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DATE: December 14, 2023

TO: Hearing Attendees and Commenters –
Oregon Administrative Rules chapter 333, division 16,
"Toxic Free Kids Modernization Act (HB 3043) – Fall 2023"

FROM: Brittany Hall, Hearing Officer

cc: Gabriela Goldfarb, Manager
Environmental Public Health Section

Justin Waltz, Policy Analyst and Lead
Toxic-Free Kids Program

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public
Comment Period

Hearing Officer Report

Date of Hearing: November 15, 2023, via Microsoft Teams

Purpose of Hearing: To receive testimony regarding the Oregon Health Authority (OHA), Public Health Division's proposed permanent amendment of administrative rules in chapter 333, division 16 related to the Toxic-Free Kids Act.

Hearing Officer: Brittany Hall

Testimony Received: One individual provided oral testimony at the hearing. Oral testimony requested clarification on how classes and subclasses will be added to the list of high priority chemicals. Testimony also questioned how the fees will be charged, requesting clarification on whether one charge of the \$250 fee would be applied for the entire class/subclass, or if a manufacturer reporting use of multiple chemicals from a class/subclass would be charged the \$250 fee for each individual chemical within that class/subclass.

Oral testimony also opined that throughout the legislative and rulemaking process, people believed that because HB 3043 puts the addition of classes or subclasses in statute, the only way Oregon would look at adding classes or subclasses was if Washington and their program did so. However, as the proposed rules are written it

would allow the addition of classes or subclasses by considering other state and federal programs.

Agency response: The Agency thanks these individuals for their comments. With respect to how classes and subclasses of chemicals will be added to the list of High Priority Chemicals of Concern for Children’s Health (HPCCCH) listed in Oregon Administrative Rule (OAR) [333-016-2030](#), the Agency will consider the parameters specified in OAR 333-016-2030(1). With respect to how the fees would be charged, OAR [333-016-2080 requires](#) OHA to charge \$250 for the notification of each HPCCCH reported. The \$250 fee will not cover an entire class or subclass of chemicals. With respect to the opinion that the Agency may only consider adding classes or subclasses to its list of HPCCCH if the State of Washington does so, the Agency respectfully disagrees. SECTION 2 of [HB 3043](#) provides broad criteria that the Agency should consider when adding a class or subclass of chemicals to the HPCCCH list. Consideration of the chemicals or classes of chemicals on the State of Washington’s list is one such criteria that will be utilized in revising the HPCCCH list.

Other Written Comments: Two individuals submitted written comments on behalf of nine organizations during the period allotted for public comments, which closed at 5PM on November 21, 2023. These comments are briefly summarized below and are attached to this report as **EXHIBIT 1**.

One of the written comment letters provided follow-up and clarification to the oral testimony that was given at the hearing and described above.

Written comments addressed the racial equity statement provided for this rulemaking, stating that “we agree with OHA’s assessment that while the rules on their face will not impact racial equity directly, the impact of allowing for the regulation of classes of chemicals in children’s toys and removing the five-chemical limit on regulations would likely have a bigger impact on human health.” Written comments encourage OHA “to include more interested parties that represent environmental justice issues” and “to include a diverse array of public-interest advocates that speak for disproportionately impacted communities” on the TFKA rulemaking advisory committees.

Written comments expressed disappointment with the delay in rulemaking for Section 5 of HB 3043 (Hazard Assessments).

Agency response: The Agency thanks these individuals and organizations for their comments. With respect to the need for OHA to do a better job of including people representing both disproportionately impacted communities and environmental justice issues on the TFK Rules Advisory Committee (RAC), OHA completely agrees. In early November, TFK Program staff met with staff of the Office of the State Public Health Director’s Equity Office to seek guidance on correcting this deficiency. As a result, the TFK Program will work with the Equity Office starting June 2024 on outreach efforts to identify potential representatives in advance of RAC meetings in Fall 2024. Next fall, the RAC will focus on rules for the remaining parts of HB 3043, which are likely to have a

greater effect on racial equity than the rules amended in this rulemaking. With respect to OHA's decision to delay rulemaking on Section 5 of HB 3043 until Fall 2024, Program staff empathize with the disappointment voiced. The delay is due to OHA's need to do a thorough review of the legislative intent of the language in that section. OHA is committed to spending the time necessary to draft rules that can be effectively implemented and also meet the legislative intent.



November 20, 2023

Ms. Brittany Hall
Administrative Rules and Legislative Coordinator
Oregon Health Authority, Public Health Division
800 NE Oregon Street, Suite 930
Portland, OR 97232

RE: Comments on Proposed Rule – OAR 333-016

Dear Ms. Hall:

On behalf of The Toy Association (TTA), the Juvenile Products Manufacturer's Association (JPMA), and the American Chemistry Council (ACC) please accept the following comments and requests for clarifications on the Oregon Health Authority's (OHA) proposed administrative rules in Chapter 333, Division 16 (Rule) related to the implementation of HB 3043. We appreciate the opportunity to provide these comments on the proposed Rule, and to provide input through the Rules Advisory Committee (RAC) meetings convened in 2023. It is in the best interest of children and the manufacturers of children's products to have certainty around regulatory requirements and resolving the following concerns would help provide a clearer pathway for compliance with the TFKA.

1. How will classes or subclasses be added to the HPCCCH list and then how will the fees be charged? When you add a "class" or "subclass" will it be listed as the "class" or as each individual chemical within a whole "class/subclass"? Will the manufacturer be charged \$250 for all chemicals included in the "class/subclass" or \$250 for each individual chemical in the "class/subclass"?

If the intention is for the manufacturer to pay one \$250 fee for the whole "class/subclass" we recommend changing the language around notification requirements to clarify.

2. Throughout the process, many stakeholders believed that because HB 3043 puts the addition of "classes" or "subclasses" in ORS 431A.255(1)(b) that they can only be added if WA changes their Children's Safe Products Act (CSPA) to allow them to be added to their List of Chemicals of High Concern to Children. There is a good argument for that interpretation of the statute, especially testimony in the legislative record states that this provision was only created to align with WA's program. However, the rule says that to include "classes" or "subclasses" that the department may consider all the programs in section 1 of 333-016-2030.

We appreciate OHA's desire to ensure that the new statutory requirements from HB 3043 are implemented correctly and clearly. Thank you for the opportunity to comment. Please feel free to contact us directly via Erin Raden at eraden@toyassociation.org if you have any questions about these comments or would like to discuss in more detail.

Respectfully,

Erin Raden
Senior Director, State Government Affairs
The Toy Association

Lisa Trofe
Executive Director
Juvenile Products Manufacturers Association

Tim Shestek
Senior Director, State Affairs
American Chemistry Council

CC: Justin Waltz
Program Analyst & Lead, Toxic-Free Kids Program
Oregon Health Authority - Public Health Division

November 21, 2023

Oregon Health Authority, Public Health Division
Brittany Hall, Administrative Rules Coordinator
800 NE Oregon Street, Suite 930
Portland, Oregon 97232

Submitted via email to: publichealth.rules@odhsoha.oregon.gov
toxicfreekids.program@odhsoha.oregon.gov

RE: HB 3043 (Toxic Free Kids) Phase 4 Fall 2023 Rulemaking

A. Administrative/Wording Changes

The undersigned parties here that were involved in this phase of the Toxic Free Kids Modernization Act's rulemaking, submit these comments. We have no feed back on OHA's administrative changes to administrative rules in chapter 333- which consists of inserting the definitions of "classes" and "subclasses" of chemicals where appropriate, changes high priority chemical reporting dates, and inserts "inaccessible" to the quantitative exposure assessment (QEA) requirements.

B. Racial Equity Statement

We agree with OHA's assessment that while the rules on their face will not impact racial equity directly, the impact of allowing for the regulation of classes of chemicals in children's toys and removing the five-chemical limit on regulations would likely have a bigger impact on human health. Numerous studies have shown that dollar and discount stores and cheaper products contain higher levels of chemicals of concern- such as phthalates, PFAS, and even *asbestos*.¹ Data shows that for many phthalates, exposure is significantly higher in children between ages 6 and 11, as well as in people of color.²

It has long been the philosophy behind the coalition that supported HB 3043 that by making mainstream products in big box stores healthier and safer, accessibility to better ingredients increases to everyone as opposed to the select few who can afford specialty products. This increases both economic and racial equity for those most disproportionately impacted by toxic chemical exposures.

We also agree with OHA's sentiment that there is a need to include more interested parties that represent environmental justice issues on the TKFA rulemaking advisory committees, as these types of committees tend to be saturated with business interests. Oregon Environmental Council (OEC) representatives reached out to you to add additional environmental, consumer justice, and health advocates and we encourage you to include a

¹ <https://www.theguardian.com/us-news/2022/apr/12/harmful-chemicals-toys-discount-stores-us>.

² <https://www.downtownpublications.com/single-post/playing-with-poison-toxins-in-children-s-toys>.

diverse array of public-interest advocates that speak for disproportionately impacted communities.

C. The Delay in Rulemaking for OAR [333-016-3020](#) (Hazard Assessments)

While we are disappointed that the rulemaking for OAR [333-016-3020](#) (SECTION 5) ended up being delayed until Fall 2024, we are supportive of OHA taking the time to do more analysis and be thoughtful about the intent of HB 3043 Sec. 5. However, we still want to note that HB 3043 called for rules to be in place by Jan. 1, 2024.

And perhaps more importantly, while we are supportive of taking this time to get more information, we would hope that the agency would not delay a rulemaking each time manufacturers find controversy.

HB 3043 Sec. 5 states: “A hazard assessment (HA) approved or deemed approved under this subsection is valid for a period of three years after the date of submittal of the hazard assessment. A manufacturer must resubmit the hazard assessment at the end of the three-year period.”

On plain reading, and via legislative intent during the HB 3043 hearings, it is clear to us that the clause does not call for a manufacturer to re-submit the same paperwork every three years- as the Toy Association asserts. It is our understanding that *GreenScreen* practice calls for a hazard assessment to be re-performed every three years with the intent of encouraging constant scientific development and green chemistry innovation. HB 3043 is therefore consistent with best scientific practices.

And further, in the rare chance of a regrettable substitution or a high hazard score, we would hope that such a chemical would be added to the high priority chemical list for children’s products (HPCCH) so that other manufacturers who did not submit an HA for that chemical would receive notice that it will no longer be acceptable in children’s products. While it is not ideal that such a chemical would have to wait for the next round of rulemaking (every 3 years), the use of *GreenScreen* and periodic hazard assessments furthers innovation for safer alternatives- a core intent of HB 3043 and the 2015 Toxic Free Kids Act.

HB 3043 made a number of changes to benefit manufacturers- including delaying HPCCH reporting from Jan. 1 to Jan. 31 to give them more time, and to align with Washington’s reporting date, and to give them a limited exemption from HPCCH substitutions if it was demonstrated that the exposure was inaccessible.

We are also disappointed that during the negotiations of HB 3043, the Toy Association and manufacturers did not mention their concerns with Sec. 5 or share their interpretations of it. They had plenty of chances. We hope that in the Fall of 2024, OHA will come to a definitive understanding that Sec. 5 calls for at least one more hazard assessment to be performed three years after its approval in alignment with *GreenScreen* practices.

Sincerely,

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