

DATE: December 13, 2024

TO: Hearing Attendees and Commenters –
Oregon Administrative Rules chapter 333, division 16 –
“Toxic Free Kids Modernization Act (HB 3043, 2023) and triennial
review of High Priority Chemicals”

FROM: Brittany Hall, Hearing Officer and Administrative Rules Coordinator

cc: Brett Sherry, Program Manager
Toxic Free Kids Program

Justin Waltz, Policy Analyst and Lead
Toxic Free Kids Program

SUBJECT: Presiding Hearing Officer’s Report on Rulemaking Hearing and
Public Comment Period

Hearing Officer Report

Date of Hearing: November 15, 2024, via Microsoft Teams

Purpose of Hearing: The purpose of this hearing was to receive testimony regarding the Oregon Health Authority (OHA), Public Health Division’s proposed permanent amendments to Oregon Administrative Rules in chapter 333, division 16 related to the Toxic Free Kids Act enacted in 2015. This law 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), and ultimately remove or substitute these chemicals from certain products or seek a waiver or exemption from the requirement for removal or substitution.

[House Bill 3043](#) (HB 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).

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 or higher. 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 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. OHA carried out a Fall 2023 rulemaking that implemented this HB3043 change, which took effect January 1, 2024. However, there are other due dates in rule affected by this statutory change, but not updated during the Fall 2023 rule process. OHA is now proposing the additional changes to due dates in other parts of the rules to align with the revised reporting deadline. These include requests for exemption from notice requirements, and the 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 an application for 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. OHA's rule 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) provided feedback on OHA's 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 will take effect January 1, 2025 and apply to biennial notifications due on January 31, 2026 and thereafter 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 chemical removal or substitution requirement. The changes clarify requirements of OAR 333-016-3015 *Exemptions from Removal or Substitution Requirements*. A proposed amendment allows a manufacturer with an approved list of products exempted under this rule to add additional product models that are chemically identical to one or more of the models on their approved list without having to provide duplicative information already submitted to OHA. Finally, OHA proposes clarifications of the conditions under which a manufacturer may be in violation of HPCCCH removal provisions.

Hearing Officer: Brittany Hall

Testimony Received: No testimony was received at the hearing on November 15, 2024.

Other Comments: Eleven individuals or organizations submitted written comments to OHA within the period allotted for public comment, which closed at 5:00 PM on November 21, 2024. Written comments are attached to this report as **EXHIBIT 1**. Written comments are briefly summarized below, in no particular order.

- OHA heard a concern about the proposed amendment allowing manufacturers with an approved list of products exempted per (OAR 333-015-3015 *Exemptions from Removal or Substitution Requirements*) to add additional product models that are chemically identical to one or more of the models on their approved list. The individual states that this amendment will allow increased numbers of

product models containing dangerous materials to be put on the market and likely expose additional children to toxic materials.

Agency response:

OHA thanks this individual for their comment made on the proposed amendment to OAR 333-016-3015 *Exemptions from Removal or Substitution Requirements*. This amendment allows a manufacturer that holds an approved list of exempted products to add additional product models to that list if the additional models are chemically identical to one or more product models on the approved list; there are no additional HPCCCHs in the new models; and if the concentration of the HPCCCH or its mobility from the product have not increased from those for products in the approved list.

The commenter voiced concern about the amendment to OAR 333-016-3015(8) stating it would allow "...[manufacturers] to increase the numbers of product models containing dangerous materials that they are putting on the market, which are likely to expose additional children to toxic materials."

OHA believes the amendment likely will not have bearing on the number of product models the manufacturer puts on the Oregon marketplace. The amendment changes how the manufacturer is to inform OHA of new product models. The rationale for this amendment is to increase efficiency for the manufacturer, which will no longer need to biennially submit the same paperwork for chemically identical products, and allow the agency to redirect staff resources to high priority risk-reduction activities.

- OHA heard concern from several organizations and an individual about a hazard assessment for a substituted chemical not having to be submitted after six years. Comments questioned if there is a mechanism to consider new information that becomes available that may indicate that the substitute chemical is no longer acceptable in children's products. OHA heard a request to include additional language in section (6) that requires OHA to evaluate a substitute chemical when and if new health impact data becomes available. One organization suggested that OHA should "...adopt additional [rule] language that clearly accepts only hazard assessments that use the most recent scientific data."

Agency response:

OHA thanks these organizations for their comments, particularly their concern that science evolves, and may reveal adverse health effects of substitute chemicals that OHA has approved. The organizations provided recommended rule language to address this concern. OHA is unable to make the requested changes at this time as the recommended rule language relates to the TFK rule that stipulates how hazard assessments are to be conducted (OAR 333-016-3030 *Hazard Assessment for Substitute Chemicals*). That rule was not formally considered for amendment in meetings of TFK's Rules Advisory Committee (RAC) in August and September.

However, OHA understands the concerns expressed, and appreciates the suggestions for amending OAR 333-016-3030. To date, OHA has not received any hazard assessment submissions under OAR 333-016-3020, *Requirements for Chemical Substitution*. Should OHA approve any hazard assessments submitted under that chemical substitution rule, the agency will be tracking the science serving as the basis for that approval. Should OHA become aware of health concerns relating to a chemical that was approved under this chemical substitution rule, it will consider adding the chemical to OAR 333-016-2020 *Chemicals of High Concern to Children*. Once listed as an HPCCH, the manufacturer would be required to follow applicable rules regarding chemical reporting, as well as any removal or substitution requirements per OAR 333-016-3010.

- OHA received a request from several trade organizations writing as one coalition, that the agency exclude youth off-highway vehicles (OHV); replacement parts for these vehicles; and associated protective equipment from the definition of “children’s product” in Oregon Administrative Rule (OAR) 333-016-2010 *Definitions*. They’re concerned that OHA may require the reporting of these items per OAR 333-016-2060 *Notification Requirements*. This coalition provides a summary of U.S. Consumer Product Safety Commission (CPSC) comments on the issue, as well as a comment on the current unavoidable use of Per- and polyfluoroalkyl substances (PFAS) chemicals in these vehicles and related protective equipment. This coalition seems to express concern that members of the PFAS class, often used in the manufacture of these OHV parts and protective equipment, may be subject to OAR 333-016-3010 *Removal or Substitution of High Priority Chemicals*.

Agency response:

OHA thanks these organizations for their comments, including their suggested rule language. ORS 431A.253 and OAR 333-016-2010 *Definitions* have a subsection that specifically states what a “children’s product” means. OHA has determined that ORVs, replacement parts for these vehicles; and associated protective equipment are not included in that definition and therefore, not subject to OAR 333-016-2060 *Notification Requirements*.

With respect to the coalition’s concern that perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemicals in OHVs and related products will be affected by OAR 333-016-3010 *Removal or Substitution of High Priority Chemicals*, OHA points out the current statute and its implementing rules require that chemicals be removed or substituted only in the subset of children’s products that are intended to be mouthed; a children’s cosmetic; or made for, marketed for use by or marketed to children under three years of age. [See ORS 431A.260.]

- OHA received the recommendation to develop a framework and criteria in 2025 and 2026 for evaluating chemical classes and subclasses for potential addition to the HPCCCH list in order to achieve within a reasonable timeframe the legislative intent of HB3043 of a serious evaluation of these types of chemical groups. The commenter recommended OHA undertake this work to be prepared to conduct an evaluation of chemical classes and subclasses by the next HPCCCH list review cycle in 2027.

Agency response:

OHA appreciates this recommendation. OHA agrees and intends to develop a framework and criteria for evaluation of chemical classes and subclasses in 2025 and 2026 prior to the next triennial review of OAR 333-016-2020 – *Chemicals of High Concern to Children* in the Fall of 2027. This review will be developed in accordance with OAR 333-016-2030 *Modifications to the List of High Priority Chemicals of Concern for Children’s Health*.

- OHA heard support from several organizations for the proposed addition of the ten new chemicals to OAR 333-016-2020 *Chemicals of High Concern to Children*.

Agency response:

OHA thanks these organizations for taking the time to share their views.

- OHA received comments from a coalition of three industrial organizations (“coalition”). This coalition states that the proposed rule changes do not reflect the content or intent of Section 4 of HB3043. They state current rules for the Toxic Free Kids Program require reporting by the chemical level, which is to be supported by information on product category; function of the chemical; and the concentration category of the chemical in unit/component part. The coalition stated that HB3043 only requires the addition of one product model and its brand name to the current group of data points, and not to be “...at the *‘brand name, product model level.’*” The comments also included concerns that the proposed rules will increase the reporting burden for manufacturers. The coalition questioned the OHA’s proposal to amend the rule that aligns one aspect of reporting for TFK with that used for reporting to a Washington State law. Finally, the coalition stated that the reporting approach required under a similar Vermont law is untested and not yet complete.

Agency response:

OHA thanks these organizations for their comments. HB3043’s most significant change to the TFK Program is to require manufacturers of children’s products to report on High Priority Chemicals of Concern for Children’s Health (HPCCCH) in a way that is understandable to parents and others purchasing products intended for use by children. Under the existing rules, a manufacturer only needs to report the highest concentration of a HPCCCH in one component in a generic product category (e.g., “Toy Vehicles – Non-ride (Non-Powered)”). If the manufacturer sold ten toy truck models which contain the HPCCCH but some at lower concentrations, only the highest concentration is reported for the product category. Under the proposed rules, manufacturers will need to report all concentrations in all component parts of each product model in the category. Section 4 of HB 3043 ensures the missing information is reported by requiring manufacturers to connect the brand names and product models to individual component concentrations. The proposed amendment to OAR 333-016-2060 *Notification Requirements* ensure the missing information will be reported.

OHA has determined the proposed amendments follow statutory intent of HB3043. The chief sponsor of the bill, Representative Courtney Neron, testified in committee about the intent behind the law on May 4, 2023:

“There should be reporting requirements that are friendlier to consumers by requiring brand names and models to be reported for chemicals so that they can make more educated buying choices.”

The coalition’s comment that OHA moved its rules away from Washington State’s administrative practice is correct. OHA’s proposed rulemaking eliminates language that is specific to reporting only the highest concentration of a HPCCCH in a generic product category. There may be other concentrations of the HPCCCH at lower levels in a generic product category. This language fits reporting requirements for Washington State’s Children’s Safe Products Act and the 2015 Toxic Free Kids Act, and not that of the 2023 Toxic Free Kids Modernization Act.

OHA proposes to remove parts of OAR 333-016-2060(5)(e), including "If there are multiple concentrations for a given unit in a particular product category, the manufacturer must use the highest concentration for reporting" because they conflict with the requirements in Section 4 of HB3043. Removing this rule language ensures reporting of all concentrations of a HPCCCH at or above de minimis in all units/component parts of children’s products. This allows the consumer who is buying a children’s products to make informed consumer choices.

The coalition states that similar reporting by brand name, product model, required by Vermont’s *Chemical Disclosure Program for Children’s Products Program*, is untested and not yet complete. Vermont has required reporting by brand name and product model since 2017 and its “revised implementation” was completed in early December 2024.

OHA acknowledges the coalition’s concern that the proposed rules will increase the amount of data that manufacturers are required to report to Oregon’s High Priority Chemical Database (HPCD) as well as the additional time burden it will place on manufacturers. HB3043’s inclusion of brand name and product model resulted in this additional burden upon passage. OHA has been working with the administrator of the data system (Interstate Chemical Clearinghouse) to improve

reporting capabilities to make reporting easier for manufacturers. For example, the HPCD system allows for the uploading of spreadsheets with the required information rather than requiring individual entries to the system. Similarly, it will have a search function to assist consumers in locating reported product models.

Reporting by brand name and product model will start with the January 31, 2026 reporting deadline, which includes children's products that were sold in 2024 and 2025. Manufacturers will be required to report children's products containing one or more High Priority Chemicals of Concern for Children's Health (HPCCCH) at or above de minimis amounts. Manufacturers will have over thirteen months to prepare biennial notices/reports for the 2026 Reporting Period.

- OHA heard support from several organizations for the proposed amendment that children's product manufacturers report the data on HPCCCHs in children's products by both the brand name and product model in addition to product category, as current rule requires.

Agency response:

OHA thanks these organizations for their comments. OHA determined that a manufacturer's reporting of an item's "brand name and product model" in addition to its generic product category is required by Section 4 of HB3043.

From: [Theodora Tsongas](#)
To: [Public Health Rules](#)
Cc: [Theodora A Tsongas](#)
Subject: Comments on Toxic Free Kids Rules
Date: Thursday, November 21, 2024 4:48:51 PM

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To: Oregon Health Authority, Public Health Division
Re: Notice of Proposed Permanent Rulemaking – OAR 333-016, “Toxic Free Kids Modernization Act (HB 3043, 2023) and triennial review of High Priority Chemicals”
Comments on proposed amendments
Date: November 21, 2024
via email: publichealth.rules@odhsoha.oregon.gov

Thank you for this opportunity to comment. I am Dr. Theodora Tsongas, an environmental health scientist with a career in public health. I am member of Oregon Physicians for Social Responsibility and the American Public Health Association’s Environment Section.

I am commenting today on the proposed changes to the rule under which manufacturers may request exemption from the removal or substitution requirement where 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. I am commenting because of my concern that even though the manufacturer is exempt from complying with this rule due to the size of its operation or for other reasons, the fact of the matter is, they are still manufacturing a product containing substances toxic to children, and should not be allowed to increase the numbers of product models containing dangerous materials that they are putting on the market, which are likely to expose additional children to toxic materials. It is also not clear what the rationale is for this change, giving the exempted manufacturer a possible advantage over companies that have to comply with the rule.

I agree that the change to HB3043 adding the product’s model to the reporting requirements is important and will help the public to recognize which products are or might be of concern.

The rationale for the proposed changes to the Hazard Assessment requirements is not clear as to why a hazard assessment for a substituted chemical does not have to be submitted after 6 years. Is there a mechanism to consider new information that becomes available that may indicate that the substitute chemical is no longer acceptable in children’s products? If so, what is that mechanism? If there is not one, then it should be added as an amendment to this proposed change.

Thank you.



Comments for the Toxic-Free Kids Act Rulemaking, Phase 5 November 21, 2024

Beyond Toxics, a statewide environmental justice organization, participated in the Phase 5 Rulemaking Committee. We are deeply appreciative of and support the proposed amendments to the Toxics-Free Kids Act put forth by the Oregon Health Authority as a result of HB 3043. We also have several recommendations that can improve the efficacy of the final law to best serve children's health and their families and businesses. We offer some recommendations, points of clarification, and as detailed below.

OAR 333-016-2020: Chemicals of High Concern to Children. Beyond Toxics represents thousands of Oregonians and on their behalf, we support the proposed addition of the 10 new chemicals included in OHA's Phase 5 rulemaking package. These Chemicals of High Concern to Children are mostly phthalates and flame retardants that pose known health hazards to children and adults. The proposed list also includes perfluorooctanoic acid (PFOA) and related substances, which scientific studies show human health effects at extremely low concentrations. Per- and polyfluoroalkyl substances (PFAS), are known carcinogens, neurotoxicants, mutagens, and endocrine disruptors. They do not belong in products marketing specifically to babies and children.

OAR 333-016-2060: Notification Requirements. We support the requirement for children's product manufacturers to report the data on High Priority Chemicals of Concern for Children's Health (HPCCH) for both the brand name and product model. This is preferable than listing only for the product category. Furthermore, although we suspect parents would want to understand the highest concentration of a High Priority Chemical of Concern, we can support the recommendation to require reporting of the concentration range of a HPCCH in each unit of the product, rather than just the highest concentration range for the each product unit/component.

OAR 333-016-3020: Requirements for Chemical Substitution. Beyond Toxics urges OHA to include additional language in OAR 333-016-3020(6) that requires OHA to evaluate a substitute chemical when and if new health impact data becomes available. The rule is “better safe than sorry!” Let’s not dismiss a chemical today and be unable to review health and safety data whenever it becomes available in the future. We support the language addition recommended by the Oregon Environmental Council:

“If new relevant hazard data on adverse health effects of a substitute chemical is identified by, or presented to, the Authority after the six-year HA approval period, the Authority will review and evaluate the data to determine whether the substitute chemical should be added to the HPCCCH list. This review will occur during the next regular three-year HPCCCH review and revision cycle.”

In closing, we urge OHA to partner closely with other states creating databases for registering product and chemical information for High Priority Chemicals of Concern for Children’s Health (HPCCH). As software continues to improve the ability to capture and community data that parents and caregivers wish to have to protect children, it will be necessary for OHA to modernize the TFKA to make reporting as transparent for the public as possible.

Thank you for this opportunity to provide comment to improve the Toxics-Free Kids Act!

Sincerely,

Lisa Arkin, Executive Director

Beyond Toxics

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November 21, 2024

Oregon Health Authority
800 NE Oregon St. Suite 930
Portland, OR 97232

To: publichealth.rules@odhsoha.oregon.gov

Re: Proposed administrative rules - public comment

Greetings,

Metro appreciates the opportunity to provide public comment on the proposed amendments to administrative rule related to implementation of House Bill 3043 amending Oregon's landmark law to protect children from toxic toys, the Toxic Free Kids Act.

The Portland metro region accounts for more than 40 percent of Oregon's population and is home to communities of color and other historically marginalized groups that experience greater impacts than communities with more access to resources - even from identical chemical exposures.¹ This phenomenon is known as Cumulative Risk and accounts for the compounding effect of chemical stressors (exposures to hazardous chemicals) and non-chemical stressors (such as from racism or socioeconomic status). With the ongoing implementation of HB 3043, we welcome OHA's ongoing stewardship of an expanded list of chemicals of concern that better protects all children from chemical exposure. Through participation in OHA's thoughtful rulemaking process, we know that continuing Oregon's history of leadership requires innovation. We thank OHA for including Metro as well as many other organizations that have a mission to reduce our communities' exposure to toxic chemicals as members of the Rulemaking Advisory Committee.

The specific rules we would like to comment on are below.

333-016-2020 - Chemicals of High Concern to Children

- Metro supports OHA's proposal to add the ten chemicals that were recently added to Washington's Chemicals of High Concern to Children list.
- Metro recommends OHA develop a framework and criteria in 2025 and 2026 suitable for bringing on multiple classes of chemicals during the next chemical list review. By following this recommended timeline, OHA would complete a reasonable implementation of HB 3043's direction to incorporate entire classes of chemicals.

¹ "The Role of Cumulative Risk Assessment in Decisions about Environmental Justice." International Journal of Environmental Research and Public Health, Nov. 2010, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2996223/>.

Metro understands that OHA did not have sufficient time to evaluate and recommend chemical classes or subclasses in time for the current Phase 5 rulemaking. While adding ten or twenty or thirty chemicals at a time is useful, there remain thousands and thousands of under evaluated chemicals in commerce in the United States that can be undisclosed on children's toys. There are already classes of chemicals, such as PFAS subclasses, with sufficient existing health effects research demonstrating harm to our communities.

OAR 333-016-2060 – Notification Requirements

- Metro supports OHA's proposal to ensure that reporting clearly documents the concentration ranges of High Priority Chemicals of Concern for Children's Health (HPCCCH) for each product unit (i.e., component). OHA's proposal clearly implements the new statutory language that requires manufacturers to report the product brand and model and not just the product category. The currently proposed depth of reporting provides a real-world picture of the total amount of toxic chemicals on a product. When children play with a toy, they are exposed to the entire toy, and exposure is cumulative. Consequently, toy purchasers should have access to the total amount of a priority chemical in each component of the product.
- Metro also finds OHA's proposed depth of reporting reasonable to include in an updated High Priority Chemicals Data System (HPCDS). Metro has over a decade of experience managing a similarly complex database (e.g., relational database) for businesses to electronically file solid waste regulatory reports and to remit solid waste fees and taxes. Over time, Metro has revised this database to meet new operational needs and ensured a streamlined, efficient process for reporting entities to submit data and is confident that OHA can do the same. OHA also has excellent colleagues in other states that have passed similar reporting laws, such as Vermont, which can make creating the most detailed, most accessible possible HPCDS a shared responsibility.

OAR 333-016-3020 – Requirements for Chemical Substitution

- Metro encourages OHA to adopt additional language that clearly accepts only hazard assessments that use the most recent scientific data. For example, OHA should require evidence that a sufficient search of recent data was conducted and used in the hazard assessment, such a proof a search was conducted in the three months before the hazard assessment was submitted.
- Metro recommends that the rulemaking additions to OAR 333-016-3020(6) clearly direct OHA to evaluate a substitute chemical when such data becomes available. OHA should clarify how it will welcome new data after the first two hazard assessments and how it will evaluate the data in time to inform the evaluation of substitute chemicals for consideration in subsequent evaluations of the HPCCCH list. Additional data should augment the last required hazard assessment (HA), giving OHA up-to-date information on the hazards of the substitute chemical that would be considered in subsequent evaluations of the HPCCCH list. Metro is concerned about

the current ambiguity on how OHA will act on a chemical revealed to be a potentially unacceptable substitute after the formal hazard assessments are completed. The proposed six years for formal hazard assessments is a small amount of time for scientific discovery of an unacceptable substitution.

OHA could accomplish these recommendations by adding the following text to the proposed rule:

“If new relevant hazard data on adverse health effects of a substitute chemical is identified by, or presented to, the Authority, the Authority must review and evaluate the data to determine whether the substitute chemical should be added to the HPCCCH list. This review must occur during the next regular three-year HPCCCH review and revision cycle. To support a transparent and timely process for acquiring new relevant hazard data, OHA must complete a public solicitation for new data or research about the human health effects of substitute chemicals in year 9 and every three years after that in perpetuity or until the chemical is added to the HPCCCH list. OHA must review and respond to the submissions before the start of the next evaluation cycle of the HPCCH list.”

Thank you for your leadership in implementing Oregon’s Toxic Free Kids Act to protect children from hazardous chemicals.



Warren Johnson
Policy and Compliance Program Director



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November 19, 2024

Toxic-Free Kids Act Rulemaking, Phase 5
Attention: Brittany Hall, Administrative Rules Coordinator
800 NE Oregon Street Suite 930, Portland OR 97232,

Dear Public Health Rules Coordinator Brittany Hall and the TFKA Program Team,

Thank you for the years of engagement with Oregon Environmental Council (OEC) and its partners around a wide variety of issues including addressing toxic chemicals in products, pesticides and heat and smoke. It is in this spirit of collaboration that we submit this comment letter for the Toxic-Free Kids Act Rulemaking, Phase 5.

Oregon Environmental Council is a nonprofit, nonpartisan, membership-based, state-wide organization that advances innovative, collaborative and equitable solutions to Oregon's environmental challenges for today and future generations. Oregon Environmental Council has closely tracked the Toxic-Free Kids Act (TFKA) for years and we understand the positive long term impact this project will have on children's health. **With that in mind, we submit the following comments:**

Priority Concern #1: 333-016-2020 - Chemicals of High Concern to Children

OEC supports the proposed addition of the 10 new chemicals included in OHA's Phase 5 rulemaking package that reflect the recent additions to the Washington's Chemicals of High Concern to Children list. These chemicals are mostly phthalates and flame retardants that pose known health hazards to children and adults. The proposed list also includes perfluorooctanoic acid (PFOA) and related substances, which scientific studies show human health effects at extremely low concentrations. The addition of these chemicals enhances the protectiveness of the TFKA program for children.

Priority Concern #2: OAR 333-016-2060 – Notification Requirements

The amendments to HB 3043 made by the 2023 Oregon Legislature include a requirement for children's product manufacturers to report the data on High Priority Chemicals of Concern for Children's Health (HPCCH) for the brand name and product model, rather than only for the

product category. This requirement is included in OHA's proposed OAR 333-016-2060(5)(c). To ensure consistency with this more product-specific reporting level, the proposed language in OAR 333-016-2060(5)(e) now requires reporting of the concentration range of a HPCCH in each unit of the product, rather than just the highest concentration range for the entire product category. OEC strongly supports these new proposed reporting requirements and urges OHA to maintain these proposed provisions in the final rule.

During the Rulemaking Advisory Committee (RAC) meetings, different perspectives were shared on the level of reporting that should occur in response to the new HB 3043 language, with some RAC members arguing to keep the requirement in the rule to report the highest concentration range for units within an entire product category, rather than providing data for each individual product unit. OEC believes that the legislative intent of HB 3043 is to ensure that reported concentration ranges of an HPCCH relate to each product unit (i.e., component), given the new statutory language that requires manufacturers to report the product brand and model and not just the product category. In addition, to fully understand the cumulative exposure potential in a given product, consumers need to know the total amount of a priority chemical in each component of the product.

OEC recognizes that requiring additional reporting of the product model and brand name will be more time intensive for manufacturers. However, we expect that those manufacturers already possess the data on chemicals in product components and, therefore, the additional reporting will not require more testing or research. In addition, we understand the resource burden on OHA for expanding the reporting database fields will be manageable because of coordination with other states and the Interstate Chemicals Clearinghouse (IC2), which administers the High Priority Chemicals Data System (HPCDS). Given that Vermont requires similar brand name and product model reporting, the additional resources for expanding the HPCDS can be a shared responsibility.

Priority Concern #3: OAR 333-016-3020 – Requirements for Chemical Substitution

OEC supports the new proposed language in OAR 333-016-3020(6) regarding the length of time a hazard assessment for a substitute chemical is valid and requiring a product manufacturer to resubmit a hazard assessment (HA) with current and credible scientific evidence three years after the first HA was approved. However, OEC is concerned about the uncertainty related to what occurs when new data on a substitute chemical's adverse impacts becomes publicly available three years after the second HA is approved. During one of the Rulemaking Advisory Committee

(RAC) meetings, OHA indicated that any new data that comes to light after the six-year period of continuous HA validity (e.g., through a new Green Screen assessment or published research) on the adverse health effects of a substitute chemical could be considered during the next regular evaluation of possible additions to the HPCCCH list. OEC believes additional language in OAR 333-016-3020(6) should explicitly direct OHA to evaluate the substitute chemical if new chemical if such data becomes available. For example, these two sentences could suffice:

“If new relevant hazard data on adverse health effects of a substitute chemical is identified by, or presented to, the Authority after the six-year HA approval period, the Authority will review and evaluate the data to determine whether the substitute chemical should be added to the HPCCCH list. This review will occur during the next regular three-year HPCCCH review and revision cycle.”

This language would remove any ambiguity about what actions will be taken on a chemical revealed to be a potentially regrettable substitute.

Regarding the mechanism for identifying new data or research on substitute chemicals, OEC recommends that OHA include in this rule a public solicitation for new data or research about the human health effects of substitute chemicals. This solicitation could occur once every three years. It would direct OHA to review and respond to the submissions within one year. The intent is to ensure that additional data and research would augment the last required hazard assessment (HA), and thereby provide OHA with up-to-date information on the hazards of the substitute chemical that would be considered in subsequent evaluations of the HPCCCH list.

Additional Comment on Future TFKA Program and Rulemaking Needs

In Phase 4 of the TFKA rulemaking, OHA adopted language from HB 3043 allowing for classes and subclasses to be added to the HPCCCH list as part of future regular list review cycles. OEC understands that OHA has not had sufficient time to evaluate and recommend chemical classes or subclasses for the current Phase 5 rulemaking. However, OEC strongly recommends that OHA begin developing a framework and criteria in 2025 and 2026 for evaluating chemical classes and subclasses for potential addition to the HPCCCH list. The results of this work will allow OHA to be prepared to conduct an evaluation of chemical classes and subclasses by the next HPCCCH list review cycle in 2027. Through the addition of the language on chemical classes and subclasses in HB 3043, OEC believes the Oregon Legislature clearly intended for a serious evaluation of these types of chemical groups to occur within a reasonable timeframe. One



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example of a currently relevant class of chemicals of concern are per- and polyfluoroalkyl substances (PFAS). Two PFAS chemicals – PFOS and PFOA – are currently on the HPCCCH list, or in the case of PFOA, proposed to be on that list. Both of those chemicals have largely been phased out of use in new products. However, there are hundreds of other PFAS compounds that may be used in consumer products, and some subclasses of PFAS may be more highly toxic to children than others. Based on existing health effects research, those PFAS subclasses likely warrant evaluation for inclusion on the HPCCCH list.

The work to safeguard the health of children by reducing exposures to toxic chemicals is critical and demonstrates a prioritization of the health of Oregon's future.

Oregon has established itself as a leader that takes bold action to safeguard the environment, to protect children from toxic products, and to inform consumers of hazards so they might protect their children. OEC understands the importance of these priorities and appreciates that you continue to uphold Oregon's values with this critical work.

Thank you for your time and consideration.

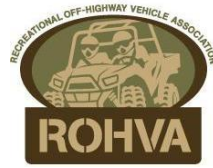
Sincerely,

Crystal Weston
Environmental Health Program Director

Kevin Masterson
Consultant, on behalf of OEC



**MOTORCYCLE
INDUSTRY
COUNCIL**



November 13, 2024

Mr. Justin Waltz
Analyst & Program Coordinator
Oregon Department of Public Health
800 NE Oregon Street
Suite 640
Portland, OR 97232

Re: Oregon Toxic Free Kids Modernization Act: Clarify that youth OHV and related equipment are exempted from “children’s product” definition

Dear Mr. Waltz:

The Motorcycle Industry Council (MIC)¹, the Specialty Vehicle Institute of America (SVIA)², and the Recreational Off-Highway Vehicle Association (ROHVA)³ strongly urge that you specifically exclude youth off-highway vehicles (OHVs), including all-terrain vehicles (ATVs), off-highway motorcycles, replacement parts and equipment from the “children’s product” definition in the Oregon Toxic Free Kids Modernization Act regulatory implementation.

The Oregon Toxic Free Kids Modernization Act defines “children’s product” as a specific list of products made for, marketed for use by, or marketed to, children under 12 years of age. We are concerned that youth-sized off-highway vehicles could be erroneously captured unless granted clarification or a specific exemption. The intent of the law appears to be targeting products children play with, interact with closely, and can be put in the child’s mouth. Given the exceptions listed in the law, we believe it was not the intent to regulate youth OHVs as “children’s products.”

Youth OHVs are specifically sized and powered for children. **Banning youth-sized OHVs creates a much more immediate health risk due to the potential for children to then operate adult-sized OHVs.** Please consider comments made by the U.S. Consumer Product Safety Commission (CPSC) while discussing risks associated with lead exposure from youth ATVs pursuant to the passage of the Consumer Product Safety Improvement Act which banned certain limits of lead in children’s products. Youth ATVs were subsequently excluded from such lead limits by P.L. 112-28 in part due to CPSC’s statement that banning youth ATVs would pose a **“serious and immediate risk of injury or death” for children under 12 who would instead ride larger and faster adult-size ATVs.** (See 74 Fed. Reg. 22154.)

Low-risk polymerized PFAS are currently unavoidable uses in powersports in order to:

- Withstand extreme heat and chemical blends,
- Provide water resistance, corrosion resistance, and friction properties.

¹ The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing several hundred manufacturers, distributors, dealers and retailers of motorcycles, scooters, motorcycle parts, accessories and related goods, and allied trades.

² The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers, dealers, and distributors of all-terrain vehicles (ATVs) in the United States. SVIA’s primary goal is to promote safe and responsible use of ATVs.

³ The Recreational Off-Highway Vehicle Association (ROHVA) is a national, not-for-profit trade association formed to promote the safe and responsible use of recreational off-highway vehicles (ROVs – sometimes referred to as side-by-sides or UTVs) manufactured or distributed in North America. ROHVA is also accredited by the American National Standards Institute (ANSI) to serve as the Standards Developing Organization for ROVs. More information on the standard can be found at <https://rohva.org/ansi-standard/>.

- For electrical insulation to provide flexibility and durability which maintains safe operating conditions.
- For fuel hoses which must withstand a myriad of fuel blends while maintaining flexibility and structural integrity to prevent cracking or catastrophic leaks.
- For gaskets which must stand up to high heat and various fluids to prevent fluids and fuel vapors from exiting the vehicle causing clean air violations, environmental contamination, and risk of vehicle fires.

These are not parts that would be in regular contact with a child's mouth or skin and therefore would not put a child at risk.

We urge you to either:

1. Clarify that youth ATVs are not captured by the law in your regulatory findings, or
2. The definition of "juvenile product" be amended to specifically exclude off-highway vehicles and related products, which may be accomplished as follows:

(8)(b) "*Children's product*" does not mean:

(R) Off-highway vehicles or related replacement parts, or protective equipment.

Manufacturers must ensure our vehicles and replacement parts meet durability standards that are sufficient to protect riders. Any potential PFAS-free alternatives must also meet durability and safe operation standards that are equal to or exceed current quality in order to be deemed a suitable replacement.

Other chemicals identified as chemicals of high concern to children in the NPRM may be used by manufacturers or for maintenance and repair to ensure safe function or operation of the youth product. Some of these chemicals may also provide important performance characteristics.

Our member companies continue searching for suitable replacements for PFAS and other chemicals in their vehicle parts and products, but currently PFAS and other chemicals are an unavoidable use to ensure safety and proper functioning of our vehicles. We understand your desire to address issues related to PFAS and other chemicals of high concern to children and we believe that our proposed amendments are consistent with that goal. Thank you for your consideration of the proposed amendment and if you have any questions, please contact me at 703-416-0444 ext. 3202.

Sincerely,



Scott P. Schloegel
Senior Vice President, Government Relations
Motorcycle Industry Council
Specialty Vehicle Institute of America
Recreational Off-Highway Vehicle Association



November 12, 2024

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

FR: Derek Sangston, Oregon Business & Industry; Jos Huxley, the Toy Association; Lauren Aguilar, Juvenile Products Manufacturers Association; and Tim Shestek, American Chemistry Council

RE: Industry Coalition Comments in Opposition to OHA HB 3043 Rulemaking

On behalf of our organizations and members, thank you for providing the opportunity to comment on the proposed draft rules to implement the Oregon Toxic Free Kids Act (TFKA) as it was changed by HB 3043 (2023). While the organizations forming our industry coalition participated on the previously convened rules advisory committee (RAC) to help draft these rules and thank the Oregon Health Authority (OHA) for adopting industry recommendations in some instances, our coalition opposes them as drafted because they would create substantial burdens on manufacturers, would cause previously unforeseen administrative challenges on OHA, and are not supported by legislative history pushing for Oregon's implementation of TFKA to match Washington's implementation of that state's similar program.

Oregon Business & Industry (OBI) is a statewide association representing businesses from a wide variety of industries and from each of Oregon's 36 counties. In addition to being the statewide chamber of commerce, OBI is the state affiliate for the National Association of Manufacturers and the National Retail Federation. Our 1,600 member companies, more than 80% of which are small businesses, employ more than 250,000 Oregonians. Oregon's private sector businesses help drive a healthy, prosperous economy for the benefit of everyone.

The Toy Association is the North American based trade association; our membership includes more than 900 businesses, from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs, all involved in bringing safe & fun toys and games to children. The toy sector is a global industry of more than US \$90 billion worldwide annually, and our members account for more than half of this amount.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, we have served as leaders in global toy safety efforts; in the 1970s we helped to create the first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized in the United States and internationally as an effective safety standard that has been adopted as a mandatory toy safety standard for all toys sold in the U.S. under CPSIA in 2008. It also serves as a model for other countries looking to protect the health and safety of their citizens with protective standards for children. The Toy Association continues to work with medical experts, government, consumers and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

The Toy Association is committed to working with legislators and regulators around the world to reduce barriers to trade and to achieve the international alignment and harmonization of risk-based standards that will provide a high level of confidence that toys from any source can be trusted as safe for use by children. Standards alignment assures open markets between nations to maximize product availability and choice.

The American Chemistry Council (ACC) represents more than 190 companies engaged in the business of chemistry—an innovative, economic growth engine that is helping to solve the biggest challenges facing our country and the world. Our members are the leading companies engaged in all aspects of the business of chemistry, creating the groundbreaking products that are improving the world all around us by making it healthier, safer, more sustainable and more productive. ACC members are committed to safety and sustainability in the communities where we operate and in the products we manufacture.

The Juvenile Products Manufacturers Association is a national not-for-profit trade organization representing 95% of the prenatal to preschool industry including the producers, importers, or distributors of a broad range of childcare articles that provides protection to infants and assistance to their caregivers. JPMA collaborates with government officials, consumer groups, and industry leaders on programs to educate consumers on the safe selection and use of juvenile products. Product safety is the top priority for JPMA and our members and we understand and support preventing exposure to dangerous chemicals.

Our coalition argued during the RAC and again here that certain changes OHA is preparing to TFKA do not reflect the content or intent Section 4 of HB 3043 as enrolled. Under the existing process, reporting is *by the chemical level*, along with supporting information including that relating to the product category, function of the chemical and a measurement range of the chemical present in units/component; HB 3048 amended this only to include the brand name and model to the existing data cohort. However, OHA is referring to the change in that reporting to now be “...*at the ‘brand name, product model level’* of a product, (emphasis added) which represents a major change both in the reporting structure itself as well as the cost burden imposed on reporting entities, since the reporting fees are set at the chemical reporting level. During the RAC, OHA additionally admitted this change would also create substantial administrative challenges within the agency.

While this was recently raised and discussed with OHA and it was advised that the reference was not presented as-intended (for example, it was confirmed that payment remains at the chemical level), there remains significant concern regarding the potential for very significant novel and previously unknown increases in the reporting burden for companies to be introduced through the rulemaking as opposed to the statutory process. Instead of tracking closely with how Washington State’s current administrative practice on this issue, OHA has instead focused on mirroring Vermont’s different, more onerous, and untested policy approach to regulating chemicals used in children’s products. Despite Vermont having not currently completed its own recently revised implementation of this policy.

OHA is additionally changing how the range of each chemical is reported, in a way that would result in another level of even greater burden impacts. Instead of continuing the current process (to report the range of the chemical present at the highest level observed in the units, defined as component part(s) of products, that are covered by the product category & chemical combination) OHA is amending 333-016-2060 to require the range *to be individually reported for each unit/component within the product (model) reported*, without the ability to report only to the highest level present in all of the units within that category. As an example, each product can include a number of components or materials (units) with differing levels of the reported chemical. While OHA stated during RAC hearings that this change would provide the greatest amount of data for consumers, we remain concerned that the incredible breadth of data is just as likely to confuse consumers; especially since the TFKA requires including inaccessible components in the reporting scope and many of the reported chemicals have minimal to no exposure potential. OHA's current practice requiring disclosure of the highest concentration level of the reported chemical in the component part(s) of products provide consumers with the most practical and useful information on the safety of a given product. The revision required by HB 3034 to include product identification was intended to include a greater degree of product-level identification to the existing framework, as opposed to OHA's proposal to significantly change the reporting framework itself in its entirety.

While OHA did change its original draft in way requested by our industry coalition – specifically it removed the requirement that manufacturers also disclose UPC along with both the brand name and product model as the first draft of 333-016-2060(5)(c) would have required and it clarified that the manufacturer instead of the retailer would be correct in the definition of “product model” that 333-016-2010(27) provides – and our coalition supports those changes, we must oppose OHA's rules implementing HB 3043 as described above.

Please contact us with any questions. Thank you.