

# DRAFT

## SUMMARY

Establishes product stewardship program for household hazardous waste.  
Establishes Household Hazardous Waste Stewardship Fund.

Becomes operative January 1, 2020.

Requires initial plans for household hazardous waste stewardship programs to be submitted to Department of Environmental Quality no later than April 1, 2021. Requires household hazardous waste stewardship program developed pursuant to approved plan to be implemented no earlier than January 1, 2022.

Imposes penalty for violation of program provisions not to exceed \$25,000 per day for each day of violation.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to household hazardous waste; creating new provisions; amending ORS 459.415 and 459.995; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

## HOUSEHOLD HAZARDOUS WASTE STEWARDSHIP

**SECTION 1. The Legislative Assembly finds and declares that it is in the best interests of this state for manufacturers of products for household use that contain hazardous substances to take responsibility for developing, financing and implementing a statewide system to conveniently serve the urban and rural areas of this state, for the collection and environmentally sound management of household hazardous waste.**

**SECTION 2. As used in sections 1 to 11 of this 2019 Act:**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (1) “Brand” means a name, symbols, words or marks that identify  
2 a covered product and attribute the product to the owner of the brand  
3 as the manufacturer.

4 (2)(a) “Covered product” means any product offered for retail sale  
5 for household use, contained in the receptacle in which the product is  
6 offered for retail sale, if the product has any of the following charac-  
7 teristics:

8 (A) The physical properties of the product meet the criteria for  
9 characteristic wastes under the federal Resource Conservation and  
10 Recovery Act of 1976, P.L. 94-580, 42 U.S.C. 6901 et seq., as amended,  
11 including ignitability, corrosivity, reactivity or toxicity as defined in  
12 40 C.F.R. 261.20 to 261.24.

13 (B) The physical properties of the product meet the criteria for  
14 designation as a class 2, 3, 4, 5, 6 or 8 hazardous material, as defined  
15 in 49 C.F.R. 173, by the United States Department of Transportation  
16 pursuant to the Hazardous Materials Transportation Act of 1975, 49  
17 U.S.C. 5101 et seq., as amended.

18 (C) The product is a marine pollutant as defined in 49 C.F.R. 171.8.

19 (D) The product requires registration under the Federal Insecticide,  
20 Fungicide, and Rodenticide Act, P.L. 92-516, 7 U.S.C. 136, as amended.

21 (b) “Covered product” does not mean:

22 (A) A primary battery or rechargeable battery.

23 (B) A lamp that contains mercury.

24 (C) A thermostat that contains mercury.

25 (D) A pharmaceutical drug.

26 (E) Products sold for commercial agricultural use that require reg-  
27 istration under the Federal Insecticide, Fungicide, and Rodenticide  
28 Act, P.L. 92-516, 7 U.S.C. 136, as amended.

29 (F) Architectural paint, as defined in ORS 459A.822.

30 (G) An electronic device, including but not limited to a covered  
31 electronic device as defined in ORS 459A.305.

1 (H) A vitamin or dietary supplement.

2 (3) “Environmentally sound management” includes, but is not lim-  
3 ited to, the following management practices, implemented in a manner  
4 that is designed to protect public health, safety and the environment:

5 (a) Adequate record keeping;

6 (b) Keeping detailed documentation of the methods used to:

7 (A) Manage covered products; and

8 (B) Track and document the fate of covered products from col-  
9 lection through final disposition within this state and outside this  
10 state;

11 (c) Performance audits and inspections;

12 (d) Compliance with worker health and safety requirements; and

13 (e) Maintenance of adequate environmental liability insurance and  
14 financial assurances for a stewardship organization and contractors  
15 working for the stewardship organization.

16 (4) “Final disposition” means the point beyond which no further  
17 processing takes place and the covered product has been:

18 (a) Transformed for direct use as a feedstock in producing new  
19 products; or

20 (b) Disposed of or processed for energy recovery in permitted facil-  
21 ities.

22 (5) “Household hazardous waste stewardship program” means a  
23 statewide program for the collection and environmentally sound man-  
24 agement of covered products that is funded and operated by a  
25 stewardship organization pursuant to a plan approved by the Depart-  
26 ment of Environmental Quality under section 6 of this 2019 Act.

27 (6) “Manufacturer” means any person, irrespective of the selling  
28 technique used, including that of remote sale:

29 (a) That manufactures covered products under a brand that it owns  
30 or is licensed to use;

31 (b) That sells covered products manufactured by others under a

1 **brand that the seller owns;**

2 **(c) That manufactures covered products without affixing a brand;**

3 **(d) That manufactures covered products to which it affixes a brand**  
4 **that it does not own; or**

5 **(e) On whose account covered products manufactured outside the**  
6 **United States are imported into the United States. This paragraph**  
7 **does not apply if, at the time the covered products are imported into**  
8 **the United States, another person is registered as the owner of the**  
9 **brand of the covered products.**

10 **(7) “Orphan covered product” means a covered product for which**  
11 **no manufacturer can be identified.**

12 **(8) “Person” means the United States, the state or a public or pri-**  
13 **vate corporation, local government unit, public agency, individual,**  
14 **partnership, association, firm, trust, estate or other legal entity.**

15 **(9) “Pharmaceutical drug” means any product sold for human**  
16 **medical or veterinary use, including prescription, nonprescription,**  
17 **brand name and generic drugs.**

18 **(10) “Premium service” means a service such as at-home pickup**  
19 **service, including curbside pickup service.**

20 **(11) “Primary battery” means any nonrechargeable battery, includ-**  
21 **ing but not limited to an alkaline, a carbon-zinc and a lithium metal**  
22 **battery.**

23 **(12) “Rechargeable battery” means one or more voltaic or galvanic**  
24 **cells, electrically connected to produce electric energy and designed**  
25 **to be recharged.**

26 **(13) “Retailer” means a person that offers new covered products for**  
27 **sale at retail through any means, including but not limited to remote**  
28 **offerings such as sales outlets, catalogs or the Internet.**

29 **(14) “Stewardship organization” means a corporation, nonprofit or-**  
30 **ganization or other legal entity designated by a manufacturer or group**  
31 **of manufacturers to implement a household hazardous waste**

1 **stewardship program.**

2 **SECTION 3. (1) A manufacturer or retailer may not sell or offer for**  
3 **sale any covered product to any person in this state unless:**

4 **(a) The covered product is labeled with a brand; and**

5 **(b) The brand is included in a plan for a household hazardous waste**  
6 **stewardship program that is submitted to and approved by the De-**  
7 **partment of Environmental Quality pursuant to sections 5 and 6 of**  
8 **this 2019 Act.**

9 **(2) The manufacturer or retailer shall provide to consumers, at the**  
10 **time of sale, information on available collection opportunities for the**  
11 **covered product through the approved household hazardous waste**  
12 **stewardship program.**

13 **(3) A retailer is in compliance with subsection (1) of this section if,**  
14 **on the date the covered product is ordered from the manufacturer or**  
15 **its agent, the website maintained by the manufacturer's stewardship**  
16 **organization lists the manufacturer, along with the manufacturer's**  
17 **brand associated with the covered product, as a participant in an ap-**  
18 **proved household hazardous waste stewardship program.**

19 **SECTION 4. Before January 1 of each year, a stewardship organ-**  
20 **ization for covered products sold or offered for sale in this state shall**  
21 **register with the Department of Environmental Quality, for a period**  
22 **to cover the upcoming calendar year, on a form provided by the de-**  
23 **partment. The registration must include:**

24 **(1) A list of all manufacturers that are participating in the**  
25 **stewardship organization.**

26 **(2) A list of all the brands manufactured, sold or imported by the**  
27 **manufacturers participating in the stewardship organization, including**  
28 **those brands being offered for sale in this state by the manufacturers.**

29 **(3) Any other information required by the department to implement**  
30 **sections 1 to 11 of this 2019 Act.**

31 **SECTION 5. (1) In a form and manner prescribed by the Department**

1 of Environmental Quality, a stewardship organization shall submit to  
2 the department a plan for the development and implementation of a  
3 household hazardous waste stewardship program. The plan must de-  
4 scribe how the stewardship organization will:

5 (a) Manage and conduct a household hazardous waste stewardship  
6 program.

7 (b) Fund the household hazardous waste stewardship program, in-  
8 cluding how the stewardship organization will fund all the costs in-  
9 curred for the environmentally sound management of covered  
10 products during each stage of management, from collection of the  
11 covered products from the public through final disposition of the cov-  
12 ered products.

13 (c) Apportion the costs of the household hazardous waste  
14 stewardship program among each manufacturer participating in the  
15 stewardship organization.

16 (d) Provide for the environmentally sound management of covered  
17 products.

18 (e) Provide for advertising and promoting collection opportunities  
19 statewide and on a regular basis.

20 (f) Work to develop and implement the household hazardous waste  
21 stewardship program in coordination with:

22 (A) An approved statewide architectural paint stewardship program  
23 as described in ORS 459A.820 to 459A.855; and

24 (B) Any other stewardship organizations in this state.

25 (g) Provide for convenient service as described in subsection (2) of  
26 this section.

27 (2) Unless the department adopts by rule different standards, a plan  
28 provides for convenient service if:

29 (a) For a county or metropolitan service district where a permanent  
30 publicly owned or publicly contracted household hazardous waste col-  
31 lection site is located, the plan describes how the stewardship organ-

1 **ization will provide for the environmentally sound management of**  
2 **covered products received at the permanent site and received through**  
3 **collection events conducted by an entity approved by the department**  
4 **to conduct collection events, the county or the metropolitan service**  
5 **district;**

6 **(b) For a county that does not have a permanent publicly owned**  
7 **or publicly contracted household hazardous waste collection site and**  
8 **that contains all or part of a city having a population of 25,000 or**  
9 **more, the plan describes how the stewardship organization will provide**  
10 **for:**

11 **(A) At least one collection event per year; and**

12 **(B) The environmentally sound management of covered products**  
13 **received at the collection event provided for by the stewardship or-**  
14 **ganization and at any additional collection events conducted by the**  
15 **department, an entity approved by the department to conduct col-**  
16 **lection events or the county; and**

17 **(c) For a county that does not have a permanent publicly owned**  
18 **or publicly contracted household hazardous waste collection site and**  
19 **that does not contain all or part of a city having a population of 25,000**  
20 **or more, the plan describes how the stewardship organization will**  
21 **provide for:**

22 **(A) At least one collection event every other year; and**

23 **(B) The environmentally sound management of covered products**  
24 **received at the collection event provided for by the stewardship or-**  
25 **ganization and at any additional collection events conducted by the**  
26 **department, an entity approved by the department to conduct col-**  
27 **lection events or the county.**

28 **(3)(a) A plan submitted under subsection (1) of this section must**  
29 **describe how the stewardship organization has made a good faith ef-**  
30 **fort to coordinate with an appropriate local government as defined in**  
31 **ORS 174.116, collection service franchise holder under ORS 459A.085 or**

1 **person who provides collection service for the payment of costs asso-**  
2 **ciated with the receipt at collection events of products that are not**  
3 **covered products.**

4 **(b) If the department determines that the stewardship organization**  
5 **has made a good faith effort under paragraph (a) of this subsection**  
6 **and was unable to coordinate with the appropriate local government,**  
7 **collection service franchise holder or person who provides collection**  
8 **service, the department may allow the stewardship organization to**  
9 **refuse to accept at collection events products that are not covered**  
10 **products.**

11 **(4) In operating a household hazardous waste stewardship program,**  
12 **a stewardship organization shall:**

13 **(a) Implement the plan required under this section no later than**  
14 **60 days after the department approves the plan.**

15 **(b) Meet or exceed the requirements for providing convenient ser-**  
16 **vice as described in subsection (2) of this section.**

17 **(c) Offer publicly owned or publicly contracted household hazardous**  
18 **waste collection sites the first opportunity to participate as collection**  
19 **sites.**

20 **(d) Provide for the environmentally sound management of all cov-**  
21 **ered products, regardless of the manufacturer of the covered product**  
22 **and including orphan covered products, free of charge, except that a**  
23 **stewardship organization that provides premium service for a house-**  
24 **hold may charge for the additional cost of that premium service.**

25 **(e) Notify retailers that sell or offer for sale covered products made**  
26 **or sold by manufacturers participating in the household hazardous**  
27 **waste stewardship organization about the stewardship program and**  
28 **provide the retailers with information about available collection op-**  
29 **portunities that the retailers will need in order to comply with section**  
30 **3 (2) of this 2019 Act.**

31 **(f) By April 1 of each year, or by a later date as determined by the**

1 department, provide a report for review by the department that details  
2 how the plan required under this section was implemented during the  
3 previous calendar year, including but not limited to information about  
4 the services that were provided and the material collected during the  
5 previous calendar year.

6 (g) Establish and maintain a website that provides information  
7 about collection sites under the program and lists manufacturers par-  
8 ticipating in the stewardship organization under the plan and covered  
9 products that are sold or offered for sale in this state by participating  
10 manufacturers.

11 **SECTION 6.** (1) The Department of Environmental Quality shall  
12 approve a plan submitted under section 5 of this 2019 Act if the  
13 stewardship organization submits a completed plan, the proposed plan  
14 meets the requirements of section 5 of this 2019 Act and the  
15 stewardship organization pays the fee established by the Environ-  
16 mental Quality Commission under section 8 of this 2019 Act.

17 (2)(a) Not later than 60 days after receiving a plan under section 5  
18 of this 2019 Act, the department shall approve or reject the plan. If the  
19 department rejects the plan, the department shall inform the  
20 stewardship organization of the reason or reasons for the rejection.

21 (b) Not later than 60 days after the department rejects a plan under  
22 paragraph (a) of this subsection, a stewardship organization must  
23 submit to the department a revised plan. Not later than 90 days after  
24 receiving a revised plan under this paragraph, the department shall  
25 approve or reject the revised plan.

26 (3) Notwithstanding section 5 (2)(a) of this 2019 Act, if the depart-  
27 ment determines that a plan does not provide convenient service in a  
28 county where a permanent publicly owned or publicly contracted  
29 household hazardous waste collection site is located, the department  
30 may require a stewardship organization to pay an entity approved by  
31 the department to conduct collection events for the costs the approved

1 **entity incurs for the collection, transport, processing and disposal or**  
2 **other management of covered products. Charges to the stewardship**  
3 **organization may not exceed the actual costs of providing those ser-**  
4 **vices.**

5 **(4) The department may adopt by rule methods for measuring pro-**  
6 **gram performance, which may include, but need not be limited to,**  
7 **convenience standards or public awareness measures.**

8 **(5) The department shall report biennially to the Legislative As-**  
9 **sembly on the operation of the statewide system for the environ-**  
10 **mentally sound management of covered products.**

11 **SECTION 7. (1) In accordance with the applicable provisions of ORS**  
12 **chapter 183 relating to contested case proceedings, the Department of**  
13 **Environmental Quality may issue an order requiring compliance with**  
14 **the provisions of sections 1 to 11 of this 2019 Act.**

15 **(2) The department may bring an action against any person that is**  
16 **in violation of the provisions of sections 1 to 11 of this 2019 Act.**

17 **SECTION 8. (1) The Environmental Quality Commission shall adopt**  
18 **by rule an annual registration fee to be paid by a stewardship organ-**  
19 **ization. The fee adopted under this section must be reasonably calcu-**  
20 **lated to cover the costs of administering, implementing and enforcing**  
21 **sections 1 to 11 of this 2019 Act.**

22 **(2) The fee required by this section shall accompany the registration**  
23 **form submitted by a stewardship organization under section 4 of this**  
24 **2019 Act.**

25 **(3) Fees collected by the commission under this section shall be**  
26 **deposited in the State Treasury to the credit of the Household Haz-**  
27 **ardous Waste Stewardship Fund established under section 9 of this**  
28 **2019 Act.**

29 **SECTION 9. The Household Hazardous Waste Stewardship Fund is**  
30 **established, separate and distinct from the General Fund. Interest**  
31 **earned by the Household Hazardous Waste Stewardship Fund shall be**

1 credited to the fund. Moneys in the fund are continuously appropriated  
2 to the Department of Environmental Quality and may be used only to  
3 pay the costs of administering, implementing and enforcing sections  
4 1 to 11 of this 2019 Act.

5 **SECTION 10.** The Legislative Assembly declares that the collab-  
6 oration of manufacturers and stewardship organizations to develop  
7 and implement household hazardous waste stewardship programs is in  
8 the best interests of the public. Therefore, the Legislative Assembly  
9 declares its intent that the development, implementation and opera-  
10 tion of household hazardous waste stewardship programs as required  
11 by sections 1 to 11 of this 2019 Act shall be exempt from state antitrust  
12 laws. The Legislative Assembly further declares its intent to provide  
13 immunity for the development, implementation and operation of  
14 household hazardous waste stewardship programs as required by  
15 sections 1 to 11 of this 2019 Act from federal antitrust laws. This sec-  
16 tion does not authorize any person to engage in activities or to  
17 conspire to engage in activities that constitute per se violations of  
18 state or federal antitrust laws that are not authorized under sections  
19 1 to 11 of this 2019 Act.

20 **SECTION 11.** The Environmental Quality Commission may adopt  
21 rules as necessary to implement sections 1 to 11 of this 2019 Act.

22 **SECTION 12.** ORS 459.415 is amended to read:

23 459.415. (1) Before any local government **unit or stewardship organiza-**  
24 **tion operating a household hazardous waste stewardship program un-**  
25 **der sections 1 to 11 of this 2019 Act** operates a permanent collection depot  
26 or periodic collection events for household hazardous waste or hazardous  
27 waste generated by conditionally exempt small quantity generators, the local  
28 government **unit or stewardship organization** shall receive written ap-  
29 proval from the Department of Environmental Quality.

30 (2) In requesting written approval from the department, a local govern-  
31 ment unit **or stewardship organization** proposing to operate a permanent

1 collection depot or periodic collection events shall submit a detailed pro-  
2 posal. The proposal shall include at least the following information:

3 (a) Measures to be taken to [*insure*] **ensure** safety of the public and em-  
4 ployees or volunteers working at the collection site;

5 (b) Measures to be taken to prevent spills or releases of hazardous waste  
6 and a plan to respond to a spill or release if one occurs;

7 (c) A copy of the request for proposals for a contractor to properly man-  
8 age and recycle or dispose of the waste collected in a manner consistent with  
9 the rules of the Environmental Quality Commission for hazardous waste  
10 collection, storage, transportation and disposal; and

11 (d) Measures to be implemented to [*insure*] **ensure** no waste is accepted  
12 from generators of hazardous waste subject to regulation under ORS 466.005  
13 to 466.385 unless the intent is to specifically collect such waste.

14 (3) The department may request additional information about the proposed  
15 program from the local government unit **or stewardship organization**. The  
16 department shall not approve a program unless the program provides ade-  
17 quate provisions to protect the public health, safety and the environment.

18 **SECTION 13.** ORS 459.995 is amended to read:

19 459.995. (1) Except as provided in subsection (2) of this section, in addition  
20 to any other penalty provided by law:

21 (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to  
22 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.310 to 459A.335,  
23 459A.675 to 459A.685 or 646A.080 **or sections 1 to 11 of this 2019 Act**, or  
24 any rule or order of the Environmental Quality Commission pertaining to the  
25 disposal, collection, storage or reuse or recycling of solid wastes, as defined  
26 by ORS 459.005, or any rule or order pertaining to the disposal, storage or  
27 transportation of waste tires, as defined by ORS 459.705, or any rule or order  
28 pertaining to the sale of novelty items that contain encapsulated liquid  
29 mercury, incurs a civil penalty not to exceed \$25,000 per day for each day  
30 of the violation.

31 (b) Any person who violates the provisions of ORS 459.420 to 459.426 in-

1 incurs a civil penalty not to exceed \$500 for each violation. Each battery that  
2 is disposed of improperly is a separate violation. Each day an establishment  
3 fails to post the notice required under ORS 459.426 is a separate violation.

4 (c) For each day a city, county or metropolitan service district fails to  
5 provide the opportunity to recycle as required under ORS 459A.005, the city,  
6 county or metropolitan service district incurs a civil penalty not to exceed  
7 \$500 for each violation.

8 (d) Any person who violates the provisions of ORS 459.247 (1)(f) incurs a  
9 civil penalty not to exceed \$500 for each violation. Each covered electronic  
10 device that is disposed of improperly is a separate violation.

11 (e) Any retailer that violates the provisions of ORS 459A.825 (1) or (2)(b)  
12 incurs a civil penalty not to exceed \$100 per day for each day of the vio-  
13 lation.

14 (f) Any producer that violates the provisions of ORS 459A.825 (1) incurs  
15 a civil penalty not to exceed \$1,000 per day for each day of the violation.

16 (g) Any stewardship organization that violates the provisions of ORS  
17 459A.825 (2)(a), 459A.827, 459A.830 to 459A.837 or 459A.842 incurs a civil  
18 penalty not to exceed \$1,000 per day for each day of the violation.

19 (2) Any product manufacturer or package manufacturer who violates ORS  
20 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665  
21 incurs a civil penalty not to exceed \$1,000 per day for each day of the vio-  
22 lation. A violation of ORS 459A.650 to 459A.665 is not subject to additional  
23 penalties under subsection (1) of this section.

24 (3) Any civil penalty authorized by subsection (1) or (2) of this section  
25 shall be imposed in the manner provided by ORS 468.135.

26 **SECTION 14. Sections 1 to 11 of this 2019 Act and the amendments**  
27 **to ORS 459.415 and 459.995 by sections 12 and 13 of this 2019 Act apply**  
28 **to all manufacturers engaging in the activities set forth in section 2**  
29 **(6) of this 2019 Act before, on or after January 1, 2020.**

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**MISCELLANEOUS**



1 **declared to exist, and this 2019 Act takes effect on its passage.**

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