

Chemical Disclosure Guidance for Manufacturers

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[Chemical Disclosure Program](#)

Vermont Department of Health

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1. INTRODUCTION

In 2014, the Vermont General Assembly passed Act 188. The Act, now [18 V.S.A. Chapter 38A](#) requires that manufacturers report to the Vermont Department of Health (Department) when their children's products contain one or more chemicals of high concern to children (CHCC) and if offered for sale in Vermont. This Guidance provides information to the manufacturers responsible for reporting to the Department as required by the statute ([18 V.S.A. Chapter 38A](#)) and the chemicals of high concern to children rule ([CHCC Rule](#)). This document defines and explains key terms and concepts relating to the statute and rule. References to the statute and rule are in bold.

2. WHAT ARE CHEMICALS OF HIGH CONCERN TO CHILDREN?

There are 86 CHCC listed in statute. Click [HERE](#) to view the list of chemicals. These chemicals may be intentionally added to a children's product to serve a particular function, or they may be present as contaminants. The list will be reviewed and updated every two years.

3. WHO NEEDS TO REPORT?

Manufacturers of children's products are required to report the use of chemicals of high concern to children to the Department when they are offered for sale in Vermont, including Internet sales. The term "manufacturer" usually means the entity whose name is affixed to the product, if that entity has a physical presence in the US. If the entity whose name is affixed to the children's product does not have a physical presence in the US, then the entity who sells the product in Vermont is considered the manufacturer. Therefore, "manufacturer" may include other entities that may not technically fabricate a product, but rather assemble product components or import a final product for sale in the US. The definition of a manufacturer, and the reporting requirements of the manufacturer, apply only to products offered for sale in Vermont, not products that are given away for free. It is only necessary for one entity to provide notice with respect to a particular children's product.

18 V.S.A. §1772 (12) (A) and (B)

EXAMPLES:

These examples apply to children's products that are not exempt from reporting, are offered for sale in Vermont and contain one or more chemicals of high concern to children:

1. A children's toy is fabricated or assembled (manufactured) in the US by FUNTOY and sold by KidToyInc, under the FUNTOY brand.
 - FUNTOY is considered the manufacturer and is responsible for reporting.
2. A children's toy is fabricated or assembled (manufactured) in the US by FUNTOY and sold by KidToyInc, under the KidToyInc brand.
 - KidToyInc is considered the manufacturer and is responsible for reporting.
3. A children's toy is fabricated or assembled (manufactured) in Europe by EuroFUNTOY, and imported and sold by KidToyInc, under the EuroFUNTOY brand. EuroFUNTOY is located in Europe and does not have a physical presence in the United States.
 - KidToyInc is considered the manufacturer and is responsible for reporting.
4. A children's toy is fabricated or assembled (manufactured) in Europe by EuroFUNTOY, and

imported and sold by KidToyInc, under the KidToyInc brand. EuroFUNTOY is located in Europe and does not have a physical presence in the United States.

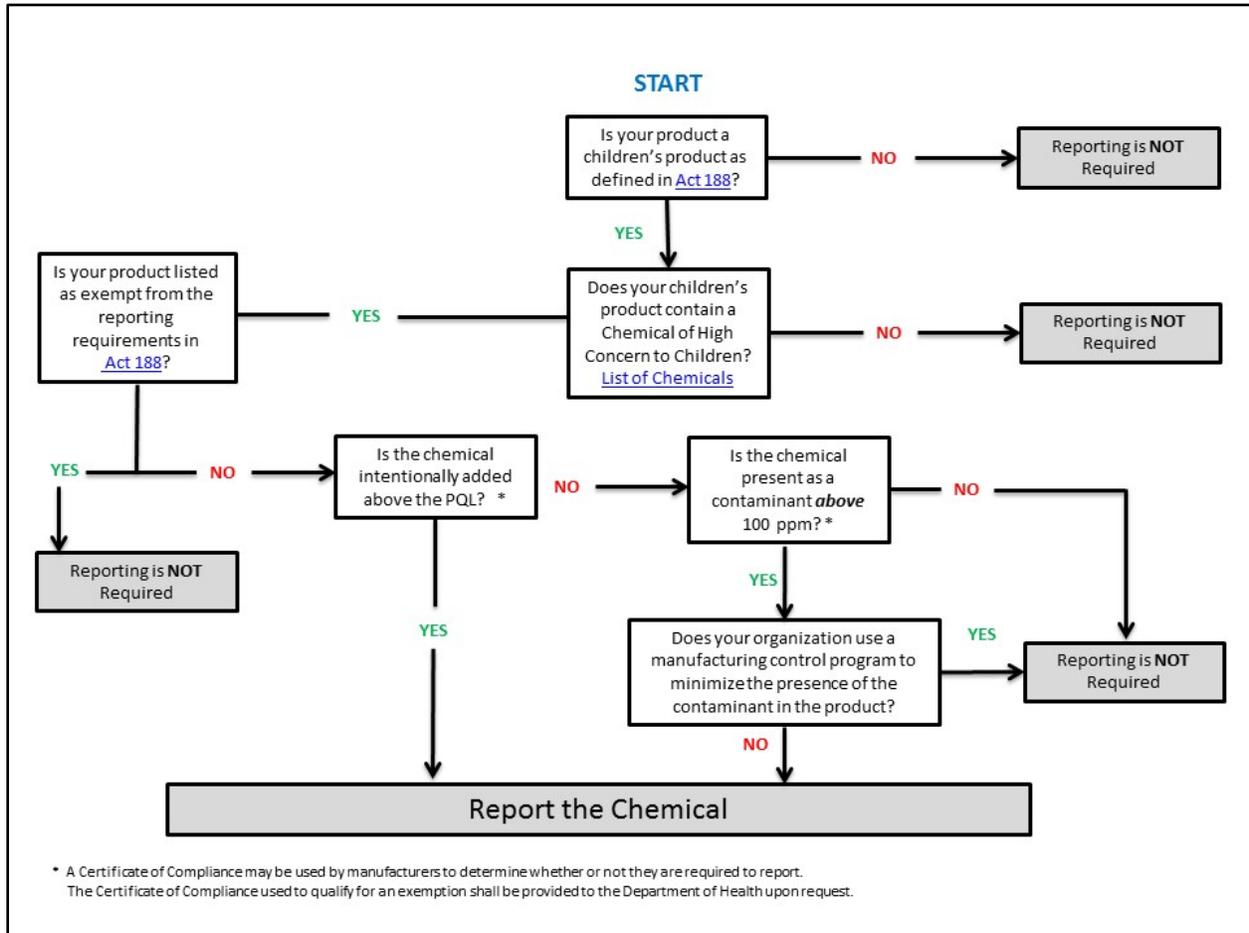
- KidToyInc is considered the manufacturer and is responsible for reporting.
5. KidToyInc fabricates or assembles (manufactures) a product using components from both inside the US and outside the US, and then sells the product. The product is labeled with KidToyInc's name.
 - KidToyInc is considered the manufacturer and is responsible for reporting.
 6. A children's product is fabricated or assembled (manufactured) by an individual using materials or supplies that were purchased at a local craft store. The individual does not know if the materials and supplies purchased at the craft store were made in the US or outside the US. The final product is sold at a craft fair in Vermont.
 - The individual who crafted the product is considered the manufacturer and is responsible for reporting.
 7. Children's products are fabricated or assembled (manufactured) in the US by FUNTOY. FUNTOY distributes those products to vending machines where the products are sold without a brand name.
 - FUNTOY is considered the manufacturer and is responsible for reporting.
 8. Children's products are fabricated or assembled (manufactured) in Europe by EuroFUNTOY and imported by USA Imports. USA Imports distributes those products to vending machines, where the products are sold.
 - USA Imports is considered the manufacturer and is responsible for reporting.
 9. U.S. Based FUNTOY manufactures a children's product using several components including a material purchased from U.S. based Company B. The finished product bears the brand name of FUNTOY as well as Company B's brand under a licensing agreement with FUNTOY.
 - FUNTOY is considered the manufacturer and is responsible for reporting. Entities that do not have knowledge of the final product composition are not intended to be considered the "manufacturer" for purposes of reporting.
 10. U.S. Based FUNTOY manufactures a children's product for U.S. based Company A using several components including a material purchased from U.S. based Company B. The finished product is sold under the private label brand of Company A but Company B's brand name also appears on the product under a licensing agreement with Company A.
 - Company A, as the private labeler, is considered the manufacturer and is responsible for reporting. Where private labelers hold themselves out as the manufacturer of the finished product, they are considered the "manufacturer" for purposes of reporting.
 11. U.S. Based FUNTOY contracts with a third party outside of the U.S. to manufacture or assemble a children's product using components from US based component manufacturer CoolWigit and includes images from BIGMovie on the product, and is sold by KidToyInc. The children's product bears the brand names for FUNTOY as well as the names CoolWigit and BIGMovie under licensing agreements.
 - FUNTOY is considered the manufacturer and is responsible for reporting. Entities who do not have knowledge of the final product composition are not intended to be

considered “manufacturers” for purposes of reporting. Even where the brands of manufacturers of components or entities that are only allowing the use of an image in a final product are affixed to the children’s product, those entities are not required to report.

4. REPORTING

(a) How does a manufacturer know whether to report a product?

See the reporting chart below, which helps determine if a chemical in a children’s product(s) should be reported.



(b) How does a manufacturer report?

The online reporting system is accessible from the Health Department website. Specific instructions on reporting are now available on the Health Department Website within the [Chemical Disclosure Online Reporting System User Manual](#).

(c) What types of products should manufacturers report?

Manufacturers must submit a report when their children’s product contains a chemical of high concern to children. A children’s product means a consumer product marketed for use by, marketed to, sold, offered for sale, or distributed to children in the state of Vermont either online or in stores. Specific exemptions are listed in section 6(e).

18 V.S.A. §1772 (7)(A)

(d) Are reporting requirements different for chemicals that are intentionally added versus chemicals present as contaminants?

Reporting is different for chemicals that are intentionally added to products, versus chemicals that are present as contaminants. Chemicals that are present as contaminants must be reported when present in a component at a concentration of 100 ppm or greater as established by **18 V.S.A. §1775 (a)(2)**. Chemicals that are intentionally added to a product, usually to serve a specific function, must be reported when present above the practical quantification limit (PQL) for that chemical. To download the PQL Document from the Department of Health website, click [HERE](#).

If a product releases one of CHCC as a post-production byproduct, the released CHCC serves no function, and the chemical has not been intentionally or unintentionally added to the product during production, the chemical does not need to be reported.

18 V.S.A. §1772 (9), (11); 18 V.S.A. §1775 (a)(1), (2)

(e) How much does it cost to report?

The fee for reporting is \$200 per chemical for each reporting period. A manufacturer may list multiple products containing the same chemical in one report with one fee. For example, a manufacturer will choose a chemical to report, and then may add to the report all children's products that contain that chemical. See section 4(f)(7) for more details. The maximum amount that could potentially be paid by one entity in a reporting period is \$17,200 if all 86 chemicals are reported.

18 V.S.A. §1775 (j)

(f) What type of information about a product is required to be reported?

1. The name of the chemical and its chemical abstracts service (CAS) registry number.
2. The Global Product Classification (GPC) product brick description.
3. The product component containing the chemical.
 - (a) The product component means the uniquely identifiable material or coating (including ink or dye) that is intended to be included as part of a finished product.
 - (b) This is a dropdown list of components, and is the same as provided by Washington State.
CHCC Rule Section 4.6
4. The amount of the chemical contained in each unit of the product or product component, reported by weight (parts per million). The concentration in parts per million should be the concentration in the product component, not the concentration in the final children's product.
18 V.S.A. §1775(b)(3)
5. The name and address of the manufacturer of the children's product and the name, address, and telephone number of a contact person for the manufacturer.
6. The function of the chemical in the product.
 - (a) This is a dropdown list of functions, and is the same as provided by Washington State.
7. The brand name and product model.
 - (a) The brand name is typically the name affixed to the product. The product model may be the description associated with the UPC number, the actual UPC

number, or both the number and the description together. Both the brand name and product model must be descriptive enough so that the product can be easily located, online or in a store, based on the product information reported to the Department. The brand name and product model are determined by the manufacturer or responsible party, such as the supplier or retailer, prior to placing the item into the stream of commerce.

- (b) In some limited cases, products may be sold without a brand name and/or product model. In those cases, the brick cannot be used as a replacement for product model. The manufacturer responsible for reporting must provide a description of the product model beyond the brick level, even if no brand name is available. A brick description has insufficient information for consumers to make retail choices.
- (c) Manufacturers shall report the brand names and product models of their products that contain chemicals. The brand names and product models are associated only with a chemical, and not with function, concentration, component or brick information for that chemical. The program is currently exploring options with our vendor to add a third field into our template to collect brand name, product model, and UPC. Manufacturers will not be required to report all three fields until our template is updated to allow manufactures to do so.
- (d) Brand name and product model data is submitted using a downloadable excel template. *Note: Do not modify the columns in rows 1 and 2 of the template, or enter data outside of the designated columns. Editing rows 1 and 2 or entering data outside of the designated columns will cause your file to be rejected.*

(e) Examples -

1.) The tag on the product says the brand "FUNTOY"

Brand Name – FUNTOY

Product Model – Dump Truck Powered Ride On

(UPC -495069485960)

2.) Brand Name – FUNTOY

Product Model – Plush 5 inch Spotted Pony

3.) Brand Name – FUNTOY

Product Model – 24 pack Fine Tip Markers

(UPC - 968473649382)

4.) Brand Name – FUNTOY

Product Model – Purple Sparkly Plastic Rubber Bouncy Ball 1inch Diameter

Explanation – This product model is an example of a description that would be sufficient for a product with no designated model.

- (f) If a product is offered for sale in different sizes or variations, the individual variations may need to be reported separately if the concentration of the chemical within the component is significantly different.

- (g) If a specific item that item contains one of the CHCC is sold in multiple toy sets (for example, one screw driver is sold as part of three different children’s toy construction sets) the disclosure would include the following:
- The chemical used in the screw driver
 - The Product Model/Brand Name excel upload containing all product model and brand names that use the screw driver (as well as any other product models and brand names that use the chemical being reported)
 - The details about the screw driver (function of chemical, component, concentration of chemical, brick)

18 V.S.A. §1775(b)(1) – (5) and CHCC Rule 6.1.6 – 6.1.7

(g) How often must manufacturers report?

Manufacturers are required to report on or prior to **January 31, 2022** for products offered for sale between **September 1, 2020** and **January 31, 2022**. Submissions shall continue annually thereafter (see below table for reporting period schedule). Each report is based on a chemical; thus, a manufacturer can submit a maximum of 86 reports per reporting year. Products can be added to reports throughout the reporting period, and will not result in a new fee.

CHCC Rule 8.0 - 9.1

Reporting Period*	Start Date	End Date
2021	9/1/2020	1/31/2022
2022	2/1/2022	1/31/2023
2023	2/1/2023	1/31/2024
2024	2/1/2024	1/31/2025
2025	2/1/2025	1/31/2026
2026	2/1/2026	1/31/2027
2027	2/1/2027	1/31/2028
2028	2/1/2028	1/31/2029
2029	2/1/2029	1/31/2030
2030	2/1/2030	1/31/2031

*July 31 is the interim reporting date for products offered for sale after the start date of each reporting period. Products reported by this date do not need to be re-reported in the same reporting period.

(h) What if a manufacturer reports and starts selling a new product the following month?

If the product contains a CHCC for which a manufacturer has already created a report during the reporting period, the new product should be added by amending the appropriate existing chemical report. If the product contains a CHCC that has not been reported yet during the current reporting period, this would be considered a new report, resulting in a new fee.

CHCC Rule 8.0

(i) *How will manufacturers report chemicals that are Trade Secret?*

As it is defined in 9 V.S.A. §4601 (3), Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

It is the burden of the manufacturer to assert that information submitted under §1775 is a trade secret, confidential business information, or is otherwise designated confidential by law. After submitting a disclosure containing trade secret information, manufacturers must substantiate assertions that the specific identity of a chemical is trade secret by answering a questionnaire and emailing it to the Program within 24 hours of submitting disclosure or the request will be denied. If the trade secret claim is approved by the Program, the generic class or category of the chemical in the children's product and the potential health effect of the specific chemical will be displayed to the public.

The questionnaire is available on the [Chemical Disclosure Program website](#) and should be emailed to: AHS.VDHChemicalDisclosureProgram@vermont.gov

18 V.S.A. §1778

5. PAYMENT

(a) *Which payment types are accepted?*

- The online disclosure system will accept the following payments
 - Credit Card
 - Debit Card
 - ACH

(b) *When do manufacturers pay?*

Manufacturers will pay at the end of the disclosure process. Manufacturers may enter data for multiple disclosures and pay for them all at once. Manufacturers may return to the system at any time within the reporting period to report additional chemicals, and pay for the additional reports at that time.

(c) *Will manufacturers receive an invoice or receipt of payment?*

Manufacturers will not receive an invoice, as payments are done online at the time of reporting.

After providing payment for disclosures submitted, a receipt will be emailed to the manufacturer to confirm that the payment was received.

If a trade association reports for a manufacturer, both the trade association and the manufacturer will receive an email receipt.

6. EXEMPTIONS

If you believe that your entity qualifies for one of the exemptions listed(a)(b)(c)(d) or determine that your entity is not subject to reporting requirements, please complete and submit the [Notice of Exemption form](#) available on the Program's web page to certify your entities' exempt status.

(a) Chemical Control Program

Manufacturers are exempt from reporting to the Department chemicals that are present as contaminants if the manufacturer implements a manufacturing control program and exercises due diligence to minimize the presence of the contaminant. A chemical control program is a program that includes industry best practices for the minimization of a chemical in a children's product. These practices may include, but are not limited to: methods and procedures for meeting relevant federal regulations; International Standards Organization (ISO) requirements; American Society for Testing and Materials (ASTM) International standards; and other widely established certification or standards programs.

Actions demonstrating due diligence in ensuring the effectiveness of a manufacturing control program may include the following: 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.

Comprehensive documentation of the Chemical Control Program used to qualify for an exemption under this section shall be provided to the Department of Health upon request.

18 V.S.A. §1775(e)

(b) Certificate of Compliance

A certificate of compliance is a document certified by a competent authority stating that the supplied good or service it covers meets the agreed-upon or required specifications. The certificate of compliance would be expected to state that the product or component does or does not contain a chemical of high concern to children. A certificate of compliance is one way that manufacturers may evaluate whether they are required to report. If a manufacturer is certain that their manufacturing process does not involve the use or addition of a chemical to a children's product due to the availability of the certificate of compliance, there is no need to report.

A Certificate of Compliance used to qualify for an exemption under this section shall be provided to the Department of Health upon request.

18 V.S.A. §1775 (g)

(c) Products for sale out of state

18 V.S.A. Ch. 38A applies to products offered for sale in Vermont, including internet sales. Products offered for sale outside of the state of Vermont are not within the scope of this legislation.

18 V.S.A. §1775 (h)

(d) Application of section

Product exemptions are listed below:

- Batteries
 - Snow sporting equipment including skis, poles, boots, snow boards, sleds, and bindings
 - Inaccessible components of a consumer product that during reasonably foreseeable use and abuse of the consumer product would not come into direct contact with a child's skin or mouth
 - Used consumer products that are sold in second-hand product markets
 - A product primarily used or purchased for industrial or business use that does not enter the consumer product market or is not otherwise sold at retail
 - A food or beverage or an additive to a food or beverage
 - A tobacco product
 - A pesticide regulated by the U.S. Environmental Protection Agency
 - A drug, or biologic regulated by the U.S. Food and Drug Administration (FDA), or the packaging of a drug, or biologic that is regulated by the FDA, including over the counter drugs, prescription drugs, dietary supplements, medical devices, or products that are both a cosmetic and a drug regulated by the FDA
 - Ammunition or components thereof, firearms, air rifles, hunting or fishing equipment or components thereof
 - An aircraft, motor vehicle, vessel
 - Consumer electronic products, including personal computers, audio and video equipment, calculators, wireless telephones, game consoles, and hand-held devices incorporating a video screen used to access interactive software intended for leisure and entertainment and their associated peripherals
 - Interactive software, intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs
 - The packaging in which a product is sold, offered for sale, or distributed
 - Soap
 - Dietary supplements
 - Food and drugs approved by the FDA
- 18 V.S.A. §1772 (7)(B), 18 V.S.A. §1772 (8), 18 V.S.A. §1772 (10), 18 V.S.A. §1775 (k)**

7. OTHER

(a) Data sharing

Currently, Vermont is not in a reciprocal data-sharing agreement with Washington State or Oregon. Chemical data that have been disclosed to Washington or Oregon must be disclosed separately to the state of Vermont, if the products meet Vermont's requirements.
18 V.S.A. §1775(c)

(b) Notice of removal of a chemical

A manufacturer who submitted a report may notify the Department that the chemical has been removed from the product or that the product is no longer for sale. A form to notify the Department will be available on the website. Upon verification of the form, the Department will remove the reported information from the website.

18 V.S.A. §1775 (f)

(c) Will the Department accept petitions for removal of chemicals from the Chemicals of High Concern to Children List?

Under 3 V.S.A. §805 any person may request that the Commissioner add or remove a chemical from the list of high concern to children.

18 V.S.A. §1773 (d)

(d) How should formaldehyde donor concentrations be reported?

For formulations containing the formaldehyde donors listed, manufacturers should report the anticipated concentration of formaldehyde in the product. The anticipated concentration of formaldehyde could be obtained by product testing, or by working within the supply chain to understand what concentration of formaldehyde is expected to be released from a specific donor.