

DEPARTMENT OF HEALTH

NO. 1456

29 October 2021

HAZARDOUS SUBSTANCES ACT, 1973

(ACT No. 15 OF 1973)

REGULATIONS RELATING TO LEAD IN PAINT OR COATING MATERIALS

The Minister of Health hereby intends, in terms of section 29 (1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), to make Regulations in the Schedule.

Interested persons are invited to submit within three months from the date of publication of this Notice substantiated comments or representations on the proposed Regulations to the Director-General, Department of Health, Private Bag X 828, Pretoria, 0001 (for the attention of the Chief Director: Environmental Health & Port Health Services), by fax to: 012- 395 8802, attention: Ms Aneliswa Cele, or by e-mail to: Aneliswa.Cele@health.gov.za, within three months of the publication of this Notice.



DR M.J PHAAHLA, MP

MINISTER OF HEALTH

DATE:

30/08/2021

SCHEDULE

Definitions

1. In these Regulations a word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context indicates otherwise—

“accredited laboratory” means a laboratory accredited in terms of the Conformity Assessment, Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006) or any international laboratory accredited under ISO/IEC 17025 by a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA) or one of its recognised regional bodies;

“children’s product” means a consumer product designed or intended primarily for children which includes, but is not limited to the following children’s products:-

- (a) furniture designed for use by children;
- (b) gates and other enclosures used for confining a child;
- (c) children’s toys and play equipment;
- (d) school stationary supplies; and
- (e) children’s jewellery.

“coating material” means a product, in liquid, paste or powder form, which, when applied to a substrate, forms a layer possessing protective, decorative and or other specific properties;

“Globally Harmonized System ” means an internationally adopted harmonized hazard communication system for identifying and evaluating all the physical, toxicological and ecotoxicological properties of a substance or mixture, to determine the classification of the substance or mixture using specified criteria;

“manufacturer” means any person who undertakes the physical or chemical transformation of substances into a new product, performed either by power-driven machines or by hand, and markets the new product under his or her name, trademark or private label;

“material change” means a change that the manufacturer or importer makes to the design, manufacturing process or source of component parts, for the paint or similar coating material, which the manufacturer or importer, exercising due care, knows or should know could affect compliance with the 90ppm total lead limit standard;

“paint” means a pigmented or unpigmented coating material which, when applied to a substrate, forms an opaque dried film having protective, decorative or specific technical properties; and

“the Act” means the Hazardous Substances Act, 1973 (Act No. 15 of 1973).

Scope of application

2. These Regulations apply to the manufacture, sale, distribution, import and export of all paints or similar coating materials.

Permissible lead concentration

3. The total lead concentration applicable to paints or similar coating materials must not be more than 0.009 percent (90 ppm) or 90mg/kg total lead (calculated as lead metal), based on the weight of the total non-volatile content of the paint or weight of the dried paint film.

Testing by manufacturers and importers

4. (1) Manufacturers and importers of paint or similar coating materials, with the exception of white water-borne coating materials, must after the effective date of the Regulations following the date of publication, before supply, test the lead content of the first production batch or lot of paint or similar coating material manufactured or imported, using any accredited laboratory.

(2) In the event of a material change, manufacturers and importers must test the lead content of the first production batch or lot of the changed paint or similar coating material.

(3) For the purposes of this regulation, “**White water-borne coating materials**” means water-borne coating materials containing non-lead white pigments.

Compliance declaration certification

5. (1) Manufacturers and importers of paint or similar coating materials must issue a lead content standard compliance declaration certificate for all tested manufactured and imported products.

(2) An importer of paint may rely on a foreign paint manufacturer’s test results to issue its own compliance declaration certificate, provided that the importer exercises due care to ensure the foreign manufacturer’s test results meet the requirements of these Regulations, and that the importer has records of the laboratory test results and attestations regarding how the testing was conducted.

(3) The required compliance declaration certificate under these Regulations must correspond with the form prescribed in **Annexure A**.

(4) The compliance declaration certificate must be in English, be legible and may also be accompanied by a translation in another language.

(5) Manufacturers and importers of paints or similar coating materials must submit a copy of the compliance declaration certificate, in hard copy to inspectors upon request and to the Department of Health.

(6) The compliance declaration certificate must be submitted to the Department of Health, within 12 months following the effective date of the Regulations

and in the event of a material change, manufacturers and importers must submit such certificate within three months.

(7) Manufacturers and importers of paint or similar coating materials must keep records of all laboratory test results or analysis certificates and attestations of how the testing was done for a period of five years.

Sampling and analysis for compliance monitoring

6. (1) An inspector must, for purposes of compliance and monitoring sample paint or similar coating materials for laboratory lead concentration analysis as prescribed in *Government Gazette* Notice R. 453 of 25 March 1977, Group I Hazardous Substances Regulations under the Act.

(2) An inspector may use a calibrated portable analysing device to instantly determine an indication of the presence and level of lead in dried samples of paint or similar coating materials for the purposes of testing compliance with the 90 ppm total lead limit.

(3) The results of the calibrated portable analysing device must be used by the inspector to detain and seize paint or similar coating materials that is not in compliance with the permissible 90 ppm total lead concentration limit and subject such paint or similar coating materials to laboratory testing and analysis.

(4) Analysts must use internationally recognised sampling procedures, quality assurance principles and analytical methods that are prescribed in the standards published by the International Standards Organization (ISO) or ASTM International, including but not limited to the list in **Annexure B**.

Labelling

7. (1) The labels of all paint or similar coating materials that are offered for sale shall include, but not be limited to the—

- (a) trade name;
- (b) manufacturer or importer's name, address and telephone number;
- (c) production date;
- (d) batch number;
- (e) paint or similar coating material product uses ; and
- (f) statement: "Complies with the South African legal lead limit of 90ppm or less".

(2) The labels of all paints or similar coating materials must further include pictograms and precautionary labelling statements as per Globally Harmonized System of classification and labelling of chemicals.

Importation of paint or similar coating materials

8. (1) Paint or similar coating materials may only be imported if in compliance with the relevant provisions of these Regulations and only through the ports of entry prescribed in **Annexure C**.

(2) In the event the name of the port of entry changes, the new substituting name shall apply.

Prohibitions

9. (1) Paints or similar surface coating materials that do not conform to these Regulations must not be manufactured, offered for sale, distributed or imported and shall not be allowed to be donated or exported for sale.

(2) The use of the label statement to indicate endorsement by the National Department of Health or reference to the Act or Regulations is prohibited.

(3) The use of the label statement: “No Lead” or “Lead Free” or “Lead Safe” or any statement that provides an impression that the product does not have any traces of lead is prohibited.

Offences and penalties

10. (1) Any person who fails to furnish a compliance declaration certificate is guilty of an offence and liable to a fine of not less than R500 000.00 or imprisonment or to both fine and imprisonment.

(2) Any person who issues or presents a false compliance declaration certificate is guilty of an offence and liable to a fine of not less than R250 000.00 or imprisonment or to both fine and imprisonment.

(3) Any person who exercises or attempts to exercise undue influence on any accredited laboratory in respect of testing or reporting of the results of the testing of any product is guilty of an offence and liable on conviction to a fine of not less than R1 000 000.00 or imprisonment or to both fine and imprisonment.

(4) Any manufacturer, importer, distributor, exporter or retailer who contravenes any provisions and prohibitions applicable to these Regulations is guilty of an offence and liable to a fine or imprisonment as determined in the Act.

Short title and commencement

11. (1) These Regulations are called the Regulations Relating to Lead in Paint or Coating Materials, 2021.

(2) The Regulations shall come into effect 1 (one) year after the date of publication, with the exception of regulations 7(1) (a), (b), (c), (d), (e), (f) and 7(2), which shall come into effect 2 (two) years after the date of publication.

Annexure A

Manufacturer or importer's logo

Certificate of Compliance Declaration in terms of Regulation 5

I (person in charge of the paint and coating materials manufacturing or importing company) hereby certify that the following paint and coating materials, (manufactured or imported [select]) by, (the trade name and physical address of the manufacturer or importer), have been subjected to lead content testing by (name, physical address and contact number of the accredited testing laboratory) and the results thereof are as prescribed below.

| Paint or coating material product name | Paint or coating material product type | Production date | Lead content analysis results | Date of testing |
|--|--|-----------------|-------------------------------|-----------------|
| | | | | |
| | | | | |

The person responsible for maintaining records of the above test results is (full names, designation, contact number and e-mail address of the individual).

I further affirm that the abovementioned information and data is to the best of my knowledge true, correct and complete, and that the paint and coating materials supplied are in compliance with the prescribed 0.009 percent (90 ppm) or 90mg/kg total lead limit.

.....(Signature)

.....Full names (person in charge of the paint and coating materials manufacturing or importing company)

Date:.....

Annexure B**Standards on analytical methods for measuring lead in paint as prescribed in****Regulation 6(4)(a)** ISO 1513;

- (b) ISO 1514;
- (c) ASTM E1645-16;
- (d) ASTM E1979-17;
- (e) ISO 6503;
- (f) ASTM D3335-85a (2014);
- (g) ASTM E1613-12;
- (h) ASTM F2853-10; and
- (i) US CPSC Test Method CPSC-CH-E1003-09.1

Annexure C

Ports of entry through which paint or similar coating materials or painted children's products may only be imported as prescribed in Regulation 8

1. Sea Ports
 - (a) Cape Town;
 - (b) Durban;
 - (c) East London;
 - (d) Port Elizabeth; and
 - (e) Richards Bay.
2. Airports
 - (a) OR Tambo;
 - (b) Cape Town; and
 - (c) King Shaka.
3. Land Border
 - (a) Beit Bridge;
 - (b) Maseru;
 - (c) Oshoek;
 - (d) Lebombo;
 - (e) Nakop ; and
 - (f) Golela.