



State of Oregon Department of Environmental Quality

Notice of Proposed Rulemaking

Aug. 29, 2024

Oregon E-Cycles 2024

This package contains the following documents:

- Notice of Rulemaking
- Draft Rules – Edits Highlighted
- Draft Rules – Edits Included (final clean version)

Note for Readers:

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Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules. These rules relate to House Bill 3220 (2023), which modernizes the state's electronics recycling program, Oregon E-Cycles.

Request for other options

During the public comment period, DEQ asks for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

Overview

DEQ is undertaking rulemaking to clarify and implement HB 3220, which modernizes the long-standing electronics recycling program, 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 the costs of collection and processing of materials, as well as DEQ's administrative fee.

DEQ proposes creating several new rules and modifying current rules to best serve the E-Cycles program. In early 2024, DEQ convened an advisory committee of entities who may be affected by proposed rules, to give input to DEQ on proposed rule concepts. The committee included representatives of manufacturers of covered electronics devices, the public, local governments, prospective producer responsibility organizations, collection site operators and others. DEQ also offered opportunities for informal public input at each of the three rulemaking advisory committee meetings.

Some of the proposed rule topics include environmentally sound management practices, fair financial compensation to collection sites and coordination within the program. The proposed rules would also establish new fees to be paid to DEQ by the electronics producer responsibility organizations participating in the E-Cycles program. These proposed rules are discussed in more detail later in this document.

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Procedural summary

More information

Information about this rulemaking is on the E-Cycles rulemaking [web page](#).

Public hearing

DEQ plans to hold one public hearing. Anyone can attend a hearing by registering to attend through the Zoom online meeting platform.

Date: Tuesday, Sept. 17, 2024
Start time: 10 a.m. Pacific Time
[Zoom Registration Link](#)

After registering, you will receive a confirmation email with instructions on how to join the meeting.

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, regular mail or at the public hearing.

- Email: Send comments by email to ECycles.2024@DEQ.oregon.gov
- Postal mail: Oregon DEQ, Attn: Rachel Harding, Oregon E-Cycles, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
- At the public hearing: 10 a.m., Tuesday, Sept. 17, 2024

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by **5 p.m., Pacific time on Monday, Sept. 30, 2024.**

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

Sign up for rulemaking notices

Get email or text updates about this rulemaking by signing up for email notices through this [GovDelivery](#) link.

What will happen next?

DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the proposed rules based on the comments.

Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ intends to present the proposed rule changes to the EQC in January 2025.

Statement of need

What need would the proposed rules address?

Proposed rules would address the need to clarify statutory requirements, including the requirement to refine program definitions and set administrative fees. Proposed rules would also address the need for operational clarifications around the topics of environmentally sound management practices and collection site standards. Other rules would address the need to clarify statute, related to setting of product categories and ensuring fair financial compensation to collection sites, as well as addressing program logistics including coordination, reporting requirements and calculating market share.

How would the proposed rules address the need?

Proposed rules would address the need by specifying fees and definitions; also, by clarifying the management practices and standards that should be adhered to by participating program entities. Rules would also address the above needs by specifying elements of a study for ensuring fair financial compensation and by describing the components needed for reporting and coordination to help participants, such as covered electronic device manufacturers and electronics producer responsibility organizations, comply with statutory requirements.

How will DEQ know the rules addressed the need?

DEQ will know that the rules addressed the needs if the public is able to conveniently use the program, and if covered devices are collected and moved safely and responsibly through the system for recycling. Additionally, if the established fees sustain DEQ's oversight and enforcement responsibilities, this would be another indication that rules addressed the needs for rulemaking. DEQ will also know that rules addressed needs if program participants understand and comply with the requirements of the statute as clarified in these rules.

Rules affected, authorities, supporting documents

Lead division

Land Quality Division

Program or activity

Materials Management Program, Product Stewardship Section

Chapter 340 action

Adopt				
340-012-0099	340-098-0230	340-098-0235	340-098-0240	340-098-0245
340-098-0250	340-098-0255	340-098-0260	340-098-0265	340-098-0270
Amend				
340-012-0045	340-012-0140	340-012-0155	340-098-0000	340-098-0010
340-098-0100	340-098-0150	340-098-0200		

Statutory Authority - ORS				
459A.345	468.020	468.065		

Statutes Implemented - ORS				
459.247	459A.305 – 459A. 355			

Legislation

House Bill 3220 (2023)

Rules Summary

As OAR 166-500-0030(1)(e) requires, the following are included to provide a brief summary of the proposed new rules and existing rules affected by this rulemaking.

OAR Chapter 340, Division 12

Rule Number	Rule Title	Explanation
340-012-0045	Civil Penalty Determination Procedure	Adds reference to 340-012-0099
340-012-0099	Classification of Violations for Producer Responsibility Program Requirements, including ORS 459A.305 to 459A.355 and related rules	Classifies violations of requirements for producer responsibility programs, including requirements under ORS 459A.305 to 459A.355 and related rules
340-012-0140	Determination of Base Penalty	Adds violations of ORS 459A.305 to 459A.355 to penalty matrices
340-012-0155	Additional or Alternate Civil Penalties	Describes the civil penalty DEQ may assess for each violation of the prohibition against the disposal of computer monitors, desktop or portable computers, and televisions

OAR Chapter 340, Division 98

Rule Number	Rule Title	Explanation
340-098-0000	Applicability	Updates rule to clarify applicability of OAR 340-098-0000 to OAR 340-098-0270
340-098-0010	Definitions	Clarifies definitions for terms used in OAR 340-098-0100 to OAR 340-098-0270
340-098-0100	Revenue Need Until and Including December 31, 2025	Clarifies DEQ's revenue need until and including December 31, 2025

Rule Number	Rule Title	Explanation
340-098-0150	Registration Fees Until and Including 2025	Clarifies that DEQ will use the registration fee determination described in this rule until December 31, 2025
340-098-0200	Market Share Notifications Until and Including 2025	Clarifies that DEQ will use the market share and fee tier determination described in this rule until and including 2025
340-098-0230	Market Share Notifications Beginning 2026	Describes the market share determination that DEQ will use beginning 2026
340-098-0235	Electronics Producer Responsibility Organization Fees	Establishes the plan review fee and annual fee that an electronics producer responsibility organization must pay to DEQ
340-098-0240	Program Plans	Describes the plan submission process and what DEQ may require in a plan
340-098-0245	Environmentally sound management practices	Clarifies requirements for environmentally sound management practices in managing covered electronic devices
340-098-0250	Fair Financial Compensation	Clarifies the requirement for an electronics producer responsibility organization to provide fair financial compensation to collection sites, and how DEQ may evaluate whether the requirements have been met
340-098-0255	Annual Reports	Describes the annual report submission process and what DEQ may require in an annual report
340-098-0260	Coordinating Body	Describes what DEQ may require of a prospective coordinating body, the coordinating body designation process, and what DEQ may direct

Rule Number	Rule Title	Explanation
		regarding coordination between multiple electronics producer responsibility programs
340-098-0265	Product Categories	Describes the product categories for purposes of sorting covered electronic devices at collection and calculating market share
340-098-0270	Manufacturer Obligation Calculation	Describes the process for a coordinating body or an electronics producer responsibility organization to calculate manufacturer obligations

Fee Analysis

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 459A.334 and ORS 459A.345.

Brief description of proposed fees

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.
- 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 aligns with 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 electronics producer responsibility organizations participating as part of the program cost. These costs are ultimately covered by manufacturers required to participate in the E-Cycles program, through the approved electronics 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 could divide the annual fee between the electronics producer responsibility organizations based on the market shares of the manufacturers participating in the program. 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 electronics producer responsibility organization will pay a one-time plan review fee for their initial program plan. An electronics producer responsibility

organization intending to operate in 2026 must pay the plan review fee with the submittal of their initial program plan in 2025.

All electronics producer responsibility organizations with an approved plan will pay the annual fee. The first annual fee is due in 2026. If there are multiple electronics 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. The fees charged by DEQ to an electronics producer responsibility organization will be part of an electronics producer responsibility organization's overall operating budget. DEQ estimates the cost of these fees will be a small percentage of an electronics 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 in the table below. Manufacturers could choose to pass these fees on to consumers through the price of their products.

The proposed fees would support DEQ's 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 fees sustain the 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.

The existing Oregon E-Cycles program includes a manufacturer registration fee and a separate fee for manufacturers participating in a state contractor program that DEQ oversees. HB 3220 eliminates the state contractor program and thus the separate fee. The manufacturer registration fee in the current program requires DEQ to conduct analysis to apportion its cost among approximately one hundred manufacturers. HB 3220 eliminates the manufacturer registration fee and requires the EQC to set an annual fee and a plan review fee for the modernized E-Cycles program.

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	Feb. 1, 2025

Fee schedule

Each electronics producer responsibility organization will pay a one-time plan review fee to DEQ for its initial program plan. DEQ anticipates that it will begin to receive plan review fees on or before July 1, 2025, which is the deadline for electronics producer responsibility organizations to submit initial program plans if they intend to operate in 2026. An electronics producer responsibility organization with a program plan approved by DEQ will also pay an annual fee each year on June 1. Each electronics producer responsibility organization will pay an equal share of the total annual fee.

Fee Type	Occurrence	Due
Annual Fee	Each year, starting in 2026	June 1 of each year
Plan Review Fee	One time, with initial plan	July 1, 2025, for plans submitted for the program year 2026; otherwise, due before plan submission for subsequent program years

Statement of fiscal and economic impact

Fiscal and Economic Impact

HB 3220 requires the EQC to establish an annual fee and a plan review fee for DEQ's oversight, enforcement and administration of the Oregon E-Cycles Program, an electronics producer responsibility program. Producer responsibility programs ensure that manufacturers play a role in the handling of materials and products after use.

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

As required by statute, DEQ has proposed rules to establish product categories. Beginning in 2026, Oregon E-Cycles will collect several additional types of covered electronic devices. Collection sites will sort collected devices into the product categories, which will also be used by DEQ to calculate manufacturers' market share of covered electronic devices. These proposed rules may have an impact on collection sites and electronics 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 and DEQ proposes to keep five product categories for the modernized E-Cycles program.

Proposed rules related to fair financial compensation may have a potential impact on electronics 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

The proposed rules allow DEQ to approve alternative environmentally sound management practices from those required by rule if the electronics producer responsibility organization demonstrates to DEQ's satisfaction that the alternative environmentally sound management practices are substantially equivalent to the required practices in ensuring protection of, and compliance with all laws applicable to, human health and safety, the environment, and data privacy. The use of alternative environmentally sound management practices may help reduce the fiscal impact.

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. Further, participation as a collection site is voluntary. 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 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, and several states have manufacturer-funded electronics recycling programs similar to Oregon E-Cycles. 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 electronics producer responsibility program they choose to participate in. The impacts of proposed rules are discussed above. Manufacturers will share program costs and impacts of proposed rules with other participating manufacturers. If there are multiple

electronics producer responsibility organizations with plans approved by DEQ for implementation, manufacturers may select between multiple electronics 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 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, product 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 and managing covered electronic devices.

Several representatives of collection sites, from the public, private and non-profit sectors, 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 for Small Businesses

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

DEQ estimates a small number of small businesses will be subject to the proposed rules. In terms of 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 electronics producer responsibility organizations to conduct reporting and tracking of materials with documentation. This cost will apply to all electronics producer responsibility organizations whether they are a large or small business; however, the manufacturers participating in the electronics producer responsibility organization's program will cover these costs. Small businesses that choose to participate as collection sites may have reporting, recordkeeping and other administrative activities to comply with the electronics producer responsibility organization's requirements for participation. Statute requires electronics 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 electronics producer responsibility organizations to provide program supplies to collection sites. Additionally, collection sites will likely need staffing, again with fair financial compensation provided. These costs would apply to all electronics producer responsibility organizations whether they are a large or small business; however, the manufacturers participating in the electronics producer responsibility organization's program will cover these costs.

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

DEQ appointed prospective producer responsibility organizations and 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, electronics producer responsibility programs such as this ensure that manufacturers

have a role in the collection and disposal of their products, including financial responsibility.

Advisory committee fiscal review

DEQ appointed an 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 the committee's input is included in the meeting summary dated July 10, 2024, available on DEQ's E-Cycles rulemaking web page.

The committee did not identify significant impacts beyond DEQ's draft recommendations. One committee member concurred with the draft statement and noted that electronics producer responsibility programs are funded by manufacturers and hoped for a reasonable and collaborative effort through the rulemaking process. A committee member suggested that DEQ consider whether lowering the proposed one-time plan review fee is possible for small recyclers interested in being an electronics producer responsibility organization. Upon review, DEQ determined that the plan review fee is reasonably calculated to cover DEQ's costs for plan review. For comparison, DEQ charges the same plan review fee for electronics producer responsibility organizations submitting plans under the Drug Take-Back Program, an electronics producer responsibility program for unwanted household medicines. Additionally, as mentioned in the fiscal impact statement above, electronics producer responsibility organizations are funded by their participating manufacturers.

The statute also allows electronics producer responsibility organizations to share sites; a small electronics producer responsibility organization may potentially share sites (and costs) with other electronics producer responsibility organizations. A prospective producer responsibility organization that is unable to find enough manufacturers to fund its proposed program may choose not to operate an electronics producer responsibility program and thereby would not have to pay the plan review or the annual fees. On review, DEQ determined that the fiscal impact statement above addresses potential impacts on small recyclers interested in becoming electronics producer responsibility organizations. 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 not have an effect on the development costs because the proposed rules relate to the implementation of the legislatively-approved electronics 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)(b)(F) requires state agencies to provide a statement identifying how adoption of this 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 an electronics 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 an electronics 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

Environmental justice is 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 is committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

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 and 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.

Federal relationship

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

At this time, 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.

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 plans to share information about this rulemaking with the EQC through an informational item at the November 2024 EQC meeting.

Advisory Committee

Background

DEQ convened an advisory committee for the E-Cycles rulemaking. The committee met three times and included representatives of electronics manufacturers, the environmental perspective, prospective producer responsibility organizations, the public and operators of collection sites from the private, public and non-profit sectors. Documents pertaining to this rulemaking can be found on the [E-Cycles rulemaking web page](#).

The committee members were:

E-Cycles Rulemaking Advisory Committee	
Name	Representing
Jim Puckett	Basel Action Network
Walter Alcorn	Consumer Technology Association
Zack Dahl	Dahl Disposal Services
Tim Brownell	Deschutes County
Don Hennen	Dynamic Lifecycle Innovations
Tricia Conroy	Electronic Manufacturers Recycling Management Company, LLC
Durran Champie	Free Geek
Sabrina Gogol	Metro
Andrew Keough	Member of the public
Naomi Manahan	Reverse Logistics Group
Denise Barnes	Rogue Disposal & Recycling
Daven Stetson	St Vincent de Paul of Lane County
Ray Zielke	Universal Recycling Technology

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
 - Oregon E-Cycles
- 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 reviewed materials and gave feedback on the draft rule concepts.

Public Engagement

Public notice

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

- On Aug. 29, 2024, filing notice with the Oregon Secretary of State for publication in the Sept. 2024 Oregon Bulletin;
- Posting the Notice, including Invitation to Comment and Draft Rules on the [E-Cycles rulemaking web page](#);
- Emailing approximately 23,497 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Oregon E-Cycles
 - DEQ Public Notices
- Emailing the following key legislators required under [ORS 183.335](#):
 - Representative Pam Marsh, Chair, House Committee on Climate, Energy, and Environment
 - Representative Bobby Levy, Vice-Chair, House Committee on Climate, Energy, and Environment
 - Representative Emerson Levy, Vice-Chair, House Committee on Climate, Energy, and Environment
 - Representative Tom Andersen, Member, House Committee on Climate, Energy, and Environment
 - Representative Mark Gamba, Member, House Committee on Climate, Energy, and Environment
 - Representative Ken Helm, Member, House Committee on Climate, Energy, and Environment
 - Representative Virgle Osborne, Member, House Committee on Climate, Energy, and Environment
 - Representative Mark Owens, Member, House Committee on Climate, Energy, and Environment
 - Representative Khanh Pham, Member, House Committee on Climate, Energy, and Environment
 - Representative Kim Wallan, Member, House Committee on Climate, Energy, and Environment
 - Senator Janeen Sollman, Chair, Senate Committee on Energy and Environment
 - Senator Lynn Findley, Vice-Chair, Senate Committee on Energy and Environment
 - Senator Jeff Golden, Member, Senate Committee on Energy and Environment
 - Senator Cedric Hayden, Member, Senate Committee on Energy and Environment
 - Senator Kate Lieber, Member, Senate Committee on Energy and Environment

- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

How to comment on this rulemaking proposal

DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments by email, regular mail or at the public hearing.

- Email: Send comments by email to ECycles.2024@DEQ.oregon.gov
- Postal mail: Oregon DEQ, Attn: Rachel Harding, Oregon E-Cycles, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232-4100
- At the public hearing: 10 a.m., Tuesday, Sept. 17, 2024 (see below)

Comment deadline

DEQ will only consider comments on the proposed rules that DEQ receives by **5 p.m., Pacific time on Monday, Sept. 30, 2024.**

Note for public university students:

ORS 192.345(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon's public records law. If you are an Oregon public university or OHSU student, notify DEQ that you wish to keep your email address confidential.

Public hearing

DEQ plans to hold one public hearing. Anyone can attend a hearing by registering to attend through the Zoom online meeting platform.

Date: Tuesday, Sept. 17, 2024

Start time: 10 a.m. Pacific Time

[Zoom Registration Link](#)

After registering, you will receive a confirmation email with instructions on how to join the meeting.

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](#).

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location~~ - and moved to another location

DIVISION 012 ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0045

Civil Penalty Determination Procedure

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-~~0097~~0099.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Statutory/Other Authority: ORS 468.020

Statutes/Other Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
DEQ 1-2003, f. & cert. ef. 1-31-03
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89
DEQ 22-1988, f. & cert. ef. 9-14-88
DEQ 22-1984, f. & ef. 11-8-84
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0099

Classification of Violations for Producer Responsibility Program Requirements, including ORS 459A.305 to 459A.355 and related rules

(1) Class I:

(a) Failing to register or participate in a producer responsibility organization;

(b) Failing to substantially implement a producer responsibility program plan;

(c) Failing to provide for environmentally sound management practices in the collection, transportation, or processing of covered electronic devices;

(2) Class II:

(a) Failing to submit a plan, study, notification, report, or other required information to DEQ, unless otherwise specified;

(b) Failing to implement one or more elements of a producer responsibility program plan;

(c) For a coordinating body, failing to coordinate between electronics producer responsibility organizations;

(d) Violating any otherwise unclassified requirement of ORS 459A.305 to 459A.355 or related rules.

Statutory/Other Authority: ORS 459A.345 and 468.020

Statutes/Other Implemented: ORS 459A.305 - 459A.355

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to

the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A city with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (dd), (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(V) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR chapter 340, division 271.

(Y) Any violation of the Fuel Tank Seismic Stability Program rules under OAR chapter 340, division 300.

[\(Z\) Any violation of ORS 459A.305 to 459A.355 or related rules committed by:](#)

[\(i\) A producer responsibility organization.](#)

[\(ii\) A manufacturer.](#)

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General

Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons

waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

- (a) The \$1,000 penalty matrix applies to the following:
- (A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.
 - (B) Any violation of visible emissions standards by operation of a vehicle.
 - (C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.
 - (D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.
 - (E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.
 - (F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.
 - (G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.
 - (H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.
 - (I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.
 - (J) Any violation of a statute, rule or order relating to the opportunity to recycle.
 - (K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.
 - (L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.
 - (M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(N) Any violation of ORS 459A.305 to 459A.355 or related rules committed by a person not listed under another matrix.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Statutory/Other Authority: [ORS 459A.345](#), ORS 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.995, 459A.655, 459A.660, [ORS 459A.305 - 459A.355](#) & 468.035

History:

DEQ 13-2023, amend filed 09/14/2023, effective 09/14/2023

DEQ 16-2022, amend filed 09/23/2022, effective 09/23/2022

DEQ 4-2022, amend filed 03/16/2022, effective 03/16/2022

DEQ 27-2021, amend filed 12/16/2021, effective 12/16/2021

DEQ 20-2021, amend filed 11/18/2021, effective 01/01/2022

DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021

DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021

DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020

DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019

DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018

DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

DEQ 6-2006, f. & cert. ef. 6-29-06

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 9-1996, f. & cert. ef. 7-10-96

DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 33-1990, f. & cert. ef. 8-15-90
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0155

Additional or Alternate Civil Penalties

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to \$250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705–459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205–459.426, 459.705–459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

(i) \$100,000 if the violation was caused intentionally;

(ii) \$150,000 if the violation was caused recklessly;

(iii) \$200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: $BP + [(0.1 \times BP) (P + H + O + C)] + EB$.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state will incur a civil penalty not to exceed \$100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

(i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and

(ii) 1 point if the oil or hazardous material is or contains any constituent listed as a “hazardous substance” in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an “extremely hazardous substance” under 40 CFR 355; and

(iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and

(iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted. will incur a civil penalty according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of \$500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to \$1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to \$500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to \$500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

[\(4\) DEQ may assess a civil penalty of up to \\$500 for each violation of ORS 459.247\(1\)\(f\). Each covered electronic device that is disposed of improperly is a separate violation.](#)

Statutory/Other Authority: ORS [459A.345](#), 465, 466, 468.020, 468.130, 468.996 & 783.992

Statutes/Other Implemented: ORS [459.247](#), [459.995](#), 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 9-2000, f. & cert. ef. 7-21-00

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

Division 98
MATERIALS MANAGEMENT: PRODUCT STEWARDSHIP PROGRAMS

340-098-0000

Applicability

(1) OAR 340-098-0000 to ~~OAR 340-098-0200~~ OAR 340-098-0270 ~~apply to manufacturers of covered electronic devices sold or offered for sale in the State of Oregon for calendar years 2012 and beyond~~ prescribe requirements for electronics producer responsibility programs under ORS 459A.305 to 459A.355. OAR 340-098-0100 to OAR 340-098-0200 are in effect until and including December 31, 2025. OAR 340-098-0230 to OAR 340-098-0270 are effective February 1, 2025.

(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 8-2023, amend filed 07/20/2023, effective 07/21/2023

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

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

340-098-0010

Definitions

(1) ~~Terms used in OAR 340-098-0000 through 340-098-0200 have the meaning provided in ORS 459A.305. Terms used in OAR 340-098-0300 to OAR 340-098-0390 have the meanings provided in ORS 459A.200 and ORS 459A.209. Definitions for additional terms used in~~ For purposes of OAR Chapter 340, Division 98 ~~are:~~

~~(1)~~ (a) “DEQ” means the Department of Environmental Quality.

~~(2)~~ (b) “Fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next year.

(2) Terms used in ~~OAR 340-098-0000~~ OAR 340-098-0100 through 340-098-0200 have the meaning provided in ORS 459A.305. Definitions for additional terms used in OAR 340-098-0100 through 340-098-0200 are in sections (3) and (4).

(3) As used in OAR 340-098-0100 to OAR 340-098-0200:

(a) “Market share” means the percentage of the total number of units of covered electronic devices sold in or into Oregon the previous calendar year or most recent four quarters for which data is available, as determined by DEQ.

~~(4)~~ (b) “Revenue need” means the total amount of revenue DEQ must collect in registration fees in order for the registration fees to approximately match DEQ’s projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

~~(4)~~ As used in OAR 340-098-0230 to OAR 340-098-0270:

(a) “Collection site” means a collector that, notwithstanding any premium services offered, accepts all categories, types and brands of covered electronic devices at no charge to covered entities.

(b) “Computer monitor” includes:

(A) A cathode-ray tube monitor;

(B) A flatscreen monitor;

(C) A touchscreen monitor, such as an interactive whiteboard or panel

(c) “Desktop computer” includes:

(A) A thin client;

(B) A mini, single-board, or small form factor personal computer; or

(C) An all-in-one computer.

(d) “Covered electronic device materials” means a covered electronic device, a component of a covered electronic device, or a material from a covered electronic device.

(e) “Final disposition” means the point beyond which no further processing or refurbishing occurs and covered electronic device materials have been sold as whole units of covered electronic devices for reuse; disposed of; or processed into recycled materials for a market.

(f) “Market share” means a manufacturer’s percentage of all registered covered electronic devices by weight sold within a product category during a specified time period.

(g) “Peripheral” means:

(A) A keyboard, mouse or other device sold exclusively for external use with a covered electronic device as a wireless or corded device that provides input into, or output from, a covered electronic device, including:

(i) A controller for a covered electronic device, such as a game controller, a joystick, or a flight simulation controller;

(ii) A docking station;

(iii) Headphones or ear buds;

(iv) A standalone speaker intended for use with covered electronic devices, but not a speaker intended for amplifiers or sound systems;

(v) An external drive;

(vi) A digital or media streaming device;

(vii) A web camera;

(viii) A headset, including an augmented reality or virtual reality headset; or

(ix) A power adapter charger.

(B) Cords used with a keyboard, mouse or other device described in subparagraph 5(f)(A) of this rule.

(h) "Portable computer" includes:

(A) A laptop;

(B) A tablet; or

(C) An e-reader.

(i) "Processor" means a person who recycles or otherwise processes covered electronic device materials derived from collected covered electronic devices.

(j) "Refurbish" means to repair a used covered electronic device in order to restore or improve the covered electronic device so that the device may be used for the same purpose for which it was originally designed.

(k) "Service provider or downstream vendor" means a person, including a collector, processor, refurbisher, or broker, receiving a covered electronic device or covered electronic device materials from the time the covered electronic device is collected

[by an electronics producer responsibility program through final disposition of the covered electronic device materials in that covered electronic device.](#)

(5) Terms used in OAR 340-098-0300 to OAR 340-098-0390 have the meanings provided in ORS 459A.200 and ORS 459A.209.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305 & 459A.315

History:

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

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

340-098-0100

Revenue Need [Until and Including December 31, 2025](#)

(1) Revenue need. The revenue need for the fiscal year beginning:

(a) July 1, 2012 is \$415,000;

(b) July 1, 2013 is \$435,000;

(c) July 1, 2014 is \$435,000; and

(d) July 1, 2015 and for subsequent fiscal years [until and including December 31, 2025](#) is \$465,000.

(2) Revenue need adjustments.

(a) If the revenue collected from registration fees under OAR 340-098-0150 exceeds DEQ's actual costs for the program, DEQ will reduce the revenue need by the excess amount in a subsequent year. DEQ will also evaluate whether to revise the revenue need for future years to ensure that revenue need approximately matches DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(b) If DEQ has been unable to collect revenue from registration fees owed for a prior year, DEQ may add the amount of uncollected revenue to the revenue need in a subsequent year as necessary to ensure that revenue approximately matches DEQ's projected costs as described in subsection (a). DEQ will make good faith efforts to collect registration fees owed.

(3) Reporting. Each fiscal year DEQ will report its current and projected program expenditures and revenue.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0150

Registration Fees [Until and Including 2025](#)

Section (1) describes generally how DEQ determines registration fees [until and including December 31, 2025](#), and sections (2) through (4) provide the specific process for determining registration fees [until and including December 31, 2025](#).

(1) Overview. Each year manufacturer registration fees total the revenue need for that year. DEQ assigns manufacturers to registration fee Tiers 1-7 based on their market share. All manufacturers within a tier pay the same registration fee in any given year. Manufacturers in Tier 6 pay a fee of \$200. Manufacturers in Tier 7, with the smallest market share, pay \$40. Fees for manufacturers in Tiers 1-5 are calculated each year to total the revenue need remaining after subtracting the revenue expected from Tiers 6 and 7. To determine the manufacturer fee for each of Tiers 1-5, the total market share for all manufacturers in a tier is multiplied by the remaining revenue need. That revenue share for the tier is then divided by the number of manufacturers in the tier to determine the fee for those manufacturers. DEQ then adjusts the fees for Tiers 1-5 so that no fee is more than \$35,000 or less than \$200. If the fee for any tier is over \$35,000, DEQ caps the fee at \$35,000, and distributes the amount of unallocated revenue from that tier to lower tiers in proportion with their market share (excluding Tiers 6 and 7). If the resulting fee for any tier is below \$200, DEQ raises the fee to \$200 for that tier and recalculates the fees for the higher tiers as described above for Tiers 1-5.

(2) Total registration fees. Each year the total registration fees of manufacturers required to pay a registration fee under ORS 459A.315 and OAR 340-098-0000 through 340-098-0200 will equal the revenue need for the fiscal year beginning July 1 of that year.

(3) Registration fees. For each year after 2012, each manufacturer will pay a registration fee described in this section:

(a) Registration fees will be based on the following fee tiers:

(A) Tier 1 includes all manufacturers with a market share greater than or equal to 5%;

(B) Tier 2 includes all manufacturers with a market share greater than or equal to 1% but less than 5%;

(C) Tier 3 includes all manufacturers with a market share greater than or equal to 0.1% but less than 1%;

(D) Tier 4 includes all manufacturers with a market share greater than or equal to 0.03% but less than 0.1%;

(E) Tier 5 includes all manufacturers with a market share greater than or equal to 0.01% but less than 0.03%;

(F) Tier 6 includes all manufacturers with a market share less than 0.01% that equates to 50 or more units.

(G) Tier 7 includes all manufacturers with a market share that equates to less than 50 units.

(b) The registration fee for each manufacturer in Tier 6 will be \$200. The registration fee for each manufacturer in Tier 7 will be \$40.

(c) The registrations fees for manufacturers in Tiers 1-5 will equal the revenue need remaining after subtracting the revenue expected from Tier 6 and 7 fees.

(d) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the total registration fees for each tier will be a percentage of the remaining revenue need that is equal to the total market share of the manufacturers in that tier.

(e) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the registration fee of each manufacturer in a given tier will be the amount of the remaining revenue need that the manufacturer's tier is responsible for, as stated subsection (3)(d), divided by the number of manufacturers in that tier.

(f) For Tiers 1-5, the registration fee for manufacturers in any tier will not be more than \$35,000. The registration fee for manufacturers in a tier in which the registration fee is calculated to be more than \$35,000 will be adjusted to \$35,000.

(g) For Tiers 1-5, after the registration fee adjustments described in subsection(3)(f), the registration fees of each manufacturer in a tier with registration fees below \$35,000 will also be adjusted so that total registration fees still equal the remaining revenue need, as follows:

(A) Fee adjustment = $(W \times (X \div Y)) \div Z$.

(B) "W" is the net amount of registration fees above \$35,000.

(C) "X" is the total market share of all the manufacturers in the manufacturer's tier.

(D) "Y" is the total market share for all manufacturers in tiers 1-5 with registration fees below \$35,000, excluding manufacturers whose fees have been adjusted to \$200 in accordance with subsection (3)(i).

(E) "Z" is the total number of manufacturer's in the manufacturer's tier.

(h) If any manufacturer in Tiers 1-5 would pay a registration fee greater than \$35,000 after the process described in subsection (3)(g), the process described in subsections (3)(f) and (3)(g) will be repeated until no manufacturer pays a registration fee greater than \$35,000.

(i) After the process described in subsections (3)(f) through (3)(h) has been completed, the registration fee for any manufacturer in Tiers 1-5 in which the registration fee is calculated to be less than \$200 will be adjusted to \$200. The total revenue from all fees in tiers for which fees are raised to \$200 will be subtracted from the remaining revenue need and the fees for all higher tiers will be recalculated to meet that adjusted revenue need as described in subsections (3)(d) through (3)(i). The process described in subsections (3)(d) through (3)(i) will be repeated until no manufacturer pays a registration fee less than \$200.

(4) 2012 fees. Manufacturers will pay registration fees in ORS 459A.315(2)(b) for calendar year 2012, except:

(a) If the total revenue to be collected under the method described in ORS 459A.315(2)(b) is less than the revenue need for 2012, DEQ will calculate each manufacturer's registration fee according to OAR 340-098-0150(3);

(b) The registration fees of manufacturers whose registration fees would be at least \$250 higher calculated under OAR 340-098-0150(3) than under ORS 459A.315(2)(b) will be adjusted so that the total registration fees for 2012 equal revenue need; and

(c) Each manufacturer described in subsection (4)(b) will pay the following registration fee adjustment: $\text{Fee adjustment} = (A \times (B \div C)) \div D$ where:

(A) "A" is the difference between the revenue need and the amount to be collected under the method described in ORS 459A.315(2)(b);

(B) "B" is the total market share of all manufacturers in the manufacturer's tier;

(C) "C" is the total market share of all manufacturers described in subsection (4)(b); and

(D) "D" is the total number of manufacturers in the same tier as the manufacturer.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0200

Market Share Notifications Until and Including 2025

(1) Preliminary determination. Beginning in 2013 and each year thereafter until and including 2025, DEQ will make a preliminary determination of each manufacturer's market share and fee tier for that fiscal year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share and fee tier determination. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final determination. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and fee tier and notify each manufacturer of that determination. In making the final market share and fee tier determinations, DEQ will use the best available information as determined by DEQ including any relevant information provided by manufacturers under section (2).

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0230

Market Share Notifications Beginning 2026

(1) Preliminary market share. Beginning in 2026 and each year thereafter, DEQ will make a preliminary determination of each manufacturer's market share for the program year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final market share. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and notify each manufacturer of that determination. In making the final market share determinations, DEQ will use the best available information as determined by DEQ, including any relevant information provided by manufacturers under section (2).

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315, 459A.340

340-098-0235

Electronics Producer Responsibility Organization Fees

(1) Each electronics producer responsibility organization must pay the fees in this rule to DEQ.

(2) Plan review fee.

(a) The plan review fee for an initial plan submitted by an electronics producer responsibility organization is \$75,000.

(b) An electronics producer responsibility organization must pay the plan review fee before submitting its initial plan for an electronics producer responsibility program.

(3) Annual fee.

(a) For 2026 and for each year thereafter, the annual fee is \$315,000.

(b) Each electronics producer responsibility organization with an approved plan to operate an electronics producer responsibility program in the year to which the annual fee applies must pay an equal share of the total annual fee.

(c) DEQ may reduce the annual fee for a given year to ensure fee revenue approximately matches DEQ's projected costs for that year.

(d) An electronics producer responsibility organization must pay DEQ the annual fee by June 1 of each year, beginning with June 1, 2026.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.334

340-098-0240

Program Plans

(1) DEQ may require a prospective electronics producer responsibility organization to submit a letter of intent to DEQ declaring the electronics producer responsibility organization's intention to submit a program plan for the implementation of an electronics producer responsibility program.

(2) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit a program plan by July 1 in a given year for the implementation of an electronics producer responsibility program in the following calendar year. DEQ may reject a program plan if the program plan is not timely submitted.

(3) DEQ may require an electronics producer responsibility organization to provide, in its program plan, information to describe how the electronics producer responsibility organization will implement an electronics producer responsibility program that complies with ORS 459A.305 to 459A.355. Such information can include information on coordination if multiple program plans are approved, public awareness, program financing, the provision of convenient and equitable service throughout the state, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals. Information that DEQ can require in a program plan includes but is not limited to:

(a) A contact for the electronics producer responsibility organization who is located in Oregon;

(b) The names of any electronics producer responsibility organizations that the prospective electronics producer responsibility organization will share collection sites with;

(c) How the electronics producer responsibility organization will provide fair financial compensation to collection sites calculated to cover the costs of collecting, storing, managing and transporting covered electronic devices, such as by offering:

(A) Compensation rates necessary to ensure that a collection site can operate in an area where a collection site is required to meet convenient service under statute, with consideration for how the collection site can support the area being served and provide environmentally sound management practices;

(B) Comparable compensation rates for collection sites that operate in similar geographic areas; and

(C) Comparable incentives among collection sites to conduct sorting or other practices in a manner that improves program efficiency while ensuring compliance with environmentally sound management practices.

(d) How the electronics producer responsibility organization will measure public awareness across the state and in minority, lower-income, rural and other historically underserved communities, such as through statistically significant surveys;

(e) Milestones, timelines, and deliverables on implementation;

(f) What steps or any changes the electronics producer responsibility organization will take that ensure the electronics producer responsibility organization meets plan requirements and program goals;

(g) How the electronics producer responsibility organization will provide convenient and equitable service throughout the state, including the list of collection sites that

have committed in writing to collect covered electronic devices under the electronics producer responsibility program and which collection sites will be shared with another electronics producer responsibility organization;

(h) Information on how collection sites and other collection services will offer convenient and equitable service throughout Oregon, such as whether collectors offer consistent business hours, the hours of operation for such collectors, and language and physical accessibility considerations;

(i) How the electronics producer responsibility organization will address any issues of noncompliance or nonperformance to ensure the electronics producer responsibility organization implements the electronics producer responsibility program according to the electronics producer responsibility organization's approved plan; and

(j) The entity that the electronics producer responsibility organization will designate as a coordinating body if multiple plans are approved.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.320

340-098-0245

Environmentally sound management practices

(1) Standards for environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide environmentally sound management practices that ensure:

(a) Continuous improvement in environmental outcomes, reduction of environmental impacts, and protection of health, safety, and data privacy in the management of covered electronic device materials;

(b) Each service provider or downstream vendor involved in the management of covered electronic device materials, from the time a covered electronic device is collected from a covered entity through to final disposition of the covered electronic device materials in that covered electronic device, manages covered electronic device materials in a way that:

(A) Minimizes environmental impacts;

(B) Protects health, safety, and data privacy;

(C) Incorporates the solid waste management hierarchy, prioritizing the reuse and refurbishment of covered electronic devices above recycling, and recycling of

covered electronic device materials above disposal of covered electronic device materials, consistent with all applicable laws; and

(D) Complies with all laws, treaties, and regulations applicable to the service provider or downstream vendor handling the covered electronic device materials, including legal requirements related to:

(i) Collection, waste and recycling processing, reuse, refurbishment, storage, handling, and shipping;

(ii) Air emissions and wastewater discharge, including storm water discharges;

(iii) Worker health and safety;

(iv) Wage and labor laws; and

(v) Transboundary movement of covered electronic device materials, including electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

(c) A covered electronic device is sent to processors, refurbishers, or for reuse within six months of a collector receiving the covered electronic device from a covered entity.

(2) Required environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide for the following environmentally sound management practices.

(a) Recordkeeping. An electronics producer responsibility organization must retain all records related to the implementation and administration of the electronics producer responsibility program, including records on whether environmentally sound management practices were provided, for not less than three years from the time the record was created and make the records available for inspection and audit by DEQ at DEQ offices upon request. An electronics producer responsibility organization must maintain records on the chain of custody for covered electronic device materials from collection to final disposition. Records must include:

(A) A point of contact for each service provider or downstream vendor;

(B) The types and amounts of covered electronic device materials that are recovered for reuse, refurbished, recycled, disposed of, or otherwise managed by each service provider or downstream vendor;

(C) The types of refurbishment, recycling, disposal, or other management methods used by each service provider or downstream vendor for covered electronic device materials;

(D) Documentation by each service provider or downstream vendor that the service provider or downstream vendor adhered to environmentally sound management practices and complied with all laws and regulations applicable to their management of covered electronic device materials; and

(E) Information on each service provider or downstream vendor's end markets for covered electronic device materials and end market contacts that the electronics producer responsibility organization uses to verify chain of custody.

(b) Requirements for service provider and downstream vendors. An electronics producer responsibility organization must require each service provider or downstream vendor to:

(A) Maintain all records related to covered electronic device materials for at least three years and ensure that such records are available to the electronics producer responsibility organization, including if the service provider or downstream vendor closes or leaves the electronics producer responsibility program;

(B) Cooperate with performance audits, records review, and inspections conducted by the electronics producer responsibility organization or DEQ;

(C) Maintain liability insurance and financial assurances;

(D) Provide regular training and maintain policies on site management and operation requirements for the collection, sorting, or processing of covered electronic device materials; and

(E) If the service provider or downstream vendor is located in Oregon, comply with applicable state and local recordkeeping and reporting requirements, including reporting requirements for the Oregon Material Recovery Survey under OAR 340-090-0100 and any covered electronic devices reporting and tracking requirements for covered electronic devices.

(e) Monitoring. As part of monitoring and evaluating adherence by service provider and downstream vendors to environmentally sound management practices, an electronics producer responsibility organization must conduct:

(A) Reviews of changes in management processes in collectors and processors as changes arise;

(B) Quarterly reviews of collection reports from collectors and processing reports from processors;

(C) An annual audit of records related to the electronics producer responsibility program maintained by service providers and downstream vendors;

(D) Annual interviews with or surveys of collectors;

(E) Annual in-person site visits of:

(i) At least one-third of collectors in the electronics producer responsibility organization's collection network; and

(ii) All processors;

(F) Annual deployment of tracking devices to verify chain of custody and the fate of covered electronic device materials.

(f) An electronics producer responsibility organization must have processes to track and address fines, violations, or issues involving a service provider or downstream vendor. Processes must ensure the electronics producer responsibility organization will promptly notify DEQ of fines, violations, or issues related to environmentally sound management practices. Processes must also ensure the electronics producer responsibility organization can take appropriate action to ensure the environmentally sound management of covered electronic devices. Appropriate action can include terminating agreements with service providers or downstream vendors.

(g) Continuous improvement. An electronics producer responsibility organization must annually evaluate strategies to better achieve the standards for environmentally sound management practices in subsection (1). Strategies include incorporating new, more effective technologies; and improving existing practices and processes.

(3) DEQ administration.

(a) DEQ may approve alternative environmentally sound management practices from the requirements of subsections (1) and (2) if the electronics producer responsibility organization demonstrates to DEQ's satisfaction that the alternative environmentally sound management practices, such as the use of an independent, third-party certification program, are substantially equivalent in ensuring protection of, and compliance with all laws applicable to, human health and safety, the environment, and data privacy.

(b) For the purposes of monitoring compliance with environmentally sound management practices, DEQ may use tracking devices to track the fate of covered electronic device materials.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305, 459A.320

340-098-0250

Fair Financial Compensation

(1) In offering compensation to collection sites, an electronics producer responsibility organization may review the costs of collecting, storing, managing and transporting covered electronic devices across a range of collection sites or may use reasonable estimates of costs of collecting, storing, managing and transporting covered electronic devices.

(2) An electronics producer responsibility organization or coordinating body must cooperate with, and provide any information requested by, DEQ on whether an electronics producer responsibility organization has provided fair financial compensation to collection sites. Such information includes compensation rates offered to a collection site or a prospective collection site.

(3) As part of administering ORS 459A.305 to 459A.355, DEQ may periodically conduct a study, or approve an electronics producer responsibility organization to conduct a study with methodology acceptable to DEQ, on whether an electronics producer responsibility organization has provided fair financial compensation to collection sites.

(a) The study may include, but is not limited to, evaluations of:

(A) The real costs of collection sites in urban and in rural areas in Oregon in collecting, storing, managing and transporting covered electronic devices, including labor, packing, storage, and security costs;

(B) Compensation rates offered to a collection site and to a potential collection site;

(C) Trends in collection costs and collection site compensation in Oregon;

(D) Alternative forms of compensation to compensation on a price-per-pound basis, such as a baseline fee for participation as a collection site, with price-per-pound compensation for pounds collected above a minimum threshold; and

(E) How changes in compensation may impact convenience.

(b) An electronics producer responsibility organization or coordinating body must cooperate with and provide any information requested by DEQ to conduct the study.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.320

340-098-0255
Annual Reports

(1) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit an annual report on the activities of its electronics producer responsibility program in a given calendar year by March 1 of the following year.

(2) DEQ may require an electronics producer responsibility organization to provide in its annual report information on whether the electronics producer responsibility organization implemented its electronics producer responsibility program in accordance with the electronics producer responsibility organization's approved program plan and with ORS 459A.305 to 459A.355. Such information may include information on coordination if multiple program plans are approved, public awareness, program financing, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals, including but not limited to:

(a) The reporting of the total weight of each type of covered electronic device, including peripherals, by product categories;

(b) A summary of any safety or security problems that occurred during the collection, transportation or disposal of covered electronic devices, such as fires that may have been resulted from managing covered electronic devices under a producer responsibility program at collection sites, processors, and other service providers and downstream vendors, and the actual or potential future resolutions of those problems; and

(c) Whether the electronics producer responsibility organization achieved program goals and possible reasons for why the electronics producer responsibility organization fell short of a goal and actions to remedy shortfalls or achieve the goal.

(3) An electronics producer responsibility organization may count pounds of covered electronic devices collected by a collection site through premium services towards the electronics producer responsibility organization's collection goals.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345
Statutes/Other Implemented: ORS 459A.320

340-098-0260
Coordinating Body

(1) DEQ may require a prospective coordinating body to submit a letter of intent and information to help DEQ evaluate the prospective coordinating body's ability to serve as a coordinating body.

(2) If electronics producer responsibility organizations with approved plans are unable to designate a coordinating body in accordance with the timeline set by DEQ, DEQ may designate a coordinating body that DEQ determines will be in the best interest of the electronics producer responsibility programs. A prospective coordinating body must provide any information DEQ needs to make its decision.

(3) DEQ may direct a coordinating body to conduct any coordination between electronics producer responsibility organizations for the implementation of electronics producer responsibility programs pursuant to ORS 459A.305 to 459A.355, including coordination related to:

(a) Public education and outreach activities to advertise and promote, on a regular basis, recycling of covered electronic devices and collection opportunities statewide;

(b) Program goals, including collection goals and public awareness goals; or

(c) The conducting of surveys or other measurements of public awareness about the electronics producer responsibility programs and electronics recycling opportunities.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.323

340-098-0265

Product Categories

Beginning in 2026, the product categories for purposes of sorting covered electronic devices at collection and calculating market share are:

(1) Category 1 includes desktop computers, portable computers, and small-scale servers;

(2) Category 2 includes printers, scanners, and fax machines;

(3) Category 3 includes monitors and televisions;

(4) Category 4 includes portable digital music players, digital video disc players, digital video disc recorders, videocassette recorders, video game consoles, digital converter boxes, cable receivers, satellite receivers, routers, and modems; and

(5) Category 5 includes peripherals.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305

340-098-0270

Manufacturer Obligation Calculation

(1) A coordinating body, or an electronics producer responsibility organization if a coordinating body is not designated, must annually calculate each manufacturer's manufacturer obligation by:

(a) Multiplying the manufacturer's market share for each product category by the product category's percentage of the total weight of all covered electronic devices recycled during the previous year; and

(b) Adding the percentages calculated under subparagraph (a) of this section.

(2) In calculating a product category's percentage of the total weight of covered electronic devices recycled during the previous year for subparagraph 1(a) of this rule, an electronics producer responsibility organization or coordinating body shall use the total weight of covered electronic devices recycled in an electronics producer responsibility program during the previous year. For 2026, where covered electronic devices are not eligible for recycling by an electronics producer responsibility program in 2025, an electronics producer responsibility organization or coordinating body may use national data, consumer research, sampling, or any other similar data from 2025 to apportion the costs of the program or programs among all manufacturers, and to reconcile such apportionment against manufacturer obligations in subsequent years.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305, 459A.323

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DIVISION 012 ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0045

Civil Penalty Determination Procedure

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(1) BP is the base penalty and is determined by the following procedure:

(a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0099.

(b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.

(3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Statutory/Other Authority: ORS 468.020

Statutes/Other Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 19-1998, f. & cert. ef. 10-12-98

DEQ 4-1994, f. & cert. ef. 3-14-94

DEQ 21-1992, f. & cert. ef. 8-11-92

DEQ 15-1990, f. & cert. ef. 3-30-90

DEQ 4-1989, f. & cert. ef. 3-14-89

DEQ 22-1988, f. & cert. ef. 9-14-88

DEQ 22-1984, f. & ef. 11-8-84
DEQ 78, f. 9-6-74, ef. 9-25-74

340-012-0099

Classification of Violations for Producer Responsibility Program Requirements, including ORS 459A.305 to 459A.355 and related rules

(1) Class I:

- (a) Failing to register or participate in a producer responsibility organization;
- (b) Failing to substantially implement a producer responsibility program plan;
- (c) Failing to provide for environmentally sound management practices in the collection, transportation, or processing of covered electronic devices;

(2) Class II:

- (a) Failing to submit a plan, study, notification, report, or other required information to DEQ, unless otherwise specified;
- (b) Failing to implement one or more elements of a producer responsibility program plan;
- (c) For a coordinating body, failing to coordinate between electronics producer responsibility organizations;
- (d) Violating any otherwise unclassified requirement of ORS 459A.305 to 459A.355 or related rules.

Statutory/Other Authority: ORS 459A.345 and 468.020

Statutes/Other Implemented: ORS 459A.305 - 459A.355

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$12,000 Penalty Matrix:

(a) The \$12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or

Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act, unless otherwise classified.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission and Zero Emission Vehicle rules (OAR 340-257) by a vehicle manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A city with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR Chapter 340, division 253 by a person registered as an importer of blendstocks,

(S) Any violation classified under OAR 340-012-0054 (1) (dd), (ee), (ff), or (gg).

(T) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions greater than

or equal to 25,000 metric tons per year or by a person that has not reported greenhouse gas emissions to DEQ during the past five years, or by a person for which DEQ has insufficient information to accurately estimate emissions.

(U) Any violation of the Third Party Verification rules under OAR Chapter 340, division 272.

(V) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(W) Any violation of the rules for Emission Standards for New Heavy-Duty Trucks under OAR chapter 340 division 261 by engine, truck or trailer manufacturers and dealers.

(X) Any violation of the Climate Protection Program rules under OAR chapter 340, division 271.

(Y) Any violation of the Fuel Tank Seismic Stability Program rules under OAR chapter 340, division 300.

(Z) Any violation of ORS 459A.305 to 459A.355 or related rules committed by:

(i) A producer responsibility organization.

(ii) A manufacturer.

(b) The base penalty values for the \$12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$12,000;

(ii) Moderate — \$6,000;

(iii) Minor — \$3,000.

(B) Class II:

(i) Major — \$6,000;

(ii) Moderate — \$3,000;

(iii) Minor — \$1,500.

(C) Class III: \$1,000.

(3) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix, unless otherwise classified.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR chapter 340, division 253 unless the violation is otherwise classified in this rule.

(M) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 25,000 metric tons per year but greater than or equal to 5,000 metric tons per year.

(N) Any violation of the Landfill Gas Emissions rules under OAR chapter 340, division 239 by a person that owns or operates a landfill with over 200,000 tons waste in place and is not required to comply with OAR 340-239-0110 through OAR 340-239-0800.

(O) Any violation of a hazardous waste pharmaceutical statute, rule, permit or related order committed by a person that is a reverse distributor.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8,000.

(ii) Moderate — \$4,000.

(iii) Minor — \$2,000.

(B) Class II:

(i) Major — \$4,000.

(ii) Moderate — \$2,000.

(iii) Minor — \$1,000.

(C) Class III: \$ 700.

(4) \$3,000 Penalty Matrix:

(a) The \$3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit, permit attachment, or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a very small quantity generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a very small quantity generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Greenhouse Gas Reporting Program under OAR Chapter 340, division 215 by a person with greenhouse gas emissions less than 5,000 metric tons per year.

(b) The base penalty values for the \$3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$3,000;

(ii) Moderate — \$1,500;

(iii) Minor — \$750.

(B) Class II:

(i) Major — \$1,500;

(ii) Moderate — \$750;

(iii) Minor — \$375.

(C) Class III: \$250.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(N) Any violation of ORS 459A.305 to 459A.355 or related rules committed by a person not listed under another matrix.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1,000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Statutory/Other Authority: ORS 459A.345, 468.020 & 468.090 - 468.140

Statutes/Other Implemented: ORS 459.995, 459A.305 - 459A.355, 459A.655, 459A.660, 459A.685 & 468.035

History:

DEQ 13-2023, amend filed 09/14/2023, effective 09/14/2023

DEQ 16-2022, amend filed 09/23/2022, effective 09/23/2022

DEQ 4-2022, amend filed 03/16/2022, effective 03/16/2022

DEQ 27-2021, amend filed 12/16/2021, effective 12/16/2021

DEQ 20-2021, amend filed 11/18/2021, effective 01/01/2022

DEQ 17-2021, amend filed 11/17/2021, effective 11/17/2021

DEQ 16-2021, amend filed 10/04/2021, effective 10/04/2021

DEQ 14-2020, amend filed 05/07/2020, effective 05/07/2020

DEQ 199-2018, amend filed 11/16/2018, effective 01/01/2019
DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018
DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16
DEQ 1-2014, f. & cert. ef. 1-6-14
DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11
DEQ 6-2006, f. & cert. ef. 6-29-06
DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06
Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 19-1998, f. & cert. ef. 10-12-98
DEQ 9-1996, f. & cert. ef. 7-10-96
DEQ 4-1994, f. & cert. ef. 3-14-94
DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 33-1990, f. & cert. ef. 8-15-90
DEQ 15-1990, f. & cert. ef. 3-30-90
DEQ 4-1989, f. & cert. ef. 3-14-89

340-012-0155

Additional or Alternate Civil Penalties

(1) DEQ may assess additional civil penalties for the following violations as specified below:

(a) DEQ may assess a civil penalty of up to \$250,000 to any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705–459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205–459.426, 459.705–459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to public health or that causes extensive damage to the environment. When determining the civil penalty to be assessed under this subsection, the director will use the procedures set out below:

(A) The following base penalties apply:

(i) \$100,000 if the violation was caused intentionally;

(ii) \$150,000 if the violation was caused recklessly;

(iii) \$200,000 if the violation was caused flagrantly.

(B) The civil penalty is calculated using the following formula: $BP + [(0.1 \times BP) (P + H + O + C)] + EB$.

(b) Any person who intentionally or negligently causes or permits the discharge of oil or hazardous materials into waters of the state or intentionally or negligently fails to clean up a spill or release of oil or hazardous materials into waters of the state

will incur a civil penalty not to exceed \$100,000 dollars for each violation. The amount of the penalty is determined as follows:

(A) The class and magnitude of the violation are determined according to OAR 340-012-0045, then the base penalty is determined according to OAR 340-012-0140.

(B) The multiplier for the base penalty is determined by adding the following values:

(i) 2 points if the violation was caused negligently; or 3 points if the violation was caused recklessly; or 4 points if the violation was caused intentionally with actual knowledge that a violation would occur; and

(ii) 1 point if the oil or hazardous material is or contains any constituent listed as a "hazardous substance" in 40 CFR 302; or 2 points if the oil or hazardous material is or contains any constituent listed as an "extremely hazardous substance" under 40 CFR 355; and

(iii) 2 points if the volume of the oil or hazardous material spilled, lost to the environment, or not cleaned up exceeds 1,000 gallons; and

(iv) 1 point if the violation impacted an area of particular environmental value where oil or hazardous materials could pose a greater threat than in other non-sensitive areas, for example, sensitive environments such as those listed in OAR 340-122-0115(50), drinking water sources, and cultural sites.

(C) The base penalty from paragraph (A) is multiplied by the sum of the points from paragraph (B) to determine the adjusted base penalty. The civil penalty formula in OAR 340-012-0045 is applied using the adjusted base penalty for the BP factor.

(c) Any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the applicable penalty matrix in 340-012-0140(2) and the civil penalty formula contained in 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted. will incur a civil penalty according to the schedule set forth in ORS 496.705 for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in ORS 496.705 that are property of the state.

(e) DEQ may assess a civil penalty of \$500 to any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050.

(2) Civil penalties for certain violations are subject to the following maximums in lieu of the maximum daily penalty provided in OAR 340-012-160(4):

(a) DEQ may assess a civil penalty of up to \$1,000 for each day of violation to any person that fails to comply with the prohibitions on the sale or distribution of cleaning agents containing phosphorus in ORS 468B.130.

(b) DEQ may assess a civil penalty of up to \$500 for each violation of each day to any person that fails to comply with Toxics Use Reduction and Hazardous Waste Reduction Act requirements of ORS 465.003 to 465.034.

(c) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.420 to 459.426. Each battery that is improperly disposed of is a separate violation, and each day an establishment fails to post the notice required by ORS 459.426 is a separate violation.

(d) DEQ may assess a civil penalty of up to \$500 for each violation of the requirement to provide the opportunity to recycle as required by ORS 459A.005.

(3) DEQ may assess the civil penalties below in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) DEQ will assess a Field Penalty as specified under OAR 340-150-0250 unless DEQ determines that an owner, operator or permittee is not eligible for the Field Penalty.

(b) DEQ may assess Expedited Enforcement Offers as specified under OAR 340-012-0170(2).

(4) DEQ may assess a civil penalty of up to \$500 for each violation of ORS 459.247(1)(f). Each covered electronic device that is disposed of improperly is a separate violation.

Statutory/Other Authority: ORS 459A.345, 465, 466, 468.020, 468.130, 468.996 & 783.992

Statutes/Other Implemented: ORS 459.247, 459.995, 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992

History:

DEQ 1-2014, f. & cert. ef. 1-6-14

DEQ 14-2008, f. & cert. ef. 11-10-08

DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

DEQ 1-2003, f. & cert. ef. 1-31-03

DEQ 9-2000, f. & cert. ef. 7-21-00

DEQ 21-1992, f. & cert. ef. 8-11-92
DEQ 15-1990, f. & cert. ef. 3-30-90

Division 98
MATERIALS MANAGEMENT: PRODUCT STEWARDSHIP PROGRAMS

340-098-0000
Applicability

(1) OAR 340-098-0000 to OAR 340-098-0270 prescribe requirements for electronics producer responsibility programs under ORS 459A.305 to 459A.355. OAR 340-098-0100 to OAR 340-098-0200 are in effect until and including December 31, 2025. OAR 340-098-0230 to OAR 340-098-0270 are effective February 1, 2025.

(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 8-2023, amend filed 07/20/2023, effective 07/21/2023

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

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

340-098-0010
Definitions

(1) For purposes of OAR Chapter 340, Division 98:

(a) “DEQ” means the Department of Environmental Quality.

(b) “Fiscal year” means the period beginning on July 1 of any year and ending on June 30 of the next year.

(2) Terms used in OAR 340-098-0100 through 340-098-0200 have the meaning provided in ORS 459A.305. Definitions for additional terms used in OAR 340-098-0100 through 340-098-0200 are in sections (3) and (4).

(3) As used in OAR 340-098-0100 to OAR 340-098-0200:

(a) "Market share" means the percentage of the total number of units of covered electronic devices sold in or into Oregon the previous calendar year or most recent four quarters for which data is available, as determined by DEQ.

(b) "Revenue need" means the total amount of revenue DEQ must collect in registration fees in order for the registration fees to approximately match DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(4) As used in OAR 340-098-0230 to OAR 340-098-0270:

(a) "Collection site" means a collector that, notwithstanding any premium services offered, accepts all categories, types and brands of covered electronic devices at no charge to covered entities.

(b) "Computer monitor" includes:

(A) A cathode-ray tube monitor;

(B) A flatscreen monitor;

(C) A touchscreen monitor, such as an interactive whiteboard or panel

(c) "Desktop computer" includes:

(A) A thin client;

(B) A mini, single-board, or small form factor personal computer; or

(C) An all-in-one computer.

(d) "Covered electronic device materials" means a covered electronic device, a component of a covered electronic device, or a material from a covered electronic device.

(e) "Final disposition" means the point beyond which no further processing or refurbishing occurs and covered electronic device materials have been sold as whole units of covered electronic devices for reuse; disposed of; or processed into recycled materials for a market.

(f) "Market share" means a manufacturer's percentage of all registered covered electronic devices by weight sold within a product category during a specified time period.

(g) "Peripheral" means:

(A) A keyboard, mouse or other device sold exclusively for external use with a covered electronic device as a wireless or corded device that provides input into, or output from, a covered electronic device, including:

(i) A controller for a covered electronic device, such as a game controller, a joystick, or a flight simulation controller;

(ii) A docking station;

(iii) Headphones or ear buds;

(iv) A standalone speaker intended for use with covered electronic devices, but not a speaker intended for amplifiers or sound systems;

(v) An external drive;

(vi) A digital or media streaming device;

(vii) A web camera;

(viii) A headset, including an augmented reality or virtual reality headset; or

(ix) A power adapter charger.

(B) Cords used with a keyboard, mouse or other device described in subparagraph 5(f)(A) of this rule.

(h) "Portable computer" includes:

(A) A laptop;

(B) A tablet; or

(C) An e-reader.

(i) "Processor" means a person who recycles or otherwise processes covered electronic device materials derived from collected covered electronic devices.

(j) "Refurbish" means to repair a used covered electronic device in order to restore or improve the covered electronic device so that the device may be used for the same purpose for which it was originally designed.

(k) "Service provider or downstream vendor" means a person, including a collector, processor, refurbisher, or broker, receiving a covered electronic device or covered electronic device materials from the time the covered electronic device is collected by an electronics producer responsibility program through final disposition of the covered electronic device materials in that covered electronic device.

(5) Terms used in OAR 340-098-0300 to OAR 340-098-0390 have the meanings provided in ORS 459A.200 and ORS 459A.209.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305 & 459A.315

History:

DEQ 18-2020, amend filed 09/21/2020, effective 09/21/2020
DEQ 4-2012, f. & cert. ef. 6-26-12

340-098-0100

Revenue Need Until and Including December 31, 2025

(1) Revenue need. The revenue need for the fiscal year beginning:

(a) July 1, 2012 is \$415,000;

(b) July 1, 2013 is \$435,000;

(c) July 1, 2014 is \$435,000; and

(d) July 1, 2015 and for subsequent fiscal years until and including December 31, 2025 is \$465,000.

(2) Revenue need adjustments.

(a) If the revenue collected from registration fees under OAR 340-098-0150 exceeds DEQ's actual costs for the program, DEQ will reduce the revenue need by the excess amount in a subsequent year. DEQ will also evaluate whether to revise the revenue need for future years to ensure that revenue need approximately matches DEQ's projected costs for implementing ORS 459A.305 to 459A.355, excluding costs incurred under ORS 459A.340(4).

(b) If DEQ has been unable to collect revenue from registration fees owed for a prior year, DEQ may add the amount of uncollected revenue to the revenue need in a subsequent year as necessary to ensure that revenue approximately matches DEQ's projected costs as described in subsection (a). DEQ will make good faith efforts to collect registration fees owed.

(3) Reporting. Each fiscal year DEQ will report its current and projected program expenditures and revenue.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0150

Registration Fees Until and Including 2025

Section (1) describes generally how DEQ determines registration fees until and including December 31, 2025, and sections (2) through (4) provide the specific process for determining registration fees until and including December 31, 2025.

(1) Overview. Each year manufacturer registration fees total the revenue need for that year. DEQ assigns manufacturers to registration fee Tiers 1-7 based on their market share. All manufacturers within a tier pay the same registration fee in any given year. Manufacturers in Tier 6 pay a fee of \$200. Manufacturers in Tier 7, with the smallest market share, pay \$40. Fees for manufacturers in Tiers 1-5 are calculated each year to total the revenue need remaining after subtracting the revenue expected from Tiers 6 and 7. To determine the manufacturer fee for each of Tiers 1-5, the total market share for all manufacturers in a tier is multiplied by the remaining revenue need. That revenue share for the tier is then divided by the number of manufacturers in the tier to determine the fee for those manufacturers. DEQ then adjusts the fees for Tiers 1-5 so that no fee is more than \$35,000 or less than \$200. If the fee for any tier is over \$35,000, DEQ caps the fee at \$35,000, and distributes the amount of unallocated revenue from that tier to lower tiers in proportion with their market share (excluding Tiers 6 and 7). If the resulting fee for any tier is below \$200, DEQ raises the fee to \$200 for that tier and recalculates the fees for the higher tiers as described above for Tiers 1-5.

(2) Total registration fees. Each year the total registration fees of manufacturers required to pay a registration fee under ORS 459A.315 and OAR 340-098-0000 through 340-098-0200 will equal the revenue need for the fiscal year beginning July 1 of that year.

(3) Registration fees. For each year after 2012, each manufacturer will pay a registration fee described in this section:

(a) Registration fees will be based on the following fee tiers:

(A) Tier 1 includes all manufacturers with a market share greater than or equal to 5%;

(B) Tier 2 includes all manufacturers with a market share greater than or equal to 1% but less than 5%;

(C) Tier 3 includes all manufacturers with a market share greater than or equal to 0.1% but less than 1%;

(D) Tier 4 includes all manufacturers with a market share greater than or equal to 0.03% but less than 0.1%;

(E) Tier 5 includes all manufacturers with a market share greater than or equal to 0.01% but less than 0.03%;

(F) Tier 6 includes all manufacturers with a market share less than 0.01% that equates to 50 or more units.

(G) Tier 7 includes all manufacturers with a market share that equates to less than 50 units.

(b) The registration fee for each manufacturer in Tier 6 will be \$200. The registration fee for each manufacturer in Tier 7 will be \$40.

(c) The registrations fees for manufacturers in Tiers 1-5 will equal the revenue need remaining after subtracting the revenue expected from Tier 6 and 7 fees.

(d) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the total registration fees for each tier will be a percentage of the remaining revenue need that is equal to the total market share of the manufacturers in that tier.

(e) For Tiers 1-5, except as adjusted by subsections (3)(f) through (3)(i), the registration fee of each manufacturer in a given tier will be the amount of the remaining revenue need that the manufacturer's tier is responsible for, as stated subsection (3)(d), divided by the number of manufacturers in that tier.

(f) For Tiers 1-5, the registration fee for manufacturers in any tier will not be more than \$35,000. The registration fee for manufacturers in a tier in which the registration fee is calculated to be more than \$35,000 will be adjusted to \$35,000.

(g) For Tiers 1-5, after the registration fee adjustments described in subsection(3)(f), the registration fees of each manufacturer in a tier with registration fees below \$35,000 will also be adjusted so that total registration fees still equal the remaining revenue need, as follows:

(A) Fee adjustment = $(W \times (X \div Y)) \div Z$.

(B) "W" is the net amount of registration fees above \$35,000.

(C) "X" is the total market share of all the manufacturers in the manufacturer's tier.

(D) "Y" is the total market share for all manufacturers in tiers 1-5 with registration fees below \$35,000, excluding manufacturers whose fees have been adjusted to \$200 in accordance with subsection (3)(i).

(E) "Z" is the total number of manufacturer's in the manufacturer's tier.

(h) If any manufacturer in Tiers 1-5 would pay a registration fee greater than \$35,000 after the process described in subsection (3)(g), the process described in subsections (3)(f) and (3)(g) will be repeated until no manufacturer pays a registration fee greater than \$35,000.

(i) After the process described in subsections (3)(f) through (3)(h) has been completed, the registration fee for any manufacturer in Tiers 1-5 in which the registration fee is calculated to be less than \$200 will be adjusted to \$200. The total revenue from all fees in tiers for which fees are raised to \$200 will be subtracted from the remaining revenue need and the fees for all higher tiers will be recalculated to meet that adjusted revenue need as described in subsections (3)(d) through

(3)(i). The process described in subsections (3)(d) through (3)(i) will be repeated until no manufacturer pays a registration fee less than \$200.

(4) 2012 fees. Manufacturers will pay registration fees in ORS 459A.315(2)(b) for calendar year 2012, except:

(a) If the total revenue to be collected under the method described in ORS 459A.315(2)(b) is less than the revenue need for 2012, DEQ will calculate each manufacturer's registration fee according to OAR 340-098-0150(3);

(b) The registration fees of manufacturers whose registration fees would be at least \$250 higher calculated under OAR 340-098-0150(3) than under ORS 459A.315(2)(b) will be adjusted so that the total registration fees for 2012 equal revenue need; and

(c) Each manufacturer described in subsection (4)(b) will pay the following registration fee adjustment: Fee adjustment = $(A \times (B \div C)) \div D$ where:

(A) "A" is the difference between the revenue need and the amount to be collected under the method described in ORS 459A.315(2)(b);

(B) "B" is the total market share of all manufacturers in the manufacturer's tier;

(C) "C" is the total market share of all manufacturers described in subsection (4)(b); and

(D) "D" is the total number of manufacturers in the same tier as the manufacturer.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0200

Market Share Notifications Until and Including 2025

(1) Preliminary determination. Beginning in 2013 and each year thereafter until and including 2025, DEQ will make a preliminary determination of each manufacturer's market share and fee tier for that fiscal year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share and fee tier determination. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final determination. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and fee tier and notify each manufacturer of that determination. In making the final market share and fee tier determinations, DEQ will use the best available information as determined by DEQ including any relevant information provided by manufacturers under section (2).

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315

History:

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

340-098-0230

Market Share Notifications Beginning 2026

(1) Preliminary market share. Beginning in 2026 and each year thereafter, DEQ will make a preliminary determination of each manufacturer's market share for the program year and notify each manufacturer of that determination.

(2) Change requests. Each manufacturer will have 30 days to request changes to the preliminary market share. A manufacturer requesting a change must provide DEQ the relevant information the manufacturer believes supports the change and any other information requested by DEQ to evaluate the requested change.

(3) Final market share. After the 30-day period described in section (2), DEQ will make a final determination of each manufacturer's market share and notify each manufacturer of that determination. In making the final market share determinations, DEQ will use the best available information as determined by DEQ, including any relevant information provided by manufacturers under section (2).

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.315, 459A.340

340-098-0235

Electronics Producer Responsibility Organization Fees

(1) Each electronics producer responsibility organization must pay the fees in this rule to DEQ.

(2) Plan review fee.

(a) The plan review fee for an initial plan submitted by an electronics producer responsibility organization is \$75,000.

(b) An electronics producer responsibility organization must pay the plan review fee before submitting its initial plan for an electronics producer responsibility program.

(3) Annual fee.

- (a) For 2026 and for each year thereafter, the annual fee is \$315,000.
- (b) Each electronics producer responsibility organization with an approved plan to operate an electronics producer responsibility program in the year to which the annual fee applies must pay an equal share of the total annual fee.
- (c) DEQ may reduce the annual fee for a given year to ensure fee revenue approximately matches DEQ's projected costs for that year.
- (d) An electronics producer responsibility organization must pay DEQ the annual fee by June 1 of each year, beginning with June 1, 2026.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.334

340-098-0240
Program Plans

(1) DEQ may require a prospective electronics producer responsibility organization to submit a letter of intent to DEQ declaring the electronics producer responsibility organization's intention to submit a program plan for the implementation of an electronics producer responsibility program.

(2) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit a program plan by July 1 in a given year for the implementation of an electronics producer responsibility program in the following calendar year. DEQ may reject a program plan if the program plan is not timely submitted.

(3) DEQ may require an electronics producer responsibility organization to provide, in its program plan, information to describe how the electronics producer responsibility organization will implement an electronics producer responsibility program that complies with ORS 459A.305 to 459A.355. Such information can include information on coordination if multiple program plans are approved, public awareness, program financing, the provision of convenient and equitable service throughout the state, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals. Information that DEQ can require in a program plan includes but is not limited to:

(a) A contact for the electronics producer responsibility organization who is located in Oregon;

(b) The names of any electronics producer responsibility organizations that the prospective electronics producer responsibility organization will share collection sites with;

(c) How the electronics producer responsibility organization will provide fair financial compensation to collection sites calculated to cover the costs of collecting, storing, managing and transporting covered electronic devices, such as by offering:

(A) Compensation rates necessary to ensure that a collection site can operate in an area where a collection site is required to meet convenient service under statute, with consideration for how the collection site can support the area being served and provide environmentally sound management practices;

(B) Comparable compensation rates for collection sites that operate in similar geographic areas; and

(C) Comparable incentives among collection sites to conduct sorting or other practices in a manner that improves program efficiency while ensuring compliance with environmentally sound management practices.

(d) How the electronics producer responsibility organization will measure public awareness across the state and in minority, lower-income, rural and other historically underserved communities, such as through statistically significant surveys;

(e) Milestones, timelines, and deliverables on implementation;

(f) What steps or any changes the electronics producer responsibility organization will take that ensure the electronics producer responsibility organization meets plan requirements and program goals;

(g) How the electronics producer responsibility organization will provide convenient and equitable service throughout the state, including the list of collection sites that have committed in writing to collect covered electronic devices under the electronics producer responsibility program and which collection sites will be shared with another electronics producer responsibility organization;

(h) Information on how collection sites and other collection services will offer convenient and equitable service throughout Oregon, such as whether collectors offer consistent business hours, the hours of operation for such collectors, and language and physical accessibility considerations;

(i) How the electronics producer responsibility organization will address any issues of noncompliance or nonperformance to ensure the electronics producer responsibility organization implements the electronics producer responsibility program according to the electronics producer responsibility organization's approved plan; and

(j) The entity that the electronics producer responsibility organization will designate as a coordinating body if multiple plans are approved.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345
Statutes/Other Implemented: ORS 459A.320

340-098-0245

Environmentally sound management practices

(1) Standards for environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide environmentally sound management practices that ensure:

(a) Continuous improvement in environmental outcomes, reduction of environmental impacts, and protection of health, safety, and data privacy in the management of covered electronic device materials;

(b) Each service provider or downstream vendor involved in the management of covered electronic device materials, from the time a covered electronic device is collected from a covered entity through to final disposition of the covered electronic device materials in that covered electronic device, manages covered electronic device materials in a way that:

(A) Minimizes environmental impacts;

(B) Protects health, safety, and data privacy;

(C) Incorporates the solid waste management hierarchy, prioritizing the reuse and refurbishment of covered electronic devices above recycling, and recycling of covered electronic device materials above disposal of covered electronic device materials, consistent with all applicable laws; and

(D) Complies with all laws, treaties, and regulations applicable to the service provider or downstream vendor handling the covered electronic device materials, including legal requirements related to:

(i) Collection, waste and recycling processing, reuse, refurbishment, storage, handling, and shipping;

(ii) Air emissions and wastewater discharge, including storm water discharges;

(iii) Worker health and safety;

(iv) Wage and labor laws; and

(v) Transboundary movement of covered electronic device materials, including electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

(c) A covered electronic device is sent to processors, refurbishers, or for reuse within six months of a collector receiving the covered electronic device from a covered entity.

(2) Required environmentally sound management practices. Unless approved otherwise by DEQ under subsection (3), an electronics producer responsibility organization must provide for the following environmentally sound management practices.

(a) Recordkeeping. An electronics producer responsibility organization must retain all records related to the implementation and administration of the electronics producer responsibility program, including records on whether environmentally sound management practices were provided, for not less than three years from the time the record was created and make the records available for inspection and audit by DEQ at DEQ offices upon request. An electronics producer responsibility organization must maintain records on the chain of custody for covered electronic device materials from collection to final disposition. Records must include:

(A) A point of contact for each service provider or downstream vendor;

(B) The types and amounts of covered electronic device materials that are recovered for reuse, refurbished, recycled, disposed of, or otherwise managed by each service provider or downstream vendor;

(C) The types of refurbishment, recycling, disposal, or other management methods used by each service provider or downstream vendor for covered electronic device materials;

(D) Documentation by each service provider or downstream vendor that the service provider or downstream vendor adhered to environmentally sound management practices and complied with all laws and regulations applicable to their management of covered electronic device materials; and

(E) Information on each service provider or downstream vendor's end markets for covered electronic device materials and end market contacts that the electronics producer responsibility organization uses to verify chain of custody.

(b) Requirements for service provider and downstream vendors. An electronics producer responsibility organization must require each service provider or downstream vendor to:

(A) Maintain all records related to covered electronic device materials for at least three years and ensure that such records are available to the electronics producer responsibility organization, including if the service provider or downstream vendor closes or leaves the electronics producer responsibility program;

(B) Cooperate with performance audits, records review, and inspections conducted by the electronics producer responsibility organization or DEQ;

(C) Maintain liability insurance and financial assurances;

(D) Provide regular training and maintain policies on site management and operation requirements for the collection, sorting, or processing of covered electronic device materials; and

(E) If the service provider or downstream vendor is located in Oregon, comply with applicable state and local recordkeeping and reporting requirements, including reporting requirements for the Oregon Material Recovery Survey under OAR 340-090-0100 and any covered electronic devices reporting and tracking requirements for covered electronic devices.

(e) Monitoring. As part of monitoring and evaluating adherence by service provider and downstream vendors to environmentally sound management practices, an electronics producer responsibility organization must conduct:

(A) Reviews of changes in management processes in collectors and processors as changes arise;

(B) Quarterly reviews of collection reports from collectors and processing reports from processors;

(C) An annual audit of records related to the electronics producer responsibility program maintained by service providers and downstream vendors;

(D) Annual interviews with or surveys of collectors;

(E) Annual in-person site visits of:

(i) At least one-third of collectors in the electronics producer responsibility organization's collection network; and

(ii) All processors;

(F) Annual deployment of tracking devices to verify chain of custody and the fate of covered electronic device materials.

(f) An electronics producer responsibility organization must have processes to track and address fines, violations, or issues involving a service provider or downstream vendor. Processes must ensure the electronics producer responsibility organization will promptly notify DEQ of fines, violations, or issues related to environmentally sound management practices. Processes must also ensure the electronics producer responsibility organization can take appropriate action to ensure the environmentally sound management of covered electronic devices. Appropriate action can include terminating agreements with service providers or downstream vendors.

(g) Continuous improvement. An electronics producer responsibility organization must annually evaluate strategies to better achieve the standards for environmentally sound management practices in subsection (1). Strategies include incorporating new, more effective technologies; and improving existing practices and processes.

(3) DEQ administration.

(a) DEQ may approve alternative environmentally sound management practices from the requirements of subsections (1) and (2) if the electronics producer responsibility organization demonstrates to DEQ's satisfaction that the alternative environmentally sound management practices, such as the use of an independent, third-party certification program, are substantially equivalent in ensuring protection of, and compliance with all laws applicable to, human health and safety, the environment, and data privacy.

(b) For the purposes of monitoring compliance with environmentally sound management practices, DEQ may use tracking devices to track the fate of covered electronic device materials.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305, 459A.320

340-098-0250

Fair Financial Compensation

(1) In offering compensation to collection sites, an electronics producer responsibility organization may review the costs of collecting, storing, managing and transporting covered electronic devices across a range of collection sites or may use reasonable estimates of costs of collecting, storing, managing and transporting covered electronic devices.

(2) An electronics producer responsibility organization or coordinating body must cooperate with, and provide any information requested by, DEQ on whether an electronics producer responsibility organization has provided fair financial compensation to collection sites. Such information includes compensation rates offered to a collection site or a prospective collection site.

(3) As part of administering ORS 459A.305 to 459A.355, DEQ may periodically conduct a study, or approve an electronics producer responsibility organization to conduct a study with methodology acceptable to DEQ, on whether an electronics producer responsibility organization has provided fair financial compensation to collection sites.

(a) The study may include, but is not limited to, evaluations of:

- (A) The real costs of collection sites in urban and in rural areas in Oregon in collecting, storing, managing and transporting covered electronic devices, including labor, packing, storage, and security costs;
 - (B) Compensation rates offered to a collection site and to a potential collection site;
 - (C) Trends in collection costs and collection site compensation in Oregon;
 - (D) Alternative forms of compensation to compensation on a price-per-pound basis, such as a baseline fee for participation as a collection site, with price-per-pound compensation for pounds collected above a minimum threshold; and
 - (E) How changes in compensation may impact convenience.
- (b) An electronics producer responsibility organization or coordinating body must cooperate with and provide any information requested by DEQ to conduct the study.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.320

340-098-0255

Annual Reports

- (1) Unless directed otherwise by DEQ, an electronics producer responsibility organization must submit an annual report on the activities of its electronics producer responsibility program in a given calendar year by March 1 of the following year.
- (2) DEQ may require an electronics producer responsibility organization to provide in its annual report information on whether the electronics producer responsibility organization implemented its electronics producer responsibility program in accordance with the electronics producer responsibility organization's approved program plan and with ORS 459A.305 to 459A.355. Such information may include information on coordination if multiple program plans are approved, public awareness, program financing, environmentally sound management practices, fair financial compensation to collection sites, and measurement and achievement of goals, including but not limited to:
- (a) The reporting of the total weight of each type of covered electronic device, including peripherals, by product categories;
 - (b) A summary of any safety or security problems that occurred during the collection, transportation or disposal of covered electronic devices, such as fires that may have been resulted from managing covered electronic devices under a producer responsibility program at collection sites, processors, and other service providers and downstream vendors, and the actual or potential future resolutions of those problems; and

(c) Whether the electronics producer responsibility organization achieved program goals and possible reasons for why the electronics producer responsibility organization fell short of a goal and actions to remedy shortfalls or achieve the goal.

(3) An electronics producer responsibility organization may count pounds of covered electronic devices collected by a collection site through premium services towards the electronics producer responsibility organization's collection goals.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.320

340-098-0260

Coordinating Body

(1) DEQ may require a prospective coordinating body to submit a letter of intent and information to help DEQ evaluate the prospective coordinating body's ability to serve as a coordinating body.

(2) If electronics producer responsibility organizations with approved plans are unable to designate a coordinating body in accordance with the timeline set by DEQ, DEQ may designate a coordinating body that DEQ determines will be in the best interest of the electronics producer responsibility programs. A prospective coordinating body must provide any information DEQ needs to make its decision.

(3) DEQ may direct a coordinating body to conduct any coordination between electronics producer responsibility organizations for the implementation of electronics producer responsibility programs pursuant to ORS 459A.305 to 459A.355, including coordination related to:

(a) Public education and outreach activities to advertise and promote, on a regular basis, recycling of covered electronic devices and collection opportunities statewide;

(b) Program goals, including collection goals and public awareness goals; or

(c) The conducting of surveys or other measurements of public awareness about the electronics producer responsibility programs and electronics recycling opportunities.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.323

340-098-0265

Product Categories

Beginning in 2026, the product categories for purposes of sorting covered electronic devices at collection and calculating market share are:

- (1) Category 1 includes desktop computers, portable computers, and small-scale servers;
- (2) Category 2 includes printers, scanners, and fax machines;
- (3) Category 3 includes monitors and televisions;
- (4) Category 4 includes portable digital music players, digital video disc players, digital video disc recorders, videocassette recorders, video game consoles, digital converter boxes, cable receivers, satellite receivers, routers, and modems; and
- (5) Category 5 includes peripherals.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305

340-098-0270

Manufacturer Obligation Calculation

(1) A coordinating body, or an electronics producer responsibility organization if a coordinating body is not designated, must annually calculate each manufacturer's manufacturer obligation by:

(a) Multiplying the manufacturer's market share for each product category by the product category's percentage of the total weight of all covered electronic devices recycled during the previous year; and

(b) Adding the percentages calculated under subparagraph (a) of this section.

(2) In calculating a product category's percentage of the total weight of covered electronic devices recycled during the previous year for subparagraph 1(a) of this rule, an electronics producer responsibility organization or coordinating body shall use the total weight of covered electronic devices recycled in an electronics producer responsibility program during the previous year. For 2026, where covered electronic devices are not eligible for recycling by an electronics producer responsibility program in 2025, an electronics producer responsibility organization or coordinating body may use national data, consumer research, sampling, or any other similar data from 2025 to apportion the costs of the program or programs among all manufacturers, and to reconcile such apportionment against manufacturer obligations in subsequent years.

Statutory/Other Authority: ORS 468.020, 468.065 & 459A.345

Statutes/Other Implemented: ORS 459A.305, 459A.323