

## ISSUES: CSPA RULE MAKING

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### 1) Reporting List Issues

a) Already decided by Ecology: 50 chemicals on list. Selection and prioritization should be based on three main criteria: how widespread is the chemical in children's products; toxicity of the chemical at customary exposure levels; levels/amounts of the chemical present and degree of exposure. The selection process should be specified in the rule. I have concerns about exempting GRAS chemicals based on research I did a few years ago; my recollection is that the GRAS list is not updated as often as it should be, and that there were some glaring examples of toxic chemicals that should not have been on the GRAS list.

b) Chemicals not ordinarily found in consumer products should not be excluded from the reporting list. The example cited in John's June 11 email supports this position.

c) As a general principle, a 'de minimus' level for a chemical to be reported is probably reasonable. But, for the 50 chemicals on this initial list, presumably the most toxic and widely distributed chemicals, there should be no 'de minimus' level of any such chemical intentionally added in the manufacturing process.

d) The 'de minimis' list should not be in the rule. We are continually learning new information about adverse health effects of old chemicals; federally set safe exposure levels seem to be continually revised downward; and, new chemicals are continually being produced. When we are presented with such developments, we want to be able to respond quickly and appropriately, something not easily achievable if the 'de minimis' levels were in the rule.

e) The public should be able to recommend chemicals to be added to or removed from the reporting list. The process should be public and transparent, and included in the rule. Further information about a "reasonable toxicological risk assessment" and "hazard assessment alone" would be helpful.

f) YES. There is no need to reinvent the wheel in our process here. We need to know: the REACH and RoHS processes; their lists of chemicals and prioritization conclusions for reporting purposes; indeed, how they handled these issues we are now dealing with. As we develop our own CSPA rules, we do need to learn from the experiences of others.

g) Modification of the reporting list should be possible upon recommendation by both the public and by the Departments of Ecology and Health and others.

Some documentation - research, test results, studies, etc. - needs to be presented in support of any such recommendation.

h) I am not clear as to what is reasonable for frequency of modification; I would like to know the experience of other jurisdictions. Whatever is decided upon, there needs to be some provision for an emergency process if some chemical is suddenly and clearly found to be highly toxic and needs to be made public immediately.

i) See response to a). Prioritization of the chemicals is important, but it may not be possible to say which of these various factors is the most important; rather, all of these named criteria are important to some degree and should be considered in determining the ranking of the 50 initial chemicals.

j) The various sources for identifying high priority chemicals probably need not be identified in the rule; they should be in the final report and included on the Ecology website.

k) Yes, for some chemicals there should be no 'de minimis' level. The manufacturers of the product at issue should be required to provide that information. If the chemical is present due to manufacturing processes or contamination, again the manufacturer needs to be aware of that and take corrective actions.

l) Each such list is helpful as we come up with our own list. I am assuming that our list will be at least similar to these others. I do not know how to weigh the value of each one.

m) I am not sure why this question is being asked. The CSPA bill defines children's products as including: toys; children's cosmetics, children's jewelry; a product designed or intended by the manufacturer to help a child with sucking or teething, to facilitate sleep, relaxation, or the feeding of a child, or to be worn as clothing by children. The bill then goes on to list 17 products that are not included in the bill's definition of a children's product.

n) If a chemical is known to be present in a children's product, whether that presence is there by intention, contamination and/or accident on a regular basis, that chemical should be considered for inclusion on the list of the 50 chemicals.

## 2) Issues associated with the reporting process

a) One governing principle is that assertions of confidential business information should not be allowed to prevent the disclosure of the presence of toxic chemicals in products intended for the use and/or benefit of children.

b) As for a timeline for reporting, Section 5 of the CSPA provides that reporting by the manufacturer or trade organization must begin reporting six

months after the rules are adopted by the department. Are we to consider something different from these provisions?

- c) Again, the statute itemizes the information that should be included in these reports. I can see no reason for hard copies.
- d) Use of a standardized form is definitely preferable, chiefly for purposes of analysis.
- e) The intent of the CSPA as it now stands is to provide education about toxics in children's products to the public. The information provided in manufacturers' and trade association reports to DOE needs to be made public. Posting these reports on the website makes that information available to the public. The exposure risk should be made clear. Periodic press releases (not every time a report is filed) should report about the program, where the information is available, and general findings about the presence of toxic chemicals in children's products as reflected by these reports. The rule should cover how these reports will be handled.
- f) Submission of test results is the best way to determine if any of the 50 chemicals are in a product. Self-certification or self-declaration of conformity needs some oversight process and/or penalty for improper disclosure.
- g) We certainly can learn from other reporting systems.
- h) Analysis by products or types of products would be very useful, showing which ones have the greatest number of toxic chemicals, and which have the highest concentrations of these chemicals. Such information is very germane to revisions of the reporting list.

### 3) Issues associated with enforcement of the CSPA

- a) I think Ecology has answered this in the June 17 memo: "The only enforcement mechanism authorized by the CSPA is the civil penalty."
- b) Failure to report the existence of one or more of the 50 chemicals in its product, or intentional concealment of such existence, should trigger a penalty. Notice and opportunity to respond or provide the required information should be provided to the manufacturer or trade association prior to imposition of any penalty.
- c) The media should be informed if and when a penalty is actually imposed.
- d) Probably Ecology should test products for compliance, at first randomly or when it suspects that accurate information is not being provided. Most likely, that will not be possible because of state budget issues.

e) To ensure compliance with the rule, Ecology should use any method that is reasonable, cost effective, and productive of credible results.

f) With the goal of providing information to the public, labeling definitely should be considered. Does Ecology have the authority to do that without further legislative authorization?

4) Legal Issues

Per John's email of June 17, I think Ecology has decided these issues.