

The Model Law's Testing

Requirements

Implications for Industry
Compliance and Lab Capacity

Global Policymakers
Webinar on Eliminating
Lead in Paint through
Regulatory Action

5 October 2020



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The Question of Laboratory Capacity

- **Q:** Should a lack of laboratory capacity in a given country present an obstacle to developing and establishing a lead paint law?
- **A:** No. The Model Law envisions governments' rights to inspect and test paint as merely one of three mechanisms for enforcing limits on lead in paint. Lack of laboratory capacity need not be an obstacle to developing, establishing, and enforcing a lead paint law.

Enforcement and Compliance Mechanisms

Important to understand what the Model Law requires and what it authorizes:

- Section D of the Law requires manufacturers and importers to submit sufficient samples of paint or similar coating materials to a **third-party laboratory** accredited under international standards for testing of compliance with the 90-ppm total lead limit.
- Section D of the Law also requires manufacturers and importers to issue a “**declaration of conformity**” stating that their paint product or similar coating material complies with the law’s 90-ppm total lead limit.
- Section E of the Law authorizes government agents to enter a location at “reasonable times” to **inspect and test paint** or similar coating materials.

Enforcement and Compliance Mechanisms

As such, the testing requirements under the Model Law primarily concern manufacturers and importers, not government/enforcers.

- Given that manufacturers and importers are the parties most affected by the testing requirements, it is crucial that governments work with the private sector to determine phased-in effective dates for the 90-ppm total lead limit.

Phased-in effective dates allow time for:

- Industry to change its practices and come into compliance with the limit;
- Industry to determine how it will obtain testing;
- Government to encourage in-country laboratories to acquire the necessary equipment, expertise, and accreditation to perform the required testing.

Enforcement and Compliance Mechanisms

In considering government enforcement of a legal lead paint limit, it is also useful to remember Section F: Prohibited Acts

F. Prohibited Acts (relevant sections)

It shall be unlawful for any person to:

- sell, offer for sale, manufacture for sale, distribute in commerce, import into [X country], any paint or similar coating material that contains lead or lead compounds and in which the lead (calculated as lead metal) is in excess of 90 ppm of the weight of the total non-volatile content of the paint or the weight of the dried paint film, ...
- fail to furnish a declaration of conformity required by [cite section] or issue a false declaration of conformity if such person in the exercise of due care has reason to know that the declaration of conformity is false or misleading in any material respect...

Enforcement and Compliance Mechanisms

In other words, while the Model Law recognizes that “inspections [and testing] by the relevant agency are critical to ensuring that paints are manufactured and imported in conformity with the country’s total lead limit...”,

- **Paints without an accompanying declaration do not need to be tested because without the declaration they are already in violation of the Law’s requirements.**
- **Civil, and possibly criminal, penalties apply to parties selling, manufacturing, or importing such paints.**
- **One goal of government inspections is to ensure that all paints for sale can produce a copy of a declaration.**

Industry's Obligations

- Industry representatives will present later today regarding their approaches to complying with the Model Law's requirements.
- In the meantime, it is useful for government officials to remember the Model Law's Guidance, in Key Element D, section i:

“Manufacturers and importers should be required to submit sufficient samples of a paint product's first production batch or lot for third-party testing. Testing of the first production batch or lot will be sufficient to meet the testing requirement unless a material change occurs in the product process for that paint product...”

Industry's Obligations

- The Model Law and Guidance also specifically facilitates compliance by importers. In the Guidance, Key Element D, section i, notes that:

“In order to ensure that testing is not unduly burdensome and duplicative, importers may be allowed to rely on a foreign manufacturer’s test results to issue a declaration of conformity, as long as the importer exercises due care to ensure that the manufacturer’s test results meet the requirements of the law, and the importer maintains appropriate records of the test methodology and results. ”

Industry's Obligations

Thus, although the Model Law places the obligations for compliance, testing, and certification on manufacturers and importers, the Model Law and Guidance also:

- Take pains to ensure that such compliance is not unduly burdensome or duplicative; and
- Envision governments working collaboratively with manufacturers and importers to establish phased-in effective dates for when compliance is binding.

The Question of Laboratory Capacity

- For all the reasons discussed above, in response to the question of laboratory capacity, the Guidance answers, in Key Element C, that:

“Current lack of in-country laboratory capacity need not be an impediment to a lead paint law going into effect, as industry can still comply with the law by sending paint samples to laboratories in other countries that are qualified to perform the required testing. Additionally, for imported paints, manufacturers and importers can rely on test results from qualified laboratories in the country of origin under the model law under certain circumstances.”

Market Forces Facilitate Compliance

- It is also useful to consider that market forces can supplement the regulatory power of the government and create a setting for innovation, initiative, and voluntary compliance.
- The law creates new customers: manufacturers, importers, and government will all be in the market for qualified laboratories: establishing a legal lead paint limit creates a **demand** for testing.
 - The remaining question then, is one of **supply**: Testing will be taking place but who will conduct the testing – foreign laboratories or domestic ones?”
- The testing requirement provides domestic laboratories with the potential for more profits, the potential to contribute to economic growth in their country through increased hiring, benefits to laboratory employees through expanded skill sets, and the opportunity to protect the health and safety of their fellow citizens.

Market Forces – Compliant Paint

- Whereas the market forces relevant to developing laboratory capacity were **demand** and **supply**, the market forces most pertinent to manufacturing and importing paint are **competition** and **competitiveness**.
- There are a variety of ways market forces will facilitate manufacturers and importers' compliance:
 - Vis-a-vis consumers:

In the absence of a law, or during a phase-in period, the more aware consumers become about the risks associated with lead levels in paint, the more inclined they will be to choose compliant paint, regardless of price considerations.

Manufacturers and importers will not want to miss out on the opportunity to provide compliant paints.

Market Forces – Compliant Paint

- Vis-a-vis competitors:

In the absence of a law, or during a phase-in period, if there is a choice between supplying compliant or non-compliant paint, there will always be a competitor who will seize the opportunity to supply the better/compliant product – **compliant paint will become a selling point.**

High prices for compliant paint will similarly face a competition challenge: **there will always be a competitor willing to supply a more affordable, compliant paint.**

- Vis-a-vis markets:

As more and more countries adopt the Model Law and/or a 90ppm limit, a manufacturer will have access to more markets for exports by producing paints with the lowest possible limit – **even in the absence of a law.** A manufacturer producing non-compliant paint is greatly reducing its ability to expand its market.

Satisfying the Testing Requirement

- Because more and more countries around the world are adopting Model Law provisions and/or a 90ppm total lead limit, the availability of qualified laboratories globally, and industry's ability to safely rely on test results from other countries of origin, are becoming more realistic and more practical.
- Next WHO will provide an overview of lead paint testing capabilities globally, introduce analytical methods for measuring lead in paint, and discuss how to build lab capacity (for example, through regulatory incentives).

Thank you!



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