

Guidance on Building Blocks for a Legal Framework and Global/Regional Status of Lead in Paint

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Module J

Establishing a Legal Framework to Regulate Lead in Paint



Elements of A National Legal
and Regulatory Framework for
the Elimination of the Use of
Lead in New Decorative Paint



1. Defining Lead Paint
2. Determining the Lead Content of Paint
3. Setting Effective Dates of Legislation and/or Regulations
4. Establishing a Mechanism to Promote Compliance
5. Setting out the Consequences of Non-Compliance
6. Additional Controls on Lead Paint Violating Legislation and Regulation
7. Periodic Review

Determining the best approach

- Prior to developing or modifying legislation and/or regulatory requirements to limit lead in paint, a suggested first step is to review existing requirements and/or voluntary standards to determine whether a new legal framework or law is needed to adequately protect the public from the risks of lead in paint.
- The case studies in Module H provide examples of how four different countries addressed these risks, by enacting new laws and strengthening existing legal regimes.

Key principles of effective legal limits

Gather scientific and technical underpinnings

- Scientific information is key to credible and effective legislation and/or regulation
- Types of information could include:
 - Studies that demonstrate the health risks associated with lead (Module C)
 - Data regarding existing levels of lead in new paint (Modules C and F)
 - Information about the existing market and alternatives (Modules D and E)
 - Blood lead level data to provide a baseline for assessing results (Module C)
- Conduct an initial assessment of lead paints being manufactured or sold prior to new law/regulations as a tool for assessing the effectiveness of limits once they are in place

Key principles of effective legal limits

Provide for public awareness and public input

- Ensure public access to information about the new laws and regulations, including notice of proposals
- Provide opportunities for public input and engagement through the process of developing legal limits, such as the opportunity to provide public comments
- The regulated community and other stakeholders can provide valuable input and suggestions for effective regulation

Key principles of effective legal limits

Include clear and understandable definitions of regulated substances and regulated activities

Definitions could include:

- **Paint** includes, “varnishes, lacquers, stains, enamels, glazes, primers or coatings used for any purpose; and is typically a mixture of resins, pigments, fillers, solvents and other additives”
- **Lead Paint** as defined as, “paint to which one or more lead compounds have been added”.

Key principles of effective legal limits

Include clear and understandable definitions of regulated substances and regulated activities (continued)

Definitions could include

- **Lead Compounds** compounds typically added to paint include, but are not limited to, Lead carbonate (white lead), Lead chromate, Lead chromate oxide, Lead chromate molybdate sulphate red, Lead sulpho-chromate yellow, Lead 2-ethylhexanoate, Lead molybdate, Lead naphthenate, Lead nitrate, Lead monoxide, Lead oxide, Lead octanoate, Lead peroxide, Lead sulphate, and Tri lead-bis (carbonate)-dihydroxide.
- **Total lead concentration** a weight percentage of the total non-volatile portion of the product or in the weight of the dried paint film (e.g. 90 ppm)

Key principles of effective legal limits

Include clear and understandable definitions of regulated substances and regulated activities

- Clearly address the following questions:
 - Who is your regulated community: Manufactures? Retailers?
 - What part of the paint cycle will be regulated: Manufacture? Use? Import? Export? Disposal? All of these?
 - Are there be prohibited uses or exemptions? If so, describe the scope of prohibitions and the criteria for eligibility for exemptions.

Key principles of effective legal limits

Set effective dates for new requirements

- Clearly indicate the date by which prohibited products should no longer be sold
- Consider whether to allow stakeholders time to source and procure alternative materials and exhaust existing stocks of lead paint
- Consider whether to require materials be disposed by a given date
 - Who will be responsible for disposal?
 - What methods will be authorized for disposal?
- Coordination with relevant stakeholders in determining a timeline could allow for more effective implementation

Key principles of effective legal limits

Establish a mechanism to promote compliance / 1

- Provide a mechanism for enforcing the new standard
 - For example: labeling requirements; third-party certification; government inspections and testing (more details on next slide)
- Assign clear responsibilities for the various actions required by the new law or regulation
- Build oversight capacity and provide resources to agencies responsible for ensuring compliance

Key principles of effective legal limits

Establish a mechanism to promote compliance / 2

- Potential modes of ensuring compliance:
 - Create a **monitoring program** that includes regular inspections to ensure that paints and related products are being manufactured and sold in accordance with legal limits, and **periodic sampling** of paints to ensure lead content meets prescribed standards
 - Institute **certification schemes** to demonstrate compliance:
 - Voluntary or mandatory, or a mix of both, and could be country specific or regionally based
 - Independent, third-party certification, in conjunction with independent, accredited laboratories
 - Could include a voluntary or mandatory labeling requirement to indicate certification

Key principles of effective legal limits

Set clear, transparent consequences for non-compliance

- Laws and regulations should clearly dictate the consequences for non-compliance, as well as incentives for compliance
- Provide information and resources to regulated entities to educate them on how to comply with new limits
- Ensure compliance status information is available to stakeholders
- Specify a process for disposing of existing lead paint and related products once entities come into compliance
- Consider application of the same standards to both domestic and export markets to prevent the dumping of lead paint in countries less advanced in their controls

Key principles of effective legal limits

Include provisions in the legal framework relating to disposal of existing paint

- Specify how lead paint or products impounded for violating legislation and regulation are to be destroyed or disposed of in a safe manner
- Ensure regulated entities, including paint manufacturers and retailers, have information regarding how to destroy or dispose of existing lead paint and related products

Key principles of effective legal limits

Provide for periodic review to assist in determining the effectiveness of new laws

- Reviews could include
 - Periodic assessments of the paint market
 - Periodic blood lead level assessments
 - Understanding any new applicable science
- Based on reviews, update the laws or regulations (with stakeholder and public input) as needed

Module H

Case Studies on Existing Lead Paint Laws



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EU Legal Framework



- **Regulation (EC) No 1907/2006 – REACH** (Registration, Evaluation, Authorisation and Restriction of Chemicals)
- **Regulation (EC) No 1272/2008** on "Classification, Labelling & Packaging of Substances & Mixtures"
- **Directive 2009/48/EC** on "Safety of Toys"

Regulation (EC) No 1907/2006 (REACH)	
Name	Registration, Evaluation, Authorisation and Restriction of Chemicals
Entry into force	2007
Scope	Manufacture, placing on the market or use of substances on their own, in mixtures or in articles
Provisions on the use of some lead compounds in paints	(a) restrictions on the placing on the market or use (b) the authorisation procedure for the use
Other EU legal instruments relevant to lead in paint	
Regulation (EC) No 1272/2008	Classification, Labelling and Packaging of substances and mixtures
Directive 2009/48/EC	Safety of toys



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EU REACH Regulation



- Entered into force in 2007 to improve the protection of human health and the environment from the risks that can be posed by chemicals
- Applies to all chemical substances; not only those used in industrial processes but also in our day-to-day lives
- To comply with the regulation, companies must identify and manage the risks linked to the substances they manufacture and market in the EU
- If the risks cannot be managed, authorities can restrict the use of substances in different ways. In the long run, the most hazardous substances should be substituted with less dangerous ones.
- Restrictions apply to lead carbonates, lead sulfate and Lead compounds when classified in the CLP Regulation as carcinogen 1A or 1B and/or toxic to reproduction 1A or 1B (e.g. Silicic acid, lead nickel salt, Lead hydrogen arsenate, etc).
- Authorisations apply to Lead chromate, Lead sulfochromate yellow, Lead chromate molybdate sulfate red, etc,



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USA Legal Framework



- Restrictions on lead in new consumer paints or consumer products bearing lead-containing paint
- The first restriction on lead in paint took effect in 1972 when **Federal Hazardous Substances Act (FHSA) Section 2(q)(1)(B)** was established to ban the sale of paint or similar coatings with a lead content greater than 5000 parts per million, which is 0.5% of the total weight of dried paint film
- In 1978, the Consumer Product Safety Commission (CPSC) regulation reduced the lead limit on consumer paint was reduced to 600 ppm (**Consumer Product Safety Act, CPSA**)
- The limit was further reduced to 90 ppm in 2008 (**Consumer Product Safety Improvement Act of 2008, Pub. L. 110-314 (CPSIA) Section 101**)



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Uruguay: Legal Framework

- In 2004, Uruguay established **Law N° 17.775** to prevent and control occupational exposure to lead contamination, including controls on lead in paint
- In 2011, the limit on lead content in paint was set at 600 ppm, determined on dry basis or by total non-volatile content (**Decree 069/2011**)
- Labelling requirements of lead-containing products was further stated by the Resolution of the Environmental **Directorate 190/2011**



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Law N° 17.775 (2004)



- Lead-bearing paints cannot contain more than the maximum lead level allowed by a future ruling
- Containers with leaded products must carry a label in Spanish, which must indicate the lead content and provide precautionary directions for use
- Lead is banned from toys and other products used by children and adolescents
- All lead-containing products must be clearly labeled, including the percentage of lead content
- National register must be kept for all lead processing industries and commercial lead-containing products, and must include information on their origin, storage, transit, and destination of such products



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Decree 069/2011



- Paints can contain a maximum lead level of 600 ppm, determined on a dry basis or by total non-volatile content
- Applies to:
 - Architectural paints (also called decorative)
 - Paints for children's use
 - Graphic inks and masterbatches
- The 600 ppm level was reached through agreement with the private sector, NGOs and governmental authorities, focusing on international standards and considering the capability of manufacturers in Uruguay



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Decree 069/2011 (Cont'd)



Return Strategy for Stocks of Banned Paint

- Businesses:
 - Must send back to manufacturers or importers any stocks of paint with lead content > 600 ppm
- Manufacturers and Importers:
 - Must, at own expense, receive and redeem paint stocks, and dispose of them according to a management plan approved by the National Environment Directorate.
 - Stocks of banned paints must be disposed of within 2 years of ban (i.e., 2013)



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Decree 069/2011 (Cont'd)



Compliance Encouraged and Supported

- Advisory Commission for Ministry of Housing, Land Planning and Environment
 - Representatives: Ministry of Housing, Land Planning and Environment; Ministry of Industry, Energy and Mining; and other public and private entities
 - Purposes: (1) Implement regulations for lead in paint; (2) Develop a plan to reduce and replace lead additives in paints and varnishes
- Manufacturers and importers encouraged to promote actions to decrease lead content below maximum limit of 600 ppm
- Enforcement Authorities:
 - Ministry of Housing, Land Planning and Environment, through the National Directorate of Environment
 - National Customs Directorate



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Evidence of Success



- In 2012, a national paint test conducted by IPEN and UNEP demonstrated the success of the new decree
- All tested paints had low total lead concentrations, with maximum found of 63 ppm



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Philippines: Legal Framework



- In 1992, **Department of Environment and Natural Resources (DENR) Administrative Order (DAO) 1992-29** (Implementing Rules and Regulations of Republic Act 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act)) regulated, limited, and prohibited the use, manufacture, import, transport, storage, possession and sale of chemicals
- In 1998, **DAO 1998-58** (Priority Chemical List) listed 28 toxic chemical substances, including lead compounds
- In 2013, Chemical Control Order (CCO) for Lead and Lead Compounds (**DAO 2013-24**) was established to regulate, limit and prohibit the selected uses of lead and lead compounds



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DAO 2013-24

Chemical Control Order for Lead and Lead Compounds

Definition: lead paints - paints or other similar surface coating materials containing lead or lead compounds (calculated as lead metal) in excess of .009 percent (90 ppm) of the weight of the total non-volatile content of the weight of the dried paints film.

Prohibited use: The use of lead and lead compounds shall be strictly prohibited in the following production/manufacturing of:

Packaging for food and drink; Fuel additives; Water pipes; Toys;
School supplies; Cosmetics;

Paints (as a pigment, a drying agent or for some intentional use) with more than 90 ppm threshold limit beyond three (3) years (2013-2016) for architectural, decorative, household applications and six (6) years (2013-2019) for industrial applications.



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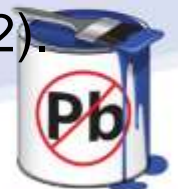
DAO 2013-24

Chemical Control Order for Lead and Lead Compounds

Transitory provision: Lead in paints shall be allowed for the next six (6) years (2013-2019) as transitional provision provided precautionary labeling is placed in the products:

Automobiles paints; Industrial and commercial building and equipment maintenance coatings; Refinish coatings for industrial equipment; Catalyzed coatings for use on radio-controlled model powered airplanes; Touch up coatings for appliances and lawn and garden equipment.

Penalty provision: Any violation of the requirements specified in this Order shall subject the person(s) liable thereof to the applicable administrative and criminal sanctions as provided for under Sections 41 and 43 of DA 92-29 and DENR Memorandum Circular No. 2005-003 (Prescribing Graduated Administrative Fines Pursuant to Republic Act No. 6969 and DENR Administrative Order No. 29, Series of 1992).



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Process of Establishing Regulations



- Department of Environment and Natural Resources (DENR) consulted with key stakeholders including civil society (NGOs) and industry
- Issues discussed and debated:
 - Is 90 ppm total lead limit practically achievable?
 - Should phase-out period be required within 2 years vs. 6 years?
 - Are alternatives available of comparative quality to lead additives?
 - What is the cost to industry of shifting from lead to organic pigments?
 - How to best ensure and enforce lead limits for imported paints?



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Significant Developments To Date



Industry

- Paint industry is committed to comply with the lead paint phase-out policy with individual companies making formal pledges to comply
- Top paint manufacturers (Boysen and Davies) are participating in the world's first, third party, Lead Safe Paint Certification Program –a program that will independently verify and certify the lead content in paints

Government and NGO

- EcoWaste Coalition and the Department of Environment and Natural Resources (DENR) continue to monitor lead in paint
- Awareness-raising throughout the year and during the Lead Poisoning Prevention Week of Action
- DENR-EMB (Environmental Management Bureau) will continue to promote compliance and awareness



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Summary



Common Elements of Case Studies

- An easily measurable lead content limit
- Engagement of relevant ministries and stakeholders
- Raised awareness about the dangers of lead
- An enforceable standard
- Compliance assurance





THANK YOU

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