

Oregon E-Cycles Rulemaking Advisory Committee Meeting Summary

July 10, 2024

Virtual Zoom Meeting

This is a rulemaking advisory committee meeting to discuss draft rule concepts with committee members related to HB 3220, which modernizes the Oregon E-Cycles Program. All meetings are open to the public.



Attendees

Nicole Hogan	15037847661
Rachel Harding - OR DEQ	Dianne Brickman
Michael Lee - OR DEQ	Diana Mathis
Lauren Royer - OR DEQ	Tess Milio
Cheryl Grabham	Luke Frazier - Best Buy
Daven Stetson - St Vincent de Paul of Lane County	Dave Larmouth - Dahl Disposal Service
Donald Hennen - Dynamic	Vinod Singh
Kristan Mitchell - ORRA	Walter Alcorn - CTA
Ray Zielke - URT	Henry Miller
Ali Briggs-Ungerer - MRM	Joyce Thung
Lisa Nelson	Christine Haun - WA Dept of Ecology
Tricia Conroy - MRM	Laura Leebrick - Rogue Waste/Waste Connections
Sabrina Gogol - Metro	Thomas Baker
Daniel Redick - OR DEQ	Andrew K
Zack Dahl - Dahl Disposal Service	Nick Isbister
Denise Barnes - Rogue Disposal	Robert Lamp
Jason Linnell - NCER	Jessica Cha
Sophie Wimberley - Reverse Logistics Group	

Meeting Summary

9 a.m. Welcome, Overview of Today's Meeting

9:10 a.m. Rule Concept Discussion

DEQ introduced three final rule concepts:

- *Topic 1: Manufacturer financing of program.* The program costs are apportioned among manufacturers based on 'manufacturer obligations'. Producer Responsibility Organization or Coordinating Body calculates manufacturer obligations. Calculation has two variables:
 - 1. Market share data from previous year and
 - 2. Product categories: The percentage of the total weight of all products in given categories recycled in the previous year.

Translations or other formats

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Contact: 800-452-4011 | TTY: 711 | deqinfo@deq.state.or.us

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- The market share process will stay relatively the same.
- DEQ will intake manufacturer market share data. A preliminary estimate will be provided, followed by a 30 day review period before the final share is confirmed.
- PRO or CB will use weight of devices from categories recycled in the previous year's electronics producer responsibility program.
- May use national sales data and other applicable data to calculate this.
- Flag on timing/timeline- when would the department provide CB the data on Market Share? The PRO needs this for their plans, and manufacturers need to know for their proportion.
- How has this changed from the past process?
 - No longer doing collection determination and DEQ charges PRO for registration and administration fees, PRO charges MFR based on shares.
 - Through 2025 DEQ will make preliminary market share determination for manufacturer, charge manufacturer's registration fees.
 - Via Rule 265 the new market share process begins in 2026.
- Collection Streams:
 - Beyond the established collection network, additional collection streams should be encouraged. For example, collectors not gathering all eligible devices may not count in the program, but we should still encourage their collection efforts.
 - Balancing collection requirements:
 - We need to ensure that the proportions between the collection site requirements are balanced.
 - We don't want collectors to stop once they meet basic requirements, instead, we should incentivize manufacturers to earn credits from collections that fall outside the official program.
 - These should be considered when determining obligations
- *Topic 2: PRO fees.* Statute requires one time plan review fee and annual fee. Outline shows that plan review is \$75,000 and the PRO must pay fee before submitting plan. The annual fee is \$315,000 where DEQ may reduce this annual fee in a given year. Will split equally among number of PROs and the annual fee due June 1 of each year or 30 days after DEQ sends invoice.
- Is this close to what it currently costs (to administer the Program)? Encouragement to dive into what DEQ's day to day responsibilities under the new system and if this matches. In year one it will probably be more than average, but over the years it will be more routine. Take a look at sources of revenue that might be coming in from other fees associated with the program. And, looking at a lower initial fee for PRO especially since we are looking at multiple PROs.
 - DEQ provided answer that this is estimated to be near current costs with adjustments for inflation over the next 5 years.
- Clarification on Fees:
 - Plan Review fee is one time only and would not apply for the PRO on subsequent plan years. The annual fee of \$315 will be divided among PROs.
 - \$75,000 fee applies regardless of when a PRO first enters. Year 5 for example. The initial fee occurs when plan is submitted.
 - June 1 annual fee would apply to that program year and would be in the middle of the year the fee applies.
- How many times are proposed for DEQ to conduct 3rd party study factors into estimate?
 - Estimated 1 study for this to roll into these fees and induct studies in future years.
- Market Share minimum:
 - Plan review fee is due in July 2025 and what happens if 10% market share is not met, will the fee to be refunded? DEQ will review this and consider timing. Fee was not meant to be refunded.
- Encouragement for DEQ to perform two studies for fair compensation:
 - Reinstate one in 2028 and 2031 for timing in evaluation of fair compensation. This may include increase to account for studies over those years.
- Before public comment is it possible to see what current revenues for reg fees are being replaced by plan fees?
- PROs would pass along this annual fee- would this be at the discretion of the PRO?
 - DEQ answered this is up to the PRO to decide.

- *Topic 3: Environmentally Sound Management Practices:*
 - Proposed rule language provided as material handout for Oregon admin rules chapter 340 division 98 and chapter 340 division 12. There are existing E-Cycles rules in place until Dec 31, 2025.
 - No exports that would violate treaties: Basel treaty- the US is not a signee which manages ewaste plastic export. The way the rule is set up- processors should not ship to that country if they know they are violating a treaty. Both importing and exporting countries must be in compliance. Encourage DEQ to talk with counsel, legally, US states are not allowed to enforce treaties and look at language on how it is phrased. There may be a different way to do this that doesn't raise the same legal issues. Echoed by committee member.
 - 6-month window for moving materials off-site. This is to ensure collection sites continue to receive materials. When Oregonians bring electronics to site, they expect the item is recycled or reused and not left on site for long periods of time.
 - In trying to serve extremely rural areas, moving materials every 6 months can be difficult and may generate only 1 semi-truck a year. Will there be accommodation for companies that may have to pay more in shipping costs without a full semi?
 - The current standard of 'no longer than a year' is recommended.
 - Is there a minimum to storage as well as the maximum of 6-months to a year?
- Consider marrying up rules as they go into effect and Right to Repair to encourage better practices and discourage bad actors?
 - DEQ will review this.
 - Certification and ESMPs: Are R2 and e-stewards in conflict with these? Or is this on board with existing certification standards? Encourage DEQ to cross walk with both certification bodies.
 - Rules allow the use of these certifications or one that that is substantially equivalent.
 - We expect PROs to track the processing and PROs would need to describe this in plans.

10:15 a.m. Break

10:25 a.m. Public Input Period

- One member of the public gave input on market share and fees. When the information would be provided to manufacturer and to PROs and coordinating body. Timing really does matter. The earlier the better so they can know.
 - That information is coming through manufacturer process.
 - This data is available through the same process as current program and into the new program.

10:40 a.m. Continued Rule Concept Discussion

- Are there plans for public communication regarding the new devices and marketing documents within program plans?
 - This is a question we will have to consider during administrative processes.
- Batteries are such concern. Does the implementation of this mean fires will be reported?
 - The proposed rules at the time do not specify how many fires must be reported.
 - Will need to see what PROs report in program plan.
 - The way ESMPs are set up, this information DEQ can request. We are focused on the movement of the items.
 - More electronics that use batteries and don't have wires- this will become a major thing on the collection site. City of Portland is accepting batteries. Of all the product classes, are they weighted the same for the potential damage to the environment? Or can that be weighted as a marker?
 - The PRO may do this but we are not clarifying this through rule.
- Section ci on page 11: waste recycling shipping – could you add word 'collection'. This is missing.
- Based on RAC Feedback on Fair financial compensation:
 - The Program plan will need to detail how PRO provides rates that ensure collection site participation in required areas. These rates will be comparable to those in similar geographic areas and will no longer be combined with 'operation similarities'.

- Additionally, DEQ may conduct study on compensation for real costs, geographic areas, trends, and alternative forms of compensation.
- Is there a timeline for this study?
 - Not specified in proposed rules. EQC would need to approve rules and from there we would have option to conduct study based on need.
- Language: says study may include. Should this be 'shall conduct'?
- Compensation considerations:
 - Should take into account value provided by services of collector to consumer, the PRO, recycler. If someone is providing good value they should be compensated, and if someone is doing something in a way that is sloppy they should not be paid as much. This would be part of the real costs, like a site putting the time to package things the way the PRO prefers would be compensated accordingly. This is echoed by another committee member, something that encourages positive performance could be added.
 - If a collection site is not processing as should be, then we have to do that as a processor which costs falls onto us.
 - When study is done, take both sides of this equation into account.
 - Recommend revisiting site operating characteristics for total volume of customers for example.
- Assessment of fair compensation as soon as possible to inform ongoing program development. Why move from PRO responsibility to DEQ?
 - DEQ received comments that DEQ should be responsible for this and DEQ may hire a third party.
 - Are there comments around DEQ selecting PRO to do study through approved methodology?
 - Echoed sooner the better.
- Page 13 'may' and 'shall' include evaluations- change from 'may' to 'shall'. To reinforce that this is what will be studied. Section D: the word 'or' should be 'and'
- Page 14 – Add 'Oregon' before 'collection sites' on third line.
 - We want to be careful not to be subject to national wide search and should be limited to Oregon collection sites.
- Why is the flat fee for participation and alternative forms of compensation which does not match the other criteria there?
 - Based on feedback received, price per pound is challenging for some sites and so a flat rate would assist with this challenge, and provide for alternative forms.
- Product categories:
 - Flat screen TV is very different from CRTs. This was echoed by additional RAC members.
 - Why are monitors with printers? This is based on other jurisdictions.
 - Monitors and TVs should be combined.
 - If a site counts as collection site and one or more of these 5 materials categories were included on same pallet but separate cardboard boxes, in effort to maximize space. Sorting differently than the category- can site negotiate for PRO to be responsible for liability of materials at dock and transfer station?
 - Any thought on breaking up those or subclasses? Breaking it up by pre or post 1980 for example?
 - Additional sorting occurs before processor receives. Do the broad categories facilitate the additional sorting or do some devices present challenges? Yes, there is a lot of common sense for subcategories. It's easier if there are fewer, but we work directly with processor to categorize in ways they prefer to receive them. Its already being done this way.
- For coordinating body- when will a coordinating body be selected?
 - There are some things collectively we should all think through.
 - Will provide some written comments on how timing could work.
 - Written feedback is requested in the next few weeks.
- Program plan: appreciate DEQ doing awareness study for underserved communities.
 - Awareness is crucial for program participation.
 - Ask DEQ to consider establishing in rule what counts as high awareness for adequate planning to achieve measurements and plan. A clear goal is needed to capture that.

11 a.m. Fiscal Impact Statement

- Will the proposed rules have a fiscal impact?
 - As noted, manufacturers will pay more. Hope this is reasonable and collaborative.
- if so, what is the extent of the impact?
 - No comments
- Will they have a significant adverse impact on small businesses?
 - A committee member suggested that smaller recyclers are not mentioned - ones that are interested in forming a PRO and paying the \$75,000 initial fee. Also, requiring each PRO to cover all collection convenience for entire state could also be barrier for smaller recycler.
 - There isn't a fiscal impact listed on smaller recyclers; this entity would be considered a PRO and they are listed as such in the impact statement. There is no penalty on them for plan review.
 - Ultimately, PROs are funded by their participating manufacturers.
 - Committee did not identify significant impacts beyond DEQ's draft recommendations.
- if so, how can DEQ reduce that impact?
 - Committee discussed small start-ups and unsold devices.
 - None identified by Committee.

Racial Equity Statement

- What considerations or additions does the committee suggest? Anything missing?
 - No comments

Environmental Justice: Discussion

- What considerations or additions does the committee suggest?
 - Add statement for evaluation for future categories of concern; mix of electronics changing over time, if there is language that states continually evaluating the product mix for environmental considerations.

11:55 a.m. Next Steps and Adjourn Meeting

- Notice of rulemaking in September for formal public comment period and public hearing
- DEQ provided options for staying informed in rulemaking process moving forward.