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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 20. MISCELLANEOUS HEALTH AND SAFETY PROVISIONS [24000 - 27007]** ( *Division 20 enacted by Stats. 1939, Ch. 60.*  )

**CHAPTER 6.5. Hazardous Waste Control [25100 - 25259]** ( *Chapter 6.5 added by Stats. 1972, Ch. 1236.*  )

**ARTICLE 10.1.1. Metal-Containing Jewelry [25214.1 - 25214.4.2]** ( *Heading of Article 10.1.1 amended by Stats. 2010, Ch. 313, Sec. 1.*  )

**25214.1.** For purposes of this article, the following definitions shall apply:

(a) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(b) "Children" means persons under 15 years of age.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalog, or online internet website, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalog, or online internet website, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(d) "Component" means any part of jewelry.

(e) "Inaccessible" means not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product. For purposes of this article, paint, coatings, or electroplating do not render substrate material inaccessible to a child.

(f) "Jewelry" means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Tie clip.

(N) Body piercing jewelry.

(O) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

(g) (1) "Surface coating" means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) "Surface coating" does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

*(Amended by Stats. 2019, Ch. 379, Sec. 2. (SB 647) Effective January 1, 2020.)*

**25214.1.5.** (a) This article does not do any of the following:

(1) Affect a duty or other requirement otherwise imposed under federal or state law.

(2) Alter or diminish a legal obligation otherwise required in common law, by statute, or by regulation.

(3) Create or enlarge a defense to an action to enforce a legal obligation otherwise required in common law, by statute, or by regulation.

(b) The Legislature finds and declares that the addition of this section during the 2007–08 Regular Session of the Legislature is declaratory of existing law.

*(Added by Stats. 2008, Ch. 575, Sec. 1.5. Effective January 1, 2009.)*

**25214.2.** (a) For jewelry that is not children's jewelry, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes such jewelry for retail sale or promotional purposes in the state, unless the jewelry is made entirely from one or more than one of the following materials:

(1) Stainless or surgical steel.

(2) Karat gold.

(3) Sterling silver.

(4) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(5) Natural or cultured pearls.

(6) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonné.

(7) A gemstone that is cut and polished for ornamental purposes, excluding aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(8) Elastic, fabric, ribbon, rope, or string that does not contain intentionally added lead.

(9) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, or wood, that is in its natural state and is not treated in a way that adds lead.

(10) Adhesive.

(11) Electroplated metal containing less than 0.05 percent (500 parts per million) lead by weight.

(12) Unplated metal not otherwise listed containing less than 0.05 percent (500 parts per million) lead by weight.

(13) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) containing less than 0.02 percent (200 parts per million) lead by weight.

(14) A dye or surface coating containing less than 0.05 percent (500 parts per million) lead by weight.

(15) Any other material that contains less than 0.05 percent (500 parts per million) lead by weight.

(b) For body piercing jewelry that is not children's jewelry, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes such jewelry for retail sale or promotional purposes in the state, unless the jewelry is made of one or more of the following materials:

(1) Surgical implant stainless steel.

(2) Surgical implant grade of titanium.

(3) Niobium (Nb).

(4) Solid 14 karat or higher white or yellow nickel-free gold.

(5) Solid platinum.

(6) A dense low-porosity plastic, including, but not limited to, Tygon or polytetrafluoroethylene (PTFE), if the plastic contains no intentionally added lead.

(c) (1) For children's jewelry, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes such jewelry for retail sale or promotional purposes in the state, unless the jewelry meets all of the following requirements:

(A) Every component of the jewelry contains no more than 0.01 percent (100 parts per million) lead by weight, excluding inaccessible component parts.

(B) The jewelry has a surface coating that contains no more than 0.009 percent (90 parts per million) lead by weight.

(2) The department may establish guidance on what component parts in children's jewelry shall be considered to be inaccessible for purposes of paragraph (1). In the absence of that guidance from the department, a determination of whether a component part of children's jewelry is inaccessible shall be made in accordance with Section 1500.87 of Title 16 of the Code of Federal Regulations, as it may be amended from time to time.

(d) (1) For children's jewelry, a person shall not manufacture, ship, sell, offer for sale, or offer for promotional purposes such jewelry that meets either of the following descriptions:

(A) The jewelry contains a component or is made of a material that is more than 0.03 percent (300 parts per million) cadmium by weight.

(B) The jewelry has a surface coating that contains more than 0.0075 percent (75 parts per million) soluble cadmium by weight.

(2) This subdivision shall not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-314).

(e) The department may establish a standard for children's jewelry or for a component of children's jewelry that is more protective of public health, of sensitive subpopulations, or of the environment than the standards established pursuant to subdivisions (c) and (d).

(f) This section shall become operative on June 1, 2020.

*(Repealed (in Sec. 3) and added by Stats. 2019, Ch. 379, Sec. 4. (SB 647) Effective January 1, 2020. Section operative June 1, 2020, by its own provisions.)*

**25214.3.** (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Toxic Substances Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article, except as provided in Section 25192.

(d) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

*(Amended by Stats. 2011, Ch. 473, Sec. 2. (SB 646) Effective January 1, 2012.)*

**25214.3.1.** (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare a certification. This certification shall attest that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this article and shall do all of the following:

(1) Identify the jewelry covered by the certificate, including a description of the jewelry that is sufficiently detailed to match the certificate to each product covered by the certificate and that could not be used to describe any jewelry that is not covered by the certificate.

(2) Cite to each separate rule or standard for which the jewelry is being certified.

(3) Identify the manufacturer or supplier certifying compliance of the jewelry, including the name, full mailing address, and telephone number of the manufacturer or supplier.

(4) Include the contact information for the person maintaining records of the test results of jewelry tested for purposes of this article, including the name, full mailing address, email address, and telephone number of that person.

(5) Include the date on which the jewelry was manufactured, including at least the month and year.

(6) Include the location where the jewelry was manufactured, including 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, the street address of the factory shall be included.

(7) Include the date or dates on which, and the location or locations where, the jewelry was tested for purposes of certification.

(8) Identify any third-party laboratory that performed the testing for purposes of certification, including the name, full mailing address, and telephone number of the laboratory.

(c) A manufacturer or supplier of jewelry sold or offered for promotional purposes in this state shall do either of the following:

(1) Provide the certification required by subdivision (b) to a person who sells or offers for sale that manufacturer's or supplier's jewelry.

(2) Display the certification required by subdivision (b) prominently on the shipping container or on the packaging of jewelry.

*(Amended by Stats. 2019, Ch. 379, Sec. 5. (SB 647) Effective January 1, 2020.)*

**25214.3.2.** (a) Except as provided in subdivision (b), a person who sells jewelry at retail or offers jewelry for retail sale shall not be subject to an administrative or civil penalty for a violation of this article if the person proves, by a preponderance of evidence, all of the following:

(1) The person received a certificate of compliance for the jewelry from the manufacturer or supplier.

(2) The certificate of compliance received pursuant to paragraph (1) stated that the jewelry is in compliance with the requirements of this article.

(3) The person relied on the certificate of compliance and did not know, and had no reason to know, that the jewelry was in violation of this article.

(4) Upon receiving a notice of violation from the department, the person took corrective action by immediately removing the jewelry from commerce.

(b) The affirmative defense specified in subdivision (a) does not apply to, and may not be raised by, a person who has been found in violation of this article on at least two prior occasions in the preceding three years from the filing date of the current action.

*(Added by Stats. 2008, Ch. 575, Sec. 5. Effective January 1, 2009.)*

**25214.3.3.** A manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead or cadmium in violation of this article is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

*(Amended by Stats. 2010, Ch. 313, Sec. 5. (SB 929) Effective January 1, 2011.)*

**25214.3.4.** A manufacturer or supplier of jewelry who knowingly and with intent to deceive, falsifies any document or certificate required to be kept or produced pursuant to this article is subject to a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

*(Added by Stats. 2008, Ch. 575, Sec. 7. Effective January 1, 2009.)*

**25214.3.5.** (a) This article does not limit, supersede, duplicate, or otherwise conflict with the authority of the department to fully implement Article 14 (commencing with Section 25251), including the authority of the department to include products in its product registry.

(b) Notwithstanding subdivision (c) of Section 25257.1, cadmium-containing jewelry shall not be considered as a product category already regulated or subject to pending regulation for purposes of Article 14 (commencing with Section 25251).

*(Added by Stats. 2010, Ch. 313, Sec. 6. (SB 929) Effective January 1, 2011.)*

**25214.4.** (a) The test methods for determining compliance with this article shall be conducted using the EPA reference methods 3050B, 3051A, or 3052, as specified in EPA Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 (Third Edition, or subsequent update, as applicable) for lead and cadmium in the material being tested, except as otherwise provided in subdivision (b) and Sections 24214.4.1 and 25214.4.2, and shall be conducted in accordance with all of the following procedures:

(1) When preparing a sample, the laboratory shall make every effort to ensure that the sample removed from a jewelry piece is representative of the component to be tested, and is free of contamination from extraneous dirt and material not related to the jewelry component to be tested.

(2) All jewelry component samples shall be washed prior to testing using standard laboratory detergent, rinsed with laboratory reagent grade deionized water, and dried in a clean ambient environment.

(3) If a component is required to be cut or scraped to obtain a sample, the metal snips, scissors, or other cutting tools used for the cutting or scraping shall be made of stainless steel and washed and rinsed before each use and between samples.

(4) A sample shall be digested in a container that is known to be free of lead and cadmium and with the use of an acid that is not contaminated by lead or cadmium, including analytical reagent grade digestion acids and reagent grade deionized water.

(5) Method blanks, consisting of all reagents used in sample preparation handled, digested, and made to volume in the same exact manner and in the same container type as samples, shall be tested with each group of 20 or fewer samples tested.

(6) The results for the method blanks shall be reported with each group of sample results, and shall be below the stated reporting limit for sample results to be considered valid.

(7) Test methods selected shall be those that best demonstrate they can achieve total digestion of the sample material being analyzed. Test methods shall not be used if they are inconsistent with the specified application of the test method or do not demonstrate the best performance or proficiency for achieving total digestion of the sample material.

(b) Notwithstanding subdivision (a) and Section 25214.4.1, test methods for determining compliance with the limits for lead in children's jewelry in subdivision (c) of Section 25214.2 include those permissible to demonstrate compliance with the federal Consumer Product Safety Improvement Act of 2008 (Public Law 110-314). The test method for determining compliance with subparagraph (B) of paragraph (1) of subdivision (d) of Section 25214.2 shall be the same test method used to demonstrate compliance with Section 2056b of Title 15 of the United States Code.

(c) Digested samples shall be analyzed according to the specification of an approved and validated methodology using inductively coupled plasma optical emission spectroscopy. Other analytical methods, such as inductively coupled plasma mass spectrometry, flame atomic absorption spectroscopy, graphite furnace atomic absorption spectroscopy, or other technology, may be used under

appropriate conditions, using applicable, recognized analytical techniques for the alternative method to achieve a reported quantitation limit no greater than 0.001 percent (10 parts per million) for samples.

(d) All testing for determining compliance with this article shall be performed by a laboratory that conforms to the requirements in Article 8.5 (commencing with Section 25198).

*(Amended by Stats. 2019, Ch. 379, Sec. 6. (SB 647) Effective January 1, 2020.)*

**25214.4.1.** In addition to the requirements of Section 25214.4, the following procedures shall be used for testing the following materials:

(a) For testing a metal plated with suitable undercoats and finish coats, the following protocols shall be observed:

- (1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.
- (2) The sample size shall be 0.050 gram to one gram.
- (3) The digested sample may require dilution prior to analysis.
- (4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(b) For testing unplated metal and metal substrates that are not a material listed in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 25214.2, the following protocols shall be observed:

- (1) Digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.
- (2) The sample size shall be 0.050 gram to one gram.
- (3) The digested sample may require dilution prior to analysis.
- (4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(c) For testing polyvinyl chloride (PVC), the following protocols shall be observed:

- (1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.
- (2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.
- (3) Digested samples may require dilution prior to analysis.
- (4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(d) For testing plastic or rubber that is not polyvinyl chloride (PVC), including acrylic, polystyrene, plastic beads, or plastic stones, the following protocols shall be observed:

- (1) The digestion shall be conducted using hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.
- (2) The sample size shall be a minimum of 0.05 gram if using microwave digestion or 0.5 gram if using hotplate digestion, and shall be chopped or comminuted prior to digestion.
- (3) Plastic beads or stones shall be crushed prior to digestion.
- (4) Digested samples may require dilution prior to analysis.
- (5) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(e) For testing coatings on glass and plastic pearls, the following protocols shall be observed:

(1) The coating of glass or plastic beads shall be scraped onto a surface free of dust, including a clean weighing paper or pan, using a clean stainless steel razor blade or other clean sharp instrument that will not contaminate the sample with lead or cadmium. The substrate pearl material shall not be included in the scrapings.

(2) The razor blade or sharp instrument shall be rinsed with deionized water, wiped to remove particulate matter, rinsed again, and dried between samples.

(3) The scrapings shall be weighed and not less than 50 micrograms of scraped coating shall be used for analysis. If less than 50 micrograms of scraped coating is obtained from an individual pearl, multiple pearls from that sample shall be scraped and composited to obtain a sufficient sample amount.

(4) The number of pearls used to make the composite shall be noted.

(5) The scrapings shall be digested according to EPA reference method 3050B or 3051 or an equivalent procedure for hot acid digestion in preparation for trace lead or cadmium analysis.

(6) The digestate shall be diluted in the minimum volume practical for analysis.

(7) The sample result shall be reported within the calibrated range of the instrument. If the initial test of the sample is above the highest calibration standard, the sample shall be diluted and reanalyzed within the calibrated range of the instrument.

(f) For testing dyes, paints, coatings, varnish, printing inks, or ceramic glazes, the following testing protocols shall be observed:

(1) The digestion shall use hot concentrated nitric acid with the option of using hydrochloric acid or hydrogen peroxide.

(2) The sample size shall be not less than 0.050 gram, and shall be chopped or comminuted prior to digestion.

(3) The digested sample may require dilution prior to analysis.

(4) All necessary dilutions shall be made to ensure that measurements are made within the calibrated range of the analytical instrument.

(g) For testing glass and crystal, the following protocols shall be used:

(1) For determining weight:

(A) A component shall be free of any extraneous material, including adhesive, before it is weighed.

(B) The scale used to weigh a component shall be calibrated annually by a qualified vendor using reference mass standards that are traceable to the National Institute of Standards and Technology (NIST) of the Department of Commerce or the International System of Units (SI) and shall be verified daily before weighing the component.

(C) The calibration of the scale shall be accurate to within 0.0001 gram.

(2) Both of the following testing protocols shall be observed:

(A) The glass and crystal component shall be crushed or grounded to powder form before digestion and shall be digested according to the United States Environmental Protection Agency Test Method 3052 using hydrofluoric acid in a microwave or an equivalent method to yield complete digestion.

(B) The digestate shall be diluted in the minimum volume practical for analysis.

*(Amended by Stats. 2019, Ch. 379, Sec. 7. (SB 647) Effective January 1, 2020.)*

**25214.4.2.** The department may adopt regulations to implement this article, including, but not limited to, adopting regulations that modify the testing protocols specified in Sections 25214.4 and 25214.4.1, as it deems necessary to further the purposes of this article.

*(Amended by Stats. 2008, Ch. 575, Sec. 9. Effective January 1, 2009.)*