



DEPARTMENT OF
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State of Washington

Small Business Economic Impact Statement

Chapter 173-334 WAC

Children's Safe Products – Reporting Rule

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Small Business Economic Impact Statement

Chapter 173-334 WAC Children's Safe Products – Reporting Rule

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Table of Contents

Note: Due to size limitations relating to the filing of documents with the Code Reviser, the SBEIS does not contain the appendices that further explain Ecology’s analysis. Additionally, it does not contain the raw data used in this analysis, or all of Ecology’s analysis of this data. However, this information is being placed in the rule-making file, and is available upon request. A full analysis of compliance costs is available in the associated Cost-Benefit Analysis for this rule.

| | <u>Page</u> |
|--|-------------|
| Executive Summary | ii |
| Section 1: Background..... | 1 |
| Baseline..... | 2 |
| Section 2: Analysis of Compliance Costs for Washington Businesses | 4 |
| Analytic Approach..... | 4 |
| Section 3: Quantification of Costs and Ratios | 5 |
| Quantified Costs of Ecology’s Proposed Rule..... | 5 |
| Section 4: Actions Taken to Reduce the Impact of the Rule on Small Business..... | 7 |
| Section 5: The Involvement of Small Business in the Development of the Proposed Rule Amendments | 8 |
| Section 6: The SIC Codes of Impacted Industries | 9 |
| Section 7: Impacts on Jobs..... | 10 |

Executive Summary

The Washington State Department of Ecology (Ecology) is proposing to adopt a new chapter called the Children's Safe Products Rule (Chapter 173-334 WAC). The CSPA law requires Ecology to identify high priority chemicals that are of high concern for children. This includes chemicals that have been:

- Found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids.
- Found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment.
- Added to or is present in a consumer product used or present in the home.

Ecology estimated the direct compliance costs of the proposed rule, over 20 years, and assuming product testing (the most expensive option) is used, to be between \$44.7 million and \$69.5 million.

Ecology analyzed the degree of disproportionate impact of the proposed rule on small businesses (those with 50 or fewer employees; versus the largest ten percent of businesses in likely impacted industries), and has concluded that a disproportionate impact is likely. But it should be emphasized that only business falling within the definition of a manufacturer as defined in the law would be required to report. And that would apply to retailers only if they are the importer in the United States and no other party reports on their behalf.

Based on the statutory authority created by the law, Ecology could have done the following: Required reporting for hundreds of CHHCs, based the reporting trigger on detection limit, implemented the reporting requirement for all products and all manufactures six months from the date the rule was adopted, required the reporting to be done at the individual SKU number. Instead Ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden.

- Phasing in timelines for first reporting based, in-part, on business size. The first date for any reporting for those manufacturers with gross sales less than 100 thousand dollars is 5 years from the date the rule is adopted. And these initial reports are only for those products intended to be stuck in the child's mouth, rubbed on the child's skin, and all products for children 3 and under.
- Requiring reporting at the product category level based on the GS1 Global Product Classification (GPC) standard. As a result the reporting burden is reduced to one report per product category, so a reporting entity which sales only two categories of products would only have to make two reports, one for the chemicals in each category.
- Providing multiple examples of how a manufacturer can determine what if any CHHCs are in their products. Testing is not required by the law or the rule.

- Requiring reporting at the “brick” or “class” level of the GS1 Global Product Classification (GPC) standard
- Allowing multiple courses of determining CHCC content, rather than requiring only testing.

Ecology estimated that the costs and payments created by the proposed rule will likely reduce employment in the state by up to 0.5 positions over 20 years, across the state economy, for all sizes of business. This accounts for the flow of compliance expenditures through the economy as earnings, wages, and further spending.

Section 1: Background

Ecology is proposing the Children's Safe Products - Reporting Rule (Chapter 173-334 WAC) as part of the rulemaking it is allowed to perform by law in Chapter 70.240 RCW (Children's Safe Products Act; CSPA). This law was passed in 2008, and specifically allows Ecology to, "adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter."

Based on research and analysis required by the Regulatory Fairness Act – RCW 19.85.070 – Ecology has determined the proposed rule has a disproportionate impact on small business (those employing 50 or fewer employees). Therefore, Ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

The CSPA law requires Ecology to identify high priority chemicals that are of high concern for children. This includes chemicals that have been:

- Found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids.
- Found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment.
- Added to or is present in a consumer product used or present in the home.

In July 2009, Ecology published a report (Ecology publication number 09-07-014) describing the work done by Ecology and the state Department of Health (DOH) to comply with CSPA requirements, address concerns raised by stakeholders, and implement direction from the Governor.¹ This included discussion of the process the agencies used to determine chemicals of concern that are being proposed as part of this rulemaking.

The majority of the CSPA law delineates requirements for manufacturers and sellers of children's products, including:

- Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates above the limits established in the law. At this time the agency feels federal programs have substantially pre-empted our agency for the enforcement of these limits. So this rule only addresses the reporting requirement.
- Notification to Ecology that a children's product contains a high priority chemical.
- Actions that must be taken by – and penalties for – manufacturers in violation of the law.

Ecology conducted a stakeholder process and pilot rule phase to determine the content of the proposed rule. Both the pilot phase and the stakeholder process helped Ecology identify possible compliance difficulties for the regulated community without diminishing the effectiveness of the

¹ The Governor expressed that Ecology and DOH should rely on safety testing conducted in the European Union and California, to the extent they provide a reasonable assurance of safety, in order to help establish a degree of consistency for the industry.

rule. These processes were also used to get other input from the public, business, environmental interests, and health interests might have toward rulemaking.

Baseline

As there is no current state-level CSPA or similar rule, there is technically no baseline rule for comparison. There are no existing federal or Washington State requirements intended explicitly for children's products as under this rule. There are, however, a number of partially overlapping requirements and mitigating factors, including:²

- Washington's toxics in packaging law (Chapter 70.95G RCW – Toxics in Packaging) requires manufacturers to have practices that may include contract specifications, quality control mechanisms, and/or testing protocols to determine the amount of a chemical in product materials.
- Manufacturers must have procedures in place to test for lead under the federal Consumer Product Safety Improvement Act of 2008 (CPSIA). Some chemicals are restricted in cosmetic products under FDA regulations.
- Interstate toxics rules allowing manufacturers to employ economies of scale in producing a homogeneous product across multiple markets:
 - Manufacturers who sell children's products in Maine are subject to similar reporting requirements for priority chemicals (Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B). The State of California has several reporting requirements applicable to manufacturers of children's products, including required reporting on use of specific ingredients in cosmetics (Cal. Health & Safety Code §§ 111791-111793.5).
 - Manufacturers who do business in California are also required to label products if exposure to certain chemicals from those products exceeds levels known to cause cancer or reproductive harm (California Proposition 65).
 - The European Union, for instance, enforces chemical limits in children's products through its Toy Directive (88/378/EEC) and Cosmetics Directive (76/768/EEC). Many companies have pre-existing restricted substance lists (RSLs) to describe and codify procedures to meet chemical limits in a variety of product lines for sale in various countries.

See Appendix B for a full listing of existing interstate and international rules that will likely mitigate the compliance costs created by the proposed rule.

These factors will likely mitigate some of the compliance costs for a subset of businesses covered by the proposed rule.

The baseline also includes the explicit provisions of the authorizing statute. These are excepted from this analysis. For further discussion, see Analytic Exceptions, below in this chapter.

² See Appendix B for a full listing of existing regulations that will likely mitigate the compliance costs created by the proposed rule.

Changes under Ecology's Proposed Rule

The proposed rule sets out requirements for:

- Annual notification of Ecology by manufacturers of children's products containing Chemicals of High Concern to Children (CHCCs), with pertinent firm, product, and CHCC quantity information as established by statute.
- Timing of first reporting is phased in according to the product tier and size of manufacturer. Product tiers (1 – 4) represent the level of contact with a child intended for types of products, based on levels of the GS1 Global Product Classification (GPC) standard. It is an industry standard for product classification.
- Enforcement priorities and penalties.

Analytic Exemptions

Ecology excluded from analysis the following elements, explicitly dictated or defined in the Children's Safe Products statute (Chapter 70.240 RCW):

- Definitions, including:
 - Children's cosmetics
 - Children's jewelry
 - Children's product
 - Cosmetics
 - High priority chemical
 - Manufacturer
 - Phthalates
 - Toy
 - Trade association
 - Very bioaccumulative
 - Very persistent
- Prohibition of the manufacturing and sale of children's products containing lead, cadmium, or phthalates.
- Explicit reporting requirements, including:
 - The name of the chemical used or produced and its chemical abstracts service registry number.
 - A brief description of the product or the product component containing the substance.
 - A description of the function of the chemical in the product.
 - The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount.
 - The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer.
 - Any other information the manufacturer deems relevant to the appropriate use of the product.
- Notification of sellers and distributors
- Civil penalty

Section 2: Analysis of Compliance Costs for Washington Businesses

Analytic Approach

Ecology analyzed the costs and benefits of the proposed rule qualitatively, and quantified the impacts where possible. Ecology only analyzed those aspects of the proposed rule that were left to Ecology's discretion in the rulemaking process. In the case of the proposed rule, many of its elements were dictated explicitly by law, as is the general idea of manufacturer reporting.

One must keep in mind, however, that Ecology only had particular discretion on reporting ranges, and the phasing-in of first reporting time. Every chemical on the reporting list meets the standards set by the authorizing law. Ecology chose 59 chemicals from an initial list of two thousand prospective chemicals. Ecology believes the content of the list of CHCCs is sufficiently dictated by statute, so that the chemicals on the final list were not entirely left to Ecology's discretion. However, Ecology also believes it is to the public and state's advantage to present the estimated costs of testing and reporting, to provide additional information to manufacturers and the public regarding compliance with the authorizing statute.

Section 3: Quantification of Costs and Ratios

Quantified Costs of Ecology's Proposed Rule

Ecology estimated the quantitative costs of complying with the proposed rule, including those elements dictated by the authorizing law, based on:

- The number of businesses expected to comply.
- The number of chemicals that require testing or business practice or business chain knowledge.
- The estimated costs of testing or business practices and reporting.

These estimates are conservatively high, and do not account for economies of scale, non-reporters, or interstate/international regulatory consistency. Moreover, as a means of estimating CHCC content and reporting into a range, testing is not specifically required by the proposed rule or the law. Other options for gauging CHCC content include supply-chain knowledge and knowledge of the manufacturing process.

Ecology assumed that known businesses operating in Washington State manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS³ categories, including:

- 3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products)
- 4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing)
- 3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care)
- 3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture)

Based on WA Employment Security Department information, there are currently about 276 such businesses in the state. Ecology was also able to categorize most of these businesses roughly into size categories by employment and, to a lesser degree, annual earnings. Ecology believes these businesses represent the majority of the businesses that will need to comply with the proposed rule. Some retailers who act as importers or distributors for products made by companies with no presence in the United States may also need to report, but Ecology assumes this number will be minimal.

Ecology assumed that any given business would maintain at least existing business practices and standards, but Ecology assumed conservatively (attempting to overestimated costs, as to calculate a conservative net benefit of the proposed rule) that a business might choose to test for a maximum of ten CHCCs.

Based on surveys of current testing costs, Ecology estimated that this cost of knowing the level of CHCC content in children's products for some manufacturers would be in the range of approximately \$1 thousand – \$10 thousand per year for all the CHCCs in their products.

³ North American Industry Classification System (see <http://www.census.gov/eos/www/naics/index.html>)

This value was based on a range of existing, approved analytical methods. It is possible that new test methods could need to be developed. Ecology multiplied these values to calculate a total conservatively high⁴ testing cost of the proposed rule and CSPA law of \$2.8 million – \$27.6 million the first year, followed by \$2.8 million annually in subsequent years, when testing has been established.

The above calculations generated a total likely present value⁵ cost of compliance, over 20 years, with the combined CSPA rule and CSPA law, of \$44.7 million to \$69.5 million. Requirements set forward in the latter of these, the CSPA law, are exempt from inclusion in this analysis, but Ecology included this total cost in this analysis because the contribution of Ecology reducing the possible list of CHCCs (to only those meeting the requirements set forth in the authorizing law) was not separable from the overall impacts of the law .

The costs estimated by Ecology work under the assumption that costs are for a typical business, and are constant across them, on average. Obviously, the costs per-business range of \$10 thousand to \$100 thousand divided by smaller numbers of employees will be larger, as it will be divided by each \$100 of sales recorded (for which records are much more sparse). For 50 employees or fewer, this is at least \$200 – \$2 thousand per employee. For the largest 10 percent of likely affected businesses, this is at most 9 – 90 cents per employee.

⁴ Assuming all covered businesses must test to determine whether and what to report.

⁵ Accounting for expected inflation, using US Treasury I-Bonds (see http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm)

Section 4: Actions Taken to Reduce the Impact of the Rule on Small Business

Based on the statutory authority created by the law, Ecology could have done the following: Required reporting for hundreds of CHHCs, based the reporting trigger on detection limit, implemented the reporting requirement for all products and all manufactures six months from the date the rule was adopted, required the reporting to be done at the individual SKU number. Instead Ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden.

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Section 5: The Involvement of Small Business in the Development of the Proposed Rule Amendments

While multiple attempts were made to get small business involvement during both the pilot and advisory group phases, the actual input provided by them was little to none. One Washington small businesses (Find it Games) said they were willing to participate on the advisory group but even after multiple efforts to get their input none was provided. Also another small business joined the pilot phase (Four Seasons) but they also did not provide any input. We assume that this was due to the need for small business to attend to the daily requirements of running their business. Hopefully their membership in trade organizations, for example TIA, JPMA, AAFA, and others resulted in their concerns being represented. It should be noted that Grant Nelson (AWB) was copied of multiple emails which were sent to the participants of pilot and that some of these even outline topics that agency was seeking input on.

In addition, a listserv provided the public and small businesses, among others, with up-to-date information on the proposed rule. Also a press release and focus sheet were release at the start of the pilot phase.

Section 6: The SIC Codes of Impacted Industries

Ecology assumed that known businesses operating in Washington State manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS⁶ categories, including:

- 3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products),
- 4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing),
- 3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care), and
- 3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture).

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⁶ North American Industry Classification System (see <http://www.census.gov/eos/www/naics/index.html>)

Section 7: Impacts on Jobs

Ecology used the Washington State Office of Financial Management's 2002 Washington Input-Output Model (OFM-IO) to estimate the proposed rule's first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry, or industries, are entered in the OFM-IO model as decreases in spending and investment.

Ecology calculated that between approximately zero and 0.5 jobs are likely to be permanently lost under the proposed rule. Ecology was not able to estimate the second-round impacts of the proposed rule, which include the earned income of secondary parties and reduce overall job impacts. This result does, however, account for the labor income earned during efforts to research and report CHCC content.