

ALBANY COUNTY DEPARTMENT OF HEALTH

RULES AND REGULATIONS REGARDING THE PRESENCE OF CERTAIN TOXIC CHEMICALS IN CHILDREN'S PRODUCTS AND APPAREL SOLD IN ALBANY COUNTY.

SECTION 1: INTENT AND PURPOSE

Pursuant to Local Law No. 1 for 2015, as amended, which is known as "The Toxic Free Toys Act," these rules and regulations have been promulgated by the Commissioner of Health.

SECTION 2: DEFINITIONS

- (A) Person: any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity of business of any kind.
- (B) Children: person's aged twelve and under.
- (C) Children's product: a toy or other article, primarily intended for use by children.
- (D) Children's apparel: any item of clothing that consists of fabric or related material intended or promoted for use in children's clothing.

The following shall be considered in determining if the children's product or apparel is intended for children:

- (a) A statement by a manufacturer about the intended use of such toy or article, including a label on such toy or article;
- (b) The context and manner of the advertising, promotion, and marketing associated with the toy or article; and
- (c) Whether the toy or article is commonly recognized by consumers as being intended for use by children.

SECTION 3: TOXIC CONTENT RESTRICTIONS

Heavy Metals:

- (A) To the extent relevant and to the extent required by preemption, the provisions of the federal Consumer Product Safety Act (CPSA), as amended, the Federal Hazardous Substances Act (FHSA), as amended, or any regulation, exclusion or exemption promulgated under either act or any other applicable federal law or pursuant to any Enforcement Policy of the administering federal authority and any successor to these afore-mentioned laws/regulations, shall apply in the same manner and with the same force.

(B) For children's products and children's apparel not covered by the federal legislation listed above:

1. The surface-coating materials on such products/apparel will not contain antimony, arsenic, cadmium, lead and/or mercury of which the metal content of the soluble material is in excess of the levels specified in Table 1 as tested in accordance with applicable CPSC test methods.
2. The limits set forth do not otherwise apply to the mere presence of any antimony in polyester.
3. For accessible substrate materials the total lead content shall not be in excess of 100 ppm of the weight of the component per CPSC requirements.
4. For accessible substrate materials, the migration of antimony, arsenic, cadmium, and/or mercury from toys and parts of toys will not exceed the limits specified in Table 1 as calculated pursuant to ASTM F-963.
5. For the purposes of accessible substrate materials, the following criteria are considered reasonably appropriate for the classification of toys or parts likely to be sucked, mouthed or ingested: All toy parts intended to be mouthed or contact food or drink, components of toys which are cosmetics, and components of writing instruments characterized as toys.

Table 1:

Compound	Maximum levels in ppm
Antimony	60
Arsenic	25
Cadmium	75
Lead (surface-coating materials)	90
Lead (accessible substrate materials)	100
Mercury	60

For purposes of documentation, local retailers may rely upon representations and warranties provided by suppliers.

Cobalt and Benzene

Cobalt: In the absence of Federal or State regulations, guidance documents or scientifically accepted Cobalt toxicity levels for children's products/apparel, the Department will actively monitor ongoing research and development in this area and implement testing as more data and information becomes available should hazards be evident per FHSA.

Benzene: The department will work with State and Federal partners to address individual concerns related to Benzene in toys including direction to appropriate testing involving

reasonable likely bioavailability of benzene, i.e., the ability to be absorbed into the body, is present when Benzene is in the form of a gas or a liquid. As such, this substance is monitored in drinking water and in air by federal agencies, the Environmental Protection Agency, OSHA (Occupational Safety and Health Administration), and the Consumer Product Safety Commission which can specify hazardous limits in consumer products.

Test Methods.

Department use of XRF governed per CPSC Test Method CPSC-CH-E1001-08.3 or Test Method CPSC-CH-E1002-08.3 or testing performed at a CPSC accredited Laboratory or per FHSA protocol requirements.

SECTION 4: EXEMPTION

This Regulation shall not apply to:

- (a) Used children's products or apparel that are sold or distributed for free at secondhand stores, yard sales, or donated to charities, nor shall it apply to children's products or apparel sold exclusively on the internet, or
- (b) Protective sporting equipment designed to prevent injury, including, but not limited to, helmets, athletic supporters, knee pads or elbow pads, or
- (c) Batteries, consumer electronics or electronic components, paper products, or a drug, biologic, medical device, food, or food additive regulated by the US Food and Drug Administration.

SECTION 5: CIVIL PENALTIES

(a) First Offense – Any person who knowingly violates the provisions of this law, or reasonably should know that he/she is in violation of the provisions of this law, shall be fined an amount not to exceed \$500 per violation.

(b) Subsequent Offense – a penalty of \$1000 per each subsequent violation shall be assessed.

SECTION 6: ENFORCEMENT

1. Beginning on the adoption date of these regulations, the Department of Health shall inform retailers selling children's products of the requirements of this law.

2. Enforcement of the law shall commence November 1, 2017. The Department shall conduct random inspection of at least ten (10) establishments per quarter (in addition to any other unannounced inspection(s) required under this section), and shall test for toxic content either by using an x-ray fluorescence analyzer, or by engaging the services of a United States Consumer Product Safety Commission accredited laboratory, or both.

3. Attestation of Compliance:

(a) A person selling or offering for sale children's products or apparel within Albany County shall certify annually on forms promulgated by the department, under penalty of perjury, that the children's products/apparel meet the requirements of both federal and Albany County laws no later than thirty (30) days after the effective date of enforcement.

(b) Any entity established after the effective date of this regulation shall so certify no later than thirty (30) days following the first date of operation.

(c) In the event a person fails to file the afore-referenced forms within the specified time, the person shall take affirmative measures to submit said forms within ten (10) days of receipt of a written notice of such a deficiency.

(d) Failure to submit this form may result in additional measures of enforcement, including but not limited, one or more unannounced inspections by the Department.

SECTION 7: VIOLATION

1. Violation: A person shall be deemed in violation if, after certifying under penalty of perjury on forms promulgated by the Department that all children's products/apparel being sold are in compliance with applicable federal and County law, one or more children's product/apparels obtained from the establishment reveal toxicity levels in excess of limits specified in Table 1.

2. Notice of Violation: A notice of violation shall be issued via certified mail, within fifteen (15) days of the test results indicating toxic levels in excess of limits specified in Table 1. The Notice shall contain a concise statement of the facts constituting the violation and the amount of the fine assessed. It shall provide the party against whom such violation is alleged an opportunity to submit documentation within twenty (20) business days of receipt of the Notice why the party believes a violation has not occurred.

3. Defense:

(a) It shall be a complete defense that the toy or other children's product which forms the basis of the violation either complies with, or is exempt under, the Consumer Product Safety Act, as amended, or the federal Consumer Product Safety Act (CPSA), as amended, the Federal Hazardous Substances Act (FHSA), as amended, or any regulation or exemption promulgated under either act or any other applicable federal law or pursuant to any Enforcement Policy of the administering federal authority. All supporting documentation, including certificates of compliance, shall be included in the written response to the Notice of Violation.

(b) The compliance certificate must identify separately each children's product safety rule that is applicable to the children's product, must provide the name, full mailing address, and telephone

number of the importer or U.S. domestic manufacturer certifying the product, and must provide name, full mailing address, e-mail address, and telephone number of the person maintaining test records in support of the certification. For the date(s) when the product was manufactured, provide at least the month and year. For the place of manufacture, provide at least the city (or administrative region), state (if applicable), and country where the product was manufactured or finally assembled. If the same manufacturer operates more than one location in the same city, provide the street address of the factory. Provide the location(s) of the testing and the date(s) of the test(s) or test report(s) on which certification is being based. Identify the CPSC-accepted laboratory on whose testing the certificate depends. A CPSC designated "Children's Product Certificate" will be acceptable to denote such compliance

4. Review of Documentation: Within twenty (20) days of the receipt of supporting documentation, the Commissioner shall review and make an initial determination regarding the violation, and shall notify the party by certified mail of this determination.

5. Requests for Formal Hearing: Within ten (10) days of the receipt of the determination, the party may either pay the fine or request a formal hearing in writing regarding the alleged violation. The Department shall serve a notice of formal hearing via certified mail at least thirty (30) days prior to the hearing date specifying the time and place of the hearing, the names of the person who will conduct the hearing. Within forty-five (45) business days of conducting the hearing, the Department shall mail a written decision.

6. Appeals: An appeal to the hearing decision may be brought pursuant to Article 78 of the New York Civil Practice Law and Rules in New York Supreme Court in the County of Albany.

7. Special Proceeding: Failure to pay the fine or to request a formal hearing within the allotted time specified in Section 7(5) shall result in the Department referring the matter to the Office of the County Attorney to bring a special proceeding in New York State Supreme Court in the County of Albany to recover the civil penalty and to otherwise make effective its purposes by seeking appropriate judicial relief.