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DATE: August 26, 2021

TO: Interested Parties

FROM: Brett Sherry, Program Manager
Toxic Free Kids Program

RE: Notice of Temporary Rulemaking – OAR 333-016-2060
"Clarification related to the reporting of children's products under
the Toxic Free Kids Act"

The Oregon Health Authority (Authority), Public Health Division is temporarily amending OAR 333-016-2060 related to the Toxic Free Kids Act.

SB 478 (Oregon Laws 2015, chapter 786) was passed by the Oregon Legislature during the 2015 legislative session. The law requires the Oregon Health Authority (Authority) to require manufacturers of children's products to disclose high priority chemicals of concern for children's health used in children's products that are sold or offered for sale in Oregon. The law states that the Authority shall adopt a list of High Priority Chemicals of Concern for Children's Health (HPCCCH); establish requirements for disclosure; establish a process for manufacturers to apply for an exemption from the disclosure requirements; and adopt a process by which manufacturers of three specific categories of children's products (those for children under three years-old; "mouthable" items, per ORS 431A.253(8); and children's cosmetics) are to remove HPCCCH from products in these categories or substitute them with a less-hazardous alternative before submitting the third biennial notice for such categories. In addition, the Authority is to establish rules for manufacturers to apply for exemptions and waivers from this removal or substitution requirement. Rules to implement these requirements have been established through past rulemaking.

OAR 333-016-2060 *Notification Requirements* currently stipulates that manufacturers are to report the "...amount of the chemical used in each unit of the children's product..." that meets or exceeds a specific minimal level (de minimis) for that chemical. The term "unit" is not defined in either ORS 431.250 or its implementing rule. As a result, manufacturers have calculated these amounts inconsistently. The Authority is making changes to OAR 333-016-2060 *Notification Requirements* that will remove this unintentional ambiguity and standardize these calculations.

Temporary amendments to OAR 333-016-2060 include the following:

- For the purposes of OAR 333-016-2060, "unit" has the same meaning as "component part" as that is defined in OAR 333-016-2010.
- If there are multiple concentrations for a given unit in a particular product category, the manufacturer must use the highest concentration for reporting.

This temporary rule is effective August 26, 2021 through February 21, 2022. These clarifications affect notifications for the January 1, 2022 Biennial Notice/Reporting Period and thereafter. Rulemaking to make these changes permanent will take place in the Fall of 2021.

For more details, please see the Temporary Administrative Order, including the Need and Justification and the full text of the temporary rules at the following website:

<http://www.healthoregon.org/toxicfreekids>.

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@dhsosha.state.or.us.