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Date: November 2, 2023

TO: Interested Parties

FROM: Brett Sherry, Program Manager  
Toxic Free Kids Program

RE: Notice of Proposed Permanent Rulemaking – OAR 333-016  
“Toxic Free Kids Modernization Act (HB 3043) – Fall 2023”

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The Oregon Health Authority (Authority), Public Health Division is proposing to permanently amend administrative rules in chapter 333, division 16 related to the Toxic Free Kids Act.

[House Bill 3043](#) (Oregon Laws 2023, chapter 426) was passed by the Oregon Legislature during the 2023 legislative session and signed into law by Governor Tina Kotek. The law modifies existing statute (2015 Toxic Free Kids Act). This rulemaking implements certain provisions of HB 3043.

The amendments directly affect manufacturers with annual worldwide gross sales of \$5 million or more that sell or offer for sale children’s products in Oregon containing high priority chemicals of concern for children’s health (HPCCCH) at de minimis. The Toxic Free Kids (TFK) Program’s charge is to maintain a list of high priority chemicals of concern for children’s health. Manufacturers of children’s products containing those chemicals must report those products to Oregon Health Authority (OHA). Under the Act, manufacturers are required to remove or substitute such chemicals in certain product types after making three biennial notices/reports. Rules for these requirements have been established through past rulemaking.

HB 3043 added “class of chemicals” and “subclass of chemicals” to the definitions in the Toxic Free Kids Act. This rulemaking amends current rules to incorporate the addition of these terms in definition, and adds rule language allowing OHA to add class or subclasses of chemicals to the HPCCCH list.

HB 3043 also changed the reporting deadline for manufacturers from January 1 of even-numbered years to January 31 of even numbered years. This rulemaking revises existing rule to align with the new reporting date.

The amended rules also add the term “inaccessible” to the *Quantitative Exposure Assessment* (QEA) requirements in existing rule. Manufacturers submit a QEA to the Authority as part of a request to waive the requirement that a HPCCCH in certain children’s products be removed or substituted after three biennial notices/reports. With this amendment, manufacturers are to demonstrate that the HPCCCH is not accessible to the consumer and cannot be transferred to a child’s body.

Please see the Notice of Proposed Rulemaking for further details.

You are invited to review and comment on the proposed rules. If you wish to present oral testimony, a public hearing will be held on **November 15, 2023 at 10:00 AM** via video/phone conference using Microsoft Teams. To provide oral testimony during this hearing, please contact [publichealth.rules@odhsoha.oregon.gov](mailto:publichealth.rules@odhsoha.oregon.gov) to sign-up and receive the link for the Microsoft Teams video conference. Alternatively, you may dial 971-277-2343, Phone conference ID 843 807 023# for audio only.

You may also file written comments before **5:00 p.m. on November 21, 2023**, by e-mailing them to the Public Health Division Rules Coordinator at [publichealth.rules@odhsoha.oregon.gov](mailto:publichealth.rules@odhsoha.oregon.gov).

Written comments may also be sent by regular mail to the following address and must be postmarked by November 21, 2023:

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

You may also send comments by fax to (971) 673-1299.

Final rules will be filed after consideration of all comments.

For more details, please see the Notice of Proposed Rulemaking, including the Statements of Need and Fiscal and Racial Equity Impact, and the full text of the proposed rules at the following website: <http://www.healthoregon.org/toxicfreekids>. These are found in the *Phase 4* section of the [Rules and Implementation](#) page.

If you have questions or would like a paper copy of these rule changes, please contact Justin Waltz at 971-673-1217 or [justin.waltz@oha.oregon.gov](mailto:justin.waltz@oha.oregon.gov). Thank you for your continued support.

Accessibility Statement: For individuals with disabilities or individuals who speak a language other than English, OHA can provide information in alternate formats such as translations, large print, or braille. Contact the Public Health Division at 971-673-1222, 711 TTY or [publichealth.rules@odhsoha.oregon.gov](mailto:publichealth.rules@odhsoha.oregon.gov).