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| Rules affected, authorities, supporting documents |

Lead divisionProgram or activity

Land Quality SW PPD, Oregon E-Cycles

Chapter 340 action[🞂](http://deq05/intranet/working/rulemaking/qcards/P04-AboutRulesNumbersTitles.pdf)

Recommendation[🞂](http://deq05/intranet/working/rulemaking/qcards/P06-AboutRulesRulemakingActionsDefined.pdf) Division Rule Title

adopt 098 0000 Applicability

adopt 098 0010 Definitions

adopt 098 0100 Revenue need

adopt 098 0150 Registration fees

adopt 098 0200 Notifications

Statute implemented🞂 Legislation Year

ORS 459A.305, ORS 459A.315 HB 2626 2007

Statutory or other legal authority

ORS 468.020, 468.065, 459A.345

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| Stakeholder involvement |

Advisory committee

A 12-member Oregon E-Cycles advisory work group met from 2007 to 2010 to help develop the Oregon E-Cycles program. In 2010, that work group provided input on the E-Cycles’ budget and fee structure in preparation for this rulemaking. DEQ convened the Oregon E-Cycles Registration Fee advisory committee in November 2011. This advisory committee met three times between November and February to discuss E-Cycles revenue needs, alternative fee models, and other related issues.

The 15-member committee included representatives from seven electronics manufacturers, including three smaller companies with fewer than fifty employees; two local governments; two electronics recyclers; two recycling plans; and two electronics industry organizations. A list of advisory committee members is provided [where].

The committee reviewed the information required for the fiscal impact statement, specifically the impact on small businesses.

Public notice

The Secretary of State published notice of the proposed rulemaking in the *Bulletin* on April 1, 2012. DEQ also:

* Posted the notice on DEQ’s webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on March 30, 2012.
* Emailed the notice to:
* 7,068 interested parties through GovDelivery on March 30, 2012.
* 159 registered electronic manufacturers in the Oregon E-Cycles program on March 30, 2012.
* Three legislators as required under [ORS 183.335](http://www.leg.state.or.us/ors/183.html) on April 5, 2012: Senator Dingfelder, Chair, Environment and Natural Resources; Representative Bailey, Co-Chair, Energy, Environment and Water, Representative Gilliam; and Co-Chair, Energy, Environment and Water.
* Members of the advisory committee on March 30, 2012.

Public hearings

During the comment period, DEQ held one public hearing in Portland that was also accessible by phone and through iLinc. No one attended in person or called in to provide comments.

Public comment

DEQ received eight written comments. See the Summary of comments and DEQ responses below.

Close of public comment period

The comment period closed on April 27, 2012 at 5 p.m.

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| Summary of comments and DEQ responses |

Following is a summary of the public comments received during the public comment period. DEQ’s response follows each comment summary. The original comments are on file with DEQ.

1. **Appreciate stakeholder involvement (**Commenters #6, 7, & 8)
2. Commenter appreciates the opportunity to participate in advisory committee meetings and conference calls to obtain stakeholder input before proposing rules. (6, 7) This input has improved the rule making proposal. (6)
3. DEQ has made a great effort to involve the regulated community to develop an effective program fair to the regulated community. (8)
4. This input has improved the rule making proposal. (6)

**Response:**

* DEQ appreciates the advice and perspectives interested persons have provided for this rulemaking and implementation of the E-Cycles program.

1. **Proposed fee changes sustain the program (**Commenter #1)

The proposed fee change is a good idea to sustain the program. (1)

**Response:**

DEQ appreciates the review and feedback.

1. **Exempt or reduce fees for small manufacturers (**Commenters #2, 3, & 4)
2. The fee increase for small, Tier 6, manufacturers is too high, from $40 to $200 a year. (2, 4) The $40 fee is acceptable, but for a small manufacturer building 12 computers a year, $200/year is $17 per computer. (4) This increase is not equitable unless fees for all tiers will also increase by 500 percent. (2)
3. Exempt small computer stores that build and sell few computers, e.g., below twenty computers a year. Computer stores seldom build computers anymore; individuals assemble far more of their own computers from parts bought online. (3)
4. Businesses need a way to exit the program after they no longer assemble computers. (3)
5. DEQ may not be assessing fees on all small computer stores. The number of small manufacturers registered, 109 with 50 or fewer employees, seems low. (2)

**Response:**

* DEQ has revised the proposed rules to retain the $40 fee for manufacturers who make fewer than 50 computers a year. DEQ has not proposed to exempt these manufacturers from registering or paying a registration fee. Advisory committee members did not support exempting these manufacturers from registering and paying a registration fee, and DEQ has not proposed an exemption for this rulemaking.
* Oregon’s electronics recycling law already provides an exit from registration for manufacturers who no longer sell covered devices. The law does not require the manufacturer of a covered device to continue to register its brand/device each year if it, or another entity, no longer sells that brand. It does provide, however, that DEQ may notify and require a manufacturer to register if its device is returned for recycling through E-Cycles (determined through sampling returns).
* DEQ acknowledges that not all small computer stores have registered and paid registration fees. DEQ attempts to identify and follows up on reports of unregistered manufacturers but to date has not focused compliance oversight on small manufacturers.

1. **Six-tier fee structure causes unstable revenue and unpredictable fees (**Commenters #5, 7, & 8)
2. Revenue is unstable under the proposed multi-tier fee because it does not minimize the revenue impact from changes in the number of manufacturers in higher tiers. (8)
3. Fees are unpredictable under the proposed multi-tier fee structure because most of the revenue comes from manufacturers with large market shares in the higher tiers. Market volatility and consolidation that reduces the numbers of manufacturers in the higher tiers causes great fluctuation in the registration fees. (8)
4. The more tiers, the more impact a company leaving an upper tier has on the revenue stream and the more volatile fee assessments will be. (5)
5. The significant steps in fees from tier to tier contribute to volatility. Manufacturers will shift between tiers based on a single year’s market share, making their fees difficult to predict. (5)
6. The complicated fee structure makes it difficult for a manufacturer to predict and budget for its fees from year to year. (5, 7)
7. DEQ should clarify exactly when mfrs will receive market share and fee determinations each year; companies need to adequate lead time to budget. (7)

**Response:**

* DEQ only considered fee structures that are designed to meet our annual revenue need. The proposed structure will not result in fluctuating revenue caused by manufacturers switching between tiers. Instead, the proposed fee structure consistently generates the established revenue need each year by allocating that revenue amount among the registered manufacturers.
  + In the proposed fee structure, factors that affect variability include annual revenue need, a manufacturer’s market share, the number of manufacturers in any given tier, and fees in excess of the 35K cap. Although there a number of factors that affect variability, five years of historical data run against the proposed fee structure show that, on the average, 76 percent of manufacturers had certain fees. (Tiers 1, 5, 6 and 7)

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| **Variability of Proposed Registration Fees**  **Using E-Cycles Manufacturer Data, 2008 - 2012** | | | | | | | | | | | | | | | |
|  | **Tier 1** | | **Tier 2** | | **Tier 3** | | **Tier 4** | | **Tier 5** | | **Tier 6** | | **Tier 7** | |  |
| **Year** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Mfrs** | **Fee** | **Total Mfr** |
| **2008** | **8** | $30,917 | **14** | $9,717 | **17** | $1,327 | **7** | $211 | **7** | $200 | **1** | $200 | **107** | $40 | 161 |
| **2009** | **6** | $35,000 | **13** | $12,678 | **16** | $2,073 | **15** | $274 | **5** | $200 | **1** | $200 | **111** | $40 | 167 |
| **2010** | **8** | $35,000 | **8** | $11,937 | **19** | $1,725 | **11** | $573 | **7** | $200 | **0** | - | **108** | $40 | 161 |
| **2011** | **9** | $35,000 | **5** | $12,332 | **15** | $1,841 | **8** | $284 | **12** | $200 | **2** | $200 | **117** | $40 | 168 |
| **2012** | **6** | $35,000 | **9** | $17,468 | **19** | $1,847 | **8** | $406 | **8** | $200 | **15** | $200 | **94** | $40 | 159 |

* + As shown, Tiers 2, 3 and 4 have greater fluctuations in the historical fees from year to year.
* Market consolidation does affect the volatility of fees for some manufacturers due to the 35K cap placed on the fee structure. Consolidation could result in fewer large manufacturers with greater market shares, which shifts more assessed fees in excess of the 35K cap. Excess fees then get distributed proportionally to lower tiers. In this case, market consolidation could result in more volatile and increased fees for lower tiers (Tiers 2-5 only). DEQ modeled a number of scenarios to evaluate the potential consolidation effects of numerous cap amounts. We considered caps between 20-40K. Caps in the lower range showed too much volatility in fees for Tiers 2-5 in consolidation scenarios. So, a 35K cap was chosen as a compromise between providing an upper limit of certainty for large manufacturers while reducing the risk of high fees for Tiers 2-5. DEQ originally placed a cap on the fee structure due to comments we received about providing some level of upper fee certainty for larger manufacturers during the development of these fees.
* In March of each year, as soon as the necessary market share data is available, DEQ makes a preliminary determination of each manufacturer’s market share and registration fee for that calendar year and notifies manufacturers of those determinations. Manufacturers have thirty days to request changes to their preliminary market share and fee determinations. Following that thirty-day period, DEQ evaluates any information received, makes final market share and fee determinations and notifies manufacturers of those in May. DEQ sends registration fee invoices in May; manufacturers must pay registrations fees by July 1. To determine registration fees, DEQ must gather market share data from the previous year (e.g., 2011 data for 2012) or most recent four quarters. DEQ requests market share information from manufacturers and purchases national market share data for the previous calendar year. That data gathering and analysis runs from December through February or early March.

1. **Proposed allocation of fees based on market share is not fair or justifiable (**Commenters #5, 7, & 8)
2. Manufacturers in all but the lowest proposed tier should pay the same fees. Sales volumes for all but those smallest manufacturers are high enough to negate the need for a graduated fee structure as proposed. (8)
3. DEQ’s costs to register a manufacturer and track its participation are the same regardless of the size of the manufacturer, so there is no financial justification for requiring mfrs with larger market shares to pay higher registration fees. (5, 7, 8) Given this, the proposed fee increase for top tier is unwarranted. (7) Assigning recycling obligations to manufactures based on their respective shares of products returned for recycling appropriately reflects a manufacturer’s burden on the system – but the same rationale does not hold for registration fees. (7) Since manufacturers in the higher tiers [may] also have larger recycling obligations, requiring them to also pay higher registration fees seems punitive. (8)
4. Fee structure should not reduce fees for any manufacturer. DEQ needs to increase revenue and companies have already budgeted for those fees. (7)

**Response:**

* DEQ’s existing fee structure was set by the legislature in 2007. The tiered structure establishes the concept that manufacturers with larger market shares should pay larger fees. DEQ is retaining that original legislative intent in this rulemaking by maintaining a tiered-based fee structure that recognizes the ability to pay concept. DEQ also recognizes that our costs to register a manufacturer do not vary based on the market share of a manufacturer. Thus, the proposed fee structure attempts to balance these factors. The current fee structure produces unpredictable revenue and the new fee structure is more closely tied to a manufacturer’s market share and total revenue need. Due to significant changes in how the fees are calculated, some manufacturer fees may actually decrease. DEQ did examine models that either maintained or raised current fee levels for all manufacturers, but none of them were preferred by our advisory group.
* Registration fees are to cover DEQ’s costs for the full range of functions to implement the E-Cycles program, including registering manufacturers. DEQ agrees that its costs per manufacturer do not vary based on the market share of a manufacturer.
* The proposed fee structure allocates fees based on market share so that all manufacturers pay roughly the same fee/unit sold in Oregon (except in the lowest tiers, which pay disproportionately more/unit). Table 5 shows the fee/unit sold under the existing fee structure.



* Using this approach consistently for all tiers results in a decrease in fees for Tier 3 manufacturers under the proposed fee structure. (Tier 3 manufacturers paid $5,000 under the current fee schedule and were in Tier 2. Their historical range fee decrease using the proposed fee structure is between $3,153 and $3,673.)Those fees decrease because they have currently disproportionately higher per unit costs under the existing fee structure, as seen in Table 6. DEQ did not use the existing fee structure as the starting point for the proposed fee structure.

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| **Average Cost/unit for existing fee structure 2012 Oregon manufacturer data and tier placements\*** | | | | |
| **Average Cost/ unit\*\*** | **Existing Tier** | **Existing Fee** | **Average number of units** | **Total number of Units\*** |
| $0.14 | Tier 1 | $15,000 | 110,532 | 1,460,096 |
| $1.15 | Tier 2 | $5,000 | 4,708 | 89,444 |
| $0.19 | Tier 3 | $200 | 1,034 | 10,697 |
| $0.29 | Tier 4 | $40 | 138 | 1,777 |
| \* 2012 Tiers are determined using 2011 market share data for devices sold in Oregon | | | | |
| \*\* cost/unit varies with total number of units sold in Oregon for each year | | | | |

1. **Proposed fee schedule is inconsistent with fee schedules in other states (**Commenter #8)

The fee schedule is inconsistent with the fee structures used in other states. Only WA uses a fee structure similar to Oregon’s. All others states with electronics recycling laws that require registration fees set the fees in statute. Generally they are $5,000 for established programs; several states’ fees are lower. Most states allow lower fees for smaller manufacturers. Oregon’s highest fee under the existing fee structure, $15,000, is triple the $5,000 fee. (8)

**Response:**

* Oregon’s E-Cycles program needs to be self supporting using the registration fees and cannot be subsidized with other funding any longer, which is why our revenue need has to match the fees we assign. Oregon contacted ten states (roughly one third) with e-waste programs. There is a wide range of costs and services among them, which directly influences fee amounts.
* Seven of those.states had a one, two or three tier fee schedule in the $3-15,000 range, but they do not have similar program or funding requirements as Oregon does. (Five of those programs are not self supporting and use other funds and two states were just starting to manage e-waste so their total funding needs are unknown at this time.)
* Oregon’s proposed fee schedule is consistent to three other states with variable fees in that a total revenue need is determined and fees are allocated based on market share. Washington’s program is the most similar, but they do not set a cap on their fees. The 2011 registration fees for the top tier in Washington was $43,721, nearly 25% higher than the proposed Oregon capped fee of $35,000.
* Oregon’s proposed fee structure has similarities and differences to the state programs contacted. However, relying on our fee analysis, the proposed structure provides consistent revenue, and provides fee certainty for most manufacturers.

1. **Two-tier fee structure be more equitably meets program objectives (**Commenter #5)
2. Adopt a 2-tier fee structure: $7,000 for mfrs with MS over 0.01% and $500 for all others. (5,8) Allow DEQ to increase the upper tier fee to $10,000 without rulemaking if the number of registered manufacturers changes so that revenue does not meet the $415,000 base budget. (5)
3. This 2-tier fee structure would allow DEQ to meet its revenue targets with a small reserve; provide mfrs with a stable, predictable registration fee; and allocate costs of registration and program administration equitably among all program participants. (5)

**Response:**

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| **Fee Comparison DEQ's proposal and the Two Tier Proposal 2012 Oregon Manufacturer data** | | | | | |
| Tier | Market share | Number of Mfrs - DEQ | DEQ Proposed Fee | Two Tier proposed fee | Number of Mfrs - Two Tier |
| 1 | ≥ 5% | 6 | $35,000 | $7,000 | 50 |
| 2 | ≥ 1% < 5% | 9 | $17,468 | $7,000 |  |
| 3 | ≥ 0.1% < 1% | 19 | $1,847 | $7,000 |  |
| 4 | ≥ 0.03% < 0.1% | 8 | $406 | $7,000 |  |
| 5 | ≥ 0.01% < 0.03% | 8 | $200 | $7,000 |  |
| 6 | > 50 units < 0.01% | 15 | $200 | $500 | 109 |
| 7 | < 50 units | 94 | $40 | $500 |  |
|  | TOT OR 2012 MFR | 159 |  |  | 159 |

* Looking at the fee comparison table above, the top two tiers see significantly smaller registration fees with the two tier structure as opposed to the DEQ proposed structure, while the other five tiers see a much higher registration fee.
* Additionally, many of the smaller tiers could experience a 3,400% increase in fees – having their fees raised from $200 to $7000. This increase is dramatic compared to the maximum fee increase of 133% (for Tier 1 manufacturers) proposed in the current fee structure.
* When applying the suggested fee structure against 5 years of historical market share data, it does allow DEQ to meet its current and projected revenue need outlined in this rulemaking. However, since the fee structure is not directly tied to revenue need, changes in market conditions (such as market consolidation) could result in future revenue shortfalls. More importantly, when setting the original fee structure in 2007, the legislature recognized that larger manufacturers have the ability to pay more in registration fees. The suggested 2-tier structure completely ignores this concept and actually lowers fees for the largest manufacturers.
* DEQ does not think the suggested 2-tier model will work because it fails to recognize ability to pay, isn’t tied to revenue need, and results in significant fee increases for smaller manufacturers while lowering the fees for larger manufacturers.

1. **Revenue need adjustments provide little incentive for DEQ to pare costs (**Commenter #7)
2. Adjusting the revenue target upward for subsequent years and guaranteeing an annual revenue stream provides little incentive for DEQ to seek program efficiencies or cost savings. (7)
3. The revenue need adjustment implies that DEQ can increase guaranteed revenue targets upward if it asserts it needs more revenue. (7)
4. Allowing DEQ to raise revenue for uncollected fees provides little incentive for DEQ to collect fees owed. (7)

**Response:**

* The proposed rules would *require* DEQ to *reduce* revenue need if registration fee revenue exceeds DEQ’s actual costs for the program. They would *allow* DEQ to *increase* revenue need only in the amount of uncollected fees owed for prior years (e.g., major bankruptcies or other uncollectable debt), and then only as needed to cover program costs. Any other adjustments to revenue need would require a rule amendment.
* DEQ has a high collection rate and will continue to aggressively pursue fee collection and strive to control costs to cover revenue shortfalls. Nevertheless, retaining the authority to add uncollected revenue to revenue need will help ensure that registrations fees do cover DEQ’s program costs, as intended by the legislature. DEQ has added language to the proposed rules stating that it will make reasonable efforts to collect fees owed.
* To help provide accountability for controlling program costs, the proposed rules require DEQ to report its current and projected program expenditures and revenue each year. If fee revenue exceeds program costs, the rules would also require DEQ to evaluate whether revenue need should be reduced in future years. DEQ will continue to discuss this financial information with stakeholders and, as noted in response to comment 9, will continue to work with them on ongoing program improvements and cost reductions.

1. **DEQ should reduce its administrative costs for the E-Cycles program (**Commenters #5, 6, & 8)
2. DEQ assured stakeholders that possible revenue reductions and cost containment strategies would be presented along with tier revisions, but stakeholders have not been provided with a good faith effort to provide this information. (5)
3. With the program in its fourth year of operations and start-up activities completed, program oversight should be streamlined to reflect that it is now an ongoing program that is running effectively. (5)
4. DEQ should work with CEA to develop a plan to reduce program oversight costs by 90% during the coming years so that manufacturers’ resources are spent on recycling and other direct program costs. The proposed registration fees add roughly 2 cents per pound of recycling to pay for DEQ’s data management and oversight of the recycling programs that manufacturers fund. The $435,000 in revenue needed for 2013 and 2014 would fund an estimated 2 million pounds of additional recycling each year; the additional revenue need in 2016 would yield even higher levels. (6)

**Response:**

DEQ significantly reduced costs in the fiscal year ending June 2011 as promised to the E-Cycles workgroup in June 2010. The program reduced staff from 2.7 to 1.7 FTE and significantly reduced high-cost program activities. To operate within the proposed revenue need, DEQ expects to further pare program activities and gain efficiencies to offset cost increases such as salary and benefit adjustments and inflation. DEQ is also committed to continue working with manufacturers, E-Cycles recycling program representatives and other stakeholders to identify and pursue additional opportunities to improve and streamline the program and costs for both DEQ and manufacturers, who fund their recycling programs as well as DEQ’s oversight. DEQ does not believe program costs can be reduced by 90% as suggested, without significant changes in program design that would require legislation, which DEQ is also willing to discuss. DEQ has appreciated the Consumer Electronics Associations participation in the E-Cycles program and welcomes its participation in these ongoing dialogs.

1. **DEQ should continue dialog on whether to base market share on units or weight (**Commenter #7)

DEQ should in the future continue the dialog about whether fees should be based on units sold or weight. IT mfrs are at a disadvantage if market share is based on units bec/their products are lighter than TVs. (7)

**Response:**

DEQ will continue the dialog requested as part of discussion with stakeholders on program improvements.

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| Commenters |

Comments received by close of public comment period

The table below lists eight people and organizations who submitted comments on the proposed rules by the deadline for submitting public comment. The original comments are on file with DEQ.

1. **Commenter:** Tom Sherman **Affiliation:** Interested Party

This commenter submitted comments under categories #1 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Chris Chenoweth **Affiliation:** Acupro-Oregon

This commenter submitted comments under categories #2 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Patrick Ewing **Affiliation:** Bizmobyte Computers

This commenter submitted comments under categories #2 in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Rep. Sprenger on behalf of Paul Aziz, Paul’s Computer Repair **Affiliation:** Oregon state legislator

This commenter submitted comments under categories #\_\_ in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Betty Patton **Affiliation:** Electronic Manufacturers Recycling Management Company, Oregon E-Cycle Registration Fee Advisory Committee Member

This commenter submitted comments under categories #\_\_ in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Walter Alcorn **Affiliation:** The Consumer Electronics Association, Oregon E-Cycle Registration Fee Advisory Committee Member

This commenter submitted comments under categories #\_\_ in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Kelly McKechnie **Affiliation:** TechAmerica

This commenter submitted comments under categories #\_\_ in the *Summary of comments and DEQ responses* section above.

1. **Commenter:** Frank Marella **Affiliation:** Marella Environmental Consulting

This commenter submitted comments under categories #\_\_ in the *Summary of comments and DEQ responses* section above.

Comments received after close of public comment period

No additional people or organizations submitted comments that DEQ did not receive by the close of public comment on April 27, 2012 5:00 p.m.