

# Developing Legal Limits on Lead in Paint

Toolkit for establishing  
laws to eliminate  
lead paint

2021 Update

## Module E-1

**ABA**  
AMERICAN BAR ASSOCIATION

Global Alliance to  
Eliminate Lead Paint

# Outline

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- Why Establish Lead Paint Laws
- Steps to Adopt Lead Paint Laws
- Guidance to Establish Lead Paint Laws: Model Law and Guidance for Regulating Lead Paint
  - Key Principles
  - Key Provisions
- Disposition of Obsolete Paint – Best practices
- Additional Resources

# Why Establish Lead Paint Laws?

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- Lead Paint Laws create **incentives for change**:
  - For manufacturers to reformulate paints
  - For ingredient suppliers to produce more and better non-lead ingredients
  - For importers to purchase and sell paints that comply with law
- Lead Paint Laws provide **benefits for industry**:
  - National laws create a fair market for all paint manufacturers, importers, and exporters
  - Harmonized laws can reduce trade barriers

# What Do We Mean By “Law”?

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- “Lead paint law” is meant in the broadest sense to include any mandatory legal requirement with consequences for non-compliance.
- It can be a statute, a regulation or a standard, as long as it includes an enforcement mechanism.

A **statute** might limit lead content in paint products to 90 ppm, and often requires approval in a national legislature.

A Technical Standards Bureau might establish one or more **binding standards** for lead content in paint, which would be enforced through complementary regulation.

A ministry might issue a decree or similar regulation under its authority based on an existing statute (e.g. Environment Code or Chemical Management Law) setting a limit on lead content in paint and establishing enforcement provisions.

# Steps to Adopt Lead Paint Laws

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The Global Lead Paint Alliance recommends that governments use a **multi-stakeholder process** to develop a lead paint law.

Stakeholder Engagement steps include:

1. Identify the relevant government ministry or ministries
2. Conduct meetings with key civil society and industry stakeholders

Benefits include:

- Greater confidence of key stakeholder groups, including civil society and industry organizations, in decision-making
- Valuable technical input from industry

# Steps to Adopt Lead Paint Laws (Continued):

The Lead Paint Alliance suggests the following steps for developing and drafting the law, following stakeholder engagement\*:

1. Assess options under national legal framework
2. Designate the lead agency for drafting
3. Establish a drafting and coordinating group
4. **Develop the content of the draft law**
5. Conduct a public review process
6. Promulgate the law
7. Plan ahead for implementation of the law

\*Detailed process considerations can be found in 5 UN languages at:

<https://saicmknowledge.org/library/process-considerations-drafting-lead-paint-laws>

# Considerations for Step 4: Develop the Content of the Draft Law

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- What **lead concentration(s)** will your country set?
  - What **paint products** will this limit apply to?
- **When** will the limit on lead content in paint become mandatory?
  - How will manufacturers and importers be required to **demonstrate compliance**?
    - What **government agency** will have the primary responsibility for enforcement?
      - What **powers** will this agency have?
        - What **acts will be prohibited** in the law?
          - What **penalties** will there be for these violations?

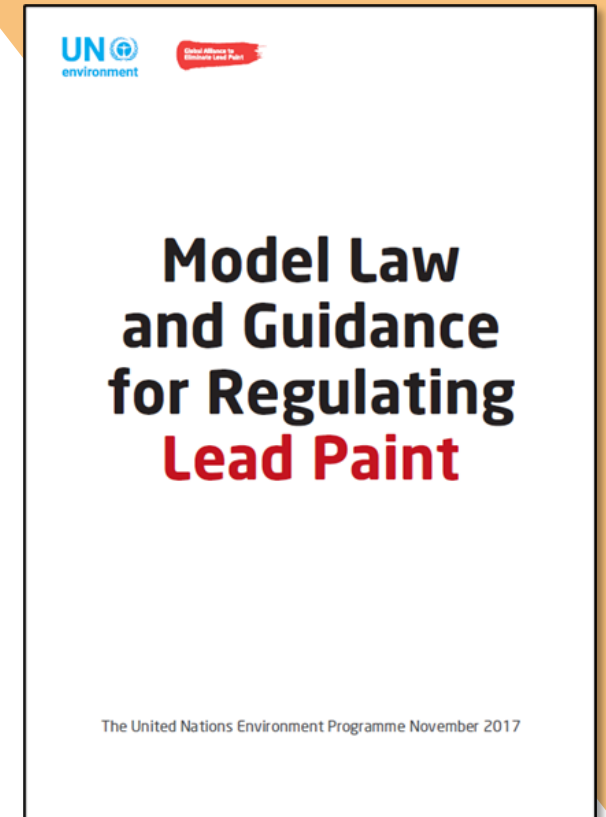
# Guidance on the Content of a Lead Paint Law

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- Can be found in the **Model Law and Guidance for Regulating Lead Paint\***
  - The Model Law is a template for **strong, straightforward, efficient** lead paint limitations
  - It is intended to be adapted to each country's existing legal framework
  - It is available online in 6 UN languages
  - It includes sample legal language to phase out lead in paint, reflecting global best practices in regulating lead in paint

\*Model Law and Guidance is available at:

<https://www.unep.org/resources/publication/model-law-and-guidance-regulating-lead-paint>





# Structure of the Model Law and Guidance

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- **Guidance:**
  - Health and economic costs of lead exposure, and benefits of laws to limit lead in paint
  - Key elements needed for effective lead paint laws, and specific recommendations
- **Appendix I:** Model Lead Paint Law
  - Example of legal language for a lead paint law, including recommendations from the guidance
- **Appendix II:** List of international standards for:
  - Paint sample preparation
  - Lead test methods\*

\*Additional content on testing methods can be found in Toolkit Module C-2

# Key Principles of the Model Law

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- **Prevention:** Limits lead content in paint manufactured or imported after compliance date to *prevent new exposures* to lead.
- **Achievable low maximum limit:** Recommended limit of 90 ppm total is:
  - *Achievable* when manufacturers stop the intentional use of lead additives
  - *A commonly used* limit globally
- **Industry Pays for Testing:** Manufacturers and importers arrange for *testing* of their paints and *certify compliance* with lead limit
  - **Compliance responsibility throughout value chain:** Manufacturers, importers, distributors, and retailers are all responsible for ensuring compliance

# Key Principles/Provisions To Be Reflected in Model Law

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- **Scope of Coverage:** All paints (Section B)
- **Clear Legal Limit on Total Lead Content:** 90 ppm total lead (Section B)
- **Effective Dates of New Requirements:** One year from date of promulgation of law (section C)
- **Compliance and Enforcement Mechanisms:** Declaration of Conformity based on Testing by Third-Party Laboratory (Section D)
- **Enforcement Responsibility and Authority:** Government inspections by [Agency] (Section E)
- **Consequences for Non-Compliance:** Prohibited Acts (Section F), Civil and Criminal Penalties (Sections G & H)

# Scope of Coverage

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- The Model Law includes an initial section **defining key terms** used in the law
- The Model Law includes sample legal text covering **all paints**, which simplifies enforcement and is most protective
- In the event of any **exceptions or exemptions** allowing lead for special uses, precautionary **labeling** should always be used:
  - “DANGER: CONTAINS LEAD. DO NOT APPLY TO SURFACES ACCESSIBLE TO CHILDREN OR PREGNANT WOMEN.”
- The Model Law does NOT include sample legal text for labeling paints as “**lead free,**” since it is not technically possible to eliminate lead contamination from all ingredients.

Sample labelling language for compliant paint:  
“This product conforms to the applicable limit on lead content established on [date] by [government].”

# Clear Legal Limit on Total Lead Content

- Because no level of lead content in paint is considered safe, the goal of the Lead Paint Alliance is to establish and promote the lowest possible technically feasible level.
  - 90 ppm is the lowest level that is **technically feasible** for manufacturers to achieve for all types of paint
  - As such, 90 ppm provides **best available health protection**
  - 90 ppm is the lowest limit **currently required** by any country
  - 90 ppm is an **emerging best practice** for new and revised laws around the world, though alternative legal limits may also be effective if clearly stated and enforced

# Effective Dates

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- Effective dates provide industry with a clear deadline for compliance.
- Effective dates for compliance should allow reasonable time for:
  - Manufacturers to alter paint formulations and production processes.
  - Manufacturers, importers, distributors and retailers to sell or safely dispose of existing stocks of paint with lead above new maximum limit.
- Possible options for choosing effective dates:
  - Uniform dates for all paints (typically 1 year), or
  - Phased dates for different uses of paints (for example, 1 year for household paints, 2 or 3 years for industrial paints).

In 2013, the Philippines issued a Chemical Control Order under the chemicals management law, restricting use of lead in ALL paints, phased to take effect for decorative and household paints (3 years) first, then industrial paints (6 years).

# Compliance & Enforcement Mechanisms

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- To make a Lead Paint law enforceable, governments must be able to verify compliance.
- The Model Law provides a “Declaration of Conformity” process that places the obligation for demonstrating compliance on manufacturers and importers.
- In this process, Manufacturers and importers must:
  - Ensure that all paints are tested for lead by an accredited third-party laboratory.\* The laboratory does not have to be in-country.
  - Sign a Declaration of Conformity for each paint formulation swearing that covered paints comply with the maximum lead limit.
  - Submit a new Declaration of Conformity after every material change in formulation.
  - Provide the Declaration of Conformity for every paint to distributors and retailers, and to the government upon request.

\* Details on testing are found in Toolkit Module C-2.

# Enforcement Responsibility & Authority

- The Model Law defines the Government role in enforcing compliance. It recommends that Lead Paint Laws:
- **Identify** the government ministry, agency or organization that is responsible for implementing the law, including enforcement activities.
  - **Authorize** the identified government body to:
    - **Inspect** facilities or stores
    - **Review** company testing data, Declarations of Conformity, and related records
    - **Test** paint itself to verify reported results

Israel's lead paint standard (2018) cites a national standards law that specifies that the Commissioner of Standards is responsible for audits and can enter any place to sample.



# Consequences for Non-Compliance

- **Prohibited Acts:** The Model Law makes it illegal for *any person* to:
  - Manufacture, sell, distribute, or import paint containing lead over the legal limit.
  - Fail to cooperate with government inspection and testing.
  - Fail to provide a Declaration of Conformity or make a false declaration.
  - Attempt to influence a third-party laboratory's testing of paint or reporting of test result.
- **Penalties:** The Model Law provides for penalties either cross-referenced to existing law, or specific to violations of this law, such as:
  - Injunctive relief – prohibiting import or sale of non-compliant paint
  - Fines
  - Administrative penalties such as revocation of license
  - Criminal penalties

# Disposition of Obsolete Paint – Best Practices

The Model Law does not include guidance on disposition of obsolete paint. However, best practices on this issue are beginning to emerge.

- In the drafting process, countries need to determine whether to allow continued retail sale of existing stocks created before the effective date.
- Some countries cross-reference to existing laws governing waste disposal.
- Some countries include recall provisions for non-compliant paint remaining unused after the effective date

# Additional Resources

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- Model Law and Guidance for Regulating Lead Paint:
  - <https://www.unep.org/resources/publication/model-law-and-guidance-regulating-lead-paint>
- Process Considerations for Drafting Lead Paint Laws:
  - <https://saicmknowledge.org/library/process-considerations-drafting-lead-paint-laws>
- American Bar Association Resolution 109B on Phasing out Lead Paint:
  - [https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/eliminating\\_lead\\_paint\\_109b.pdf](https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/eliminating_lead_paint_109b.pdf)

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