

October 2017

>> Toxic-Free Kids

A Report to the Governor and the 79th Oregon
Legislative Assembly



Oregon
Health
Authority
PUBLIC HEALTH DIVISION

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Executive summary

The Toxic-Free Kids Act (Senate Bill 478) became law during the 2015 legislative session. This law directs the Oregon Health Authority (OHA) to keep a list of high priority chemicals of concern for children's health. In addition, this law calls for OHA to set up a program for manufacturers to report and eventually phase out the use of these chemicals in children's products.

As Senate Bill 478 requires, OHA makes biennial reports to the Legislature on the status of the statute's implementation. This initial biennial report describes OHA's adoption of rules and other processes. There has been adoption in rule of the list of high priority chemicals of concern for children's health; issuance of guidance for manufacturer requests for product waivers; development of an interstate reporting data system; and development of an interim reporting system.

Completion of these foundational steps position OHA to meet future statutory deadlines. This includes the Jan. 1, 2018 deadline for manufacturers to make their first reports of targeted chemicals. OHA is also ready to carry out the Legislature's direction to understand and reduce children's exposure to these chemicals in Oregon.

Introduction

The Oregon Legislature passed the Toxic-Free Kids Act (“the Act” or TFK), during the 2015 legislative session. The Act, restated in Oregon Revised Statutes,¹ requires manufacturers of children’s products sold in Oregon to report products that contain one or more high priority chemicals of concern for children’s health (HPCCCH). In addition, manufactures must ultimately remove these chemicals or seek a waiver. Products that fall under this law include products marketed to or intended for children.

The Public Health Division of the Oregon Health Authority (OHA) manages the Toxic-Free Kids Program. By September 15 of each odd-number year, Section 13 of the Act requires OHA to report to the Legislature on the following:

- (1) Any revisions made under section 3 of this 2015 Act to the list of high priority chemicals of concern for children’s health used in children’s products.
- (2) The number of manufacturers of children’s products in compliance with section 4 of this 2015 Act and an analysis of the information collected pursuant to section 4 of this 2015 Act specifying:
 - (a) The number and types of children’s products sold or offered for sale in this state that contain high priority chemicals of concern for children’s health used in children’s products.
 - (b) The range of amounts of high priority chemicals of concern for children’s health used in children’s products, by product category, and the total number of and most frequently disclosed high priority chemicals of concern for children’s health used in children’s products.
 - (c) The potential for exposure to high priority chemicals of concern for children’s health used in children’s products based on the number of children’s products sold or offered for sale in this state that contain chemicals on the list established under section 3 of this 2015 Act, likely exposure routes and the typical use patterns for the children’s products that contain chemicals on the list established under section 3 of this 2015 Act.
 - (d) Recommendations to limit, reduce or prevent exposure to high priority chemicals of concern for children’s health used in children’s products based on an analysis of the information collected.

¹ ORS 431A.253 – 431A.280

- (3) (3)(a) Details about the implementation of sections 6 and 7 of this 2015 Act hazard assessments and waivers. In cases where the authority grants waivers for the continued use of high priority chemicals of concern for children's health used in children's products and the waiver application includes an alternatives assessment, the authority may develop recommendations on opportunities to provide technical assistance, provide grants and promote public-private partnerships and other actions to encourage manufacturers to produce children's products through green chemistry and that do not contain high priority chemicals of concern for children's health used in children's products.
- (4) (3)(b) In developing the recommendations described in paragraph (a) of this subsection, the authority may consult with the Department of Environmental Quality, the Oregon Business Development Department and other state agencies.
- (5) (4) A summary of compliance testing results obtained under section 9 of this 2015 Act. (5) Any recommendations submitted to the authority by manufacturers under section 4 (7) of this 2015 Act.

First legislative report

Adoption of the list of HPCCCH became due during this first biennium of the Act's implementation. OHA adopted the list in rule effective Jan. 1, 2016. Due dates for other provisions of the Act, which include the date manufacturers are to provide biennial notices of products with HPCCCH, are Jan. 1, 2018 or later. Therefore, not all information needed to respond to Section 13 of the Act is yet available. However, OHA has worked with stakeholders to adopt rules. OHA has also worked with stakeholders to develop the procedures necessary to implement the Act effectively and efficiently. In this first legislative report OHA describes those procedures, the relation to provisions in the Act, and how they serve as the basis for the Act's complete implementation.

Rule advisory committee and the rules process

After the Act became law, OHA organized a rules advisory committee (RAC). The RAC allows the public and stakeholders, including affected industries, to give input and suggestions during the development of new rules, including on their fiscal impact. The RAC for the Toxic-Free Kids Act included representatives from several large national and Oregon based manufacturers of children's products, trade associations, advocates for child-toxics reduction, and representatives from state and local governments.

Rule writing has been broken down into three phases. During two separate phases, the RAC advised on rules set up to guide initial implementation of the Act (phases 1 and 2), including:

- **Phase 1 rulemaking— high priority chemicals of concern for children's health:** Phase 1 began on Sept. 22, 2015. Phase 1 deals with the adoption of a list of high priority chemicals of concern for children's health. As required by Oregon's Act, OHA's rules adopt the same list as the state of Washington's Department of Ecology adopted under a similar law. Oregon's TFK phase 1 rules also specify list update criteria.
- **Phase 2 rulemaking – implementation requirements for manufacturers. Phase 2 began on Apr. 11, 2016** and finished with rules becoming effective in December 2016 and February 2017. Phase 2 rules include:
 - » Information to include in biennial notices from manufacturers and trade associations reporting regulated children's products containing HPCCCH;
 - » Components to include in exemption requests submitted to OHA (described below); and
 - » Penalties for noncompliance with reporting requirements.

Phase 3 will begin in 2019. Phase 3 will see development of requirements for manufacturers to remove reported chemicals of concern from products or seek a waiver. During this phase, TFK will decide required components of waiver requests. In addition, TFK will establish methods for evaluating the health protectiveness of manufacturers' proposals to substitute alternative chemicals.

Exemption request guidance and implementation

Certain children's products regulated by the Act may have one or more HPCCH present as a contaminant(s), not because they were intentionally added in the manufacturing process. In such cases, the Act states that a manufacturer or trade association may seek an exemption from OHA from notice requirements for specific HPCCH. The Act states such exemption requests are to have an accompanying manufacturing control plan (MCP). This MCP is a written plan that describes how the presence of HPCCH in products as contaminants is to be minimized. When there is a request for an exemption, the Act requires the MCP to show, as OHA determines, the effective control of the contaminant(s) before or during manufacturing.

OHA developed a document for guidance that specifies key elements it looks for in MCPs when evaluating exemption requests. In developing guidance for requesting exemption from notice requirements under the Oregon Toxic-Free Kids Act, OHA looked to the Act and the administrative rule governing such requests. As many manufacturers regulated by the Act fall under similar regulations in other jurisdictions, OHA reviewed exemption request guidance from other states (Washington and Vermont). OHA sought review and input on a draft of the guidance from members of the RAC. OHA received a number of comments and incorporated several in the final draft.

A 2017 statute (House Bill 5027) establishes fees for each exemption request submitted. For fee payer convenience, OHA worked with the state vendor to develop a secure online payment link. A system will be available for payment of other required fees, including biennial notices for HPCCH in children's products.

Interstate Chemicals Clearinghouse data system

The Act states that manufacturers (or trade associations working on their behalf) must provide biennial notice of regulated children's products containing HPCCCH to OHA. In addition, the resulting data must be searchable and accessible to the public. Although there was no funding to develop a searchable reporting system, the Act states that biennial notices can go to the Interstate Chemicals Clearinghouse (IC2), instead of OHA. IC2 is an association of 15 state and local government agencies that promote a clean environment, healthy communities and a vital economy by use of safer chemicals and products. IC2 has experience developing such databases, including the Interstate Mercury Education & Reduction Clearinghouse (IMERC) – a reporting database for eight states with mercury in products reporting requirements. In September 2016, OHA successfully sought and gained a grant to fulfill this central objective of the Act. The U.S. Environmental Protection Agency (EPA) awarded a \$499,556 grant to OHA. IC2 receives a portion of the grant to develop the data system.

Other states have child-toxics reporting statutes similar to Oregon's. Therefore, the EPA required and manufacturers asked for the IC2 data system to provide a single location for manufacturers and trade associations to report products with HPCCCH. This avoids having to notify similar systems in multiple states.

Avoiding duplication and enhancing efficiencies for businesses and agency staff are central goals of the IC2 data system. To that end, OHA staff joined with counterparts from four other states, advocates and representatives of national companies affected by child-toxics legislation to develop system-reporting criteria. OHA is currently waiting completion of final legal review to release grant funds to IC2, so that IC2 can begin development of the data system.

Interim Toxic-Free Kids reporting system

The IC2 data system will not be available for the Act's first biennial notice requirement (Jan. 1, 2018). However, OHA has developed an interim TFK reporting system for manufacturers and trade associations to fulfill their initial reporting obligations under Oregon's law.

Using online spreadsheets, the interim system allows manufacturers to report children's products containing HPCCCH well before the TFK Act's January 1 deadline. OHA will use the product and chemical data that manufacturers report to fulfill other obligations under the Act. Other obligations include product analysis and future legislative reports. Data from the interim system will be easily transferrable to the IC2 data system when available.

Conclusion

OHA's efforts have focused on laying the groundwork and creating the systems necessary for successful implantation of this complex statute. Accomplishments include completion of phase 1 and 2 rulemakings (adoption of Washington's HPCCCH list, creation of exemption request and MCP guidance); collaborative work with industry and other states on the IC2 data system; and development of an interim reporting system - all with the input of stakeholders. OHA expects that building on this firm foundation will ensure a full implementation of the Toxic-Free Kids Act that meets statutory deadlines.

Toxic-Free Kids Act: Implementation Timeline

2015-2017

Accomplished >>>

**December
2015**

Adoption of HPCCCH*
list, per ORS 431A.250

Adoption of rules for
review and amendment
of List

**April-December
2016**

Phase 2 rulemaking:
information required for
Biennial Notices

OHA awarded EPA grant
for IC2 Data System

**February
2017**

Phase 2 rulemaking:
penalties for
non-compliance

Phase 2 rulemaking:
components needed for
requests for exemption
from Biennial Notices

2018-2019

Projected >>>

**January
2018**

1st Biennial Notice due
to OHA of products with
HPCCCH

**2018 Q4
(Sept - Dec)**

Projected deployment
of multistate IC2 Data
System

**2019 Q1
(Jan-Mar)**

Begin Phase 3 rulemaking:
to determine criteria for
removal, substitution, seek
waiver for HPCCCH in
certain products

2020-2021

Projected >>>

**2020 Q1
(Jan-Mar)**

2nd Biennial Notice due
to OHA of products with
HPCCCH

Phase 3 rule effective
(removal, substitute, or
seek waiver for HPCCCH
in certain products)

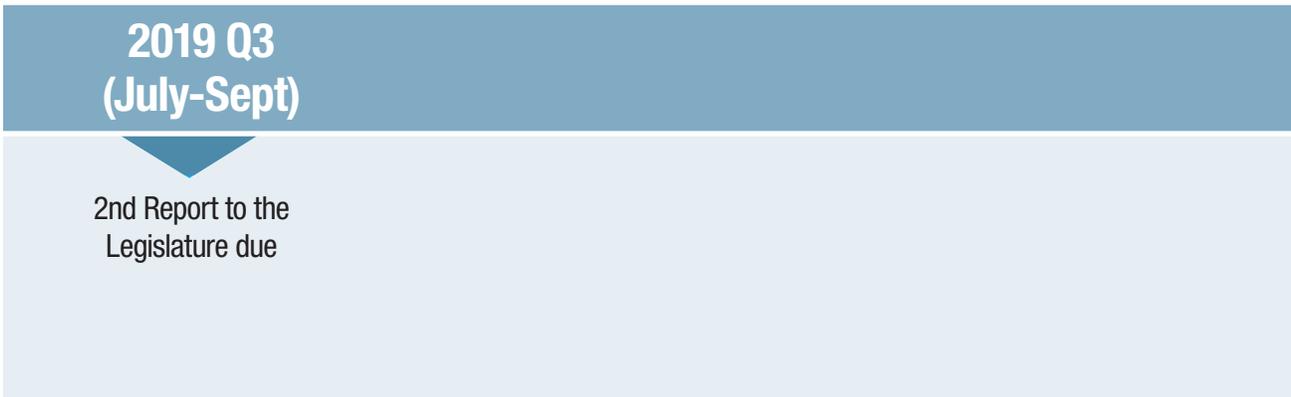
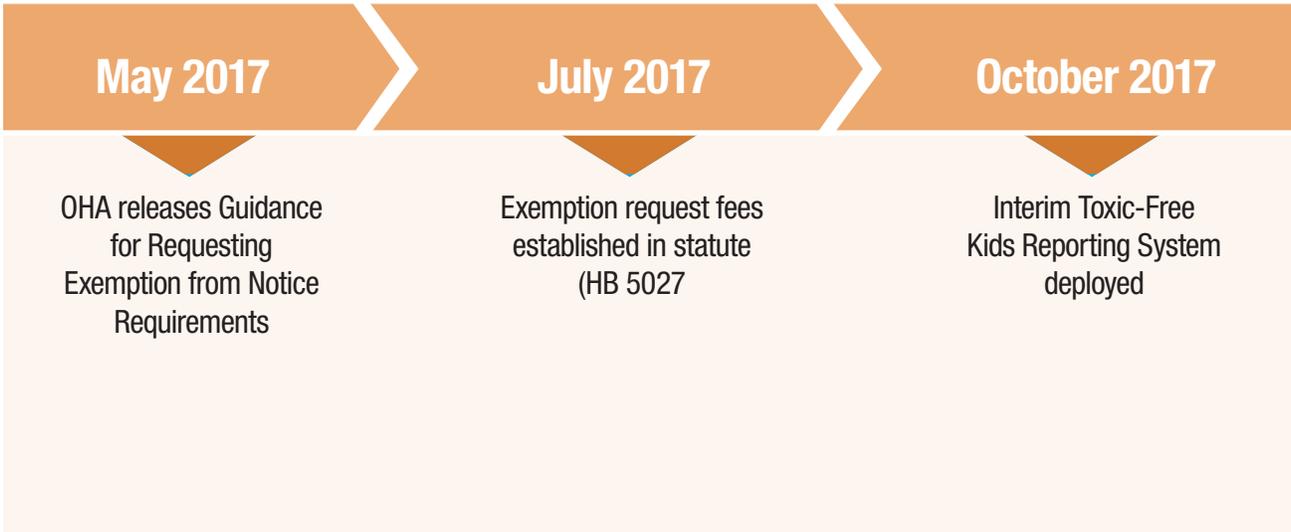
**2021 Q4
(July-Sept)**

3rd Report to the
Legislature due

**2022 Q1
(Jan-Mar)**

3rd Biennial Notice due
to OHA of products with
HPCCCH

Manufacturer deadline
to remove, substitute or
seek waiver for HPCCCH in
certain products, per statute



* HPCCCH = High Priority Chemicals of Concern for Children’s Health
 ^ After Jan 1, 2022, all aspects of ORS 431A.250 will have been implemented once. Reporting from manufacturers for new products/HPCCCH will continue, as needed, on Biennial Notice dates, per statute.



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