



PUBLIC HEALTH DIVISION
Center for Health Protection

Kate Brown, Governor



800 NE Oregon St Ste 640, Portland OR 97232

Phone: 971-673-0482

To: Hon. Senator Michael Dembrow, Chair, Interim Senate Environment and Natural Resources Committee

From: Angela Allbee, Senior Policy Advisor, Oregon Health Authority
Dr. Ali Hamade, Deputy State Epidemiologist, Oregon Health Authority-Public Health Division

Date: September 24, 2019

Re: Follow up to September Legislative Days Toxic Free Kids Act Update

On September 16, 2019 the Oregon Health Authority (OHA) provided an update on the Toxic Free Kids Act (SB 478, 2015) at an informational meeting of the Interim Senate Environment and Natural Resources Committee. The information below responds to questions committee members asked during OHA's presentation.

1. How can a consumer determine if a children's product contains a high priority chemical of concern for children's health?

As is required under the Toxic Free Kids Act (Act) OHA has established in rule a list of the high priority chemicals of concern for children's health and the potential health effects caused by exposure to such chemicals. The list can be found on OHA's website:

www.healthoregon.org/toxicfreekids, and at Oregon Administrative Rule (OAR) 333-016-2020.

Under the Act, manufacturers (defined to include importers, distributors and retailers) file a notice every two years with OHA, disclosing high priority chemicals in children's products at the "product category" level (e.g. *Car/Train Sets – Powered*) and by the component of the product in which they are found (e.g., *surface coating*). Manufacturers are not required to report products by brand name.

If a manufacturer sells only one model of one brand of, for example, *Car/Train Sets – Powered* in Oregon, a consumer could use the information reported to OHA to identify a specific item.

If the same manufacturer sells multiple brands or models of *Car/Train Sets – Powered* in Oregon, a consumer could not use the information reported to OHA to identify a specific children's item in a store by brand name or model number.

The above information is currently available upon request from the interim reporting system OHA has had in place while developing a multi-state reporting database that is accessible to the public (see next answer).

2. When will the multi-state database for manufactures to report information on children's products be available?

The multi-state High Priority Chemical Data System (HPCDS), which will include children's product data reported for Oregon, will be available in mid-November 2019. A link to HPCDS will be found at www.healthoregon.org/toxicfreekids. The HPCDS has been developed to allow for public access to Oregon data. The Act called for such a system but did not provide funding or set a timeline for its development. OHA was able to secure an Environmental Protection Agency grant to contract with the Interstate Chemicals Clearinghouse (an organization the legislature also called out in the Act) to develop the HPCDS. More information about the system, and an interim reporting system OHA created in 2017 to ensure manufacturers could comply with Oregon's law, is available in OHA's biennial report to the legislature submitted under separate cover.

3. Will the rules for the removal, substitution, or obtaining a waiver apply to high priority chemicals in all children's products?

While this was a point of discussion in recent meetings of the rules advisory committee for the Act, OHA has determined that applying these rules to all reported children's products is not in alignment with Oregon Revised Statute 431A.250. Therefore, the rules will only apply to children's products specified in ORS 431A.260(1)(a)(b)(c), i.e. those that are mouthable as defined in the Act; a children's cosmetic; or those meant for children under three-years old.

4. OHA may waive requirements to remove high priority chemical from a children's product or replace it with a less hazardous substitute. Do such waivers expire? If a viable alternative becomes available in the future, can the waiver be rescinded?

While a period of validity for waivers has been in early draft rules, during the rulemaking process currently underway OHA has determined the agency does not have authority under the Act (ORS 431A.250) to require resubmissions of previously-approved waivers to incorporate new science or technology.

5. When will OHA release the final 2019 Toxic Free Kids Act Legislative Report?

We expect the final report to be posted on www.healthoregon.org/toxicfreekids by September 30, 2019.

6. The Act requires manufacturers to provide biennial reports to OHA if they sell or offer for sale children's products that contain one of the high priority chemicals of concern for children's health. Under the Act, children's products that are mouthable, a children's cosmetic, or are meant for children under three years of age are to remove or substitute the chemical from the product or obtain a waiver from OHA by the third biennial report. How is this going to work with new children's products that enter the market?

The following examples illustrate the application of the Toxic Free Kids Act under various scenarios:

Example #1: If a children's product that is mouthable, a children's cosmetic or meant for children under three years of age was on the market in 2017, it is subject to the January 1st biennial notice dates in 2018, 2020, and 2022. By that third biennial notice date, the manufacturer must remove or substitute the chemical, or obtain a waiver from OHA. If OHA approves a waiver, the product is still subject to notification rules, and must be reported on the January 1, 2024 biennial notice date as well as subsequent reporting dates.

Example #2: If a new children's product is offered for sale in 2021 that contains one of the high priority chemicals of concern for children's health, the manufacturer would be required to report to OHA by January 1, 2022. If the product being reported was mouthable, a children's cosmetic, or intended for children under three years of age, the manufacturer would have until the third reporting period (January 1, 2026) to either remove or substitute the chemical or obtain a waiver from OHA.

Example #3: If a children's product was on the market in Oregon in 2017, reported to OHA for the January 1, 2018 biennial notice date, taken off the market in 2020, but reintroduced in 2021, it is still subject to "removal, substitution, or OHA-approved waiver" rules on or before January 1, 2022. In addition, if the product was not reported on or before January 1, 2018, the manufacturer would be subject to enforcement action for missing first biennial notice date, but not for the second because it was not on the market for any portion of that second biennial notice period (January 1, 2018 thru December 31, 2019). Manufacturers should not be able to avoid the removal or substitution requirements or reset the clock for removal or substitution by taking a product off the market for a period of time, or simply by not reporting as is required by law.

Attachment: 2019 Toxic-Free Kids Biennial Report Draft for Sept Leg Days