

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

§ 1304.2

household or residence, a school, in recreation or otherwise.

(b) The Commission has found that (1) these patching compounds are being or will be distributed in commerce; (2) that they present an unreasonable risk of injury; and (3) that no feasible consumer product safety standard under the CPSA would adequately protect the public from the unreasonable risk of injury associated with these products. This rule applies to the banned hazardous products defined in §1304.3 and described further in §1304.4.

(c) Only consumer products are subject to this regulation. Patching compounds which are consumer products include those which a consumer can purchase. Merely labeling a patching compound for industrial use would not exclude such articles from the ban. If the sale or use of the product by consumers is facilitated, it is subject to the ban. Patching compounds which are labeled as, marketed, and sold solely for industrial use in non-consumer environments are not subject to the ban. In addition to those products which can be sold directly to consumers, the ban applies to patching compounds containing respirable free-form asbestos which are used in residences, schools, hospitals, public buildings or other areas where consumers have customary access.

§1304.2 Purpose.

The purpose of this rule is to ban consumer patching compounds containing intentionally added respirable, free-form asbestos. These products present an unreasonable risk of injury due to inhalation of fibers which increase the risk of developing cancer, including lung cancer and mesothelioma, diseases which have been demonstrated to be caused by exposure to asbestos fibers.

§1304.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1304.

(b) *Asbestos* means a group of mineral fibers composed of hydrated silicates, oxygen, hydrogen, and other elements such as sodium, iron, magnesium, and calcium in diverse combinations and are: Amosite, chrysotile, crocidolite,

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

anthophyllite asbestos, actinolite asbestos, and tremolite asbestos.

(c) *Free-form asbestos* is that which is not bound, or otherwise "locked-in" to a product by resins or other bonding agents, or which can readily become airborne with any reasonably foreseeable use.

(d) *Patching compounds* are mixtures of talc, pigments, clays, casein, ground marble, mica or other similar materials and a binding material such as asbestos which are sold in a dry form ready to be mixed with water, or such combinations in ready-mix paste form.

(e) *Consumer patching compounds* are those that are customarily produced or distributed for sale to or for the personal use, consumption or enjoyment of consumers in or around a permanent or temporary household or residence, a school, in recreation or otherwise. The Commission considers that patching compounds for application in these consumer environments are either distributed for sale to or are for the personal use or enjoyment of consumers.

(f) *Intentionally-added asbestos* is asbestos which is (1) added deliberately as an ingredient intended to impart specific characteristics; or, (2) contained in the final product as the result of knowingly using a raw material containing asbestos. Whenever a manufacturer finds out that the finished product contains asbestos, the manufacturer will be considered as knowingly using a raw material containing asbestos, unless the manufacturer takes steps to reduce the asbestos to the maximum extent feasible.

(g) *Initial introduction into commerce* occurs when the manufacturer ships a product covered by this regulation from a facility of the manufacturer to a distributor, retailer, or user.

§1304.4 Consumer patching compounds as banned hazardous products.

On the basis that airborne asbestos fibers present the hazards of cancer, including lung cancer and mesothelioma to the public, consumer patching compounds containing intentionally-added, respirable free-form asbestos, which have been manufactured or initially introduced into commerce after January 16, 1978, are banned hazardous products.