



Date: October 31, 2024

To: Interested Parties

From: Brett Sherry, Program Manager, Toxic Free Kids Program

Subject: Notice of Proposed Permanent Rulemaking – OAR 333-016, “Toxic Free Kids Modernization Act (HB 3043, 2023) and triennial review of High Priority Chemicals”

The Oregon Health Authority (OHA), 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) or HB3043 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).

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 the 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.

This rulemaking implements provisions of HB3043 and conducts triennial review of the High Priority Chemicals of Concern for Children's Health (HPCCCH) list. OHA proposes the following changes:

- HB3043 requires manufacturers to report a children’s product by its brand name and product model. OHA proposes to incorporate these requirements into TFK’s reporting rule and add a definition for the term “product model.”
- HB3043 changed the reporting deadline for manufacturers from January 1 of even-numbered years to January 31 of even numbered years. A previous rulemaking made that change to the reporting rule. To align with that change, this rulemaking shifts due dates in several rules to align with the revised reporting deadline, including those for requests for exemption from notice requirements, and date on which manufacturers must notify OHA that a HPCCCH has been removed or substituted from products.
- HB3043 specifies that approved Hazard Assessments (HA) submitted as part of a chemical substitution are valid for three years after the date of submission, and then must be resubmitted. In addition to including these changes in the chemical substitution rule, OHA proposes that an HA approved for a substitute chemical for a total of six years does not need to be submitted a third time. The amendment clarifies that selling or offering for sale products with a substitute chemical not specified in an approved HA is a violation.
- Finally, the rules advisory committee (RAC) conducted a triennial review of the High Priority Chemicals of Concern for Children's Health (HPCCCH) list, as required by ORS 431A.255. OHA proposes the addition of ten chemicals from Washington State Department of Ecology’s Reporting List of Chemicals of High Concern to Children (CHCC) be added to the HPCCCH list. Practical Quantification Limits (PQLs) and detection methods for these ten chemicals were also included in this rule change. The additions are to be effective January 1, 2025, and will apply to biennial notifications due on January 31, 2026 for products sold or offered for sale in Oregon in 2024 and 2025.
- OHA proposes changes to the rule under which manufacturers may request exemption from the removal or substitution requirement. In addition to clarifying requirements under this rule, OHA proposes that a manufacturer, which has an approved list of products exempted under this rule, be allowed to add additional product models that are chemically identical to one or more of the models on their approved list. Finally, OHA proposes clarifications of the conditions under which a manufacturer may be in violation of HPCCCH removal provisions.

For more details, please see the Notice of Proposed Rulemaking, including the Statements of Need and Fiscal and Racial Equity Impacts, and the full text of the proposed rules at: <http://www.healthoregon.org/toxicfreekids>. These are found in the *Phase 5* section of the [Rules and Implementation](#) page.

You are invited to review and comment on the proposed rules. There are two (2) options to provide comment:

1. You may provide oral (spoken) testimony during a public hearing scheduled on **Friday, November 15, 2024, at 10:00 A.M. Pacific Time** via video/phone conference using Microsoft Teams
 - To provide oral testimony during this hearing:
 - Join using the [Meeting URL](#). You can also find the join link for the meeting in the Notice of Proposed Rulemaking under “Remote Meeting Details” using the “Meeting URL.”
 - You may also contact the Public Health Division Rules Coordinator at publichealth.rules@odhsoha.oregon.gov to sign-up to give oral testimony and receive the link for the Microsoft Teams video conference via calendar appointment.
 - To join the hearing via phone (audio/listen only), you may dial 971-277-2343, phone conference ID 223 038 054#
2. Written comments may be submitted before **5:00 P.M. Pacific Time on November 21, 2024:**
 - Email comments to: publichealth.rules@odhsoha.oregon.gov
 - Mail comments* to: OHA, Public Health Division
Brittany Hall, Administrative Rules Coordinator
800 NE Oregon St. Suite 930
Portland, OR 97232

* Comments sent by regular mail must be postmarked by
5:00 P.M. Pacific Time on November 21, 2024.

 - Send comments by fax to: 971-673-1299

Final rules will be filed after consideration of all comments.

If you have questions or would like a paper copy of the Notice of Proposed Rulemaking, please contact Justin Waltz at justin.waltz@oha.oregon.gov or 971-732-6055.

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examples are: sign language and spoken language interpreters, real-time captioning, braille, large print, audio, and written materials in other languages. If you need help with these services, please contact the Public Health Administrative Rules Coordinator at 971-673-1222, 711 TTY or publichealth.rules@odhsoha.oregon.gov at least 48 hours before the meeting. All relay calls are accepted. To best ensure our ability to provide a modification please contact us if you are considering attending the meeting and require a modification. The earlier you make a request the more likely we can meet the need.