



State of Oregon Department of Environmental Quality

Draft Fiscal Impact Statement

Modernizing E-Cycles 2024 Rulemaking

Introduction

The Oregon Legislature adopted HB 3220 in 2023, which modernizes and updates the statewide program for electronics collection and recycling. Known as Oregon E-Cycles, this program follows an extended producer responsibility model, a waste management strategy that requires producers to share in the responsibility for the end-of-life management of their products and materials. Typically, manufacturers will designate and join a producer responsibility organization to help them fulfill their obligations under the law. A manufacturer pays fees to that organization to cover the costs of the program, including collection and processing of materials, as well as DEQ's administrative fee.

Since operations began in 2009, the E-Cycles program has collected over 300 million pounds of electronic devices, preventing toxins from entering the environment through illegal dumping. Materials are diverted from Oregon landfills where precious and rare earth metals can be recovered for new electronics.

DEQ is currently conducting rulemaking and invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

Fee analysis

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 459A.334(1) and ORS 459A.334(2).

Brief description of proposed fees

As required in statute, DEQ is proposing a recurring annual fee and a one-time plan review fee. Fees are set to ensure that DEQ can perform oversight, enforcement and administration of the program, including review and approval of annual reports and program plans from producer responsibility organizations.

DEQ proposes the following fees:

- A plan review fee of \$75,000. Each electronics producer responsibility organization must pay the plan review fee before the electronics producer responsibility organization submits its initial program plan.

Translation or other formats

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- An annual fee of \$315,000. Each electronics producer responsibility organization must pay an equal share of the annual fee. DEQ may reduce the annual fee for a given year to ensure fee revenue approximately matches DEQ’s projected costs for that year.

Reasons

The proposed fees would address DEQ’s statutory requirement to establish an annual fee and a plan review fee. These fees will be reasonably calculated to cover the costs of implementing, administering and enforcing the statute. These fees will be paid by all producer responsibility organizations participating as part of the program cost. Again, these costs are ultimately covered by manufacturers required to participate in the E-Cycles program, through the approved producer responsibility organizations.

Fee proposal alternatives considered

DEQ considered the following alternative:

- Apportioning the annual fee by market share. If multiple electronics producer responsibility programs exist, DEQ would divide the annual fee between the electronics producer responsibility organizations based on the market shares of the manufacturers participating in the electronics producer responsibility organizations. After consideration, DEQ did not choose this option because it may be more administratively burdensome—thereby increasing the annual fee—than apportioning the annual fee in equal parts. Apportioning the annual fee equally also allows for consistency in the application of the fee.

Fee payer

Each producer responsibility organization will submit a one-time plan review fee, with submittal of their initial program plan in 2025.

All producer responsibility organizations with an approved plan will pay the annual fee, starting in 2026. If there are multiple producer responsibility organizations, the annual fee will be split equally between them.

Affected party involvement in fee-setting process

DEQ is required to establish these fees by rule, and therefore convened a rulemaking advisory committee. This committee included a variety of interests who may be directly or indirectly affected by the new law and proposed rules; this included prospective producer responsibility organizations. The committee met three times in 2024 to discuss proposed rules and the impacts of those rules.

Summary of impacts

This program is cost-internalized by the manufacturers of covered devices. Manufacturers could choose to pass these fees on to consumers through the price of their products. The fees charged by DEQ to a producer responsibility organization would be part of their overall operating budget. Given the many new facets of this

program we don't know with certainty all the financial impacts of these fees, but DEQ estimates it will be a small percentage of a producer responsibility organization's overall budget, based on the cost of similar programs in other states, such as Washington's E-Cycle program. A recent annual report from Washington's program is linked below. (see table below).

The fees that DEQ is proposing would support program administration activities, including oversight and enforcement of participating entities; review of documents including plans and reports; registering manufacturers with the program and calculating annual market share and other program duties as needed.

Fee payer agreement with fee proposal

Parties that have the potential to be affected by the proposed fees were included during committee meeting discussion.

Links to supporting documents for proposed fees

| Document | Reference |
|---------------------------------------|---|
| House Bill 3220 (2023) | https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3220 |
| Washington E-Cycle 2022 Annual Report | https://ecology.wa.gov/getattachment/044dc5a6-8eba-4359-bfad-7a74c1e38785/online_E-Cycle-WA-2022-Annual-Report-07-10-2023.pdf |

How long will the current fee sustain the program?

The existing Oregon E-Cycles program includes a manufacturer registration fee and a separate fee for manufacturers participating in the state contractor program that DEQ oversees. HB 3220 eliminates the state contractor program and thus the separate fee. The existing manufacturer registration fee requires DEQ to conduct tier assignments to apportion its cost among hundreds of manufacturers. HB 3220 eliminates the manufacturer registration fee and requires the Environmental Quality Commission to set an annual fee and a plan review fee for the modernized E-Cycles program. The proposed annual and plan review fees in this rulemaking are intended to cover DEQ's costs for administering this modernized E-Cycles Program. The program does not receive money from the general fund.

| Proposed Fees | |
|---------------------------------------|------------------|
| Annual Administrative Program Fee | \$315,000 |
| One-time Plan Review Fee | \$75,000 |
| Program costs covered by General Fund | \$0 |
| Expected effective date | February 1, 2025 |

Fee schedule

Electronic producer responsibility organizations will pay a one-time plan review fee on July 1, 2025. They will also pay an annual fee each year by the later of June 1 or thirty days after DEQ sends the annual fee invoice. Each electronics producer responsibility organization will pay an equal share of the total annual fee.

| Fee Type | Occurrence | Due |
|-----------------|-----------------------------|--|
| Annual Fee | Each year, starting 2026 | By the later of June 1 or thirty days after DEQ sends the annual fee invoice |
| Plan Review Fee | One time, with initial plan | July 1, 2025 |

Statement of fiscal and economic impact

183.335 (2)(b)(E); 183.540 [Fiscal Impact Analysis](#)

Fiscal and economic impact

HB 3220 requires DEQ to establish an annual fee and a plan review fee for its oversight, enforcement and administration of the Oregon E-Cycles Program, a producer responsibility program. Producer responsibility programs ensure that manufacturers play a role in the handling of materials and products at their end of life.

The fees proposed by DEQ would likely have an impact on the producer responsibility organizations and ultimately, manufacturers of covered electronic devices participating in the program, as the manufacturers are responsible for funding the program.

As required by statute, DEQ has proposed rules to establish product categories. Product categories are to be used in the sorting of covered electronic devices at collection and in DEQ's calculation of market share. These proposed rules may have an impact on collection sites and producer responsibility organizations, which compensate collection sites for the sites' collection costs. DEQ received input from the rulemaking advisory committee that setting too many categories may increase the costs of the electronics producer responsibility program. The existing Oregon E-Cycles program requires sorting into five categories. DEQ proposes five product categories for the modernized E-Cycles program.

Proposed rules related to fair financial compensation may have a potential impact on producer responsibility organizations, who will ultimately charge the manufacturer for these costs.

Proposed rules related to environmentally sound management practices and collection site standards may have a fiscal impact to collectors, processors, and electronics producer responsibility organizations. The proposed rules would allow DEQ to approve variances from some of these requirements, which may reduce the impact. For instance, the proposed rules would allow DEQ to approve variances from required environmentally sound management practices if an electronics producer responsibility organization demonstrates to DEQ's satisfaction that alternative environmentally sound management practices may be substantially equivalent in ensuring protection of, and compliance with all laws applicable to, human health and safety, the environment, and data privacy.

Statement of cost of compliance

State agencies

DEQ does not anticipate that other state agencies will incur costs in order to comply with the proposed rules.

Local governments

Local governments may see some of the impacts described above if they are participating in the program as a collection site. However, statute requires an electronics producer responsibility organization to provide fair financial compensation to collection sites, which would include collection sites operated by local governments. This may reduce the impact. Local governments may become a collection site to provide a service to their residents and to decrease costs associated with illegal dumping of covered devices, which are accepted through the program at no cost. Representatives of local governments were part of the rulemaking advisory committee to share input on proposed rules.

Public

The public will likely see positive impact from the modernized electronics producer responsibility program, which will accept more covered electronic devices for reuse and recycling, and from proposed rules that clarify the requirements of such programs. There may be an impact to a consumer if a manufacturer chooses to pass the cost of the program along to Oregon consumers, by way of increasing the price of their products. However, DEQ notes that Oregon E-Cycles has been operating for over ten years; several states have manufacturer-funded electronics recycling programs similar to Oregon E-Cycles; and a manufacturer may have to consider that other manufacturers may not increase the price of their products to pass the cost of the program along to Oregon consumers.

A member of the public was part of the rulemaking advisory committee to share input on proposed rules.

Large businesses - businesses with more than 50 employees

Large businesses that are manufacturers of covered electronic devices may likely see impacts based on most of the proposed rules. The statute requires manufacturers of covered electronic devices to fund the producer responsibility program they choose to participate in. The impacts of proposed rules are discussed above. As mentioned, manufacturers will share program costs and impacts of proposed rules with other participating manufacturers. If there are multiple producer responsibility organizations with plans approved by DEQ for implementation, manufacturers may select between multiple producer responsibility organizations. A representative of manufacturers was part of the rulemaking advisory committee to share input on proposed rules.

Large businesses that choose to operate as a transporter or processor for an electronics producer responsibility program may be impacted by proposed rules on environmentally sound management practices, which in part, ensure that devices and materials are handled and processed in a responsible manner. Statute also requires manufacturers to pay for the costs of an electronics producer responsibility program, which may reduce the impact on transporters and processors. A representative of a business that processes electronics was part of the rulemaking advisory committee to share input on proposed rules.

Large businesses that choose to participate as collection sites may experience impacts from proposed rules relating to collection site standards, products categories, and environmentally sound management practices. Statute requires manufacturers to pay for the costs of an electronics producer responsibility program and for an electronics producer responsibility organization to provide fair financial compensation to collection sites calculated to cover costs associated with collecting covered electronic devices. Several representatives of collection sites, from both the public and private sector, were part of the rulemaking advisory committee to share input on proposed rules.

Large businesses that choose to operate as an electronics producer responsibility organization may likely experience impacts from these rules, such as administrative costs to ensure compliance. Electronics producer responsibility organizations are funded by their participating manufacturers. Multiple prospective producer responsibility organizations were part of the rulemaking advisory committee to share input on proposed rules.

There may be additional businesses affected by the proposed rules which DEQ is not aware of at this time.

Small businesses – businesses with 50 or fewer employees

Small businesses that operate in the roles described above for large businesses would likely experience the same impacts as large businesses, from these proposed rules.

ORS 183.336 Cost of Compliance Effect on Small Businesses

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

Based on the following considerations, DEQ estimates a small number of small businesses will be subject to the proposed rules. Regarding manufacturers of covered electronic devices, statute exempts a manufacturer from participating in an electronics producer responsibility program if the manufacturer provides proof that the manufacturer sold fewer than 50 covered electronic devices in Oregon during the previous year. Some collection sites may be small businesses, but statute requires they receive fair financial compensation for their voluntary participation in the program.

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

The proposed rules will require producer responsibility organizations to conduct reporting and track of materials with documentation. This cost would apply to all producer responsibility organizations whether they are a large or small business; however, fees paid by a manufacturer as part of the program cover these costs. Small businesses that choose to participate as collection sites may have such activities to comply with the producer responsibility organization's requirements for participation. Statute requires producer responsibility organizations to provide fair financial compensation to a collection site to cover costs associated with participating in the program.

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

As mentioned above, the statute and proposed rules will require producer responsibility organizations to provide program supplies to collection sites. Additionally, collection sites will likely need some staffing, again with fair financial compensation provided. These costs would apply to all producer responsibility organizations whether they are a large or small business; however, fees paid by a manufacturer to a producer responsibility organization, as part of the program, are meant to cover these costs.

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

DEQ appointed prospective producer responsibility organizations as well as a representative of the manufacturer sector as members on the rulemaking advisory committee. These and other committee members advised DEQ on the cost of compliance for these entities, including small businesses. As stated above, producer responsibility programs such as this ensure that manufacturers have a role in the collection and disposal of products, including financial responsibility.

Advisory committee fiscal review

As ORS 183.333 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 to reduce that impact.

The rulemaking advisory committee will review the draft fiscal and economic impact statement at the next committee meeting on July 10, 2024. The findings and recommendations will be stated in the approved summary for that meeting.

The committee will determine if the proposed rules would or would not have a significant adverse impact on small businesses in Oregon.

As ORS 183.333 and 183.540 require, if a significant adverse impact is determined, the committee will consider and discuss how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

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-squarefoot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules would have no effect on the development costs because the proposed rules relate to the implementation of the legislatively-approved producer responsibility program for electronic devices. These proposed rules are intended to give clarification to implementation and other requirements for such programs.

Racial equity

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

The proposed rules for the Oregon E-Cycles Program would provide DEQ with the tools needed to administer and oversee the electronics program. These rules will assist DEQ in carrying out its required responsibilities, including reviewing a producer responsibility organization's plan and ensuring it implements a program equitably for all residents in Oregon. Equity, environmental justice and historically underserved communities are all components that a producer responsibility organization will need to provide service for as part of its program plan.

The E-Cycles program is intended to move devices and materials through a responsible system at their end of life and ensure that all residents throughout the state have access to the program. Overall, the program and its proposed rules would likely have an overall benefit to community members.

There may be impacts that may have occurred as a result of the statute. At this time, DEQ has not identified any specific actions or outcomes from these proposed rules that would substantially 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.

182.545 Duties of natural resource agencies. In order to provide greater public participation and to ensure that all persons affected by decisions of the natural resource agencies have a voice in those decisions, each natural resource agency shall:

- (1) In making a determination whether and how to act, consider the effects of the action on environmental justice issues.
- (2) Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings.
- (3) Engage in public outreach activities in the communities that will be affected by decisions of the agency.
- (4) Create a citizen advocate position that is responsible for:
 - (a) Encouraging public participation;
 - (b) Ensuring that the agency considers environmental justice issues; and
 - (c) Informing the agency of the effect of its decisions on communities traditionally underrepresented in public processes.

DEQ considered the potential effects of this rulemaking and took the following steps. Public meetings were held in a virtual setting so that members of the public from across the state could attend and give input. Further, DEQ appointed members to the rulemaking advisory committee who might have insight from an environmental justice perspective, including those from the community at-large and community-based organizations, in both rural and urban areas of the state. DEQ will make efforts to hold the public hearing at a time that is convenient to parties affected by the draft rules.

Overall, these draft rules ensure that both rural urban communities have sufficient access to drop off locations by requiring they are both conveniently located and open to the public at an acceptable frequency. They maintain or increase the standards of environmentally sound management practices from collection through processing of covered devices. The proposed rule to set fees ensures that DEQ will be able to provide thorough administration and enforcement of the statute and these rules. The law requires that covered devices be collected from the public with no cost to the consumer at drop-off.

Other draft rules relate to the logistics of the program, such as calculating market share and reconciling financial obligations which typically will not have an impact on environmental justice. There may be impacts that may have occurred as a result of the statute. As program plans are approved and the modernized program begins, DEQ will use its oversight authority to identify any potential changes or effects of these rules.

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](#).