Date: May 14, 2013

To: Human Services Ways & Means Subcommittee Members

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Re: Responses to HB 3162 Questions from May 13, 2013 Ways & Means, Human Services Subcommittee hearing

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1) What is the cost to manufacturers? *(Representative Freeman)*
a) Cost to conduct alternatives assessment or a hazard assessment.

Compliance under Section 14 of HB 3162 requires either (a) **substitution** or removal of high priority chemicals, or (b) a **waiver** application process. Both of these options (with the exception of removal) require that manufacturers follow established chemical assessment methodologies. The costs of these assessments vary depending on a variety of factors, including scope, amount of available data, and level of expertise of the entity performing the assessments.

Trade associations or firms producing similar products may reduce costs by conducting these assessments collectively.

REQUIREMENTS FOR CHEMICAL SUBSTITUTION
Manufacturers who substitute chemicals of concern in a children's product (as outlined in Section 14 of HB 3162) must submit a **hazard assessment** to demonstrate that the substitute chemical is inherently less hazardous. Complying with the law by removing or substituting the chemical of concern is more cost effective than seeking a waiver.

Hazard assessment: a process to compare and evaluate safer alternatives to hazardous chemicals. The GreenScreen for Safer Chemicals is a method developed by Clean Production Action for comparative chemical hazard assessment that can be used for identifying chemicals of high concern and safer alternatives. GreenScreen™ is used by businesses (e.g., Hewlett-Packard), governments (e.g., Washington State), and NGOs (e.g., Healthy Building Network's Pharos Project).

Hewlett-Packard is the world's leading practitioner of the GreenScreen tool:

> *"Integrating the GreenScreen framework into our overall alternatives assessment protocol has enabled HP to more easily select replacement materials with a reduced risk of human health and environmental impacts.* ***We have completed more than 130 assessments*** *since the program began. Projects in 2011 included evaluating PVC-free power cords, process cleaners,*

and general plastic resins. We also participated in the Green Chemistry and Commerce Council (GC3) plasticizer alternatives assessment project, which employs GreenScreen."
- Hewlett-Packard. (2011). *HP 2011 Global Citizenship Report*, p. 37. http://www8.hp.com/us/en/pdf/hp_fy11_gcr_tcm_245_1357670.pdf

The cost of conducting a hazard assessment ranges from $1000 - $2500 based on quotes from companies that routinely conduct these types of assessments.

REQUIREMENTS FOR WAIVERS

Manufacturers who have not removed or substituted high priority chemicals in a children's product within 5 years (as outlined in Section 14 of HB 3162) must apply for a waiver. The waiver application must include **one** of the following:

a) **Alternatives assessment**; or
b) **Exposure assessment**

Alternatives assessment: characterizes chemical hazards based on a range of potential human health and environmental impacts. Within the alternatives assessment (AA) under HB 3162, manufacturers must demonstrate that removing the chemical is not financially or technically feasible.

"Most large companies are already carrying out many elements of an AA *during the product design phase. Internal teams of toxicologists and industrial hygienists assess the safety and regulatory compliance of a product throughout its life cycle before it is ever manufactured."*
- Gauthier, A. (2012). Alternatives Assessments: Eliminating Toxicity in Consumer Products. *Sustainable Brands Issue in Focus*. www.sustainablebrands.com/news_and_views/green_chemistry/alternatives-assessments-eliminating-toxicity-consumer-products

The cost of conducting an alternatives assessment ranges from $10,000 - $70,000 based on quotes from companies that routinely conduct these types of assessments.

Exposure assessment: a process of measuring or estimating the magnitude, frequency, and duration of human exposure to environmental hazards. Within the exposure assessment under HB 3162, manufacturers must demonstrate that the chemical is not reasonably anticipated to result in exposure based upon an analysis of leachability and bioavailability of the chemical.

The cost of conducting a conducting an exposure assessment ranges from $3,000 - $20,000 based on quotes from companies that routinely conduct these types of assessments.

b) Cost to replace chemical of concern with a safer alternative.

A manufacturer that wishes to petition for a waiver under HB 3162 Toxics Disclosure for Healthy Kids may do so on the grounds that a safer alternative to a High Priority Chemicals of Concern for Children's Health is cost prohibitive or not "economically feasible".

To ensure economic viability, alternatives should be easy to process and cost-effective to integrate into products. From an economic standpoint, the ideal alternative would be a drop-in replacement that has similar physical and chemical properties such that existing storage and transfer equipment as well as manufacturing technologies could be used without significant modification. However, chemicals with similar physical and chemical properties may have similar hazard and exposure profiles.

2) **What is the federal government doing? What is the EPA, FDA and Consumer Product Safety Commission doing?**

Toxic Substances Control Act of 1976 (TSCA)
The primary governing federal statute, the Toxic Substances Control Act of 1976 (TSCA), was intended to authorize the U.S. Environmental Protection Agency (EPA) to protect public health and the environment from toxic chemicals. When TSCA was passed, about 62,000 chemicals in commerce were 'grandfathered in' without any required testing for health and safety hazards or any restrictions on usage. In the 35 years since TSCA passed, the EPA has required chemical companies to test only about 200 of those chemicals for health hazards and has issued partial restrictions on only 5 chemicals. TSCA has been widely recognized as ineffective and obsolete due to legal and procedural hurdles that prevent the EPA from taking quick and effective regulatory action to protect the public against well-known chemical threats.

In January 2009, the U.S. General Accounting Office (GAO) added the EPA's regulatory program for assessing and controlling toxic chemicals to its list of "high risk" government programs that are not working as intended, finding that:

- EPA has been unable to complete assessments even of chemicals of highest concern;
- EPA requires additional authority to obtain health and safety information from the chemical industry and to shift more of the burden to chemical companies to demonstrate the safety of their products;
- TSCA does not provide sufficient chemical safety data for public use by consumers, businesses and workers; and
- TSCA fails to create incentives to stimulate the development and marketing of safer chemicals and products.
- In the absence of federal action, states need to use all the tools at their disposal to protect the health and well being of its citizens.

In February 2012 the EPA released their *TSCA Work Plan Chemicals: Methods Document* in which they identify 83 chemicals for further assessment over the coming decade (an exact timeframe is not specified). While this is progress for EPA, there is no stated intent from EPA to take additional action on any of these 83 chemicals once the assessments are complete. It is encouraging that information from Washington state's Children's Safe

Product Act was used in identifying these 83 chemicals for further consideration, demonstrating that information from state action can inform federal policies.

EPA 2012 Chemical Data Reporting.
Chemical manufacturers are required to report volume of chemicals they manufacture and potential uses to the EPA. This information does not provide consumers or public health officials with any information about what is actually in any children's product. http://www.epa.gov/cdr/pubs/guidance/cdr_factsheets.html#overview

Consumer Products Safety Improvement Act (CPSIA)
The CPSIA was passed by Congress in 2008 and set maximum safe levels of lead and six different type of phthalate chemicals for certain children's products. The law requires mandatory testing by manufacturers. In 2011, the ASTM F963 toy safety standard became mandatory under the CPSIA, setting a limit for soluble cadmium (but not total cadmium content).

Under HB 3162, while manufacturers of all children's products would need to disclose if the product contained a chemical from Oregon's list of 19, **any product already regulated under the CPSIA is exempt from the substitution requirements of the bill.**

Food and Drug Administration (FDA)
The agency charged with oversight of cosmetics, the U.S. Food and Drug Administration (FDA), has no authority to require pre-market safety assessment as it does with drugs, so cosmetics are among the least-regulated products on the market. The FDA does not review – nor does it have the authority to regulate – what goes into cosmetics before they are marketed for use by consumers and in salons. In fact, 89 percent of all ingredients in cosmetics have not been evaluated for safety by any publicly accountable institution.

The FDA's own Web site explains its limitations:
"FDA's legal authority over cosmetics is different from other products regulated by the agency .... Cosmetic products and ingredients are not subject to FDA premarket approval authority, with the exception of color additives."

3) **How can you track the products and manufacturers if they are coming in from overseas (China)?** *(Senator Bates)*

Section 103(a) of the Consumer Product Safety Improvement Act (CPSIA) requires manufacturers to have a tracking label or other distinguishing permanent mark on any consumer product primarily intended for children twelve and younger. The tracking label must contain certain basic information, including the source of the product, the date of manufacture and more detailed information on the manufacturing process such as a batch or run number. The scope of this provision is quite broad in that it applies to all children's products, including, but not limited to, items such as clothing or shoes not just toys and other regulated products.

Washington state has established a process for determining how compliance with the chemical disclosure information for children's products regulated under the Children's Safe Product Act, RCW 70.240, will be enforced and what entities are responsible for reporting (Children's Safe Product Act – Reporting Rule – WAC 173-334)

Under Washington's Children's Safe Product Act, the following hierarchy will determine which entity will be primarily responsible for ensuring that the department receives a complete, accurate, and timely notice for the children's product:

(a) The person or entity that had the children's product manufactured, unless it has no presence in the United States. (*Washington Department of*) Ecology will use the tracking label required by Section 103 of the federal Consumer Product Safety Improvement Act (CPSIA) to determine the person or entity that had the children's product manufactured. If that entity has no presence in the United States, or it is not possible to identify them; Ecology will attempt to identify the first person or entity that owned the children's product in the United States (see section (c)).

(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.

When the section 103 tracking label references a manufacturer with no U.S. presence we will look to the importer that provides the General Certificate of Compliance required by Section 14(a) of the Consumer Product Safety Act, as amended; 15 U.S.C. Sec. 2063(a), and 16 C.F.R. Sec. 1110.7(a).

Retailers are not responsible for reporting with respect to the products they sell at retail unless they are also the producer, importer or domestic distributor of the product.

In addition, Section 8 of HB 3162 authorizes OHA to conduct optional product testing to ensure compliance.