

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

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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.