

## Chemicals of High Concern in Children’s Products

Date: December 4, 2019, 1:00 PM

Location: 108 Cherry Street, Burlington VT Room 3B

Public Attendees: Matthew Lenz, William Driscoll, Erin Sigrist, Allison Crowley

Phone: Maggie Lenz, Andrew Hackman, Don Asleson, Kanika Gandhi, Barb (Forever 21), and 33 additional participants who were not identified and did not provide comments.

VDH Staff: David Englander / Brendan Atwood / Teba Toffling Holmes / Kerry Morlock

Agenda Item	Discussion
1. Opening Remarks	D. Englander provided an overview of the purpose of the public meeting.
2. Section 5.1 Definition of Formaldehyde	<ul style="list-style-type: none"> <li>• D. Englander explained the proposed definition of formaldehyde under Section 5.1 of the rule would include a list of nine (9) intentionally added formaldehyde donor chemicals.</li> <li>• W. Driscoll asked whether the donor chemicals should be listed here as they are not the chemicals of concern.</li> <li>• D. Englander stated that the donor chemicals would be reported as formaldehyde.</li> <li>• W. Driscoll asked what the intention was of the Rule with regard to reporting amounts of formaldehyde donors as the amounts can change over time.</li> <li>• D. Englander responded that reporting the amounts of chemical donors would be the responsibility of the manufacturers, and that the Department of Health (Department) will address this requirement in a guidance document.</li> </ul>
3. Section 8.0 Reporting Years and Periods	<ul style="list-style-type: none"> <li>• D. Englander explained that legislation required the Department to adopt rules for reporting children’s products that contain chemicals of high concern when the product is offered for sale between the annual reporting period.</li> <li>• D. Englander noted a prior request for suggestions from manufacturers regarding this reporting requirement.</li> <li>• D. Englander explained that the only suggestion received was from A. Hackman suggesting bi-annual reporting at 6-month intervals.</li> </ul>

- M. Lenz stated that 30 days doesn't give manufacturers sufficient time as they don't necessarily know when the large retailers are going to offer the products for sale and that the 6-month reporting requirement is better than the 30 day.
- M. Lenz further stated that the 30-day reporting requirement created more work for manufacturers, that they will have to hire more employees to track the products, that it creates a financial impact on manufacturers.
- W. Driscoll stated that AIV had recommended that the reporting period should be the next regular reporting period, and that the 30 days would be tough.
- W. Driscoll and D. Englander discussed the specific language and requirement imposed by the Act and agreed that each interpreted it differently.
- E. Sigrist relayed that the VT Retailers Association would prefer annual reporting , that 30 days is not feasible for retailers, but similar to the toy association would be amenable to the 6-month reporting requirement over the 30 days.
- A representative from Forever 21 agreed that 30 days is not feasible.
- D. Asleson asked if there was any way to align with some of the other states' reporting timing and frequency to simplify the messaging to the supply chain.
- D. Englander stated that VT had changed the rule at least twice to align with Washington and continues to consider other states' rule requirements.
- M. Lenz requested that the State continue to work with other states to harmonize some of the reporting rules.
- K. Gandhi asked where the 30-day reporting proposal came.
- D. Englander explained that the 30 days came from judgment following discussions with the working group and Seventh Generation.
- K. Gandhi suggested that reporting should be closer to 30-day period if some manufacturers have indicated that they were able to comply with that timeframe.
- D. Englander reminded Ms. Gandhi that anyone can suggest whatever timeframe they wanted to, that nothing would be decided at the public comment hearing.
- M. Lenz stated that different manufacturers produce different products and have different roll out periods.

- E. Sigrist stated that some manufacturers can comply with a 30-day requirement, but retailers working with multiple manufacturers would have to hire new employees to do so, and therefore 30 days is not feasible.
- E. Sigrist asked if the Rule was intended to include formulated products or food.
- D. Englander directed the attendees to look at the definition of Children's Products for clarification, which was copied from the statute, and confirmed that it does not include food.
- M. Lenz asked whether the interim reports would be amendments to the annual reports or be separate.
- D. Englander confirmed that the interim reports would be considered separate from the annual reports required.
- W. Driscoll asked whether a manufacturer would be required to pay a fee if an interim report was made to disclose a new listed chemical and again on the annual report.
- D. Englander confirmed that the fee would be paid at the time of disclosure.
- W. Driscoll asked whether multiple fees would be due if disclosure included multiple products.
- D. Englander explained that the fee is per chemical, not per product, and paid at the time of disclosure. If a new product was introduced between reporting periods that used a chemical already reported as used in a manufacturer's product, there would be no cost associated with the disclosure. A fee is required only if it is a new product with a new chemical.
- W. Driscoll commented that one could interpret the statute to imply that a manufacturer would need to pay a fee at the time of disclosure and again at the time of the annual reporting and that this should be made more clear in either the statute or the guidance.
- D. Englander clarified that the fee is required is at the time of initial disclosure only if it is a new chemical and that it would be clarified in the guidance document. Annual reporting and associated fees would still be required.
- D. Asleson offered to meet with VDH staff to share a retailer's perspective including the fact that retailers rely upon manufacturers' knowledge and that it takes time to receive and consolidate the product information.
- D. Asleson asked whether there was an ability for retailers to delegate the reporting responsibilities to a third party.
- D. Englander explained that that ability currently exists and is being utilized.

	<ul style="list-style-type: none"> <li>• E. Sigrist asked whether a retailer that may be considered a manufacturer under the definition could direct the responsibility of reporting the product containing the new chemical to the actual manufacturer.</li> <li>• D. Englander confirmed that yes, the retailer could direct the manufacturer to report disclosure, and that this practice is currently be utilized.</li> <li>• D. Englander asked that those who did not agree with the 30-day proposed reporting period to provide comments in writing with specific examples regarding why this timeframe is not feasible.</li> </ul>
<p>4. Proposed language: “Offered for Sale or Distribution in Vermont”</p>	<ul style="list-style-type: none"> <li>• D. Englander opened this discussion with the invitation for anyone to make suggestions for the language “Offered for Sale or for Distribution in Vermont” if the current meaning didn’t meet the needs of the industry, the public, or consumer protection advocates.</li> <li>• W. Driscoll asked what the definition of “Offered for Sale” is.</li> <li>• D. Englander explained that the intent of the language of “Offered for Sale in Vermont” has a plain English meaning. [Note: Following the meeting, it was confirmed that “offered for sale is the language used by the State of Washington.]</li> <li>• W. Driscoll sought clarification of whether the definition meant physically on the shelves and available for sale, circulated in a trade show, or made available in catalogs for wholesalers or retailers in advance of those products appearing in Vermont.</li> <li>• D. Englander explained that it means available for purchase in Vermont (via online or catalogue).</li> <li>• D. Englander again solicited suggestions for language to clarify or define “Offered for Sale”.</li> <li>• W. Driscoll explained that many manufacturers may not know when a retailer offers a product for sale and wouldn’t know that the 30-day clock had started.</li> <li>• D. Englander explained to the attendees that a request for suggested language was also made at the workshop and that the department did not receive any responses.</li> <li>• D. Englander asked the attendees whether the question of the meaning of Offered for Sale could be resolved if the reporting requirements were set dates instead of within 30 days.</li> <li>• W. Driscoll sought clarification of whether one of the suggestions on the table was to have a fixed mid-year point or was it to have a fixed 180 days.</li> <li>• D. Englander indicated that both options are on the table.</li> <li>• M. Lenz offered that he would get back to D. Englander as to whether having a fixed date instead of the 30-day requirement would resolve the issue for his clients.</li> </ul>

	<ul style="list-style-type: none"> <li>• W. Driscoll offered that having fixed date requirements would be more in line with other states' requirements and may resolve the issue depending upon what date is established.</li> </ul>
<p>5. General Questions</p>	<ul style="list-style-type: none"> <li>• M. Lenz asked whether the Department has any analytics from the Department's website that track how many individual IP addresses are accessing the information and what they are searching for.</li> <li>• D. Englander indicated that the Department does not currently have this information.</li> <li>• E. Sigrist asked how the state was going to track products that come into Vermont from other states.</li> <li>• D. Englander responded that this rule only applies to products offered for sale in Vermont, and not simply transported into the state. D. Englander clarified that this applies to on-line retailers if they are selling in Vermont and noted that this requirement has been in place since the beginning of the Chemical Disclosure Program, and that this is not within the scope of this rulemaking.</li> <li>• D. Englander explained that this is consistent with other states like Washington and Oregon, that it applies to on-line retailers as well and that the retailer does have the option of prohibiting the sale in Vermont.</li> </ul>
<p>6. Closing Comments</p>	<p>D. Englander reminded all attendees that comments would be accepted through December 11, 2019 and that any comments sent should include details of and specific examples of any changes suggested.</p> <p>D. Englander also informed the attendees that all comments would be responded to in writing and those questions and answers will be posted online.</p>