined that there are products containing more than the 0.06 percent level of lead which meet a public need and for which substitutes are either not available or are not sufficiently effective and to which access by children to the coatings or the surfaces to which they are applied is unlikely. Accordingly, these products have been specifically exempted from the scope of the regulation in §1303.3.

(2) The Commission finds that the effects of this rule on the cost, utility, and availability of paints and painted articles will be small. The Commission notes that over 95 percent of latex-based and nearly 70 percent of oil-based paints have lead levels at or below the level set by part 1303.

(i) *Costs.* The Commission estimates that the added costs to the consumer for paints affected by this rule will not exceed 5 to 10 cents per gallon. Costs to consumers for furniture and for toys and other articles intended for the use of children are not expected to increase as the result of compliance with the regulation.

(ii) *Utility.* The Commission finds that for water-based or latex paints and coatings subject to this rule, reducing the amount of allowable lead to 0.06 percent will not have adverse effects on their utility. For certain solvent-thinned coatings, however, lead driers will have to be replaced by non-lead driers such as zirconium to comply with the 0.06 percent level (Driers are not used in latex paints). An impact on the paint industry may result because current nonlead driers may not dry satisfactorily in low temperatures or high humidity conditions, and so the

painting industry in some areas at certain times of the year may suffer a reduction of effective painting time.

(iii) *Availability.* Substitutes at comparable prices are available for paints and for products banned by this rule. The Commission believes that the reduction of lead to a level of 0.06 percent will not affect the availability of water-based or latex paints. Sales of such coatings currently exceed sales of solvent-based coatings, and because of the drying problem mentioned above, the trend toward increased use of water-based paints may be accelerated somewhat by the effects of the ban.

(d) *Alternatives.* (1) The Commission has considered other means of achieving the objective of this rule, but has found none that would cause less disruption or dislocation of manufacturing and other commercial practices, consistent with public health and safety.

(2) The Commission estimates that this ban may, because of testing costs and the necessity for improved house-keeping practices in the manufacture of paint and similar surface-coating materials to prevent lead contamination, have some relatively minor adverse effect on individual firms within some markets.

(3) The Commission, however, finds that competition will not be adversely affected by this rule. Although costs of reformulation and testing may be relatively higher for small manufacturers than large manufacturers, these costs are not so onerous as to lead to greater concentration in the industry. The period of time before the effective date is sufficient to minimize problems of compliance with the rule.

(4) The reduction of the permissible level of lead in paint will affect paint manufacturers, raw materials suppliers, professional and non-professional painters, and manufacturers of furniture and children's articles. For those producers of paint which are already subject to the regulations under the Federal Hazardous Substances Act (FHSA), the impact of this CPSA ban will involve only a change to non-lead driers since lead pigments are precluded from practical use under the 0.5 percent lead restriction now in effect under the FHSA (16 CFR 1500.17(a)(6)).

The manufacturers of some painted furniture who were not affected by the 0.5 percent limit under the FHSA may now be, if they use lead pigments or driers. Producers of children's articles who were subject to the 0.5 percent FHSA limit will have to ensure that the paint they use conforms to the 0.06 percent level.

(e) *Conclusion.* The Commission finds that this rule, including its effective date, is reasonably necessary to eliminate or reduce the unreasonable risk of lead poisoning of young children that is associated with the banned products which are described in §1303.4 and that promulgation of the rule is in the public interest.

PART 1304—BAN OF CONSUMER PATCHING COMPOUNDS CONTAINING RESPIRABLE FREE-FORM ASBESTOS

Sec.

1304.1 Scope and application.

1304.2 Purpose.

1304.3 Definitions.

1304.4 Consumer patching compounds as banned hazardous products.

1304.5 Findings.

AUTHORITY: Secs. 8, 9, 86 Stat. 1215-1217, as amended 90 Stat. 506, 15 U.S.C. 2057, 2058.

SOURCE: 42 FR 63362, Dec. 15, 1977, unless otherwise noted.

§ 1304.1 Scope and application.

(a) In this part 1304 the Consumer Product Safety Commission declares that consumer patching compounds containing intentionally-added respirable freeform asbestos in such a manner that the asbestos fibers can become airborne under reasonably foreseeable conditions of use, are banned hazardous products under sections 8 and 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2057 and 2058). This ban applies to patching compounds which are (1) used to cover, seal or mask cracks, joints, holes and similar openings in the trim, walls, ceiling, etc. of building interiors, which after drying are sanded to a smooth finish and (2) are produced and distributed for sale to or for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary