

Chapter 173-334 WAC

CHILDREN'S SAFE PRODUCTS - REPORTING RULE

NEW SECTION

WAC 173-334-010 Introduction. Under the Children's Safe Product Act (CSPA), chapter 70.240 RCW, manufacturers of children's products are required to notify the department of ecology when a chemical of high concern to children (CHCC) is present in their products or, if the product contains more than one component, each product component.

Reporting the presence of a CHCC does not establish that the product is harmful to human health. The reported information will help fill a data gap that exists for both consumers and agencies.

The CSPA requires the department of ecology in consultation with the department of health to identify a list of chemicals for which manufacturers of children's products are required to provide notice. The CSPA specifies both the characteristics of these chemicals and the notice requirements.

NEW SECTION

WAC 173-334-020 What is the purpose of this chapter? The purpose of this chapter is to:

(1) Establish the list of chemicals for which manufacturer notice is required;

(2) Establish what manufacturers of children's products must do to comply with the notice requirements created by the CSPA; and

(3) Clarify the enforcement processes the department of ecology will use if manufacturers fail to provide notice as required.

NEW SECTION

WAC 173-334-030 To whom does this chapter apply? This chapter applies to manufacturers of children's products.

NEW SECTION

WAC 173-334-040 What definitions apply to terms used in this chapter? "Chemical Abstracts Service number" means the number assigned for identification of a particular chemical by the Chemical Abstracts Service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *Chemical Abstracts*.

"CHCC list" means the reporting list of chemicals that the department has identified as high priority chemicals of high concern for children.

"Child" means an individual under twelve.

"Department of health" means the Washington state department of health.

"Product category." For those products intended for children three years of age and under, product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes. For all other children's products, product category means the "class" level within the hierarchy of GS1 Global Product Classification (GPC) standard.

"Product component" means a uniquely identifiable piece, substrate, or coating (including ink or dye) that is intended to be included as a part of a finished children's product.

NEW SECTION

WAC 173-334-050 What is the purpose of the CHCC list? The CHCC list identifies the chemicals to which the CSPA notice requirements apply. A manufacturer must notify the department in accordance with this rule if a chemical on the CHCC list is present in a children's product component. The current CHCC list is set forth in WAC 173-334-140.

NEW SECTION

WAC 173-334-060 What schedule will the department follow to revise the CHCC list? (1) The department will add chemicals to, or remove chemicals from, the CHCC list by amending this rule in accordance with the requirements of the Administrative Procedure Act, chapter 34.05 RCW.

(2) The department intends to revise the CHCC list on a regular basis. The department will routinely revise the CHCC list no more frequently than once every two years, and no less frequently than once every five years.

(3) If the directors of the department of ecology and the department of health both agree that a given chemical should be added to, or removed from, the CHCC list outside of the routine revision schedule described above, the CHCC list may be revised on a schedule the directors determine to be appropriate, in accordance with the requirements of the Administrative Procedure Act.

NEW SECTION

WAC 173-334-070 How will the department identify chemicals for inclusion in the CHCC list? (1) The department will consult with the department of health during the modification of the CHCC list.

(2) A chemical that the department determines to meet all of the following criteria may be included on the CHCC list:

(a) Meets the toxicity, persistence, or bioaccumulativity criteria of the CSPA, as specified in RCW 70.240.010(6); and

(b) Meets the exposure criteria of the CSPA, as specified in RCW 70.240.030(1).

(3) The department will consider both the parent chemical and its degradation products when deciding whether a chemical meets the criteria of this section. If a parent chemical does not meet the criteria in this section but degrades into chemicals that do, the parent chemical may be included on the CHCC list.

(4) A person may submit a petition for consideration by the department to add a chemical to the CHCC list. The petition must provide the following information:

(a) Chemical Abstracts Service registry number;

(b) Chemical prime name; and

(c) Credible peer-reviewed scientific information documenting why the chemical meets the criteria required for inclusion on the list.

NEW SECTION

WAC 173-334-080 How will the department decide to remove a chemical from the reporting list? (1) The department will remove a chemical from the CHCC list if the department determines that credible peer-reviewed scientific information demonstrates that the chemical does not meet the required criteria for being on the CHCC list.

(2) A person may submit a petition to remove a chemical from the CHCC list. For consideration by the department the petition must contain peer-reviewed credible scientific information documenting why the chemical does not meet the criteria required for inclusion on the list.

NEW SECTION

WAC 173-334-090 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:

(a) The name of the CHCC and its Chemical Abstracts Service registry number.

(b) The product category or categories in which it occurs.

(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.

(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.

For the purpose of this rule, the reporting ranges are as follows:

(i) Equal to or more than 40 ppm (0.004%) but less than 200 ppm (0.02%);

(ii) Equal to or more than 200 ppm (0.02%) but less than 1000 ppm (0.1%);

(iii) Equal to or more than 1000 ppm (0.1%) but less than 10,000 ppm (1.0%);

(iv) Equal to or more than 10,000 ppm (1.0%) but less than 100,000 ppm (10%); or

(v) Equal to or more than 100,000 ppm (10%).

(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.

(g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(2) Reporting parties are not required to include either:

(a) Any specific formula information; or

(b) The specific name and address of the facility which is responsible for the introduction of a CHCC into a children's product or product component.

(3) If a reporting party believes the information being provided is confidential business information (CBI), in whole or in part, it can request that the department treat the information as confidential business information as provided in RCW 43.21A.160. The department will use its established procedures to determine how it will handle the information.

(4) The department will make available the current version of the web form to be used for reporting on CHCCs. This same form can be used by the reporting manufacturer or trade organization to flag the submitted information they think should be treated as CBI. The web form must be used when providing notification.

NEW SECTION

WAC 173-334-100 Who is required to provide notice to the department?

(1) The manufacturer of a children's product as defined in RCW 70.240.010, or a trade organization on behalf of its member manufacturers, must provide notice to the department that the manufacturer's children's product component contains a chemical on the CHCC list.

(2) The definition of manufacturer in RCW 70.240.010 includes any person or entity that produces a children's product, any importer that assumes ownership of a children's product, and any domestic distributor of a children's product. However, it is only necessary for one person or entity to provide notice with respect to a particular children's product.

Absent an agreement to the contrary among multiple persons or entities meeting the definition of manufacturer of a particular children's product, the following hierarchy will determine which person or entity is responsible for providing notice for the children's product:

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

(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.

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

In no event may entities meeting the definition of manufacturer with respect to a particular children's product delegate notice responsibility to a person or entity with no presence in the United States.

NEW SECTION

WAC 173-334-110 How often must notice be given?

Manufacturers must provide notice on an annual basis for children's products that have been manufactured for sale in Washington during the twelve-month period that precedes the applicable due date for first notices set out in WAC 173-334-120(2). If the reporting party determines that there has been no change in the information required to be reported since the prior annual notice, the party may submit a written statement indicating that the previous reported data is still valid, in lieu of a new duplicate complete notice.

If a CHCC is subsequently removed from the children's product component for which notice was given, the manufacturer may provide notice to ecology. Such updated notices will be documented in the department's records.

NEW SECTION

WAC 173-334-120 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) of this section based on the manufacturer categories and children's product tiers established in subsections (3) and (4) of this section. Manufacturers conducting safer alternative assessments for CHCCs may obtain an extension of the first notice date as provided in subsection (5) of this section. After the first notice date, notice must be provided annually on the anniversary of the first notice.

(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 is adopted.

The notice will be considered delinquent if not received by the department by the first day of the month indicated.

Notice due dates from adoption date of rule, values are in months.

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
Medium	24	36	48	case-by-case
Small	36	48	60	case-by-case
Smaller	48	60	72	case-by-case
Tiny	60	72	84	case-by-case

(3) For the purpose of this rule the department recognizes six categories of manufacturers. The categories of manufacturers are as follows:

(a) "Largest manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one billion dollars, based on the manufacturer's most recent tax year filing.

(b) "Larger manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than two hundred fifty million but less than or equal to one billion dollars, based on the manufacturer's most recent tax year filing.

(c) "Medium size manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred million but less than or equal to two hundred fifty million dollars, based on the manufacturer's most recent tax year filing.

(d) "Small manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than five million but less than or equal to one hundred million dollars, based on the manufacturer's most recent tax year filing.

(e) "Smaller manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred thousand but less than or equal to five million dollars, based on the manufacturer's most recent tax year filing.

(f) "Tiny manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of less than one hundred thousand dollars, based on the manufacturer's most recent tax year filing.

(4) For the purpose of this rule the department recognizes four tiers of products. The tiers or products are as follows:

(a) Tier 1 - children's products intended to be put into a child's mouth (e.g., children's products used for feeding, sucking, some toys) or applied to the child's body (e.g., children's products used as lotions, shampoos, creams), or any children's product intended for children who are age three or under.

(b) Tier 2 - children's products intended to be in prolonged (more than one hour) direct contact with a child's skin (e.g.,

clothes, jewelry, bedding, car seats).

(c) Tier 3 - children's products intended for short (less than one hour) periods of direct contact with child's skin (e.g., many toys).

(d) Tier 4 - children's product components not intended for direct contact with the child's skin or mouth (e.g., inaccessible internal components for all children's products). Any reporting requirements for internal components will be based on a case-by-case evaluation by the department and may be required by amendment of these rules.

(5) If a manufacturer presents documentation to show that it is conducting safer alternative assessments for CHCCs contained in its children's products and that these assessments are intended to result in the elimination or significant reduction of CHCCs from the manufacturer's products, the department may extend by twelve months the reporting requirement for that manufacturer.

NEW SECTION

WAC 173-334-130 How will this chapter be enforced? (1) A manufacturer of children's products is responsible for knowing the amount of CHCCs in its children's products and their components. To control the amount of any chemical present in its final children's product the manufacturer has a duty to establish and conduct a reasonable manufacturing control program. At a minimum, a reasonable manufacturing control program would include those methods and procedures established in federal regulations for children's products and 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.

(2) In deciding whether to impose penalties for failure to provide appropriate notice as described in WAC 173-334-090 through 173-334-120, the department may consider whether the manufacturer responsible for providing notice has exercised due diligence to ensure it knows the amount of the CHCCs in its children's product components. Actions demonstrating diligence 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.

(3) 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.

(4) 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 in an amount above the amount reported by the manufacturer or that the manufacturer has otherwise failed to provide appropriate notice as described in WAC 173-334-090 through 173-334-120, the department will inform the manufacturer in writing. The manufacturer shall have forty-five days from receipt of the department's notification of potential violation to further analyze the components in question for presence of CHCCs or to provide an explanation for the omission.

(5) A single violation consists of a manufacturer failing to provide the required notice for the presence of each CHCC, in each applicable product category, in each applicable product component. Unless otherwise warranted by egregious circumstances, the department's investigation prior to taking an enforcement action will include a request to the suspected violator for information regarding the suspected violation.

NEW SECTION

WAC 173-334-140 The reporting list of chemicals of high concern to children (CHCC list).

CAS	Chemical
50-00-0	Formaldehyde
62-53-3	Aniline
62-75-9	N-Nitrosodimethylamine
71-36-3	n-Butanol
71-43-2	Benzene
75-01-4	Vinyl chloride
75-07-0	Acetaldehyde
75-09-2	Methylene chloride
75-15-0	Carbon disulfide
78-93-3	Methyl ethyl ketone
79-34-5	1,1,2,2-Tetrachloroethane
79-94-7	Tetrabromobisphenol A
80-05-7	Bisphenol A
84-75-3	Di-n-Hexyl Phthalate
86-30-6	N-Nitrosodiphenylamine

CAS	Chemical
87-68-3	Hexachlorobutadiene
94-13-3	Propyl paraben
94-26-8	Butyl paraben
95-53-4	2-Aminotoluene
95-80-7	2,4-Diaminotoluene
99-76-3	Methyl paraben
99-96-7	p-Hydroxybenzoic acid
100-41-4	Ethylbenzene
100-42-5	Styrene
104-40-5	4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3
106-47-8	para-Chloroaniline
107-13-1	Acrylonitrile
107-21-1	Ethylene glycol
108-88-3	Toluene
108-95-2	Phenol
109-86-4	2-Methoxyethanol
110-80-5	Ethylene glycol monoethyl ester
115-96-8	Tris(2-chloroethyl) phosphate
118-74-1	Hexachlorobenzene
119-93-7	3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine
120-47-8	Ethyl paraben
123-91-1	1,4-Dioxane
127-18-4	Perchloroethylene
131-55-5	Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone
140-66-9	4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol
140-67-0	Estragole
149-57-5	2-Ethylhexanoic Acid
556-67-2	Octamethylcyclotetrasiloxane
608-93-5	Benzene, pentachloro
842-07-9	C.I. Solvent Yellow 14
872-50-4	N-Methylpyrrolidone
1163-19-5	2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209
1763-23-1	Perfluorooctanyl sulphonic acid and its salts; PFOS
1806-26-4	Phenol, 4-octyl-
5466-77-3	2-Ethyl-hexyl-4-methoxycinnamate
7439-97-6	Mercury & mercury compounds including methyl mercury (22967-92-6)
7439-98-7	Molybdenum & molybdenum compounds

CAS	Chemical
7440-36-0	Antimony & Antimony compounds
7440-38-2	Arsenic & Arsenic compounds including arsenic trioxide (1327-53-3) & dimethyl arsenic (75-60-5)
7440-43-9	Cadmium & cadmium compounds
7440-48-4	Cobalt & cobalt compounds
25013-16-5	Butylated hydroxyanisole; BHA
25154-52-3	Nonylphenol
25637-99-4	Hexabromocyclododecane