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September 21, 2009

John Williams  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Dear Mr. Williams:

As per your request, please find below the final position paper submitted by Wal-Mart Stores, Inc., regarding your department's rulemaking efforts for the Children's Safe Products Act. Please feel free to contact me if you have any questions or would like additional information on any issues discussed below.

Sincerely,

Thomas Head  
Product Safety & Compliance  
Wal-Mart Stores, Inc.

The Department of Ecology is appropriately focused on defining a process to rapidly screen, evaluate, and make decisions on chemicals used in a wide array of children's products. The Department correctly identified the major issues and obstacles that need to be addressed in the final report and in this request for information on the reporting process. At this initial screening stage, the scope of information and speed of collection are paramount to absolute certainties. Decisions do not require perfect and detailed information; too often those demands have inhibited action. The Department should make every effort to quickly and accurately collect essential data elements on hazard, exposure, and use within the identified product categories. Information on inherent characteristics of chemicals and the intended use should be collected upstream from chemical manufacturers. Information on actual use, applications and material composition of products should be obtained downstream from product manufacturers. Most product categories lack existing infrastructure to pass information through the supply chain that would enable them to comply with reporting requirements immediately. However, the Joint Industry Guide for Material Composition Declaration for Electronic Products (JIG), which was adopted for the European Union RoHS Directive, is a good example of the standards necessary to effectively collect this information. It is critical that information collection be based on intended formulation. Accidental contaminants must be addressed on the back end in the surveillance monitoring component, as discussed later in these comments.

The Department must focus resources on what is possible and achievable in the near future. The Department should seek to reduce the administrative burden and leverage the efforts of the other states with green chemistry initiatives by collecting information through a multistate clearinghouse. The Interstate Mercury Education and Reduction Clearinghouse (IMERC) serves as an effective model of a product registry system that informs a public database that is searchable by sector, product category, or concentration range for a particular chemical. Under this example, products with chemicals that exceed de minimis levels must be deemed to be intentionally added and cataloged by manufacturers as a condition of sale in member states. Using this model will expedite the collection of essential information so resources can be allocated to the priority of evaluation.

We applaud the state of Washington for adopting this innovative approach to rulemaking and appreciate the opportunity to participate as part of our ongoing commitment to helping consumers save money and live better.

**1. Issues associated with the ‘reporting list’ – the list of chemicals that triggers reporting by manufacturers.**

- a. **Selection:** We do not have an opinion on how many chemicals should be on the reporting list, but believe it should be limited in order to be applied effectively. We encourage the Departments of Ecology (Ecology) and Health (DOH) to take into consideration health risk and exposure when developing the list, so that chemicals that do not pose a health risk to children in a certain application are not included on the list.

**Priority:** The chemicals should be prioritized by highest health risk and highest risk of exposure to children.

**Allowance for chemical exemptions:** Yes, there should be allowance for certain chemicals using Generally Recognized as Safe (GRAS) chemicals as a model. This does not mean indiscriminate addition of chemicals should be unreported, but rather that low levels in particular applications should not require disclosure. GRAS designation on this list should be specific to exposure method and method of measurement. For example, a standard for formaldehyde might differ in acceptable level and method of measurement when exposure method is inhalation versus direct skin contact. These designations enable consistent reporting of concentration ranges within product categories.

- b. **Exclusions:** Chemicals not ordinarily used in consumer products should be excluded at de minimis contaminant levels, if such chemicals are not typically used as part of an acceptable manufacturing or industry practice. For example, salted fish is a reportable ingredient under the California Safe Cosmetics Rule, but it most likely is not an ingredient found in cosmetics. However, chemicals of very high concern inherent to certain substrate or component materials commonly used in children’s products should be listed to encompass deviations from generally accepted manufacturing practices in those industries or product categories. For example, arsenic is not common in children’s products but should be reported if a manufacturer were to include CCA-treated wood components in playground equipment. Industry should be able to provide examples and supporting data where chemicals on the list

are more likely or less likely to be found in materials or a manufacturing process by product category. Identification of these is critical to both the flow of chemical information within the supply chain and efficiency in the screening process.

- c. **Triggers:** In order for the information reported to be useful, there should be a de minimis value for chemicals on the reporting list based on existing government and industry standards, which may vary by product category. For example, the de minimis value for a chemical may differ for food contact materials and furniture because the potential exposure pathways would be different between the product categories. Without de minimis values, manufacturers would be reporting on chemicals that are of no or very little risk to children in certain applications, thereby diluting the purpose of the reporting requirement, which is to identify the potential hazards in children's products created by the use of certain chemicals. In addition, using specifically defined terms and values enable communication within the supply chain. Leveraging existing definitions, like those in the EU RoHS Directive, expedite additional reporting of existing information in material composition declarations. This is especially true of products with multiple components sourced from multiple suppliers.
- d. **Values:** The list should also specify the de minimis limit and CAS number. The Department should consider creating lists by product category or substrate material to allow for differences in the appropriate de minimis value. Using values from widely adopted standards allows the Department to rely on supporting interpretive guidance and provides advance notice of changes to existing values.
- e. **Nomination:** The public should be able to recommend that chemicals be added or removed from the reporting list, but Ecology should study the chemicals and the health and exposure risks prior to taking action on public comment.
- f. **Benchmark:** Comparative data analysis will be more efficient if a consistent approach to collection and management of information is adopted by safety and regulatory bodies at state, national, and global levels.

- g. **Revision:** Ecology should study the chemicals and health and exposure risks prior to taking action on public comment. If a chemical is found to pose a risk to human health, Ecology should include it on a preliminary list that is made public, which will become final at the start of the next two-year period (see answer to “h” below) in which Ecology reviews and updates the list.
  
- h. **Frequency:** The list should be reviewed and updated once every two years.
  
- i. **Priority:** The reporting list should be prioritized by highest health risk and highest risk of exposure, with the aim of phasing out the use of those chemicals first.
  
- j. **Sources:** Yes, the sources for identifying high priority chemicals should be included in the rule.
  
- k. **Contamination:** De minimus values are indicative of intentional introduction and should be favored over detection limits as reporting must be based on formulation information passed through the supply chain. In light of this, there should be some high priority chemicals that should be restricted from being intentionally added or used in the manufacturing process for children’s products. Chemicals that are present as a result of contamination from the manufacturing process should be exempt, so long as such chemicals are typically used in an acceptable manufacturing or industry practice. In a recent incident, for example, 1,4-butanediol was substituted for 1,5-pentanediol as an industrial solvent in manufacturing small plastic parts on a toy. When ingested, 1,4-butanediol is rapidly absorbed and metabolized into  $\gamma$ -hydroxybutyric acid (GHB).
  
- l. **Weighting:** Ecology/DOH should favor the REACH list as a valuable resource when developing the reporting list, as the European Union studies each chemical in-depth prior to putting the chemical on its list. However, Canada and California do not take this approach, but rather rely solely on a precautionary principle rule, in which if the

government regulators believe there is a chance of health or exposure risk, the chemical is restricted or banned.

- m. **Terminology:** Ecology/DOH should use the “children’s product” definition as provided in the Consumer Product Safety Improvement Act and rely on federal interpretive guidance issued by Consumer Product Safety Commission to facilitate administration. Utilizing consistent terms and definitions facilitates compliance. California, as an example, utilizes the definition of cosmetic as determined by the Food and Drug Administration’s in reporting chemical composition for the California Safe Cosmetics Act of 2005. The Department should consider adopting the GS1 Global Production Classification (GPC) standard in collecting information to identify children’s products by product category, as this global standard would facilitate the exchange of information and leverage similar data sets in other states or countries. Many companies have already started implementing this standard in their business processes. In the interest of expediency, this standard could be phased in over time by size of manufacturer, capacity, etc. Eventually, children’s products could be identified at the brick or attribute levels, using the GPC numbering system; manufacturers, retailers, and agencies would be able to quickly identify children’s products subject to the reporting requirement by searching for a GPC that indicates the appropriate consumer lifestage attribute. For example, if manufacturers were required to assign an attribute value (or multiple attribute values) to each product in their product offering, all products, regardless of product category, intended for use by consumers who would fall within the consumer lifestage “baby/infant” would have 30006665 as an assigned attribute value, or 30000628 for “child.” By using this system, it clearly expresses the manufacturer’s intent and precludes arbitrary assessments based on visual observation by downstream supply chain parties, such as foreign test labs. It also allows parties to target audits more efficiently, and in some cases, automate the process
- n. **Formulation:** The reporting list should be limited to chemicals known to be used in the manufacturing of the product and should not include chemicals known or likely to be present because of common contamination.

## 2. Issues associated with the reporting process.

- a. **CBI:** Requests to designate listed chemical compounds as confidential business information should be reviewed individually, should be of limited duration, and should require substantiation.
- b. **Implementation:** The reporting process should consist of an initial registration and disclosure by manufacturers, followed by an annual confirmation or amendment process. Ecology should consider scheduling a set date for filing each year, preceded by revision of the reportable chemicals list. In the event Ecology revises the list less than six months prior to the filing due date, manufacturers should be provided a ninety-day extension to report on the additional chemicals. A phased implementation by product categories allows the industry to prepare the supply chain and those highly-regulated industries with similar existing reporting requirements to participate earlier. For example, the personal care products industry is better positioned to make disclosures and has a higher exposure profile than the sporting goods industry. Collection of the information through a multistate clearing house would minimize administrative costs and facilitate compliance by allowing manufacturers to satisfy many reporting requirements with a single registration.
- c. **Data Set:** Ecology/DOH should adopt a standardized format and accommodate importation of large data sets, rather than require manufacturers to complete separate data entries for each chemical or product. If Ecology establishes a web-based form for submission of data, there should not be reason to allow submittal of a hard copy of the report.
- d. **Data Set:** Yes, there should be a standardized mechanism for reporting, but companies should not be required to fill out a separate form for each chemical or product. Ecology should establish a database that will accommodate importation of large data sets, such as from a spreadsheet or database.

- e. **Dissemination:** The information provided to Ecology should be shared with other states green chemistry initiatives to inform consensus assessments and ultimately used to help manufacturers with informed substitutions when phasing chemicals out of their products. Such precautionary information could be posted on Ecology's website in lieu of additional labeling, so as not to dilute the effectiveness of hazard warnings. This approach could satisfy the public policy objectives with minimum disruption to the business. The way the information should be handled should be stated in the rule and should be explained in such a manner that clearly communicates exposure risk or lack thereof.
  
- f. **Assurance:** A chemical or material manufacturer can determine if their product has a chemical from the reporting list by using a self-certification process (including certifications from raw materials and/or component suppliers) with random sampling of finished products. The information to be included in the report should include the information as specified in the rule, in addition to the self-certification document and any certifications collected from raw materials and/or component suppliers.
  
- g. **Benchmarks:** Yes, there is a need to benchmark, and there is a need to review current REACH or RoHS reporting processes to determine if there is any crossover applicability. If there are common data sets among the reporting processes, these should be incorporated into the Ecology reporting process to achieve consistency, which will increase compliance (especially with global manufacturers who must comply with REACH and RoHS anyway).
  
- h. **Evaluation:** Information should be analyzed and reported in the context of product categories and intended use, with participation from industry trade associations to ensure appropriate dissemination of relevant information and recommendations within the supply chain.

### 3. Issues associated with enforcement of the Children's Safe Products Act.

- a. **Enforcement:** The multistate clearing house approach has been effective in facilitating compliance through a robust education and awareness program, coupled with publicized enforcement actions for those failing to take corrective actions.
  
- b. **Penalty:** The first year of implementation phases should focus resources exclusively on industry outreach, education, and awareness for the supply chain. Thereafter, enforcement actions should be initiated through the clearinghouse process and recommendations made to Ecology and other member states for disposition. This benefits regulated entities by providing a consistent approach in implementing corrective action that satisfies obligations in all states. In addition, this approach benefits the member states because it leverages enforcement support of other jurisdictions in a cost-effective manner.
  
- c. **Media:** No, unless a manufacturer fails to respond and take appropriate corrective actions. There is no need to involve the media if a manufacturer unintentionally fails to comply and is ready and willing to correct the violation.
  
- d. **Surveillance:** Yes, Ecology should establish an auditing system (possibly through random sampling of finished products) to ensure manufacturers are complying with the reporting requirements. A two-pronged approach to collecting information is appropriate in a screening program: the bulk of relevant information comes from submission of intended formulations by manufacturers, but this information should be supplemented by targeted surveillance to identify unanticipated variables. Many factors beyond chemical composition may affect a company's ability to accurately report information in a complex supply chain, such as inappropriate classification of a product as one for general consumer use rather than a children's product. A surveillance program serves to identify gaps and inform corrective action.
  
- e. **Criteria:** Ecology should create an auditing system that allows for the random testing of finished products (see "d"). Defining appropriate sample size and test methods by product category allow for effective comparative analysis.

- f. **Labels:** Yes, the Department should take notice of a product's label in identifying candidates for surveillance testing. However, Ecology may choose to adopt a de minimis value for a product category that has a corresponding label required. For example, finished goods with composite wood components that meet phase 2 of the formaldehyde standard established by the California Air Resource Board Airborne Toxic Control Measure could be exempt from reporting but contain a label that indicates de minimis level of formaldehyde.