



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Cost-Benefit and Least Burdensome Alternative Analyses

Supplemental Rule Proposal

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

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Preliminary Cost-Benefit and Least Burdensome Alternative Analyses Supplemental Rule Proposal

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

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Table of Contents

EXECUTIVE SUMMARY	1
CHAPTER 1: BACKGROUND AND SCOPE	2
Background.....	2
Economic analysis of original proposed rule (October 2010)	4
Scope of Analysis	4
CHAPTER 2: BASELINE AND EXEMPTIONS.....	6
Baseline.....	6
Changes under Ecology’s proposed rule.....	7
Analytic exemptions	7
Analytic approach.....	8
CHAPTER 3: COSTS OF PROPOSED RULE.....	10
Quantified costs of Ecology’s proposed rule	10
CHAPTER 4: BENEFITS OF PROPOSED RULE	14
Improved information	14
Public confidence and government transparency	14
Credibility, consumer behavior, and investment	14
Economies of scale in manufacturing.....	15
Greater understanding of distribution of CHCCs in Washington children’s products	15
Avoided lawsuits and likelihood of negative health impacts.....	15
Quantified benefits of Ecology’s proposed rule	16
CHAPTER 5: CONCLUSION.....	18
CHAPTER 6: LEAST BURDENSOME ALTERNATIVE ANALYSIS	20
Introduction.....	20
Determination	20
General goals and specific objectives of the authorizing statutes.....	20
Alternative rule content considered	20
APPENDIX A: CHANGES UNDER THE PROPOSED RULE COMPARED TO THE BASELINE (NO RULE).....	26
APPENDIX B: INTERSTATE CHILDREN’S PRODUCTS REGULATIONS	31

List of Tables

Table 1: Costs and Benefits of Ecology’s Proposed Rule 1
Table 2: Costs and Benefits of Ecology’s Proposed Rule 18

Executive Summary

The Washington State Department of Ecology (Ecology) first proposed the new rule chapter called the Children’s Safe Products – Reporting Rule (Chapter 173-334 WAC) in October 2010. Ecology revised the October 2010 version of the proposed rule based on comments from businesses and the public, and is filing a supplemental proposal to allow another opportunity for public comment on the revised proposed rule.

The Administrative Procedures Act (APA; RCW 34.05.328(d)(e)) requires two types of analyses before adopting a significant legislative rule – a cost-benefit analysis and a least burdensome alternative analysis. This report provides the results of these analyses and shows the potential impacts associated with the proposed rule.

For Ecology’s proposed rule, *Chapter 173-334 WAC – Children’s Safe Products – Reporting Rule*, this means Ecology must estimate the impacts of the proposed rule on individuals, businesses and the public. Impacts are determined by comparing the expected regulatory environment in the absence of Ecology’s proposed rule, to the way chemicals of high concern to children (CHCC) content reporting will occur under Ecology’s proposed rule.

Ecology analyzed the impacts of the proposed rule relative to the current absence of a rule, with the exception of those elements of the rule that were dictated by law, and over which Ecology did not have discretion.

Ecology analyzed the ranges of quantifiable impacts, and many likely qualitative impacts, relative to the baseline. The APA requires Ecology to consider both the qualitative and quantifiable impacts in its analysis. Based on its analysis, Ecology determined the likely benefits of the proposed rule exceed the likely costs, accounting for both quantified and qualitative impacts.

Table 1: Costs and Benefits of Ecology’s Proposed Rule

Annualized Costs millions of \$/year	Benefits
Testing costs: \$22.4 – 34.8 million	<ul style="list-style-type: none"> • Creation of a comprehensive database. • Public confidence and government transparency. • Credibility, consumer behavior, and investment. • Economies of scale in manufacturing. • Greater understanding of the distribution of CHCCs in Washington’s children’s products and economy. • Avoided children’s health. • Recall or litigation costs, related to \$100 thousand – \$15 million in costs per recall or lawsuit.

Chapter 1: Background and Scope

Background

Ecology is filing a supplemental proposal of 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."

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 show the presence of the chemical in:
 - Human umbilical cord blood.
 - Human breast milk.
 - Human urine.
 - Other bodily tissues or fluids.
- Found through sampling and analysis to be present in:
 - Household dust.
 - Indoor air.
 - Drinking water.
 - Elsewhere in the home environment.
- Added to or 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.
- Implement direction from the Governor.¹

This included discussion of the process the agencies used to determine chemicals of concern 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

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.

believes federal programs have substantially pre-empted our agency for the enforcement of these limits. Therefore, the proposed rule only addresses the notification requirements.

- Notification to Ecology that a children's product contains an intentionally added high priority chemical of high concern for children.
- Notification to Ecology that a children's product is contaminated with a [not intentionally added] high priority chemical of high concern for children at a level exceeding 100 ppm unless the manufacturer determines that the presence of any CHCC has been minimized through use of an appropriate due diligence program.
- 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 rule. These processes were also used to get other input from the public, business, environmental interests, and health interests might have toward rulemaking.

Pilot phase

Ecology conducted a pilot rulemaking during the rule development process, to learn more about the effects of a CSPA rule as it applies to actual manufacturers subject to the rule. Pilot rules or pilot phases to rules allowing Ecology to:

- Construct rules that minimize compliance difficulties for the regulated community.
- Effectively achieve the goals of the authorizing statutes, other law, and other existing Ecology goals and policies.

The pilot phase gave manufacturers a chance to test how the proposed rule may affect them. Pilot participants were expected to communicate any issues as they occur rather than waiting until the end of the pilot. Additionally, participants were strongly encouraged to submit a written final report indicating what worked and clarifying any unresolved issues. Ecology considered this input and our own experience with the pilot to draft the proposed rule.

Ecology gave participants the pilot rule language, including the list of reporting chemicals and the process we used to identify them. We encouraged participants to seriously evaluate how the implementation of the rule would affect them. Participants were asked to determine what they would need to do to comply with the rule for specific products or product categories, and to identify parts of the rule they thought needed clarification or modification.

Ecology gathered information during the pilot process to inform the stakeholder process and proposed rule. The information Ecology hoped to gather included, but was not limited to:

- Any data or suggestions to help Ecology determine the reporting trigger values. This could include risk assessments, 'safe harbor' values from other authoritative bodies, assumptions used to determine likely migration of chemicals, etc.
- Suggestions on which chemicals should be removed or added to the reporting list.

- Suggestions on how to improve the chemical selection process.
- Any data on chemicals likely to be in various children's products, or the raw material used to make children products.
- Information on analytical techniques for chemicals in different matrices (e.g. plastics, lotions, fabrics).
- Recommended layout for the reporting form to support one annual submittal for each manufacturer covering multiple products.
- Information on the time required to reformulate products.
- Information on the typical time frame for a product to go from the design phase to the shelf.
- Information on lead times needed to affect seasonal (Halloween, Thanksgiving, etc.) products including ordering and tracking and how compliance issues for these types of products might be different from products available year round.
- Recommendations on how to better phase in the reporting.
- Suggestions to improve the rule regarding the contaminant vs. intentionally added issue.
- Information about labs used to test products - locations, prices etc.
- Suggestions regarding any needed clarification of the confidential business information (CBI) requirements under Washington's public disclosure law.
- Information that would help us better understand the costs of complying with this law. This could include lab costs, third party monitoring, an audit system etc.
- Suggestions regarding safer alternative assessments including company specific mandates or use of third party systems.

Economic analysis of original proposed rule (October 2010)

Ecology first proposed this rule in October 2010. In response to comments from businesses and the public, Ecology revised the October 2010 version of the proposed rule, and is filing a supplemental proposal to allow another opportunity for public comment on the revised proposed rule. The October 2010 version of the proposed rule is analyzed in the Preliminary Cost-Benefit Analysis and Least Burdensome Alternative analysis (Ecology publication no. 10-07-035) and Small Business Economic Impact Statement (Ecology publication no. 10-07-036). Both publications are available through Ecology's website, www.ecy.wa.gov.

Scope of Analysis

Ecology analyzed the impacts of the supplemental proposed rule in the following sections of this document (Ecology publication 11-07-009):

- **Chapter 2: Baseline and Exemptions**
This chapter explains the baseline concepts to which Ecology's proposed rule was compared in Ecology's analysis, as well as what was not analyzed, and how rule impacts were analyzed.

- **Chapter 3: Costs of the Proposed Rule**
This chapter explains the cost of the proposed rule.
- **Chapter 4: Benefits of the Proposed Rule**
This chapter explains the benefits of the proposed rule.
- **Chapter 5: Conclusions**
This chapter summarizes Ecology's results and includes comments on the analysis.
- **Chapter 6: Least Burdensome Alternative Analysis.**
This chapter explains Ecology's determination on whether the proposed rule places the least burden possible on those required to comply with it, while fulfilling the goals and objectives of the authorizing legislation.

Chapter 2: Baseline and Exemptions

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).** This law 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.
- **Federal Consumer Product Safety Improvement Act of 2008 (CPSIA).** This law requires manufacturers to have a process in place to test their products for lead. Some chemicals are restricted in cosmetic products under Food and Drug Administration (FDA) regulations. While lead is not on the CHCC list, the existence of other chemical restrictions and reporting may allow some businesses greater familiarity with process knowledge and reporting protocols.
- **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.

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

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

Changes under Ecology's proposed rule

The revised proposed rule sets out requirements for:

- Manufacturers or importers to notify Ecology on an annual basis about:
 - All children's products they manufacture or import for sale in Washington State that contain intentionally added Chemicals of High Concern to Children (CHCCs). The notice must include information about the firm, the category of the product, and the amount (in categories) of CHCC in the product.
 - All children's products they manufacture or import for sale in Washington contaminated with greater than 100 ppm of CHCCs, or be able to demonstrate that the presence of any CHCC has been minimized through use of an appropriate due diligence program.
- The timing of first reporting phased in according to the product tier and size of manufacturer. Product tiers (1 – 4) represent the level of contact a child is likely to experience with various types of products. Product categories are based on levels of the GS1 Global Product Classification (GPC) standard- an industry standard for product classification.
- Enforcement processes 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

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 rule-making 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.

Ecology only has 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 66 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.

Chapter 3: Costs of Proposed Rule

Ecology quantitatively assessed the likely costs of the proposed rule, and developed appropriate quantitative estimates of the value of those costs for which it was possible. Ecology expects the elements of the proposed rule over which Ecology had discretion to result in costs related to:

- The timing of first reporting.
- Reporting ranges of CHCC content.

The authorizing law allows Ecology to phase in first reporting, but it does not explicitly dictate the degree of phasing. Ecology's choice of the degree of phasing in the reporting schedule only acts to mitigate the costs of reporting on the initial date specified in the law (six months after the adoption date of a rule on this topic). Ecology, therefore, does not believe the choice of longer times before first reporting will impose additional costs.

Ecology determined the ranges of CHCC content that manufacturers must report into, either by reporting specific content inherently within a range, or by reporting that the content is between the endpoints of a range. Ecology expects the proposed ranges – and in particular the lower endpoint of the lowest range – to contribute to the likely costs of the proposed rule.

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 supply 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)

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

- 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 Washington 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 Washington based businesses that will need to comply with the proposed rule. Ecology could not confidently determine the degree to which many of these businesses were:

- Direct producers.
- Assemblers of parts manufactured by other firms.
- Importers.
- Distributors.

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.

To maintain the most conservative estimate of net benefit (by overestimating costs to compensate for uncertainty), Ecology assumed all of these businesses would behave as though they had little or no process knowledge—as is likely for importers or distributors only. The more responsible businesses will have some (if not complete) control or knowledge of the manufacturing process and content of their children’s products. This is achieved through direct control or contracting. Ecology also expects that many businesses will already have contracted process knowledge to mitigate liability in the event of product recall.

Therefore, Ecology assumed that any given business would maintain at least existing business practices and standards, and that a business might choose to test for a maximum of ten CHCCs. This is likely an overestimate of costs, but as discussed in the above paragraph, Ecology chose the most cautious approach to dealing with the limited knowledge of the scope of each business’s process and chemical knowledge.

Based on surveys of current testing costs, Ecology estimated that the 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. 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 if necessary. This is if all covered businesses perform testing.

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

Sensitivity analysis

Those businesses that have directly or indirectly sufficient information about the manufacturing process to know the intentionally added chemicals, and the quality assurance to minimize contamination with other chemicals will not need to test. This is more likely for manufacturers than for importers or distributors. If half of the covered businesses test, or if all businesses must test for only five chemicals because they don't have sufficient process knowledge or exhibit due diligence, then costs fall to \$1.4 million – \$13.8 million the first year, followed by \$1.4 million in subsequent years.

It is also unlikely that the proposed rule will require the creation of new tests for all possible unknown contaminants, for all covered businesses. If Ecology assumes that no new tests will need to be created for contaminants at or above a concentration of 100 ppm, then the costs fall to \$2.8 million annually.

The above calculations generated at total likely present value (PV)⁵ 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.

If only half of businesses need to perform testing, only five (rather than ten) chemicals require testing for contamination, on average, then the PV falls to \$22.4 million – \$34.8 million.

If no new testing methods need to be created for the 100 ppm level, then the PV falls to \$44.7 million in the all tests for all businesses scenario.

Overall, Ecology considered the central range of these scenarios as a reasonable estimate of overall costs: \$22.4 million – \$34.8 million.

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

Chapter 4: Benefits of Proposed Rule

Ecology expects mandatory reporting of CHCC content to benefit the public in the short and long run through the information provided on potential hazards posed by children's products. Information on CHCC content may be used for:

- Consumer and government decision making.
- Investment decisions.
- Industry understanding of CHCC content across the supply chain.

Ecology believes these benefits hold for both reporters and non-reporters (manufacturers of children's products that do not contain reportable amounts of CHCCs). In particular, the status of being a non-reporting manufacturer, or having products that do not require notification of Ecology, communicates information about the qualities of a manufacturer's children's products to the consumer.

Improved information

Ecology believes that notification of CHCC content for a comprehensive list of CHCCs, as defined in the law provides significant additional information for planning and implementing future product labeling or CHCC reduction goals. Compared to information collected under only federal regulations will likely result in a better understanding of the CHCC distribution in children's products sold in Washington. This can result in reductions in children's exposure to CHCCs more efficiently and with a greater degree of equity across the local economy. Ecology believes this additional information will contribute to better policy decisions regarding CHCCs in future, and transparency in both government and business actions in regulatory compliance.

Public confidence and government transparency

With a comprehensive CSPA reporting rule in place, understanding of CHCC content in children's products in Washington State is likely to create more public confidence in the quality and safety of products in the marketplace. This is probable not only for the CHCC tiers or values themselves, but for any future regulatory actions taken to reduce children's exposure to CHCCs. Increased public confidence in the quality and the scope of reported numbers increases the likelihood the public will more fully understand any specific regulatory actions, why they are taken, and how they affect the local economy, as well as be able to participate from a more informed standpoint in the process.

Credibility, consumer behavior, and investment

Ecology expects the information on CHCC content in children's products prompted by the proposed rule to ultimately be used to benefit consumers by assisting them in making more efficient consumption choices relative to their preferences. This reduces uncertainty for consumers that include childhood toxicity information in their purchasing decisions, because they will have better information when making purchase decisions. The combination of increased knowledge about CHCC content in children's products, and increased confidence in the scope and accuracy of the information will benefit consumers' ability to behave in line with their full set of preferences. It is also likely to reduce the costs related to misinformation or

uncertainty about the content of children's products, which may lead to a reduction in consumer search times, and a reduction in consumer avoidance of products that are not actually considered harmful in a CSPA context.

The CHCC content information may also benefit investors' ability to make financial decisions based on expected benefits and risks to manufacturers of children's products. This is dependent on CHCC content and other firm attributes, as relates to elements such as risk of liability and recalls.

Economies of scale in manufacturing

For those manufacturers operating in multiple markets – interstate or internationally – in addition to Washington State, the proposed rule may offer the benefit of economies of scale in production. This means, instead of producing children's products to suit the regulations of multiple markets, a manufacturer may find it beneficial to use information discovered in the CHCC reporting process to produce a homogeneous good across all markets. This may reduce production costs for some manufacturers.

Greater understanding of distribution of CHCCs in Washington children's products

Ecology expects the public, regulatory agencies, and business to benefit from a greater understanding of the local economy and its relationship to CHCC content in children's products. For all three points of view – public, policy, and business – the proposed rule offers opportunity for Washington-specific improvements and efficiencies in:

- Policy planning and creation
- Public relations
- Consumer purchasing
- Investment behavior
- Children's health
- Avoided litigation

Ecology expects the proposed rule to increase transparent, credible information in all of these interactions between the public, policy, and businesses – opening the possibility for benefits accruing to one or more of these groups, and benefiting Washington as a whole.

Avoided lawsuits and likelihood of negative health impacts

Ecology expects the proposed rule, through better manufacturer and importer understanding of product content, to reduce the likelihood of:

- Health impacts from children's products containing significant levels of CHCCs.
- Litigation resulting from harm to children.

Ecology points out, however, that the presence of a chemical does not establish that there will be harm to a child, nor that the reporting ranges are indicative of prospective known harm or liability.

Ecology could not confidently estimate the degree to which these reductions might occur, due to the unknown degree to which children's products containing CHCCs would cause harm to children, if any, and the associated lawsuits that might be expected. Ecology did, however, estimate the range of costs that might be avoided per lawsuit, to compare the range of reductions that would partially or fully mitigate estimated quantified costs.

Quantified benefits of Ecology's proposed rule

In the absence of a current rule, Ecology based conservatively low quantitative estimates of avoided costs of recall, lawsuits, or other violation of the proposed rule on the federal CPSIA rule's caps on civil damages for known violations.

Under the current federal rule, the caps are:

- \$100 thousand for known violations
- \$15 million for related series of violations

Ecology could not confidently estimate the degree to which these violations (possibly resulting in recalls, lawsuits, or children's health impacts under the baseline) would occur, and so compared the per-instance avoided costs to the total estimated costs of reporting under the proposed rule. Ecology calculated relative costs and benefits based on the midpoint value of this avoided cost range, of \$7.55 million per instance, as well. These values account for the loss of court cases, and do not include the inherent costs of lawsuits incurred regardless of outcome.

In relative terms, at the low end of the avoided costs range (small voluntary recalls, for example, or slowdowns or reductions in the supply process), it would take at least 4.5 thousand avoided cases of recalls, lawsuits, or children's health impacts of a minor degree, as could result from significant CHCC exposure. This is over 20 years, or about 220 instances/year.

At the midpoint of the range, more likely accounting for possibilities of lawsuits and the cost of unsold products, it would take at least 6 avoided cases of CHCC content resulting in recalls, lawsuits, or children's health impacts of a minor degree. Over 20 years, this is about a 33 percent reduction in the likelihood of any such case.

At the high end of the range of possible per-instance avoided costs (likely representing worst-case scenarios of large impact), it would take at least 3 avoided cases of CHCC content resulting in recalls, lawsuits, or children's health impacts of a minor degree. Over 20 years, this is about a 15 percent reduction in the likelihood of any such case.

Chapter 5: Conclusion

The Washington State Department of Ecology (Ecology) is proposing a rule to implement the reporting requirements establish in Chapter 70.240 RCW (Children’s Safe Products Act; CSPA).

The Administrative Procedure Act (Chapter 34.05 RCW) requires that, before adopting a significant legislative rule, Ecology must, “Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.” [RCW 34.05.328(1)(c)]

For Ecology’s proposed rule, *Chapter 173-334 WAC – Children’s Safe Products – Reporting Rule*, this means Ecology must estimate the impacts of the proposed rule on individuals, businesses and the public. Impacts are determined by comparing the expected regulatory environment in the absence of Ecology’s proposed rule, to the way CHCC content reporting will occur under the proposed rule.

Ecology analyzed the impacts of the proposed rule relative to the current absence of a rule, excepting from analysis those elements of the rule that were dictated by the law, and over which Ecology did not have discretion.

Ecology analyzed the ranges of quantifiable impacts, as well as many likely qualitative impacts, relative to the baseline. Based on its analysis, Ecology determined the likely benefits of the proposed rule exceed the likely costs, accounting for both quantified and qualitative impacts.

Table 2: Costs and Benefits of Ecology’s Proposed Rule

Annualized Costs millions of \$/year	Benefits
Testing costs: \$22.4 – 34.8 million	<ul style="list-style-type: none"> • Creation of a comprehensive database. • Public confidence and government transparency. • Credibility, consumer behavior, and investment. • Economies of scale in manufacturing. • Greater understanding of the distribution of CHCCs in Washington’s children’s products and economy. • Avoided children’s health impacts • Recall or litigation costs, related to \$100 thousand – \$15 million in costs <i>per recall or lawsuit</i>.

Chapter 6: Least Burdensome Alternative Analysis

Introduction

RCW 34.05.328(1)(e) requires Ecology to “determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.”

Determination

Based on research and analysis required by RCW 34.05.328(1)(e) the Department of Ecology determines:

There is sufficient evidence the rule is the least burdensome version of the rule for those who are required to comply, given the goals and objectives of the law, for Ecology to propose the rule.

General goals and specific objectives of the authorizing statutes

Ecology believes the authorizing law bears the general goal of understanding CHCC content in children’s products used in Washington State. A specific objective is the institution of a comprehensive reporting system of CHCC content in children’s products, that will inform not only current understanding of the presence of these chemicals, but also adequately inform future government or private sector action on addressing or reducing risks to children’s health. Other objectives include the inclusion of only CHCCs with specific characteristics delineated by statute.

Alternative rule content considered

- **Use detection limit as the reporting trigger value.** Ecology expects this option to increase the frequency of testing, increase testing costs at lower levels, and increase the number of reporters. This option is not less burdensome than the content of the proposed rule.
- **Use a risk assessment to determine the trigger value.** While the data collected by the reporting requirements will help inform which components and chemicals may need further attention, this law has always been a reporting law, not a certification of safety of a certain chemical in a particular product. Doing so would not meet a specific requirement in the authorizing statute. This option is not less burdensome than the content of the proposed rule.
- **Do not phase in the reporting requirement.** Ecology expects this option to place a higher burden on entities required to comply with the proposed rule. This option is not less burdensome than the content of the proposed rule.
- **Require reporting on an individual SKU basis.** Ecology expects this option to place a higher reporting burden than the brick-level categorical reporting, as businesses would have to further subdivide their product lines to determine the status and degree of

compliance, and what to report. This option is not less burdensome than the content of the proposed rule.

- **Set a specific reporting date for chemicals in the internal components.** Ecology determined that for internal components it made more sense to establish a reporting schedule on a product-by-product basis based on the likelihood of the child being able to access such components. Ecology also allowed for reasonable use and abuse to be considered in the determination of whether internal components need to be included. This allows for those internal components that would likely not be accessed by a child under reasonable abuse standards to be exempt from reporting. This option is not less burdensome than the content of the proposed rule.
- **Leave internal components out of the rule.** Ecology determined that in some cases it is likely that manufacturers will not take adequate steps to prevent a child from accessing internal components. For this reason, Ecology did not eliminate all consideration of internal components. Ecology allowed for reasonable use and abuse in the determination of whether internal components are included in reporting requirements. This allows for those internal components that would likely not be accessed by a child under reasonable abuse standards to be exempt from reporting. This option is not consistent with the notification requirements in the authorizing law.
- **Limit the list of reporting chemicals to those that have been proven to cause harm at the reporting concentrations.** All of the chemicals on the list of CHCCs in the proposed rule meet the criteria defined by the authorizing law. Ecology chose not to link the reporting level to health effects because such an evaluation is beyond the agency's resources and expertise and is not required by the authorizing law.
- **Use leachable values not total for reporting chemicals.** Ecology considered basing the reporting triggers on leachable levels as has been done in other jurisdictions. However, the authorizing law uses the term 'presence' in describing what needs to be reported the agency determined that the total amount needs to be reported. This option is not consistent with the notification requirements in the authorizing statute.
- **Include lead on the reporting list.** Lead in children's products is regulated by the federal Consumer Product Safety Improvement Act of 2008 and substantially preempts Washington's ability to require manufacturers to report on the presence of lead. Since manufactures are already required to document the amount of lead in children's products, additional notification under CSPA is redundant. This option is not less burdensome than the content of the proposed rule.
- **Exempt those companies who already report to the FDA.** The authorizing statute excludes food and drugs regulated by the Food and Drug Administration already. Additional exemptions from the notification requirements are not consistent with the authorizing statute.
- **Limit the list of reporting chemicals and the trigger amounts to those in the REACH program.** Ecology considered chemicals regulated under REACH during the development of the list of chemicals of high concern for children but found that limiting the list in this way would be inconsistent with the criteria for CHCCS specified in the authorizing law.

- **Limit the reporting ranges to existing health based numbers.** While the data collected by the reporting requirements will help inform which components and chemicals may need further attention, this law has always been a reporting law, not a certification of safety of a certain chemical in a particular product. Limiting the reporting ranges in this way is both beyond the resources of the state and inconsistent with the intent of the authorizing statute.
- **Put enforcement provisions for the limits on Lead, Cadmium, and Phthalates in the rule.** Ecology considered adding enforcement provisions to the rule but determined that such rules are not needed at this time because Washington's standards for these chemicals are substantially preempted by the federal Consumer Product Safety Improvement Act of 2008. This option is not less burdensome than the content of the proposed rule.
- **Prove harmful exposure to establish what products and chemicals require reporting.** Ecology considered basing the list of CHCCs on established evidence of harm. However, because much of the needed information to make such an assessment is not currently available, this option is not feasible. Instead, Ecology developed a chemical selection process to assure that all of the chemicals on the list of CHCCs in the proposed rule meet the criteria defined by the authorizing law. While, the data collected will help inform which components and chemicals may need further attention, this law has always been a reporting law, not a certification of safety of a certain chemical in a particular product. Proving harm before collecting additional information on the presence of CHCCs in products is inconsistent with the authorizing statute.
- **Provide a detailed list of all the products the rule applies to.** Ecology considers this option to be very difficult if not impossible to accomplish. Instead, Ecology clarified definitions of children's products; based the notification system on the GS-1 classification system that is already universally used worldwide; and will provide further detail in the notification database. Developing such a list, and complying with it, would place additional burden on those entities providing this information. Ecology believes the authorizing law does not justify this additional burden and risk, and that the state can meet the goals of the law without the creation of such a list. This option is not less burdensome than the content of the proposed rule.
- **Provide a detailed list of all the components the rule applies to.** Ecology considers this option to be very difficult if not impossible to accomplish. Instead, Ecology clarified the definition of product component in the rule with further detail to be provided in the notification database. Developing such a list, and complying with it, would place additional burden on those entities providing this information. Ecology believes the authorizing law does not justify this additional burden and risk and that the state can meet the goals of the law without the creation of such a list. This option is not less burdensome than the content of the proposed rule.
- **Limit the list to chemicals which have been found in children's products.** The authorizing statute dictates that the list of CHCCs in the proposed rule include those:

- 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.

All of the chemicals on the list of CHCCs in the proposed rule meet the criteria defined by the authorizing law. The purpose of the authorizing statute is to find out which chemicals are actually present in children's products. To limit the list to what we already know is inconsistent with the authorizing statute.

- **Require that the report include sales figures.** Ecology believes this additional reporting burden is not allowed by the authorizing law.
- **Increase the number of reporting ranges.** Ecology believes this option is justified to meet the intent of the authorizing statute to provide needed information to help focus additional efforts to protect children's health. Increasing the number of ranges requires smaller ranges, and thereby places additional burden on those required to comply with the proposed rule. However, Ecology believes this additional burden is necessary to meet the goals and objectives of the authorizing law.
- **Reduce the number of reporting ranges.** Reducing the number of reporting ranges would mean expanding the size of each range, or raising the lowest reporting quantity of CHCCs. This option would exclude significant and important information about the concentrations of CHCCs present in children's products and would not meet the goal of the authorizing statute.
- **Exempt contamination from consideration when reporting.** The issue at hand is the CHCC content of children's products, with the intent of collecting comprehensive and correct information on the quantity of CHCCs. The origin of such content is not relevant to meeting this goal, and exemption of some of this content would specifically fail to meet the purpose of the authorizing statute. Ecology has, however, given businesses two options for contaminants under the proposed rule. Businesses must either report contaminants exceeding a concentration of 100 ppm, or demonstrate due diligence in keeping contaminants to a minimum in their children's products.
- **Establish a more refined process on how chemicals will be added or removed from the list.** Ecology determined that additional rule making is required to add or remove chemicals from the CHCC list. Since all rulemaking must follow the requirements in the Administrative Procedures Act, Ecology determined there was no need to further clarify this process in the rule.
- **Establish de minimis values on a chemical-by-chemical basis.** Ecology considered chemical specific de minimis values but determined that information necessary to establish these values was not available. While the data collected by the notification requirements will help inform which components and chemicals may need further attention, this law has always been a reporting law, not a certification of safety of a

certain chemical in a particular product. This option is not consistent with the purpose of the authorizing statute.

- **Put the process used to select the reporting list of chemicals in the rule.** The process used to select the reporting list under the authorizing law is immaterial to the proposed rule and procedures. The criteria for inclusion are also delineated by the authorizing law. A discussion of the CHCC selection process is available to the public in Ecology's report to the Legislature on that subject.⁶
- **Do not use gross sales to establish a reporting schedule.** Gross sales are a proxy for both manufacturer or importer size, and the amount of CHCC-containing product produced by reporters. Ecology believes using an alternate measure of business size to determine the reporting schedule would place more burden on small businesses that are less likely to have mitigating cost factors. Also, the definitions are broad enough to assure that the reported information does not result in the release of a significant degree of business information (a degree that may affect business practices and competition). This option is not less burdensome than the content of the proposed rule.
- **Require the upstream supplier to report.** The authorizing statute assigns the notification requirement to the manufacturer of the children's product. Unless the upstream supplier is also a manufacturer of children's products, they are exempt from the CSPA. Upstream suppliers may report on behalf of a manufacturer but cannot be compelled to do so. Reporting by the upstream supplier is both a shift of burden that is inconsistent with the authorizing statute.
- **Exempt products that list a CHCC chemical on a product label from the notification requirements.** Ecology considered this option but determined that the authorizing statute requires submittal of information that is unlikely to be included on a product label, such as the function or the amount of the chemical in the product.
- **Use a higher reporting trigger initially, and then lower this value over time.** This option would reduce the burden on notifiers in the short run, but would come with the additional costs of adjusting CHCC-measuring procedures or testing over time, as the reporting trigger fell. Ecology instead phased in the reporting schedule under the proposed rule, allowing additional time for most businesses to report for the first time, without incurring the costly adjustment costs of changing measurement or testing procedures. This option is not less burdensome than the content of the proposed rule.
- **Include enough information in the report so that the consumer can decide what to buy.** A level of information fully describing to a consumer what to buy and what not to buy, presumably based on health-risk preferences, is not authorized under the proposed rule. This option would also be more burdensome for those required to comply with it. This option is not less burdensome than the content of the proposed rule.
- **Calculate penalties on a product by product basis.** The authorizing statute allows Ecology to issue penalties for violations of the act, including failure to notify the agency. The proposed rule clarifies that failure to provide the required notice for the presence of

⁶ Washington State Department of Ecology (2009). Children's Safe Product Act Report. Ecology publication number 09-07-014. <http://www.ecy.wa.gov/biblio/0907014.html>

each CHCC in a specific product component constitutes a single violation. To be workable, the violation must match the requirement. Since Ecology is proposing to require notification by product category and product component, rather than on a product-by-product basis, this option is not workable and would place additional burden on those required to comply with the proposed rule. This option is not less burdensome than the content of the proposed rule.

- **Require a notification trigger of 1000 ppm.** Ecology considered a number of notification trigger levels including using 1000 ppm of any chemical as is done in some other jurisdictions. However, the purpose of the authorizing statute is to collect information to help the agency and consumers better understand where children's products are a source of exposure to CHCCs for children. Advice from the medical and public health community suggest that in some cases the presence of CHCCs in products at levels less than 1000 ppm could be potentially harmful to children. This option would not meet the goals and objectives of the authorizing statute and is not based on a children's health or exposure assumption.
- **Exempt Food and Drugs from Reporting.** The authorizing statute already excludes food and drugs that are regulated by the U.S. Food and Drug Administration from the definition of children's cosmetics. The proposed rule clarifies this exclusion.

Appendix A: Changes under the Proposed Rule Compared to the Baseline (no rule)

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis
WAC 173-334-010 Introduction	-	none
WAC 173-334-020 What is the purpose of this chapter?	-	none
WAC 173-334-030 To whom does this chapter apply?	-	none
WAC 173-334-040 What definitions apply to terms used in this chapter?	-	none
WAC 173-334-050 What is the purpose of the CHCC list?	-	none
WAC 173-334-060 How can the department revise the CHCC list?	Applies to Ecology	none
WAC 173-334-070 How will the department identify chemicals for inclusion in the CHCC list?	Applies to Ecology	none
WAC 173-334-080 What must the manufacturer include in its notice to the department?		
(1) The notice required by RCW 70.240.040 must be filed annually with the department for each CHCC by product category and component. The notice must include all of the following information:		Explicitly dictated in authorizing statute
(a) The name of the CHCC and its chemical abstracts service registry number.		Explicitly dictated in authorizing statute
(b) The product category or categories in which it occurs.		Explicitly dictated in authorizing statute
(c) The product component or components within each product category in which it occurs.		
(d) A brief description of the function, if any, of the CHCC in each product component within each product category.		Explicitly dictated in authorizing statute

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis
<p>(e) The total amount of the CHCC by weight contained in each product component within each product category. The amount may be reported in ranges, rather than the exact amount. If there are multiple CHCC values for a given component in a particular product category, the manufacturer must use the largest value for reporting.</p> <p>For the purpose of this rule, the reporting ranges are as follows:</p> <p>(i) equal to or more than the PQL but less than 100 ppm (0.01%),</p> <p>(ii) equal to or more than 100 ppm (0.01%) but less than 500 ppm (0.05%),</p> <p>(iii) equal to or more than 500 ppm (0.05) but less than 1,000 ppm (0.1%),</p> <p>(iv) equal to or more than 1,000 ppm (0.1%) but less than 5,000 ppm (0.5%),</p> <p>(v) equal to or more than 5,000 ppm (0.5%) but less than 10,000 ppm (1.0%), or</p> <p>(vi) equal to or more than 10,000 ppm (1.0%).</p>	<p>This reporting is explicitly dictated in the authorizing statute (Chapter 70.240 RCW – Children’s Safe Products).</p> <p>The rule creates no specific requirements on how a manufacturer determines if they need to file a report. But normal manufacturing practices can include contract specifications, quality control mechanisms, and/or testing protocols to determine the amount of a chemical in product materials. These procedures are already necessary for manufacturers who must comply with Washington’s toxics in packaging law (Chapter 70.95G RCW – Toxics in Packaging).</p> <p>Manufacturers must have procedures in place in order to test for lead, cadmium, and several varieties of phthalates under the federal Consumer Product Safety Improvement Act of 2008 (CPSIA). Some chemicals are restricted in cosmetic products under FDA regulations.</p> <p>The new regulation will require companies to determine if they need to report on an expanded list of chemicals than currently required.</p>	
<p>(f) The name and address of the reporting manufacturer or trade organization and the name, address and phone number of the contact person for the reporting manufacturer or trade organization. When a trade organization is the reporting party, the report must include a list of the manufacturers on whose behalf the trade organization is reporting, and all of the information that would otherwise be required of the individual manufacturers.</p>		<p>Explicitly dictated in authorizing statute</p>
<p>(g) Any other information the manufacturer deems relevant to the appropriate use of the product.</p>		<p>Explicitly dictated in authorizing statute</p>

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis
WAC 173-334-090 Who is required to provide notice to the department?	-	Explicitly dictated in authorizing statute
WAC 173-334-100 What time period is covered by the notice?		Explicitly dictated in authorizing statute
WAC 173-334-110 When must manufacturers begin to provide notice?		
(1) This section establishes when manufacturers must first provide notice to the department if a children's product contains a chemical on the CHCC list. The CSPA notice requirement will be phased-in as provided in the schedule set out in subsection (2) based on the manufacturer categories and children's product tiers established in subsections (3) and (4). Manufacturers conducting safer alternative assessments for CHCCs may obtain an extension of the first notice date as provided in subsection (5). After the first notice date, notice must be provided annually on the anniversary of the first notice.	-	

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis																																			
<p>(2) The following table specifies when the first annual notice must be provided to the department in compliance with RCW 70.240.040. The due date will be determined by counting the number of months specified in the table, beginning with the first calendar month following the calendar month in which this rule goes into effect. The notice will be considered delinquent if not received by the department by the first day of the month indicated.</p> <p>Notice due dates from adoption date of rule, values are in months.</p> <table border="1" data-bbox="201 464 1037 946"> <thead> <tr> <th>Manufacturer categories</th> <th>Product Tier 1</th> <th>Product Tier 2</th> <th>Product Tier 3</th> <th>Product Tier 4</th> </tr> </thead> <tbody> <tr> <td>Largest</td> <td>12</td> <td>18</td> <td>24</td> <td>case by case</td> </tr> <tr> <td>Larger</td> <td>18</td> <td>24</td> <td>36</td> <td>case by case</td> </tr> <tr> <td>Middle</td> <td>24</td> <td>36</td> <td>48</td> <td>case by case</td> </tr> <tr> <td>Smaller</td> <td>36</td> <td>48</td> <td>60</td> <td>case by case</td> </tr> <tr> <td>Small</td> <td>48</td> <td>60</td> <td>72</td> <td>case by case</td> </tr> <tr> <td>Tiny</td> <td>60</td> <td>72</td> <td>84</td> <td>case by case</td> </tr> </tbody> </table>	Manufacturer categories	Product Tier 1	Product Tier 2	Product Tier 3	Product Tier 4	Largest	12	18	24	case by case	Larger	18	24	36	case by case	Middle	24	36	48	case by case	Smaller	36	48	60	case by case	Small	48	60	72	case by case	Tiny	60	72	84	case by case	<p>A phased in approach is being used to both allow an efficient use of agency resources and to give businesses time to develop systems to lessen the burden of reporting. Larger companies with greatest pre-existing capacity to conduct activities necessary for reporting report earlier than smaller manufacturers.</p>	
Manufacturer categories	Product Tier 1	Product Tier 2	Product Tier 3	Product Tier 4																																	
Largest	12	18	24	case by case																																	
Larger	18	24	36	case by case																																	
Middle	24	36	48	case by case																																	
Smaller	36	48	60	case by case																																	
Small	48	60	72	case by case																																	
Tiny	60	72	84	case by case																																	

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis
WAC 173-334-120 How will this chapter be enforced?		
<p>(1) The department may collect children's products subject to possible reporting, and analyze their components for the presence of CHCCs. If the department finds that a children's product component contains a chemical on the CHCC list that the manufacturer either has not reported, or has reported at a lesser amount, the department will notify the manufacturer in writing. The department will then afford the manufacturer forty-five days from receipt of the department's notification to respond to the findings before the department takes further enforcement action.</p> <p>In determining whether a violation of the CSPA or these rules has occurred, the department will consider the manufacturer's timely explanation as to why it did not report the presence or accurate amount of the CHCC in the product component. If the manufacturer asserts that the CHCC is present in the component only as a contaminant, and that the manufacturer did not report the CHCC's presence based on WAC 173-334-080(1)(c), then the manufacturer must present evidence that it conducted a reasonable manufacturing control program for the CHCC contaminant and exercised due diligence as described in subsections 2 and 3 of this section.</p> <p>If the manufacturer contests the department's findings regarding the presence or amount of the CHCC in the product component, the manufacturer may further analyze the component in question for presence of CHCC and provide the department with a copy of its own laboratory findings for the component.</p> <p>If the manufacturer contests the department's findings regarding the presence or amount of the CHCC in the product component, the manufacturer may further analyze the component in question for presence of CHCC and provide the department with a copy of its own laboratory findings for the component.</p>	Applies to Ecology	
<p>(2) A reasonable manufacturing control program must include those methods and procedures established in federal regulations for children's products, and may also include recognized industry best manufacturing practices, e.g., compliance with relevant International Standards Organization (ISO) requirements, American Society for Testing and Materials (ASTM) standards, or other widely established certification or standards programs.</p>	Provides manufacturer's with an idea of the base line the agency will use when evaluating efforts to keep the concentration of contaminates as low as practical. Many manufacturers already comply with these programs.	

WAC 173-334 CSPA Reporting Rule	What the requirement means	Analysis
<p>(3) Due diligence. Actions demonstrating due diligence in ensuring the effectiveness of a manufacturing control program may include the use and enforcement of contract specifications, procedures to ensure the quality/purity of feedstock (whether raw or recycled), the use and enforcement of contract specifications for manufacturing process parameters (e.g., drying and curing times when relevant to the presence of high priority chemicals in the finished children's product components), periodic testing for the presence and amount of CHCCs, auditing of contractor or supplier manufacturing processes, and other practices reasonably designed to ensure the manufacturer's knowledge of the presence, use, and amount of CHCCs in its children's product components.</p>	<p>Provides manufacturers with examples of the types of behavior the agency will use to evaluate if due diligence was used to keep the concentration of contaminants as low as possible.</p>	
<p>(4) If the department determines based on the process described in subsection 1, or on other grounds, that a manufacturer has violated a requirement of the CSPA or these rules, it may require the manufacturer to pay a civil penalty. A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.</p>		<p>Explicitly dictated in authorizing statute</p>

Appendix B: Interstate Children’s Products Regulations

State Chemical Reporting Requirements							
State	Statute / Regulation / Agreement	Chemical(s)	Product(s)	Who is Required to Report	Statutory/Regulatory Trigger for Reporting	Reporting Requirements/Data Expected	Ability to be Shared
California	Cal. Health & Safety Code § 25251-25257.1 (A.B. 1879)					Requires the Department of Toxic Substances Control (DTSC) to develop regulations, by January 1, 2011, that create a process for identifying chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern.	Department must maintain confidentiality of information identified as a trade secret at the time of submission. Does not prohibit the exchange of a trade secret between public agencies provided that confidentiality is maintained. Information not identified as a trade secret available to the public. Establishes a procedure for responding to requests for the release of information claimed as trade secret.

State Chemical Reporting Requirements							
State	Statute / Regulation / Agreement	Chemical(s)	Product(s)	Who is Required to Report	Statutory/Regulatory Trigger for Reporting	Reporting Requirements/Data Expected	Ability to be Shared
	Cal. Health & Safety Code §§ 111791-111793.5	Chemicals known or suspected to cause cancer, birth defects, or other reproductive harm (list of 785 chemicals)	Cosmetics (as defined by US FDA)	Manufacturer, packer, and/or distributor named on label of product [for companies making ≥ \$1 million dollars in aggregate sales of cosmetic products within and outside of CA]	As of January 1, 2007, required to report if product contains any ingredient that is a chemical listed by CDPH.	<u>Chemical Use Reporting</u> Report list of cosmetic products containing a listed chemical.	Provides companies an opportunity to claim information as confidential. CDPH will not make confidential information available to the public unless the outcome of an official investigation deems the information is not confidential.
	Information Sharing Agreement between Danish EPA and CalEPA	?	?	N/A	N/A	Areas of cooperation include exchange of information, experience, and best practices and the provision of technical support on chemical exposure from consumer articles (products).	CalEPA and the Danish EPA may invite additional organizations within their own jurisdictions to participate, at their own expense and subject to such terms and conditions as may be specified, in cooperative activities under the agreement.