A Model Law and Guidance for Regulating Lead Paint

Regional meeting for the development of a regional standard on lead in paint in the ECOWAS region

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Why Establish Lead Paint Laws?

- **Incentives for change:**
  - For manufacturers to reformulate paints
  - For ingredient suppliers to produce more and better non-lead ingredients
  - For importers to sell paints that comply with law

- **Benefits for industry:**
  - National laws create a fair market for all paint manufacturers, importers and exporters.
  - Harmonized laws can reduce trade barriers

- **Legally-binding controls with effective enforcement change behavior more successfully than:**
  - voluntary limits
  - labeling requirements
  - knowledge of health risks

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**Definition of “Law”**

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.
What is the Model Law and Guidance?

- Governments requested sample legal language to phase out lead in paint
- Developed by UNEP with US EPA and WHO, reflecting global best practices in regulating lead in paint
- Serves as a template for strong, straightforward, efficient lead paint limitations
- Intended to be adapted to each country’s existing legal framework, taking the form of:
  - Statute
  - Regulation
  - Technical standard
- Available online in 6 UN languages
Legal Approach of the Model Law

- Establish a **low maximum limit on total lead content in all paints**
  - Relatively easy to understand, to measure compliance and to enforce
  - Prevents future intentional use of all lead compounds in paints
  - 35 countries use this approach of setting a low lead concentration limit in paint, and more are now in process
Key Principles of the Model Law

- **Prevention**: A strong law to limit lead content in new paints will prevent new exposures to lead.

- **Achievable low maximum limit**: Recommended limit of 90 ppm total lead is achievable when manufacturers stop the intentional use of lead additives such as lead pigments. This is a commonly used limit globally.

- **Industry Pays for Testing**: Manufacturers and importers are responsible for testing their paints and certifying compliance with lead limit.

- **Compliance responsibility throughout value chain**: All businesses along the value chain are responsible for ensuring compliance, including manufacturers, importers, distributors, and retailers.
Structure of the Model Law and Guidance

- **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
  - Sample legal text
  - Rationale for recommended provisions

- **Appendix II:** List of international standards for
  - paint sample preparation
  - lead test methods for paints
Key Provisions and Recommendations of the Model Law

- **Scope of coverage**: What paints / coatings are included?

- **Clear legal limit on total lead content**: e.g. 90 ppm

- **Effective dates of new requirements**: What is the deadline to comply?

- **Compliance and enforcement mechanisms**: How will manufacturers and importers document compliance?

- **Enforcement responsibility and authority**: Who will enforce the law, and how?

- **Consequences for non-compliance**: How will violations be addressed?
Considerations for **Regional Adoption of Elements of the Model Law**

- Regional standards may focus on harmonizing:
  - Scope
  - Lead Limit
  - Compliance Mechanism

- National Authorities may assign individual:
  - Effective Dates
  - Enforcement responsibilities
  - Consequences for non-compliance

- Application of regional standard may take different national forms
  - Components of the Model Law can be separated and added to existing laws
Thank you for your attention

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Scope of Coverage

- The Model Law recommends including all paints, which simplifies enforcement and is most protective.

- In the event of any exceptions 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 recommend labeling provisions for paints as “lead free,” since it is not technically possible to eliminate lead contamination from all ingredients.

  - Instead, setting the very low limit of 90 ppm is recommended.
Rationale for 90 ppm maximum limit on total lead

- Lowest level that is technically feasible for manufacturers to achieve for all types of paint
- Provides best available health protection
- Lowest maximum level currently required by any country
- Becoming an accepted globally used limit for new and revised laws around the world
Effective Dates

- 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 max. 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).

- Countries also need to determine whether to allow continued retail sale of existing stocks created before the effective date.
Compliance & Enforcement Mechanisms

- The Model Law uses a “Declaration of Conformity” process that places the obligation for compliance on manufacturers and importers.

- 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, including a sworn affidavit, that all their paints comply with the maximum lead limit.
  - Provide the Declaration of Conformity for all paints to distributors and retailers, and to the government upon request.
  - Failure to provide a Declaration of Conformity must subject them to penalties.
Enforcement Responsibility and Authority

- The Model Law defines the Government role in enforcing compliance.

- **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
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.

- **Civil and Criminal Penalties**: The model law provides for:
  - Injunctive relief
  - Civil and Criminal penalties – cross-referenced to existing law, or specific to violations of this law
  - Citizen suits