

1) Issues associated with the 'reporting list' – the list of chemicals that triggers reporting by manufactures.

- a) How many chemicals should be on the reporting list? How should they be selected or prioritized? Should the selection process be specified in the rule? Should there be allowance for chemical exemptions such as Generally Recognized As Safe (GRAS) chemicals? See <http://www.foodsafety.gov/~dms/eafus.html> for list of chemicals.
- b) Should chemicals that are not ordinarily used in consumer products be excluded? If so, how do we know what chemicals are not ordinarily used? For example in a recent study tetrachlorethylene and 4-nonylphenol were found in some children's products.
- c) For this list of issues 'de minimis means the amount of a substance in a product which would trigger reporting. Should there be a 'de minimis' value for the chemicals on the reporting list? If so, what should it be based on? Should United States National Toxicology Program (US NTP) See - <http://ntp.niehs.nih.gov/>, Consumer Product Safety Commission (CPSC) See- <http://www.cpsc.gov/> and EPA exposure limits be used? Should the de minimis level be based on something other than risk, such as detection limit?
- d) If a reporting list is in the rule, should the list also include the 'de minimis' limit? If the 'de minimis' value is in the rule, how would we deal with situations where new information shows that it should be adjusted?
- e) Can the public recommend that chemicals be removed or added to the reporting list? If so what should the process be? What criteria and timeline should the agency use to make a determination or decision to add or remove a chemical? Should these criteria be in the rule? Should a reasonable toxicological risk assessment be mandated as a contingent requirement for adding or removing a chemical? Can we base such decisions on hazard assessment alone?
- f) Is there a need to benchmark Registration, Evaluation, Authorization and Restriction of Chemical substances (REACH) see - http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm or Restriction of the Use of Certain Hazardous Substances (RoHS (Europe)) see - <http://www.rohs.gov.uk/> or similar regulated chemical listing process as to who can add or remove chemicals from the prioritized list? Specifically is there a need to review current REACH or/and ROHS chemical criteria and prioritization lists as well as chemicals assessment approach for hazards/risks/exposure to determine if there are any cross-over applicability?

- g) What should be the process for triggering the modification of the list after comments from the public?
- h) What should be the frequency for modifying the reporting list?
- i) How should the reporting list of chemicals be prioritized? Should the chemicals on this list be prioritized by importance to be phased out/banned? - Should prioritization be based upon a strict toxicity measure of a standard exposure level to a set number of children, and which ones cause the most harmful effects? Or upon which chemicals are the most prevalent among those children are exposed to? Or which toxic chemicals are found at the highest levels in which children's products? Or, which high priority chemicals are found in the most popular children's products?
- j) Should the sources for identifying high priority chemicals (EU, REACH, California, Canada, et al.) be included in the rule? If not, would it just be included in the final report and available on the DOE website?
- k) Should there be some high priority chemicals for which there is no 'de minimis' value, i.e., zero amount can be intentionally added to the production of a children's product? What would be the method to identify what is intentionally added? What about chemicals that are not intentionally added but are present in the product due to manufacturing processes or contamination?
- l) How should Ecology/DOH weight the value of the REACH list compared to Canada or California's lists in coming up with our own list?
- m) What do we mean by "children's products?" Should we more precisely/carefully/narrowly? define the universe of children's products to be covered by reporting? It would be good to make sure we are all talking about the same products. Are there some products that we are missing? See California's draft cosmetics reporting form to get an idea of how they have defined the universe of cosmetics products.
<http://www.cdph.ca.gov/programs/cosmetics/Pages/faq.aspx>
- n) Should reporting be limited to chemicals known to be used in manufacturing or should it also include chemicals known or likely to be present due to common contamination?

2) Issues associated with the reporting process

- a) How should confidential business information be reasonably treated?
- b) What should be the timeline for reporting? (who should have to report on what, when?) Should there be a phased-in approach? If so, what should it be

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based on? How would it work? Which companies, for which materials or substances should be required to report first?

c) What information and format must a report contain? Is there any reason to allow submittal of hard copy, rather than electronic, data?

d) Should there be a standardized mechanism for reporting (i.e. companies are required to fill out a standardized form for each chemical etc.)? This may help minimize time trying to translate information to the public.

e) What should be done with the information reported to Ecology? Options range from releasing information upon request to actively putting it in the public eye – i.e. post it on a website, do press releases, etc.. Should the way the information will be handled be in the rule? Should information be provided in a manner that clearly communicates exposure risk or the lack thereof? Should these options be in the rule?

f) How can a chemical or material manufacturer determine if their product has a chemical from the reporting list? - Testing, Self-certification or Self-declaration of conformity, documented oversight process to ensure none of the chemicals are used at any point in the production process, etc.. If we allow something other than testing results to be submitted, what information must be included in the report?

g) Is there a need to benchmark Registration, Evaluation, Authorization and Restriction of Chemical substances (REACH) see - http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm or Restriction of the Use of Certain Hazardous Substances (RoHS (Europe)) see - <http://www.rohs.gov.uk/> or similar regulated reporting process? If we allow something other than testing results to be submitted, what information must be included in the report? Specifically is there a need to review current REACH or/and ROHS reporting process to determine if there are any cross-over applicability?

h) How should Ecology summarize and analyze reported data that is submitted by manufacturers? Should information be analyzed by products or types of products? Should this work feed into revising the reporting list?

3) Issues associated with enforcement of the CSPA

a) How should the reporting requirements established by the rule be enforced?

b) What should trigger a penalty? Should the agency provide notice and opportunity to comment prior to issuing a penalty?

c) Should the media be informed?

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- d) Should Ecology independently test products to ensure compliance with the law?
- e) What methods (audits, inspections, objective evidence)? should Ecology use to ensure that manufacturers are compliant with the reporting requirements of the CSPA?
- f) Should labeling be considered? For example: If a product contains one or more reporting chemical, it gets labeled in some way - such as some cautionary language a la Prop 65.

4) The Issues listed below are being evaluated by our legal counsel. While you are welcome to provide your position on these issues, it is doubtful that Ecology will act against the advice provided by our legal counsel.

- a) Should the reporting list be in the rule?
- b) How can penalties be appealed or what Due Process should be incorporated? If a right to appeal a penalty is allowed, what grounds for appeal should there be that will prevent endless appeals that merely delay the implementation of the rule and allow the continued use of a high priority chemical in children's products?
- c) Should other mechanisms besides penalties be used for multiple violations? If so, what?