



State of Oregon Department of Environmental Quality

# Oregon Environmental Quality Commission Meeting

July 20, 2023

## Rulemaking Action Item G Mattress Stewardship Rulemaking

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# DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

## **Language of Proposed EQC Motion:**

*“DEQ moves that the commission adopt the proposed rules in Attachment A as part of Chapter 340, Division 98 of the Oregon Administrative Rules.”*

# Overview

The Mattress Stewardship Act, or [Senate Bill 1576 \(2022\)](#), requires mattress manufacturers to participate in a program to provide proper collection and disposal of used mattresses statewide. The purpose of this legislation is to reduce illegal dumping of mattresses and increase diversion from landfills, through a program implemented by mattress producers. The statute provides the Environmental Quality Commission may adopt rules as necessary to implement the new law. Per statute, the program will be funded by an assessment fee applied to mattresses at the time of sale.

Proposed rules would establish an annual fee for DEQ's oversight and enforcement of the program; clarify certain annual reporting and notification requirements; specify information that must be included on a stewardship organization's website; and delegate authority to DEQ to require stewardship organizations to provide additional reporting if they violate the law.

DEQ convened a rulemaking advisory committee to give input on proposed rules, as well as the racial equity and fiscal impact statements. Two meetings were held, both of which were open to the public and included an opportunity for public input. A public hearing was held on April 19, 2023, as part of the public comment period for this rulemaking.

# Statement of need

## **What need would the proposed rule address?**

Proposed rules for the new mattress stewardship program would address the need to establish an annual fee as required by statute and clarify the requirements of the stewardship organization to support implementation of the law.

## **How would the proposed rule address the need?**

The proposed rules address the need by providing a funding mechanism for DEQ's oversight and by clarifying reporting, notification and other requirements of the stewardship organization, which must be a 501(c)(3) nonprofit organization.

## **How will DEQ know the rule addressed the need?**

DEQ will know the rules addressed the need if DEQ's oversight of the program is funded adequately and if the mattress stewardship program is implemented successfully.

# Rules affected, authorities, supporting documents

## Lead division

Land Quality Division

## Program or activity

Materials Management Program, Product Stewardship Section

## Chapter 340 action

Adopt				
340-098-0400	340-098-0420	340-098-0440	340-098-0460	340-098-0480
Amend				
340-098-0000				

Statutory Authority - ORS		
468.020	459.005	SB 1576 (2022)

Statutes Implemented - ORS				
SB 1576 (2022)				

## Legislation

SB 1576 (2022)

## Documents relied on for rulemaking

Document title	Document location
SB 1576 (2022)	<a href="https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1576">https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1576</a>

# Fee Analysis

These proposed rules would establish new fees, as required by SB 1576 (2022).

## Brief description of proposed fees

One of the proposed rules would establish an annual fee reasonably calculated to cover DEQ's expenses associated with the costs to administer, implement and enforce SB 1576 (2022), including startup costs. This fee would be assessed to any stewardship organization with a program plan approved by DEQ.

The proposed rule would establish an annual fee of \$205,000 for the first year of the program (2024) and a fee of \$200,000 for the second year and onward. Beginning in 2026, DEQ may reduce the fee in a given year if program costs are covered for that year.

## Reasons

Section 9(3) of SB 1576 (2022) requires DEQ to establish an annual fee that is reasonably calculated to cover DEQ's costs to administer, implement and enforce SB 1576 (2022).

## Fee proposal alternatives considered

DEQ requires an annual fee to cover DEQ's costs to oversee and administer a mattress stewardship program, including approving program plans and annual reports, as well as providing program oversight and monitoring for compliance. Different options for structuring the annual fees were considered. After considering the committee's input, DEQ recommends setting a higher first annual fee to cover start-up costs.

Maintaining the status quo by not establishing fees would result in DEQ not implementing the requirements set by Section 9(3) of SB 1576 (2022) and not having adequate funds to oversee and administer SB 1576 (2022).

## Fee payer

The fee payer is any stewardship organization operating a mattress stewardship program in Oregon with a plan approved by DEQ.

## Affected party involvement in fee-setting process

DEQ convened a Rulemaking Advisory Committee that included appointees representing a variety of interests directly and indirectly affected by the proposed rules. The committee met on Dec. 8, 2022, and Feb. 3, 2023, to discuss ways to establish fees that would allow DEQ to cover program costs.

## Summary of impacts

A stewardship organization would determine the assessment fee on new mattresses sold in or into Oregon based on the overall operating cost of the program. This operating cost would include DEQ's annual fee. In other applicable states with a mattress program, the state's annual fee is a small percentage of the overall program cost.

Two other proposed rules address what information a stewardship organization must provide to DEQ for annual reports and notification of program changes. These two items may have a minor administrative cost to the stewardship organization but would unlikely have a big impact on the overall program budget.

Finally, there is also a proposed rule to allow DEQ to act on the EQC's behalf in issuing determinations by order under Section 6(5)(a)(B) of SB 1576 (2022). It is unlikely this would have an impact outside DEQ.

## Fee payer agreement with fee proposal

The annual fee has been reasonably calculated to cover the cost the department to implement the Act, as required by statute. No agreement is required for the EQC to adopt these fees; however, parties potentially affected by this proposed annual fee were included in the committee's rulemaking discussions, and provided general consensus in alignment with other committee members.

## Links to supporting documents for proposed fees

SB 1576 (2022):

<https://olis.oregonlegislature.gov/liz/2022R1/Measures/Overview/SB1576>

## How long will the current fee sustain the program?

There are no current fees established for this program. The proposed fees in this rulemaking are intended to cover DEQ's costs for implementing the Mattress Stewardship Program.

Proposed Fees	
Year one: 2024	\$205,000
Year two (2025) and onward:	\$200,000

## Fee schedule

As required in SB 1576 (2022), each year by April 1, DEQ will notify a stewardship organization of the annual fee for the upcoming calendar year. The initial plan from a

stewardship organization is due Oct. 1, 2023. The annual fee is due from a stewardship organization on July 1 of each year, starting in 2024.



# Statement of fiscal and economic impact

## Fiscal and Economic Impact

Overall, the rules would have an impact on any stewardship organization choosing to submit and operate an approved program plan. The proposed rules would have an impact through fees charged to a stewardship organization and information a stewardship organization must provide to DEQ for notice and reporting purposes. Based on the fees in other states with mattress programs, the amount of DEQ's fees and administrative costs would likely be small relative to a stewardship organization's overall program cost, which ultimately informs the assessment on each mattress sold in Oregon. The indirect impact of the rules on mattress purchasers, via the assessment, would be spread out among the mattress purchasers, which may include state agencies, local governments, the public, and large and small businesses.

## Statement of Cost of Compliance

### State agencies

DEQ would experience a direct fiscal impact associated with administering the proposed rules. These costs would be covered by new fees in the proposed rules. Separately, there may be an indirect impact to state agencies that purchase mattresses, although such impact would likely be spread among all mattress purchasers in Oregon.

### Local governments

The proposed rules would likely not have a significant impact on local governments, as the rules mainly apply to a stewardship organization, which must be a 501(c)(3) nonprofit organization. By implementing this new law, local governments should see an overall benefit to their programs by way of decreased illegal dumping of mattresses, both in local communities and on public lands. Additionally, there may be an indirect impact to local governments that purchase mattresses, as they would be subject to the assessment.

### Non-Profit Organizations

A non-profit organization choosing to participate as a stewardship organization for the mattress program would likely be impacted by the proposed rules, including the annual fee. Non-profit organizations may also be impacted in a positive way, if they are the recipient of mattresses for reuse or recycling through this new program. Non-profits were a part of the rulemaking committee and represented these viewpoints.

### Public

There may be an indirect impact to members of the public who purchase mattresses. The public may experience positive impacts associated with the proposed rules. This program may lead to the reduction in the number of mattresses illegally dumped on public land. Maintaining and improving the health of forests and public land can have a positive impact to the health of the surrounding communities. Improving water, air and land quality can reduce negative health impacts associated with pollution which led to reduced health care

costs and an improved quality of life. Adoption of these rules will ensure DEQ is able to administer and oversee an effective program for the public.

### **Large businesses - businesses with more than 50 employees**

Large businesses likely would not see significant fiscal impact based on these proposed rules. SB 1576 (2022) has already imposed costs outside of the proposed rules by requiring manufacturers, retailers and renovators to register under an approved plan, which may have an impact on a large business's administrative costs. A large business might be impacted if they purchase mattresses.

### **Small businesses – businesses with 50 or fewer employees**

Small businesses participating in the program will likely experience similar impacts as large businesses from these proposed rules.

### **ORS 183.336 - Cost of Compliance for Small Businesses**

#### **a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

The new rules may have an indirect effect on small businesses that are manufacturers, retailers, renovators or purchasers of mattresses. DEQ does not have data pertaining to the exact number of these small businesses that operate as mattress manufacturers, retailers or renovators in the state; however, the overall costs of the mattress program would be dispersed among mattress purchasers through an assessment fee. The rules are mainly in place for the stewardship organization, but the stewardship organization may list activities for a business to comply with, if they are a participant in the mattress program. An example of such activity is a mattress retailer collecting an assessment on a mattress sold.

#### **b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.**

These proposed rules are unlikely to have a major impact on small businesses related to their needing professional services, reporting, record keeping and other administrative duties. The rules are mainly in place for the stewardship organization, but the stewardship organization may list activities for a business to comply with, if they are a participant in the mattress program.

#### **c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.**

These costs would be similar to those noted above.

#### **d. Describe how DEQ involved small businesses in developing this proposed rule.**

DEQ included a small mattress recycling business on the rulemaking advisory committee for their insight on the recycling process. Due to the limited scope of this rulemaking, DEQ did not include other small businesses. However, SB 1576 (2022) requires DEQ to appoint a separate Mattress Stewardship Program Advisory Committee (MSPAC) to advise DEQ on any program plan submitted by a stewardship organization for DEQ approval. Plans submitted will include a proposed assessment amount and have the potential to affect large and small businesses including large purchasers of mattresses and mattress retailers. DEQ plans to appoint members from these sectors to that advisory committee to gain their input, before approving or rejecting any plan.

## Documents relied on for fiscal and economic impact

Document title	Document location
2022 California Mattress Stewardship Program Approved Budget	CalRecycle Mattress Budget Webpage: <a href="https://calrecycle.ca.gov/Mattresses/Budgets/">https://calrecycle.ca.gov/Mattresses/Budgets/</a>
2022 California Mattress Stewardship Program Amended Program Plan	CalRecycle Mattress Plans Webpage: <a href="https://calrecycle.ca.gov/Mattresses/Plans/">https://calrecycle.ca.gov/Mattresses/Plans/</a>

## Advisory committee fiscal review

DEQ appointed a rulemaking advisory committee. As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement, and its findings are stated in the approved meeting summary dated Feb. 3, 2023.

The committee generally agreed with DEQ’s assessment of the fiscal impact of these proposed rules. The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

## Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules would have no effect on the development costs because the proposed rules are limited to the implementation of the legislatively approved mattress

stewardship program. These proposed rules are primarily intended to give clarification to the stewardship organization, specifically on the required reporting and the annual fee.

# Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

The adoption of these rules, including an annual fee, would provide DEQ with the tools needed to administer and oversee the mattress stewardship program. These rules will assist DEQ in carrying out its required responsibilities, including reviewing a stewardship organization's plan and ensuring the stewardship organization implements a program equitably for all residents in Oregon. Both equity and environmental justice will be considered when reviewing program plans from a potential stewardship organization.

The mattress stewardship program supports environmentally sound management of mattresses at their end of life and is intended to help reduce illegal dumping of mattresses, which negatively impacts communities. Convenient and accessible opportunities for collection of discarded mattresses will be provided for all residents throughout the state, at no cost, at point of disposal. DEQ has not identified any specific actions or outcomes from these proposed rules that would substantially benefit or burden any person or community based on the racial demographics of that person or community.

# Environmental Justice Considerations

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues.

DEQ defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.

DEQ considered these effects by holding public meetings in a virtual setting so that members of the public from across the state could attend and give input. DEQ appointed several members to the rulemaking advisory committee representing lived experience from the community at-large and community-based organizations, as well as recycling and reuse organizations.

In addition to DEQ's engagement efforts being responsive to communities with environmental justice concerns, the design of the mattress stewardship program supports more equitable outcomes for communities more likely to experience environmental burdens. By requiring better collection and reuse, or recycling, of mattress components, DEQ expects that illegal dumping of mattresses will decrease. This improves the overall environmental impacts of mattresses that, when dumped illegally, can contribute to dangerous accumulation of materials if not collected by waste haulers or other entities.

By establishing rules for the responsible management of mattresses, DEQ can help ensure that the mattress stewardship program would contribute to an overall improvement in quality of life and well-being of people in Oregon and their ability to engage with a healthy and clean environment, reducing environmental inequity.

## **Federal relationship**

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules do not have any corresponding equivalent federal requirements.

# Land use

## Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<b>Goal</b>	<b>Title</b>
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

## Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ’s State Agency Coordination Program.



# EQC Prior Involvement

DEQ's Land Quality Division shared information about the Mattress Stewardship rulemaking with the EQC through an informational item (Director's Update) on the May 2023 EQC agenda. The following information was provided:

The Materials Management Program intends to bring proposed rules for the Mattress Stewardship Program to the Commission in July 2023.

The Mattress Stewardship Act, or SB 1576 (2022), establishes a statewide system for the financing, collection and environmentally sound management of discarded mattresses. This new program will include collection sites and events located conveniently around the state, funded by a flat fee on each mattress sold. A stewardship organization will operate the program and must submit a plan to DEQ for approval by October 1, 2023; this plan will provide details regarding how the program will work, as required in statute. After approval of a plan, entities who wish to sell mattresses in Oregon must be registered with the stewardship organization. DEQ will provide administrative oversight to ensure the stewardship organization is in compliance with statutory requirements.

Rulemaking for the Mattress Stewardship Act began in December 2022, and a rulemaking advisory committee met twice to provide input on draft rules, the fiscal impact statement and the racial equity statement.

Throughout the rulemaking process, DEQ has kept the public informed and engaged through the [Mattress Stewardship Rulemaking page](#) and a GovDelivery email list. The public comment period for this rulemaking ran from March 29 to April 28, 2023. A public hearing on April 19 had 16 participants in attendance. Commenters were generally supportive of this new program, and some provided suggestions to modify the proposed rules. DEQ will provide a summary of comments received and agency response in the rule packet submitted to the Commission prior to the July 2023 EQC meeting.

# Advisory Committee

## Background

DEQ convened the Mattress Stewardship rulemaking advisory committee. The committee met two times, and included representatives from the public, private and non-profit sectors. The rulemaking web page is located at: [Mattress Stewardship 2023 Rulemaking](#).

The committee members were:

<b>Mattress Stewardship Rulemaking Advisory Committee</b>	
<b>Name</b>	<b>Representing</b>
Marie Clarke	International Sleep Products Association and Mattress Recycling Council
Michelle Colletti	Community Member
Sabrina Gogol	Metro
Anna Kurnizki	Community Warehouse
Angie Marzano	Lane County Public Works
Terry McDonald	St. Vincent de Paul of Lane County
Robert Stewart	Coos County Solid Waste
Aimee Thompson	Thompson's Sanitary Service

## Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
  - Rulemaking
  - 2050 Vision for Materials Management
  - DEQ Public Notices
  - Mattress Recycling
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

## Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee met to give input on proposed new rules for the Mattress Stewardship Program. Discussions and input addressed mattress recycling and reuse, program convenience and accessibility, and ensuring necessary funding for oversight and enforcement of the program, among other topics related to program implementation.

# Public Engagement

## Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On March 29, Filing notice with the Oregon Secretary of State for publication in the April 2023 Oregon Bulletin.
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Mattress Stewardship 2023](#);
- Emailing approximately 23,880 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - 2050 Vision for Materials Management
  - DEQ Public Notices
  - Mattress Recycling
- Emailing the following key legislators required under [ORS 183.335](#):
  - Senator James Manning Jr.
  - Senator Michael Dembrow
  - Senator Janeen Sollman, Chair, Senate Committee on Energy and Environment
  - Representative Pam Marsh, Chair, House Committee on Climate, Energy and Environment
- Emailing advisory committee members
- Posting on the DEQ event calendar: [DEQ Calendar](#)

## Public Hearing

DEQ held one public hearing. DEQ received three comments at the hearing. Later sections of this document include a summary of all comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

## Presiding Officers' Record

### Hearing 1

Date	Wednesday, April 19, 2023
Place	Virtual Zoom meeting
Start Time	9:02 a.m.
End Time	9:41 a.m.
Presiding Officer	Stephanie Caldera

### Presiding Officer:

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

Sixteen people attended the hearing by teleconference or webinar. Three people commented orally, and no one submitted written comments at the hearing.

# Summary of Public Comments and DEQ Responses

## Public comment period

DEQ accepted public comment on the proposed rulemaking from March 29, 2023, until 4 p.m. on April 28, 2023.

For public comments received by the close of the public comment period, the following table organizes comments into categories with cross references to the commenter number. DEQ’s response follows each comment summary. Original comments are on file with DEQ.

DEQ made changes to the proposed rules in response to comments described in the response sections below.

List of Comments		
Comment #	Comment Summary	Commenter Numbers
<b>General Comments</b>		
1	<p><b>Comment:</b> Supports the Act; proposes a tracking number to identify manufacturer on discarded items through the process of recycling to measure compliance numbers.</p> <p><b>DEQ response:</b> DEQ appreciates the comment. The Act requires mattress manufacturers to register with a stewardship organization with an approved plan. DEQ considers that this registration requirement, coupled with the other requirements and authority granted to DEQ by the Act, adequately address the issue of compliance.</p>	1
2	<p><b>Comment:</b> Stop getting involved in every aspect of people’s lives. Please cease and desist from creating a new law every time you think something should happen.</p> <p><b>DEQ response:</b> The Act – enacted by the Oregon Legislature – requires DEQ to establish fees through rulemaking. DEQ has also determined the other proposed rules are necessary to implement the law.</p>	2
3	<p><b>Comment:</b> In support; concerned how ban on public dumping will be enforced. Suggests no charge for taking mattress to a staging area at the County dump. Mattresses can be taken dismantled there at the dump by inmates from jail.</p> <p><b>DEQ response:</b> One of the goals of this law is to decrease illegal dumping, by removing any cost at point of disposal (at a collection site participating in the mattress stewardship program). The Act also requires</p>	3

<b>List of Comments</b>		
<b>Comment #</b>	<b>Comment Summary</b>	<b>Commenter Numbers</b>
	a stewardship organization to address certain facets of illegal dumping in its program plan and annual reports.	
4	<p><b>Comment:</b> Lane County would like to voice strong support for the Mattress Stewardship Act – SB 1576 and the proposed rule concepts. The proposed rules include more stringent reporting, transparency, accountability, and enforcement provisions, which will help to combat the challenges mattresses present.</p> <p><b>DEQ response:</b> DEQ appreciates the comment.</p>	6
5	<p><b>Comment:</b> Supports proposed rules; Solely offering more collection sites does not make for an equitable program; transportation is a still a barrier, including low income, transit-dependent, seniors and people with disabilities. Equitable access to transportation is needed.</p> <p><b>DEQ response:</b> DEQ appreciates the perspective shared about barriers to transportation that many people in Oregon face. The Act requires a stewardship organization to conduct a study during the third year of implementation that evaluates the most effective methods of providing discarded mattress collection services to low-income individuals and multifamily housing structures; this study must be done in consultation with community organizations. DEQ is amending the proposed rules, specifically OAR 340-098-0440, to clarify the stewardship organization’s obligations in undertaking this study and similar reports.</p>	7
<b>Comments Relating to OAR 340-098-0400: Annual Fee</b>		
6	<p><b>Comment:</b> Supports annual fee, as long as the first year and subsequent year fees are enough to achieve DEQ’s work to provide effective oversight.</p> <p><b>DEQ response:</b> DEQ appreciates the comment. DEQ reviewed its calculations and determined the annual fee is adequate to cover its estimated costs.</p>	4
7	<p><b>Comment:</b> Section 9(3) of the Act provides:</p> <p>The department shall establish an annual fee to be paid by the stewardship organization that is reasonably calculated to cover the costs to the department to administer, implement and enforce sections 1 to 14 of this 2022 Act. The department shall provide notice to a stewardship organization no later than April 1 of each year of the annual fee for the upcoming calendar year.</p>	5

<b>List of Comments</b>		
<b>Comment #</b>	<b>Comment Summary</b>	<b>Commenter Numbers</b>
	<p>Thus, the legislature intended that DEQ would calculate the fee annually by April 1 of each year and that such fee would be based on DEQ’s anticipated costs to administer, implement and enforce the Act.</p> <p><b>DEQ response:</b> DEQ appreciates the comment. As mentioned in the advisory committee meetings, DEQ must engage in rulemaking to set the annual fee. Rulemaking requires significant DEQ resources, and if DEQ had to engage in rulemaking annually to set the annual fee, that fee would likely be higher than what has been proposed.</p> <p>DEQ concluded the proposed fee structure aligns with the Act, while allowing flexibility to reduce a fee in a given year. The proposed fee has been reasonably calculated by DEQ to cover its costs to administer, implement and enforce the Act. Under the proposed rule, beginning July 1, 2026, DEQ may reduce the fee in a given year if a lesser amount is adequate to cover program costs for that year. If DEQ intends to reduce a fee for an upcoming calendar year, DEQ will provide notice of this reduction to the stewardship organization by April 1 of the current year, as required by the Act.</p>	
8	<p><b>Comment:</b> Section 9 of the Act requires a stewardship organization to pay, by July 1 of each year, the annual fee for the upcoming calendar year. This means the first annual fee would be due July 1, 2024. Mattress Recycling Council Oregon, a prospective stewardship organization, requests DEQ to defer payment of the first annual fee until between six and twelve months after the program launches, to allow time for the stewardship organization to begin collecting the assessment fee. Otherwise, the stewardship organization will need to borrow money to pay the first annual fee to DEQ.</p> <p><b>DEQ response:</b> DEQ declines to modify the proposed rule to allow deferral of the first annual fee’s payment. Such a modification would appear to conflict with the timeline set forth under the Act.</p>	5
9	<p><b>Comment:</b> MRC Oregon urges DEQ to review and provide further detail regarding its calculations to confirm that they meet the statutory requirement that the fee be “reasonably calculated to cover the costs to the department to administer, implement and enforce” the Act. We note that California has similar authority to charge MRC for the actual direct costs that its state agency incurs to administer its statewide mattress recycling program, but that on a per capita basis, DEQ’s fee is three times more than California’s.</p>	5

List of Comments		
Comment #	Comment Summary	Commenter Numbers
	<p><b>DEQ Response:</b> The Act does not require the annual fee to be calculated or evaluated on a per capita basis; rather, the fee must be reasonably calculated to cover DEQ’s costs for administering, implementing, and enforcing the Act. MRC Oregon notes in its letter that California’s annual fee in absolute dollars is approximately \$600,000, or three times DEQ’s approximate annual fee of \$200,000. DEQ has reviewed its calculations; these calculations are based on reasonable estimates of staff costs for tasks related to administration, implementation and enforcement of the Act, as well as consultation with the Oregon Department of Justice.</p>	
<b>Comments Relating to OAR 340-098-0420: Delegation of Authority</b>		
10	<p><b>Comment:</b> Proposed rule should be revised to track the wording of Section 6(5) of the Act as follows:</p> <p style="padding-left: 40px;">Pursuant to Section 6(5)(a)(B) of SB 1576 (2022), <i>if DEQ issues a written finding pursuant to paragraph (b) and provides the stewardship organization an opportunity to respond to the finding</i>, DEQ may require a stewardship organization to meet any additional annual reporting requirements pursuant to Section 9(2) of SB 1576 that DEQ determines by order may be appropriate to avoid future violations.</p> <p><b>DEQ response:</b> DEQ considers the reference to Section 6(5)(a)(B) of the Act to sufficiently clarify when DEQ may require such additional reporting. The intent of the proposed rule is for the Commission to delegate its authority to DEQ to set additional reporting requirements in an order issued under Section 6(5)(a)(B).</p> <p>DEQ also declines to limit possible additional reporting requirements to additional annual reporting requirements. Depending on the violation, DEQ may determine that more frequent reporting pursuant to Section 6(5)(a)(B)—for instance, quarterly reporting for a period of time—may be appropriate to avoid future violations.</p>	5
<b>Comments Relating to OAR 340-098-0440: Annual Reporting</b>		
11	<p><b>Comment:</b> Proposed rule should be strengthened to allow DEQ to require the stewardship organization to gather all kinds of relevant data on how a collection site or event is performing—for instance, by changing “including” in the proposed rule to “including but not limited to.”</p>	4



<b>List of Comments</b>		
<b>Comment #</b>	<b>Comment Summary</b>	<b>Commenter Numbers</b>
	<p><b>DEQ response:</b> DEQ appreciates the comment. DEQ considers the word “including” to convey the same meaning as “including but not limited to”.</p>	
12	<p><b>Comment:</b> Proposed rule exceeds DEQ’s statutory authority. Collecting, compiling and reporting the unit and weight data from every collection site would impose significant costs and obligations on collection sites and discourage their participation in the program. For this reason, Section 9(2) of the Act obligates a stewardship organization to provide in its annual report unit and tonnage data only “at a sufficient level of disaggregation to determine how the program is performing <b>in different regions of the state</b>” (emphasis added). DEQ may only require additional information in annual reports only if, pursuant to Section 6(5) of the Act, DEQ finds in writing that the stewardship organization has violated the Act; the violation has a material impact on an approved plan’s implementation and administration, and the stewardship organization had an opportunity to respond to DEQ’s written finding.</p> <p><b>DEQ response:</b> DEQ modified the proposed rule language in OAR 340-098-0440 to address concerns raised in the comment, while ensuring that DEQ has information necessary to conduct its oversight and administrative role as required by the Act. Specifically, DEQ revised the requirement regarding annual reporting on number and tonnage of mattresses as an option for DEQ to require such information if a stewardship organization requests to make changes to a collection site or other service method.</p> <p>DEQ disagrees that allowing DEQ to request data to assess a collection site or event’s performance and effectiveness exceeds the Commission’s rulemaking authority. DEQ may need information at a site-specific and event-specific level to perform its oversight functions, as required by the Act. These functions include: approving collection sites and events proposed in a stewardship organization’s plan; approving any alternative methods for mattress collection proposed under Section 5(1)(b) of the Act; and determining, per Section 7(4), whether or not changes to a program, which may potentially include the stewardship organization dropping a site or event, have a material impact on an approved plan and which would require that a plan amendment be submitted for DEQ’s approval. Without understanding how a particular site or event is performing compared to other sites, events, or methods of collection, DEQ would be severely limited in being able to take a data-driven approach to evaluating critical aspects of the mattress stewardship program and determining whether proposed changes to service provide an equivalent level of service or have a material impact on an approved plan.</p>	5

## List of Comments

Comment #	Comment Summary	Commenter Numbers
13	<p><b>Comment:</b> The proposed rule sets obligations that MRC Oregon likely could not fulfill even with the best of intentions. MRC Oregon must rely on the voluntary cooperation of third parties because it lacks any legal authority to compel collection sites to provide the quantitative information that this proposed rule requires. If collection sites decline to provide MRC Oregon the required information, we would have no options and could not comply with DEQ’s requirements through no fault of our own.</p> <p><b>DEQ response:</b> DEQ appreciates the comment. DEQ revised proposed language in OAR 340-098-0440 to offer more flexibility in the information that a stewardship organization can provide to demonstrate a site or event’s effectiveness or performance.</p> <p>It is unclear to DEQ how a stewardship organization will be able to meet requirements for operating a compliant program without some tracking of how much each collection site is collecting, either as reported by a collection site or through some other method.</p> <p>For example, the Act requires a mattress stewardship program to provide for environmentally sound management of program mattresses, which is defined as including “Adequate record keeping” and “Keeping detailed documentation of the methods used to: [...] Track and document the fate of discarded mattresses <b>from collection</b> through final disposition within this state and outside this state; [...]. See Section 2(4) of the Act (emphasis added). Section 5(2) of the Act also requires a stewardship organization to provide financial compensation to collection sites for their reasonably actual costs to collect and manage discarded mattresses.</p>	5
14	<p><b>Comment:</b> The meaning in paragraph (1) of the phrase “directed to reuse” is unclear. We note that the Act defines neither the terms “directed to reuse” nor “reuse.” Read literally, MRC Oregon assumes that the proposed rule wants to know how many units the collection site intends will be reused, as opposed to recycled. If this is DEQ’s intent, then the proposed rule does not reflect how the mattress collection and recycling process works. Collection sites accumulate discarded mattresses and foundations for pick up and transport to recyclers, and do not “direct” that individual units be reused or recycled. Whether a specific unit is directed for recycling or reuse is most often a decision made by the recycler, based on the condition of the unit, etc. (and MRC Oregon would report that information). As a result, MRC Oregon once again could not provide the collection site-specific reuse data requested by the proposed rule.</p>	5

<b>List of Comments</b>		
<b>Comment #</b>	<b>Comment Summary</b>	<b>Commenter Numbers</b>
	<p><b>DEQ response:</b> DEQ revised the proposed language in OAR 340-098-0440. DEQ heard from RAC members that reuse is important; this revision allows a stewardship organization to report reuse on a program level instead of a site specific level. This aligns reuse with the recycling performance goals required in statute, to show how it influences the recycling rate. For instance, mattresses that weren't recycled because they were directed to reuse, is a benefit that should be highlighted as part of the mattress stewardship program. As noted in the draft rules, the word reuse is defined in ORS 459.005(24).</p>	
15	<p><b>Comment:</b> Supports proposed rules; Plans to act as a collection site and finds it important to collect data on reuse and recycling. As a small/mid size nonprofit, they would be able to collect data on how many mattresses they reuse. Reuse is a higher and best use, reporting around reuse for accountability is appreciated.</p> <p><b>DEQ response:</b> DEQ appreciates the comment.</p>	7
<b>Comments Relating to OAR 340-098-0460: Notification of Changes</b>		
16	<p><b>Comment:</b> Supports the proposed rule; this rule makes crucial information available to the users of the mattress collection system in a timely and accurate way.</p> <p><b>DEQ response:</b> DEQ appreciates the comment.</p>	4
<b>Comments Relating to OAR 340-098-0480: Website Information</b>		
17	<p><b>Comment:</b> Supports the proposed rule; this rule makes crucial information available to the users of the mattress collection system in a timely and accurate way.</p> <p><b>DEQ response:</b> DEQ appreciates the comment.</p>	4

## List of Commenters

#	Name	Organization	Comment Number	Hearing #
1	Michael Zoretich	Public	1	NA
2	Matthew Hadler	Public	2	NA
3	Tracy L England	Public	3	NA
4	Sabrina Gogol	Metro	6, 11, 16, 17	NA
5	Mike O'Donnell	Mattress Recycling Council	7, 8, 9, 10, 12, 13, 14	NA
6	Angie Marzano	Lane County	4	NA
7	Anna Kurnizski	Community Warehouse	5, 15	1

# Implementation

## Notification

If adopted, the proposed rules will become effective upon filing on approximately July 21, 2023. DEQ will notify affected parties by email through the GovDelivery email list for Mattress Stewardship, and by posting an announcement on DEQ's website. DEQ will also be in regular contact with entities including prospective stewardship organizations, that will likely be subject to the administrative rules.

## Compliance and enforcement

Affected parties - No additional compliance or enforcement will be required of a stewardship organization by rule. By statute, a stewardship organization will monitor retailers, manufacturers and renovators to ensure program compliance.

DEQ staff – Administrative rule will require DEQ to issue additional reporting requirements to a stewardship organization if a material violation takes place. Statute does provide for DEQ to take action as needed on compliance and enforcement.

## Measuring, sampling, monitoring and reporting

Affected parties – Administrative rule will require stewardship organizations to provide additional reporting as required by DEQ, pertaining to reuse.

DEQ staff – Staff will need to review and provide comments on proposed activities submitted by a stewardship organization, pertaining to required studies and reports. Staff will also need to convene the mattress stewardship program advisory committee (MSPAC) annually to review a stewardship's annual report, as required by statute. Per rule, staff may need to review information from a stewardship organization if they are providing alternative methods of service, or are making changes to the number or location of collection sites.

## Systems

Website – Administrative rule will require a stewardship organization to contain relevant information about the mattress stewardship program. Additionally, statute requires DEQ to make information available on its website.

Database – While there is no administrative rule related to a database system, a stewardship organization is required in statute to provide a convenient system for the public to access collection opportunities.

Invoicing - Administrative rule will establish an annual fee, for which DEQ will generate an invoice to a stewardship organization.

## **Training**

Affected parties – There are no proposed rules related to training; however, a stewardship organization will train retailers and other participants as part of the new state program.

DEQ staff – DEQ staff will complete trainings as needed in order to administer the program.

# Five Year Review

## Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

## Exemption from five-year rule review

The Administrative Procedures Act exempts one of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).

Rule Exempt from the Five-Year Review
340-098-0000

## Five-year rule review required

No later than July 20, 2028, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect.
- The anticipated fiscal impact of the rule was underestimated or overestimated.
- Subsequent changes in the law require that the rule be repealed or amended.
- There is continued need for the rule.

Rules Subject to the Five-Year Review				
340-098-0400	340-098-0420	340-098-0440	340-098-0460	340-098-0480

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

# Accessibility Information

You may review copies of all documents referenced in this announcement at:  
Oregon Department of Environmental Quality  
700 NE Multnomah St., Ste. 600  
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Rachel Harding, Oregon DEQ Headquarters, 503-929-7125.

## Translation or other formats

[Español](#) | [한국어](#) | [繁體中文](#) | [Русский](#) | [Tiếng Việt](#) | [العربية](#)  
800-452-4011 | TTY: 711 | [deqinfo@deq.oregon.gov](mailto:deqinfo@deq.oregon.gov)

## Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age or sex in administration of its programs or activities. Visit DEQ's [Civil Rights and Environmental Justice page](#).



# Attachment A: Draft Rules – Edits Highlighted

## Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

### Division 098

#### ~~SOLID WASTE: ELECTRONICS RECYCLING AND DRUG TAKE-BACK~~ MATERIALS MANAGEMENT: PRODUCT STEWARDSHIP PROGRAMS

Summary of rule changes: New rules are being proposed for the Mattress Stewardship Act of 2022.

#### **340-098-0000**

##### **Applicability**

(1) OAR 340-098-0000 to OAR 340-098-0200 apply to manufacturers of covered electronic devices sold or offered for sale in the State of Oregon for calendar years 2012 and beyond.

(2) OAR 340-098-0000, OAR 340-098-0010, and 340-098-0300 to OAR 340-098-0390 prescribe requirements and procedures for participating in, submitting program plans for, and operating, drug take-back programs under ORS 459A.200 to 459A.266.

(3) OAR 340-098-0000 and OAR 340-098-0400 to OAR 340-098-0460 clarify requirements of the Mattress Stewardship Act, SB 1576 (2022).

**Statutory/Other Authority:** ORS 468.020, 468.065 & 459A.345, SB 1576 (2022)

**Statutes/Other Implemented:** ORS 459A.315, SB 1576 (2022)

##### **History:**

DEQ 18-2020, amend filed 09/21/2020, effective 09/21/2020

DEQ 4-2012, f. & cert. ef. 6-26-12

**340-098-0400**  
**Annual Fee**

The stewardship organization will pay DEQ an annual fee as follows:

(1) The annual fee due on July 1, 2024, is \$205,000.

(2) The annual fee due on July 1, 2025, and in subsequent years, is \$200,000.

(3) Beginning July 1, 2026, DEQ may reduce the fee in a given year if a lesser amount is adequate to cover program costs for that year.

**Statutory/Other Authority: Section 9(3), Section 14 of SB 1576 (2022)**  
**Statutes/Other Implemented: SB 1576 (2022)**

**340-098-0420**

**Delegation of Authority to Determine Additional Reporting Requirements**

Under Section 6(5)(a)(B) of SB 1576 (2022), DEQ may require a stewardship organization to meet additional reporting requirements that DEQ determines by order that may be appropriate to avoid future violations.

**Statutory/Other Authority: Section 14 of SB 1576 (2022)**  
**Statutes/Other Implemented: Section 6(5)(a)(B) of SB 1576 (2022)**

**340-098-0440**  
**Stewardship Organization Submissions**

(1) Goals

(a) For purposes of the mattress stewardship program, reuse has the meaning provided by ORS 459.005(24).

(b) In establishing performance goals pursuant to Section 4(1)(g) of SB 1576 (2022), a stewardship organization must:

(A) Establish annual goals; and

(B) Account for reuse when setting the recycling rate goal.

(c) When evaluating methods and processes used to achieve goals related to the recycling rate in an annual report, a stewardship organization must report on the number of mattresses directed for reuse.

(2) Collection by Site or Event: If a stewardship organization notifies DEQ of a change to collection sites or events, or requests alternative methods for providing convenient service, DEQ may require a stewardship organization to provide information including:

(a) The number or tonnage of program mattresses collected by a collection site or event; and

(b) The number or tonnage of program mattresses collected for recycling by a collection site or event.

(3) Studies and Additional Reports

(a) No later than 90 days before undertaking the study required in section 9(4)(a) of SB 1576 (2022) or activities that will inform the reports required in section 9(4)(b) of SB 1576 (2022), a stewardship organization must submit a description of proposed activities with scope, processes, outcomes and timelines for DEQ's review and comment.

(b) A stewardship organization must provide a response to DEQ's comments, that explains why comments were or were not incorporated. A stewardship organization must respond to comments within 30 days of when comments were sent, unless otherwise specified by DEQ.

### **340-098-0460**

#### **Notification of Changes**

In addition to the notifications required by Section 7(3) of SB 1576, a stewardship organization will notify DEQ no less than once per month, of the following changes to an approved plan:

- (1) A change in the retailers that are registered with a stewardship organization; or
- (2) A change in the facilities managing discarded mattresses for reuse, as part of the mattress stewardship program.

**Statutory/Other Authority:** Section 7(3) of SB 1576 (2022), ORS 459.005

**Statutes/Other Implemented:** SB 1576 (2022)

### **340-098-0480**

#### **Website Information**

(1) A stewardship organization must make any changes to required information on the stewardship organization's website within three business days of the stewardship organization learning of the change. If the stewardship organization is unable to do so, the stewardship organization must notify DEQ in writing and include a timeframe by which the update will occur.

(2) A stewardship organization must request information from each collection site or event operator to provide on the stewardship organization's website, including:

- (a) The physical address of each collection site or event;
- (b) A phone number for each collection site or event;
- (c) The hours of operation for each collection site or event; and
- (d) Physical or language accessibility considerations at a collection site or event.

**Statutory/Other Authority:** Section 3(4) of SB 1576 (2022)

**Statutes/Other Implemented:** SB 1576 (2022)

# Attachment B: Draft Rules – Edits Incorporated

## Division 098

### MATERIALS MANAGEMENT: PRODUCT STEWARDSHIP PROGRAMS

Summary of rule changes: New rules are being proposed for the Mattress Stewardship Act of 2022.

#### **340-098-0000**

##### **Applicability**

(1) OAR 340-098-0000 to OAR 340-098-0200 apply to manufacturers of covered electronic devices sold or offered for sale in the State of Oregon for calendar years 2012 and beyond.

(2) OAR 340-098-0000, OAR 340-098-0010, and 340-098-0300 to OAR 340-098-0390 prescribe requirements and procedures for participating in, submitting program plans for, and operating, drug take-back programs under ORS 459A.200 to 459A.266.

(3) OAR 340-098-0000 and OAR 340-098-0400 to OAR 340-098-0460 clarify requirements of the Mattress Stewardship Act, SB 1576 (2022).

**Statutory/Other Authority:** ORS 468.020, 468.065 & 459A.345, SB 1576 (2022)

**Statutes/Other Implemented:** ORS 459A.315, SB 1576 (2022)

##### **History:**

[DEQ 18-2020, amend filed 09/21/2020, effective 09/21/2020](#)

DEQ 4-2012, f. & cert. ef. 6-26-12

**340-098-0400****Annual Fee**

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- (2) The annual fee due on July 1, 2025, and in subsequent years, is \$200,000.
- (3) Beginning July 1, 2026, DEQ may reduce the fee in a given year if a lesser amount is adequate to cover program costs for that year.

**Statutory/Other Authority:** Section 9(3), Section 14 of SB 1576 (2022)

**Statutes/Other Implemented:** SB 1576 (2022)

**340-098-0420****Delegation of Authority to Determine Additional Reporting Requirements**

Under Section 6(5)(a)(B) of SB 1576 (2022), DEQ may require a stewardship organization to meet additional reporting requirements that DEQ determines by order that may be appropriate to avoid future violations.

**Statutory/Other Authority:** Section 14 of SB 1576 (2022)

**Statutes/Other Implemented:** Section 6(5)(a)(B) of SB 1576 (2022)

**340-098-0440**

**Stewardship Organization Submissions**

(1) Goals

(a) For purposes of the mattress stewardship program, reuse has the meaning provided by ORS 459.005(24).

(b) In establishing performance goals pursuant to Section 4(1)(g) of SB 1576 (2022), a stewardship organization must:

(A) Establish annual goals; and

(B) Account for reuse when setting the recycling rate goal.

(c) When evaluating methods and processes used to achieve goals related to the recycling rate in an annual report, a stewardship organization must report on the number of mattresses directed for reuse.

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(a) The number or tonnage of program mattresses collected by a collection site or event; and

(b) The number or tonnage of program mattresses collected for recycling by a collection site or event.

(3) Studies and Additional Reports

(a) No later than 90 days before undertaking the study required in section 9(4)(a) of SB 1576 (2022) or activities that will inform the reports required in section 9(4)(b) of SB 1576 (2022), a stewardship organization must submit a description of proposed activities with scope, processes, outcomes and timelines for DEQ's review and comment.

(b) A stewardship organization must provide a response to DEQ's comments, that explains why comments were or were not incorporated. A stewardship organization must respond to comments within 30 days of when comments were sent, unless otherwise specified by DEQ.

**340-098-0460**

**Notification of Changes**

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- (1) A change in the retailers that are registered with a stewardship organization; or
- (2) A change in the facilities managing discarded mattresses for reuse, as part of the mattress stewardship program.

**Statutory/Other Authority:** Section 7(3) of SB 1576 (2022), ORS 459.005

**Statutes/Other Implemented:** SB 1576 (2022)

**340-098-0480**

**Website Information**

(1) A stewardship organization must make any changes to required information on the stewardship organization's website within three business days of the stewardship organization learning of the change. If the stewardship organization is unable to do so, the stewardship organization must notify DEQ in writing and include a timeframe by which the update will occur.

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- (a) The physical address of each collection site or event;
- (b) A phone number for each collection site or event;
- (c) The hours of operation for each collection site or event; and
- (d) Physical or language accessibility considerations at a collection site or event.

**Statutory/Other Authority:** Section 3(4) of SB 1576 (2022)

**Statutes/Other Implemented:** SB 1576 (2022)