



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
Commissioners Voting By Ballot

1111 18th Street, NW
Washington, DC

Voting: Chairman Byington
Commissioner Franklin
Commissioner Pittle

ITEM

Final Amendment to Banning Regulation on Lead-Containing Paint (16 CFR Part 1303) to exempt metal furniture articles (exclusive of metal children's furniture) bearing factory-applied coatings (amendment proposed in the Federal Register of January 12, 1978.).


(Briefing material transmitted by the Office of the Secretary on February 17, 1978.)

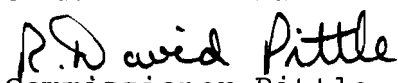
DECISION

Based on the information presented in the above-referenced material, the Commission approved a final amendment to the lead-containing paint ban establishing an exemption for metal furniture articles (exclusive of metal children's furniture). A copy of the Federal Register document is attached.

VOTE

Concurring: Chairman Byington (2/21/78)


Commissioner Franklin (2/23/78)


Commissioner Pittle (2/21/78)

Submitted by the Office of the Secretary

[6355-01]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT
SAFETY COMMISSIONSUBCHAPTER B—CONSUMER PRODUCT
SAFETY ACT REGULATIONSPART 1303—LEAD-CONTAINING
PAINT AND CERTAIN CONSUMER
PRODUCTS BEARING LEAD-CON-
TAINING PAINT

Amendment to Ban

AGENCY: Consumer Product Safety
Commission.

ACTION: Final amendment to rule.

SUMMARY: The Commission amends its banning regulation on furniture bearing lead-containing paint to exempt metal furniture articles (but not metal children's furniture) bearing factory-applied coatings from the furniture banned by the regulation. The Commission is issuing this amendment because of data indicating that factory-applied coatings from metal furniture do not chip or chalk and are, therefore, inaccessible for ingestion by children. The National Paint and Coatings Association petitioned the Commission to take this action.

DATE: The amendment is effective
March 2, 1978.FOR FURTHER INFORMATION
CONTACT:

Charles Jacobson, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6400.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 12, 1978, the Commission published in the FEDERAL REGISTER (43 FR 1804) a proposed amendment to its final ban on lead-containing paint (defined as paint containing more than 0.06 percent lead by weight) and toys and furniture bearing such paint (42 FR 44192 (16 CFR Part 1303)). The proposed amendment would exempt metal furniture articles (but not metal children's furniture) bearing factory-applied coatings from the regulation banning furniture under Part 1303.

The amendment was proposed in response to a petition dated October 7, 1977 (CP 78-1), from the National Paint and Coatings Association (NPCA) seeking the exclusion of metal furniture (but not metal children's furniture) bearing factory-applied lead coatings from the provisions of Part 1303. In its petition NPCA contended

that coatings applied to metal furniture at the factory do not present the hazard of lead poisoning in children resulting from the ingestion of available lead-paint chips that Part 1303 was designed to address. The petitioner stated that metal furniture coatings are inaccessible to children because of their resistance to chipping and peeling due to the hardness of the coatings and their strong adhesion to the metal substrate. NPCA submitted information and test data in support of its petition, and at a November 2, 1977, public meeting on the petition, NPCA demonstrated mechanical performance tests which measure the hardness, adhesion, and resistance to impact of metal furniture coatings.

Based on the data submitted by NPCA and other information available to the Commission, the Commission granted the petition and proposed the amendment cited above. (42 FR 44192.) The grounds for the proposed amendment are set out in the proposal document and will only be summarized here.

Basically, the Commission noted that the mechanical stress performance tests conducted by NPCA at the November 2, 1977, public meeting strongly suggest that factory-applied metal furniture coatings are much harder than ordinary interior or exterior surface coatings applied to walls or woodwork, are resistant to chipping and cracking, and strongly adhere to the metal substrate to which they are applied. The Commission also considered the views of two medical experts, Dr. Julian Chisolm and Dr. J. W. Sayre, both of whom were proponents of the proposition to ban residential paint containing more than 0.06 percent lead, but who in letters to NPCA expressed their support for an exemption for metal furniture. (The letters are on file at the Commission's Office of the Secretary.) In addition, the Commission noted that a review of the scientific literature on lead poisoning did not yield a single reference to factory-applied metal furniture coatings as being responsible for elevated blood lead levels or lead poisoning of children. Finally, the Commission considered data on the economic effects of the elimination of lead from metal furniture coatings which indicated that certain deep tone colors may be difficult to obtain with non-lead pigments and that without lead, the price of metal furniture coatings would rise moderately, causing a small increase in the prices of some metal furniture.

RESPONSE TO COMMENTS

The Commission received twenty-two comments on the proposed amendment to exempt metal furniture (but not metal children's furniture) bearing factory-applied coatings from the lead-containing paint ban. Part

1303. The commenters included 11 concerned citizens, 7 manufacturers, 1 county agency, and 3 trade associations.

The comments from the concerned citizens as well as the county agency requested that an exemption for metal furniture not be granted. Several of these commenters expressed the view that the risk of lead poisoning in children would be increased as a result of the exemption. Two of the commenters also stated that if any exemption for metal furniture articles was granted, a warning label on the exempted articles should be required.

The Commission notes that none of the commenters who expressed disapproval of the proposed exemption supplied any data to support their views. Based upon the data referenced above and discussed in the proposal document, the Commission believes that factory-applied coatings for metal furniture will not pose a significant hazard to young children because the hardness of the coatings, their adherence to the metal substrate, and their resistance to chipping appear to make it difficult for a child to obtain such coatings. Because the Commission does not believe there is a significant hazard from such furniture, it has not required any warning labels on metal furniture. The Commission emphasizes that it expects that reasonable manufacturing practices will result in metal furniture whose coatings are hard, durable, and tightly bound to the metal substrate. The Commission points out, however, that should it find instances where these factory-applied coatings containing lead chip, peel, chalk, or otherwise become easily available for removal and ingestion by children, it may consider individual regulatory action.

The comments from the manufacturers, which included 5 metal furniture manufacturers and 2 coatings manufacturers, uniformly supported the proposed exemption. One manufacturer noted that the paint on metal furniture is only a few mils in thickness and very hard and that it is difficult to remove even with the best of paint-removing devices. Another manufacturer stated that the pre-painting preparation of the metal substrate gives adhesion qualities which minimize any chipping and cracking possibilities. Several manufacturers emphasized that lead chromate pigments are inexpensive when compared to substitute pigments.

A commenter representing an association of manufacturers, retailers, and wholesalers of office furniture also supported the proposed exemption, noting that the standards of application in the office metal furniture industry are high and that the same testing procedures demonstrated by NPCA at the public meeting are utilized.

A trade association representing toy manufacturers and another association representing the manufacturers of juvenile furniture requested that children's metal furniture be included within any final exemption for the same reasons that adult metal furniture had been included in the proposed exemption.

The Commission declines to broaden the scope of the proposal to include children's furniture. The Commission notes that since 1973 the coatings on toys and other articles intended for use by children, which includes furniture, have been subject to a lead limit of 0.5 percent (see 37 FR 5229; 16 CFR 1500.17(a)(6)(ii)).

Note.—Coatings on adult furniture will first become subject to a lead limit on February 28, 1978 (42 FR 44192; 16 CFR Part 1303).

The Commission sees no reason for abolishing lead-paint restrictions for children's furniture at this time when manufacturers of such articles have been conforming to a lead limit for the past several years which virtually eliminates the use of lead as a pigment. In declining to broaden the scope of the proposal, the Commission emphasizes that although the possibility of children's metal furniture chipping or flaking may be remote, the close proximity of children to their own furniture makes even this possibility an unnecessary risk. In this regard the Commission notes that Dr. Sayre in his letter to NPCA on CP 78-1, noted above, stated: "Neither have we found many children who gnaw much furniture besides their high-chairs and cribs." [Emphasis added.] (The letter is dated October 25, 1977 and is on file at the Commission's Office of the Secretary.) In addition, children often bang their furniture with other objects or into other objects, thereby increasing the chance that the coatings may chip. The Commission also points out that the National Academy of Sciences (NAS) in a report submitted to the Commission entitled "Récommendations for the Prevention of Lead Poisoning in Children" specifically recommended that the lead content of paints on children's articles, including toys and furniture, be severely restricted. (NAS Report, p. 10.)

ENVIRONMENTAL CONSIDERATIONS

The Commission has considered the potential environmental impacts of an exemption for metal furniture from a ban on lead-containing paint, toys, and furniture in the Final Environmental Impact Statement on Lead Content in Paint, dated May 2, 1977. (See, especially, pages I-B-15, II-A-8-9, III-6, and III-17 of the final statement.)

Note.—The availability of the final impact statement was announced by the Council on

Environmental Quality in the FEDERAL REGISTER on June 10, 1977 (42 FR 29948). The potential environmental effects of the exclusion of metal furniture were also included in the draft statement on lead content in paint which was made available for public comment by announcement in the FEDERAL REGISTER on February 4, 1977. (42 FR 6879.)

Therefore, the Commission believes that there is no need for any further environmental review of this exemption.

CONCLUSION

In determining whether a specific risk of injury is "unreasonable" and therefore, properly the subject of a banning regulation, the Commission generally balances the probability that the risk will result in harm and the gravity of the harm against a rule's effect on the product's utility, cost, and availability to the consumer. (See H.R. Rep. No. 92-1153, 92d Cong., 2d Sess., 1972, p. 33.)

In this instance the Commission believes, based upon the data summarized above and after a review of the public comments, that the probability that factory-applied coatings on metal furniture will result in harm is remote because the hardness of the coatings and their resistance to chipping makes it unlikely that the coatings will be removed and ingested by children. In addition, the Commission has indicated that should it find instances where factory-applied lead coatings for metal furniture chip, peel, chalk, or otherwise become easily available for removal and ingestion by children, it may consider individual regulatory action.

The Commission also notes, after a review of information on the economic effects of the elimination of lead pigments from these factory-applied coatings, that such elimination may have an adverse effect on the product's cost and utility.

The Commission finds that the available data does not indicate that metal furniture (exclusive of metal children's furniture) bearing factory-applied coatings presents an unreasonable risk of injury from lead poisoning in children. Therefore, the Commission concludes that a ban of such metal furniture is not reasonably necessary to eliminate a risk of injury associated with the painted furniture and has decided to issue the amendment as set forth below.

PROPOSAL

Section 9(e) of the Consumer Product Safety Act, 15 U.S.C. 2058(e), provides that when an amendment to a consumer product safety rule involves a material change the procedures in sections 7 and 9 apply. It is the Commission's view that the amendment issued below does not involve a material change to the lead-containing paint

ban because it does not affect the basic purpose and provisions of the ban. Therefore, the provisions of section 7 and 9 (a)-(d) do not apply. The Commission believes that the informal rulemaking procedures of the Administrative Procedure Act (APA), 5 U.S.C. 533, do apply. The Commission has decided to make this amendment effective immediately March 2, 1978, so that it may be in effect before or at the same time as the lead-containing paint ban. In this regard the Commission notes that subsection (d) of §553 of the APA excepts substantive rules which grant or recognize an exemption from the 30-day delayed effective date requirement.

Accordingly, pursuant to provisions of the Consumer Product Safety Act (sec. 9(e), 86 Stat. 1215; 15 U.S.C. 2058(e)), and the Administrative Procedure Act, 5 U.S.C. 553, the Commission amends 16 CFR 1303.3(c) by adding a new subparagraph (3) as follows:

§1303.3 Exemptions.

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

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

(Sec. 9(e), 86 Stat. 1218 (15 U.S.C. 2058(e)))

Effective date: The amendment is effective March 2, 1978.

Dated: February 27, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer
Product Safety Commission.

[FR Doc. 78-5511 Filed 3-1-78; 8:45 am]