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Date: November 2, 2021

TO: Interested Parties

FROM: Brett Sherry, Program Manager
Toxic Free Kids Program

RE: Notice of Proposed Permanent Rulemaking – OAR 333-016
“Toxic Free Kids Rule Revision to Clarify Reporting and Revise Reportable
Chemical List”

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.

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) and establish requirements for disclosure of such chemicals.

After two biennial notification cycles (2018 and 2020), the Authority has determined that manufacturers of children’s products sold or offered for sale in Oregon are likely using two different methods to determine the proportion of HPCCCH in each product. Some manufacturers are reporting the concentration of HPCCCH in the components of products by dividing the mass of HPCCCH in each component of the product by the mass of the test sample of that component. [This is termed the “component method.”] Other manufacturers are reporting the concentration of HPCCCH in the product by dividing the mass of the HPCCCH by the total mass of the product. [This is termed the “whole product method”]. Both methods are reported in parts per million (ppm).

In August 2021, the Authority promulgated a temporary rule change to OAR 333-016-2060 to clarify reporting requirements. The change requires all reporting to follow the component method. [See Temporary Administrative Order PH 40-2021.] This change will apply to biennial notifications due on January 1, 2022 for products sold or offered for sale in Oregon in 2020 and 2021. This proposed rulemaking is intended to make PH 40-2021 permanent.

Other proposed amendments to OAR chapter 333, division 16 include the addition of five High Priority Chemicals of Concern for Children's Health (HPCCCH) from Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children (CHCC). The additions are to be effective January 1, 2022, and will apply to biennial notifications due on January 1, 2024 for products sold or offered for sale in Oregon in 2022 and 2023. Practical Quantification Limits (PQLs) and detection methods were also added for the five HPCCCH proposed to be added, and the PQLs for 27 chemicals that were already on the HPCCCH list were revised (See proposed changes to OAR 333-016-2035 Exhibit A).

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 18, 2021 at 1:00 PM** via video/phone conference using Microsoft Teams. To provide oral testimony during this hearing, please contact publichealth.rules@dhsosha.state.or.us to sign-up and receive the link for the Microsoft Teams video conference. Alternatively, you may dial 971-277-2343, Phone conference ID 224 999 534# for audio only.

You may also file written comments before **5:00 p.m. on November 22, 2021**, by submitting them to the Public Health Division Rules Coordinator at the following address:

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

E-mail comments to: publichealth.rules@state.or.us

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 Statement of Need and Fiscal Impact and the full text of the proposed 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@state.or.us. Thank you for your continued support.