

**Children's Safe Product Act – Reporting Rule – WAC 173-334
Reporting Guidance – Reporting Responsibility**

September 6, 2011

Under the Children's Safe Product Act, RCW 70.240, manufacturers of children's products sold to consumers in Washington State are responsible for reporting the presence of chemicals of high concern to children in those products.

RCW 70.240.010 broadly defines "manufacturer" to include the producer, importer and domestic distributor of the product.

WAC 173-334-090(2) establishes a hierarchy for determining which entity meeting the statutory definition of "manufacturer" (RCW 70.240.010) the department will hold primarily responsible for ensuring that reporting requirements are satisfied with respect to any children's product.

That subsection states:

The following hierarchy will determine which person or entity the department will hold primarily responsible for ensuring that the department receives a complete, accurate, and timely notice for the children's product:

(a) The person or entity that had the children's product manufactured, unless it has no presence in the United States.

Ecology will use the tracking label required by Section 103 of the federal Consumer Product Safety Improvement Act (CPSIA) to determine the person or entity that had the children's product manufactured. If that entity has no presence in the United States, or it is not possible to identify them; Ecology will attempt to identify the first person or entity that owned the children's product in the United States (see section (c)).

(b) The person or entity that marketed the children's product under its name or trademark, unless it has no presence in the United States.

Because this section does not expand the definition of a children's product under the statute, this entity would also have to be the producer, importer, or domestic distributor of the product.

(c) The first person or entity, whether an importer or a distributor, that owned the children's product in the United States.

When the section 103 tracking label references a manufacturer with no U.S. presence we will look to the importer that provides the General Certificate of Compliance required by Section 14(a) of the Consumer Product Safety Act, as amended; 15 U.S.C. Sec. 2063(a), and 16 C.F.R. Sec. 1110.7(a).

This same hierarchy should be applied to determine the entity whose annual aggregate gross sales must be used to determine when a report must first be provided for a children's product under WAC 173-334-110 (phasing in reporting requirements over several years based on the size of the "manufacturer" and the type of product). **Note:** If for affiliated entities a "consolidated

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federal tax return” is filed, the “gross sales” value is based on the consolidated gross sales of the affiliated entities. For all other cases the “gross sales” is based on the gross sales of the legal entity responsible for filing federal taxes.

Retailers are not responsible for reporting with respect to the products they sell at retail unless they are also the producer, importer or domestic distributor of the product.

Who would be held responsible for promotional items “given away” with a product?

For those promotional items which fall into the scope of products covered by this rule (see product scope guidance) the agency would follow the same hierarchy established in WAC 173-334-090 (2).

Example 1: An entity (e.g. Smith Company) manufactures a box of cereal with a promotional plastic toy in the box. While the cereal would meet the food exemption in the rule, the plastic toy would fall into the scope of products which have a reporting requirement.

Ecology would use the hierarchy established in WAC 173-334-090 to determine who would be held responsible for the timely and accurate notice required under the rule. In this example the Smith Company would be held responsible if it was the only entity that falls into one of the categories listed.