



# Oregon Department of Environmental Quality

**Thursday, June 21, 2012**  
**Environmental Quality Commission meeting**  
**Rulemaking: Action item D**

## **Oregon E-Cycles registration fee change**

### **DEQ recommendation to the EQC**

DEQ recommends that the Environmental Quality Commission:

Adopt the proposed PERMANENT rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

### **Overview**

#### Regulated parties

Manufacturers of covered electronic devices under Oregon's Electronics Recycling Law, ORS 459A.305 (3)(a)

#### Summary of proposed rules

The proposed rules would revise the registration fees electronics manufacturers pay annually to DEQ to cover DEQ's costs for administering Oregon's electronics recycling program, Oregon E-Cycles. The proposed rules would establish (a) the revenue needed to cover DEQ's administrative costs; and (b) a seven-tier fee structure and process to distribute the revenue need among registered manufacturers based primarily on their market share.

#### Brief history

The 2007 Legislature established the electronics recycling program, Oregon E-Cycles, to provide responsible recycling of computers, monitors and TVs in Oregon. Manufacturers of these electronic devices register with DEQ and pay an annual registration fee to cover DEQ's costs for administering the Oregon E-Cycles program. The 2007 legislation included a registration fee structure based on estimated costs and fee revenues for starting up and operating the new program. This current fee structure does not generate sufficient revenue to cover DEQ's actual program costs.

The law allows the Oregon Environmental Quality Commission to modify registration fees for calendar year 2012 and beyond so that fee revenue approximately matches DEQ's costs for implementing the Oregon E-Cycles program, ORS 459A.305 to 459A.355, excluding costs incurred for operating the state contractor-run electronics recycling program under ORS 459A.340 (4). DEQ's March 2012 ["Oregon E-Cycles Biennial Report"](#) to the legislature more fully describes the Oregon E-Cycles program.

## Need for this proposed rule

What problem is DEQ trying to solve?

The existing fee structure has not generated sufficient revenue to cover DEQ's start-up and ongoing operating costs for administering Oregon E-Cycles and will not cover projected costs. Revenue is highly variable under the existing fee structure, as shown in Table 1. Although the number of manufacturers has remained relatively steady since 2008, a drop in the number of manufacturers in the highest fee tiers has caused revenue to decline from \$388,000 in 2008 to \$287,000 in 2011 (less than the \$300,000 revenue estimated for the 2007 legislation). The few tiers and large difference in fee amounts between tiers, shown in Table 1, magnifies the revenue impacts of any redistribution of manufacturers among tiers.

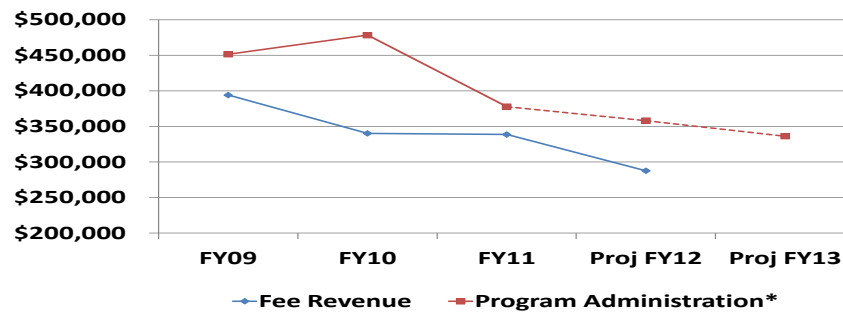
**Table 1**  
**Oregon E-Cycles Existing Fee Structure**  
**Revenue Received, Manufacturers and Market Share**

Existing Fee Structure			2008		2009		2010		2011	
Tier	Market Share (MS)	Fee	Mfrs	Total MS	Mfrs	Total MS	Mfrs	Total MS	Mfrs	Total MS
1	> 1%	<b>\$15,000</b>	22	93.85%	19	91.73%	16	92.05%	14	92.52%
2	0.1% ≤ 1%	<b>\$5,000</b>	17	5.52%	16	7.25%	19	7.13%	15	6.69%
3	0.01% < 0.1%	<b>\$200</b>	14	0.52%	20	0.98%	18	0.80%	20	0.75%
4	< 0.01%	<b>\$40</b>	108	0.11%	112	0.04%	108	0.02%	119	0.04%
<b>Total Manufacturers</b>			<b>161</b>		<b>167</b>		<b>161</b>		<b>168</b>	
<b>Revenue received</b>			<b>\$388,000</b>		<b>\$339,000</b>		<b>\$339,000</b>		<b>\$287,000</b>	
<b>Average/4 years</b>			<b>\$338,338</b>							

In addition, DEQ's costs have exceeded the original program estimates: personnel and other costs have increased; start-up costs exceeded estimates; costs were incurred for activities related to unanticipated amendments to the electronics recycling law in 2010 and 2011; and DEQ incurred higher than expected costs to plan for a data system to manage the program. Beginning in late 2013, DEQ will incur additional costs to add printers and computer peripherals to the program. The additional manufacturers of the new devices will also register and pay fees.

DEQ has reduced its costs over the past two years through efficiencies in program operations and staff reductions, and will work with stakeholders to identify additional reductions to hold program costs as steady as possible as cost factors such as health insurance or salary adjustments increase. Nevertheless, DEQ has determined that program operating costs cannot be reduced to the current revenue level without significant changes in program design, which would require legislative action. The graph in Figure 1 illustrates the revenue shortfalls.

**Figure 1**  
**Oregon E-Cycles Registration Fee Revenue and Program Costs**



\* Program costs paid by registration fee, excluding database development

DEQ has used solid waste disposal fees to make up the registration fee shortfalls each year, but that funding cannot continue. Disposal fee revenue has declined significantly and beginning July 2008, the Oregon E-Cycles program was to be fully funded by manufacturers. The disposal fee revenue spent on Oregon E-Cycles needs to be repaid to the extent possible and registration fees need to cover future program costs.

How would the proposed rule solve the problem?

The proposed registration fees are designed to generate the revenue needed to cover DEQ's costs for administering the Oregon E-Cycles program.

## Proposed fees

### Brief description of proposed fees

To help ensure that registration fee revenue covers DEQ's program costs each year, the proposed rules would establish: (a) the "revenue need" for each year to cover projected program costs, and (b) a fee structure to distribute the revenue need among all registered manufacturers based primarily on their market share.

#### a. Revenue need

The revenue need is the amount of revenue DEQ must collect in registration fees to cover DEQ's projected costs for implementing the Oregon E-Cycles program. The proposed rules would establish the revenue need for each year as shown in Table 2.

Table 2 Oregon E-Cycles Registration Fee Revenue Need				
Program Costs	2012 FY13*	2013 FY14	2014 FY15	2015 FY16
Annual operating costs	\$360,000	\$360,000	\$360,000	\$395,000
Repay loan and create operating balance	\$55,000	\$55,000	\$60,000	\$55,000
Add new products		\$20,000	\$15,000	\$15,000
<b>Revenue Need</b>	<b>\$415,000</b>	<b>\$435,000</b>	<b>\$435,000</b>	<b>\$465,000</b>

\*FY13 corresponds to E-Cycles billing year 2012. Fiscal years run July 1 through June 30. The FY designates the ending year (e.g. FY13 is the year ending June 30, 2013).

Revenue need covers both annual operating costs and other program costs. The annual operating costs remain at the current level of \$360,000 through FY 15, with pared activities and efficiencies offsetting cost increases from salary and benefit adjustments, inflation, etc. Annual operating costs for FY 16 allow for a 10 percent increase over current levels. Beginning in 2013, revenue need would also cover costs for adding new products, such as purchasing market share data, notifying and adding manufacturers and informing the public.

Other program costs covered in the revenue need include (a) repayment of a projected deficit from programs operations from July 2008 through June 2012 and from database planning and design work and (b) creation of a three-month operating balance for the program. To date, DEQ has covered these costs with solid waste disposal fee revenue. The proposed revenue need would pay for half of these other program costs totaling \$552,105 over a five year period through FY 17, adding an average of \$55,000 per year to the revenue need, as shown in Table 2. DEQ does not expect registration fees to repay solid waste disposal fees for the remaining half of these other program costs.

The proposed rules would allow DEQ to adjust revenue need in the following situations, but otherwise revenue need would be revised through rule amendment. If registration fee revenue

exceeds DEQ's actual costs for the program, DEQ would reduce revenue need by that excess amount in a subsequent year and evaluate whether revenue need should be revised for future years to more closely match DEQ's projected costs. Conversely, if DEQ is unable to collect revenue from registration fees owed for a prior year due to bankruptcies or other uncollectable debt, DEQ could add the amount of uncollected revenue to the revenue need in a subsequent year as necessary to cover program costs. To support accountability, the proposed rules also provide that DEQ will report its current and projected program expenditures and revenue each year; in practice, DEQ discusses E-Cycles financial information with stakeholders.

b. Fee structure

The proposed registration fee structure, shown in Table 3, includes seven fee tiers based on market share with a \$35,000 cap on fees, fixed fees for lower tiers and a \$200 minimum fee for upper tiers. It is designed so that each year the registration fees assessed equal the revenue need.

<p>Table 3</p> <p><b>Proposed Oregon E-Cycles Registration Fee Structure</b></p> <p><b>To Distribute Annual Revenue Need</b></p>		
<b>Tier</b>	<b>Market Share</b>	<b>Fee</b>
Tier 1	5% or greater	<p>Calculate fees for Tiers 1-5 as follows:</p> <p>1) Determine fee revenue expected from Tiers 6 &amp; 7</p> <p>[# manufacturers in tier] x [tier fee] = expected revenue from tier</p> <p>2) Determine remaining revenue need to be distributed to Tiers 1-5:</p> <p>[revenue need] – [revenue from Tiers 6 &amp; 7] = remaining revenue need</p> <p>3) Determine fee for each tier:</p> $\left[ \frac{(\text{total market share of tier}) \times (\text{remaining revenue need})}{\# \text{ manufacturers in tier}} \right] = \text{tier fee}$ <p>4) Adjust tier fees so none is &gt;\$35,000 or &lt;\$200</p> <ul style="list-style-type: none"> <li>Cap any fee over \$35,000; distribute revenue above cap to lower tiers in proportion to their market share</li> <li>Raise any fee &lt;\$200 to \$200; recalculate fees for higher tiers</li> </ul>
Tier 2	1% to < 5%	
Tier 3	0.1% to < 1%	
Tier 4	0.03% to < 0.1%	
Tier 5	0.01% to < 0.03%	
Tier 6	50 units to < 0.01%	\$200
Tier 7	< 50 units	\$40

DEQ assigns manufacturers to Tiers 1-7 based on their market share. All manufacturers within a tier pay the same fee in any given year. Manufacturers in Tiers 6 and 7, with the smallest market shares, pay a fixed fee of \$200 and \$40, respectively. 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), resulting in a fee increase for those tiers. If the resulting fee for any tier is below \$200, DEQ raises the fee to \$200, and recalculates the fee for each higher tier as described above, resulting in a fee decrease for those tiers.

#### Fee alternatives considered

DEQ and the advisory committee evaluated several alternative fee structures using registration data from Oregon E-Cycles operations since 2008 and hypothetical scenarios for future market changes. Alternatives that did not reliably generate revenue to cover DEQ's costs each year were eliminated.

Another consideration was how closely fees matched – or should match - market share. The law simply requires fees to be based on market share and established the existing fee tiers with fees increasing with market share. The more closely fees are tied to market share (e.g. a manufacturer with a 10 percent market share pays 10 percent of total revenue), the more comparable the fee per unit sold in Oregon is among all manufacturers, which is one measure of equity in ability to pay. Viewed differently, though, since DEQ's activities and costs to implement Oregon E-Cycles are not directly related to the size of any manufacturer, some thought all but the smallest manufacturers should share costs equally and pay the same fee. Other key considerations were the predictability of fees for manufacturers from year to year and the impact of fees on small businesses.

Following are the alternative fee structures evaluated with the advisory committee:

*Please see the [Oregon E-Cycles Registration Fee Advisory Committee](#) web page for more information.*

a. **Fixed fees**

Variations evaluated included increasing fees in the existing fee structure, expanding to eight tiers, and assessing a flat fee for all manufacturers. None reliably generated DEQ's annual revenue need and all were eliminated.

b. **Fixed fees with a surcharge**

This model used a six-tier fixed fees structure and added a surcharge to be distributed to the top two tiers to cover the revenue shortfall in any year the fixed fees did not generate the revenue need. This model provided fee certainty for roughly 90 percent of manufacturers, but the surcharge created uncertainty for upper tier manufacturers that was a concern for some on the committee. As with any fixed-fee model, fees are less closely tied to market share than fees under the more market share driven models discussed next.

c. **Straight market share**

This model assessed each manufacturer's fee based on its market share percentage of total revenue need (e.g. a manufacturer with 10 percent market share paid 10 percent of revenue need). All manufacturers have the same cost per unit sold in Oregon for fees under this model. Fees for manufacturers with the largest market shares were significantly higher under this versus other models, with \$70,000 for the largest. The fee for any manufacturer varies with its market share each year.

d. **Six tiered market share**

This model is the same as the proposed fee structure without the fee caps or minimums or Tier 7. Each tier pays for its total market share percentage of revenue need, but that amount is divided evenly among the manufacturers in that tier. Using tiers and averaging fees within tiers, particularly Tier 1, reduces the highest fees seen with the straight market share model, but not as much as fee caps used in the next model. Fees in this model vary by tier each year, based on the number and total market share of all manufacturers in a fee tier, instead of by each manufacturer's market share.

e. **Six tiered market share with a fee cap**

This model is the same as the proposed fee structure without minimum fees or Tier 7. After fees for each tier are calculated, the fee cap is applied. If the fee for any tier is over the cap, the amount of revenue over the cap is distributed through the lower tiers. A cap limits fees and provides more certainty for budgeting for manufacturers in the highest tiers, but less certainty for lower-tier manufacturers, whose fees increase with the redistribution of any revenue amounts over the cap. The larger the cap, the smaller the impact on fees for lower tiers.

Modeling fee caps from \$20,000 to \$40,000 under various market scenarios demonstrated the potential for future market consolidation to cause significant fee increases for lower tier manufacturers. In 2010 and 2011, for example, approximately 70 to 80 percent of the market was held by eight or nine manufacturers that each had over 5 percent market share. If the market consolidated so only a few manufacturers accounted for 70 to 80 percent of the market, the caps considered would result in large over-cap revenue amounts being distributed to lower tiers.

f. **Minimum fees**

DEQ and the advisory committee discussed different minimum fee amounts and the impacts those would have on the manufacturers paying those fees and the fees for other tiers. Committee members supported a \$200 fee for the smallest manufacturers, which included proposed Tiers 6 and 7.

g. **Tier structures**

DEQ and the advisory committee also evaluated different numbers of tiers and market share ranges within tiers. Adding tiers and reducing the ranges of market share within tiers better groups manufacturers more similar in size. Grouping similarly sized manufacturers across all tiers provides more uniformity among tiers and helps moderate year-to-year changes in tier fees, including preventing large fee increases for manufacturers at the smaller end of each tier.

## Basis for recommending the proposed fees

1. The proposed fees would consistently generate the revenue needed to cover DEQ's costs each year, even as revenue needs change.
2. The proposed fee structure would tie fees more closely to market share than the existing fee structure but it would also include modifications to limit fees for manufacturers with a large market share. Evenly distributing fees within tiers would moderate the year-to-year fluctuation of fees and reduce fees for manufacturers with higher market shares in each tier. The additional tiers and smaller market share ranges within tiers would distribute fees among more similarly sized manufacturers, which would also help temper fee changes and prevent large fee increases for the manufacturers with the lower market shares in each tier.
3. Capping fees at \$35,000 would limit the fee and provide some certainty for manufacturers in Tier 1. For manufacturers in Tiers 2 through 5, the \$35,000 cap would provide more of a buffer against significant fee increases from market consolidation than lower caps.
4. Setting \$200 and \$40 fixed fees for Tiers 6 and 7, respectively, would provide fee certainty for all small manufacturers and maintain existing fees for the smallest.
5. The proposed fee structure is very similar to the registration fee structure for E-Cycles Washington, which does not cap fees, and would support consistency between these two quite similar programs.

## Summary of impacts

Even under the current fee structure, a manufacturer's registration fee may change from year to year if its market share changes. In order to measure the impact of the proposed fee change on manufacturers, DEQ calculated each manufacturer's fee under the proposed fee structure using E-Cycles manufacturer and market share data for 2008-2012 and compared those fees to fees under the current fee structure. Table 4 shows the results of that analysis. Fees under the proposed fee structure using 2012 data increased by \$20,000 for six Tier 1 manufacturers, increased \$2,468 for nine Tier 2 manufacturers, decreased \$3,153 for nineteen Tier 3 manufacturers, increased \$206 for eight Tier 4 manufacturers, and increased \$160 for fifteen Tier 6 manufacturers. Fees remained the same for eight manufacturers in Tier 5 and 94 in Tier 7.

Manufacturers would begin paying fees under the proposed fee structure in 2013. For 2012 only, manufacturers would pay fees to meet the \$415,000 revenue need as follows. All manufacturers will pay fees under the existing fee structure, due July 1, 2012. The total revenue to be collected from those fees, \$327,560, is \$87,440 short of the \$415,000 needed for 2012. To meet revenue need, DEQ would allocate the shortfall among manufacturers whose fees for 2012 would be at least \$250 higher under the proposed fee structure. The shortfall would be allocated in proportion with their market share. The result is that the six manufacturers in proposed Tier 1 would each pay an additional \$10,573, for \$25,573 total, and the nine manufacturers in proposed Tier 2 would each pay an additional \$2,667, for \$17,667 total, in 2012. The \$250 threshold for allocating the shortfall would eliminate eight manufacturers who otherwise would collectively pay an additional \$493 in fees in 2012.



Table 4  
Comparison: Proposed to Existing Registration Fees  
Using E-Cycles Manufacturer Data for 2008 – 2012  
and \$415,000 as the Revenue Need

Proposed Fees <sup>1</sup>															
	Tier 1		Tier 2		Tier 3		Tier 4		Tier 5		Tier 6		Tier 7		
Year	Mfrs	Fee	Mfrs	Fee	Mfrs	Fee	Mfrs	Fee	Mfrs	Fee	Mfrs	Fee	Mfrs	Fee	Total Mfrs
2008	8	\$30,917	14	\$9,717	17	\$1,327	7	\$211	7	\$200	1	\$200	107	\$40	161
2009	6	\$35,000	13	\$12,678	16	\$2,073	15	\$274	5	\$200	1	\$200	111	\$40	167
2010	8	\$35,000	8	\$11,937	19	\$1,725	11	\$573	7	\$200	0	-	108	\$40	161
2011	9	\$35,000	5	\$12,332	15	\$1,841	8	\$284	12	\$200	2	\$200	117	\$40	168
2012	6	\$35,000	9	\$17,468	19	\$1,847	8	\$406	8	\$200	15	\$200	94	\$40	159
Existing fees															
All Yrs		\$15,000		\$15,000		\$5,000		\$200		\$200		\$40		\$40	
Proposed to existing fee changes															
2012	6	+\$20,000	9	+\$2,468	19	-\$3,153	8	+\$206	8	same	15	+\$160	94	same	

<sup>1</sup>The fee for each tier depends on the total market share of manufacturers in the tier, the number of manufacturers in the tier, revenue need for the year, and the amount of revenue over the \$35,000 cap distributed to lower tiers.

## Fiscal impact statement

### Fiscal and economic impact

The fiscal impact on large businesses and tribal nations would be similar to the impact described under 2 below.

ORS 183.336 (10)

#### 1. Impact on state agencies, units of local government and the public.

The proposed rules do not impact state agencies, units of local governments or the public unless they are manufacturers of electronic devices covered under the E-Cycles program. Any registration fees passed onto consumers as cost increases in covered electronic devices would be negligible.

#### 2. Cost of compliance on small businesses with 50 or fewer employees.

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

Assuming all manufacturers in the lowest fee tier are small businesses, 109 small businesses could be affected by this rule.

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

No additional activities are required for compliance with the proposed rules. All manufacturers already pay registration fees.

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

No additional equipment, supplies, labor or administrative resources are required for compliance with the proposed rules. All manufacturers already pay registration fees.

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

DEQ included small business representatives on the Oregon E-Cycles Registration Fee Advisory Committee that advised DEQ on the cost of compliance for small businesses. DEQ also provided notice of the proposed rules to all manufacturers registered under Oregon E-Cycles, the fee-payers, including those that are small businesses.

### Housing Cost

DEQ determined the proposed rulemaking will have no 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. The proposed fee affects only manufacturers of electronic devices sold in or into Oregon.

## Federal relationship

*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

ORS 183.332  
OAR 340-011-0029  
ORS 468A.327

The proposal adopts the federal requirement verbatim or by reference. FALSE

This rule proposal is in addition to federal requirements. The following exemption from adopting rules that correspond with equivalent federal laws and rules applies to this proposal:

There is no corresponding federal regulation. ORS 183.332 (6)

**Discuss HOW the proposal is different from or in addition to federal requirements.**

The proposed fees apply to an Oregon program; no comparable federal program or requirement exists.

**Discuss WHY the proposal is different from or in addition to federal requirements.**

No comparable federal program or requirement exists.

## Rules affected, authorities, supporting documents

Lead division

Land Quality

Program or activity

SW PPD, Oregon E-Cycles

Chapter 340 action▶

Recommendation▶	Division	Rule	Title	SIP/Land use*
adopt	098	0000	Applicability	
adopt	098	0010	Definitions	
adopt	098	0100	Revenue need	
adopt	098	0150	Registration fees	
adopt	098	0200	Notifications	

Statute implemented▶

ORS 459A.305, ORS 459A.315

Legislation

HB 2626

Year

2007

Statutory or other legal authority

ORS 468.020, 468.065, 459A.345

## Land use

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

OAR 340-018

ORS 197.180

OAR 660-030

### Land use considerations

To determine whether the proposed rules involve programs or actions that are considered a *land-use program*, DEQ considered:

- The statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program► document identifies the following statewide goal that relates to DEQ's authority:

Goal	Title
6	Air, Water and Land Resources Quality
5	Open Spaces, Scenic and Historic Areas, and Natural Resources
11	Public Facilities and Services
16	Estuarian resources
19	Ocean Resources

- OAR 340-018-0030 for programs or actions that relate to the proposed rules.
- DEQ's mandate to protect public health and safety and the environment.
- Whether DEQ is the primary authority that is responsible for land use programs or actions in the proposed rules.
- Present or future land uses identified in acknowledged comprehensive plans.

### Determination

DEQ determined that the proposed rules identified under the Chapter 340 Action section above **do not affect** existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination Program.

## Implementation

### Notification

If approved, the proposed rules would become effective on filing, which is expected to be before the end of June 2012. DEQ will notify the approximately 160 affected parties by mail and e-mail. DEQ will send a GovDelivery notice to approximately 7,000 interested parties, the advisory committee members and commenters.

### Systems

- Website – Update several Oregon E-Cycles web pages
- Database – Modify DEQ’s E-Waste database to support invoicing for the revised fees.
- Invoicing for 2012 only – Generate and track additional invoices for approximately fifteen manufacturers.

## Five-year review

### Requirement

[ORS 183.405](#)

The Administrative Procedures Act requires DEQ to review **new** rules within five years of the date the EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ based the analysis on the current law.

### Exemption

The APA exemptions from the five-year rule review under ORS 183.405(4) and 183.450(5) do not apply to the proposed rules.

### Five-year rule review required

No later than June 26, 2017, DEQ will review the newly adopted rules as required under ORS 183.405 (1) to determine whether:

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

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.450 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.450 (3).

## Stakeholder involvement

### Advisory committee

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

The 15-member advisory committee included representatives from seven electronics manufacturers, including three smaller companies with fewer than fifty employees, two local governments, two electronics recyclers, two E-Cycles recycling programs and two electronics industry organizations. Advisory committee members included:

Jim Craven	TechAmerica
Lee Fortier	Oregon Refuse and Recycling Association
Mary Jacques	Lenovo (US)
Becky Jarvis	Electronics Unlimited
Scott Klag	Portland Metro Regional Government
Jeff Kuypers	Hewlett Packard
Jason Linnell	National Center for Electronics Recycling
Craig Lorch	Total Reclaim
Michael Moss	Samsung Electronics
Betty Patton	Electronic Manufacturers Recycling Management
Bailey Payne	Marion county
Tim Rocak	Garten Foundation
Erik Stromquist	Computer Technology Link
Mike Watson	Dell Marketing (USA)
Gail Zuro	Planar

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

### Public notice

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

- Posted the notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> on March 30, 2012.
- Emailed the notice to:
  - 7,068 interested parties through GovDelivery on March 30, 2012.
  - 159 registered electronic manufacturers in the Oregon E-Cycles program on March 30, 2012.

- Three legislators, as required under ORS 183.335, on April 5, 2012: Senator Dingfelder, Chair, Environment and Natural Resources; Representative Bailey, Co-Chair, Energy, Environment and Water, Representative Gilliam; and Co-Chair, Energy, Environment and Water.
- Members of the advisory committee on March 30, 2012.

#### Public hearings

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

#### Public comment

DEQ received eight written comments. Please see the summary of comments and DEQ responses below.

#### Close of public comment period

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

## Summary of comments and DEQ responses

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

### 1. **Appreciate stakeholder involvement**

Commenters 6, 7 and 8

- a. Commenter appreciates the opportunity to participate in advisory committee meetings and conference calls to obtain stakeholder input before proposing rules. (6, 7) This input has improved the rule making proposal. (6)
- b. DEQ has made a great effort to involve the regulated community to develop an effective program fair to the regulated community. (8)

#### **Response**

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

### 2. **Proposed fee changes sustain the program**

Commenter 1

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

#### **Response**

DEQ appreciates the review and feedback.

### 3. **Exempt or reduce fees for small manufacturers**

Commenters 2, 3 and 4

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



### **Response**

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

#### **4. Six-tier fee structure causes unstable revenue and unpredictable fees**

Commenters 5, 7 and 8

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

### **Response**

- The proposed fee structure resolves the problem of fluctuating revenue year-to-year inherent in the existing fee structure. It consistently generates the established revenue need each year by allocating that revenue amount among registered manufacturers. Annual revenue does not fluctuate even if the numbers of manufacturers in tiers change.
- The addition of tiers to the proposed fee structure does provide more opportunity for manufacturers to shift between tiers, but more tiers also allows for smaller market share ranges within tiers and smaller gradations of fees between those tiers.
- Even under the existing fee structure, a manufacturer's fee may change from year to year if its market share changes. Additional factors also affect the variability of a manufacturer's fees

under the proposed fee structure: the annual revenue need, the number of manufacturers in its tier and their market shares, whether fees are capped and the amount of revenue over cap. To evaluate variability, DEQ calculated fees under the proposed structure using the five years of E-Cycles data. The results in Table 4, in Proposed Fees above, show that, on the average, 76 percent of manufacturers had some fee certainty (Tiers 1, 5, 6 and 7). Fees in Tiers 2, 3, and 4 fluctuated from year-to-year. These are the tiers most affected by the redistribution of revenue over the \$35,000 cap in the 2009-2012 scenarios. The differences between the highest and lowest fees over the five years modeled for were \$7,751 for Tier 2 (80% change), \$746 for Tier 3 (56% change), and \$362 for Tier 4 (172% change).

- Market consolidation adds to the volatility of fees because of the \$35,000 cap on fees. For example, consolidation to fewer manufacturers holding a large share of the market could significantly increase the amount of revenue over cap in Tier 1 that is distributed to Tiers 2-5, increasing their fees. DEQ modeled several market scenarios to evaluate the potential consolidation effects of caps between \$20,000 and \$40,000. The lower-range caps resulted in considerable volatility and potential for significant fee increases in Tier 2-5 fees in the consolidation scenarios. The \$35,000 cap is a compromise that still provides an upper limit fee and certainty for large manufacturers but reduces the risk of large fee increases for Tiers 2-5. The fee cap was proposed during rule development in response to requests for some fee limit and certainty for larger manufacturers.
- DEQ and the advisory committee considered a six-tier fixed fee structure with a surcharge to be distributed to the top two tiers to cover the revenue shortfall in any year the fixed fees did not generate the revenue need. That model would have provided certainty for roughly 90% of manufacturers, but was dropped from further consideration because of concerns over the uncertainty the potential surcharge created for the upper tier fees.
- In March of each year, as soon as the necessary market share data is available, DEQ makes a preliminary determination of each manufacturer's market share and registration fee for that calendar year and notifies manufacturers of those determinations. Manufacturers have thirty days to request changes to their preliminary market share and fee determinations. Following that thirty-day period, DEQ evaluates any information received, makes final market share and fee determinations and notifies manufacturers of those in May. DEQ sends registration fee invoices in May; manufacturers must pay registrations fees by July 1. To determine registration fees, DEQ must gather market share data from the previous year (e.g., 2011 data for 2012). DEQ requests market share information from manufacturers and purchases national market share data for the previous calendar year. That data gathering and analysis runs from December through February or early March.

## **5. Proposed allocation of fees based on market share is not fair or justifiable**

Commenters 5, 7 and 8

- a. Manufacturers in all but the lowest proposed tier should pay the same fees. Sales volumes for all but those smallest manufacturers are high enough to negate the need for a graduated fee structure as proposed. (8)

- b. DEQ's costs to register a manufacturer and track its participation are the same regardless of the size of the manufacturer, so there is no financial justification for requiring manufacturers with larger market shares to pay higher registration fees. (5, 7, 8) Given this, the proposed fee increase for the top tier is unwarranted. (7) Assigning recycling obligations to manufacturers based on their respective shares of products returned for recycling appropriately reflects a manufacturer's burden on the system – but the same rationale does not hold for registration fees. (7) Since manufacturers in the higher tiers [may] also have larger recycling obligations, requiring them to also pay higher registration fees seems punitive. (8)
- c. The fee structure should not reduce fees for any manufacturer. DEQ needs to increase revenue and companies have already budgeted for those fees. (7)

### Response

- DEQ and the advisory committee considered how closely fees should match market share. Although the electronics recycling law requires simply that fees be based on market share, it also established the existing fee tiers with fees increasing with market share. The proposed tier structure with graduating fees continues that concept. Moreover, even though DEQ's program costs, including manufacturer registration, do not vary based on the market share of any manufacturer, market share is an important consideration in evaluating impacts registration fees will have on manufacturers - as measured by their cost per unit sold in Oregon.
- To partially address concerns that fees not be based strictly on market share, the proposed fee structure incorporates features to reduce the revenue amount large manufacturers pay and shift that to the lower tiers– primarily capping fees for large manufacturers and distributing revenue over cap to lower tiers, but also setting the \$200 minimum fee (except for Tier 7). Distributing fees evenly within tiers also reduces fees for larger manufacturers in any tier, but particularly those in Tier 1.
- The flat fee structure with a surcharge, noted in response to comment 4, generated the revenue needed each year using fees less closely tied to market share, but the surcharge raised concerns for large manufacturers.
- Tables 5 and 6 provide snapshots of manufacturers' costs per unit sold in Oregon under the proposed and existing fee structures, respectively, using E-Cycles data for 2012. If fees were based strictly on individual market share, all manufacturers would pay the same cost per unit sold. Instead, the proposed fee structure bases fees on the market share of tiers and includes other adjustments to temper fee increases for large manufacturers. As a result, the cost per unit sold gradually increases as the market share decreases, as seen in the cost per unit averages in Table 5. Narrowing the market share ranges also tempers year-to-year fluctuations in unit costs. While the relative differences in unit costs among the tiers in Table 5 can be compared to the relative differences among tiers in Table 6, the actual unit costs in those tables are less comparable because the two fee structures generate different amounts of revenue.
- Given the shift from the existing flat fee structure to the proposed fee structure, fees for manufacturers in proposed Tiers 2 and 3 would decrease under certain market scenarios. Those fee decreases can be seen in Table 4, in Proposed Fees above, which compares proposed to existing fees using E-Cycles data for 2008-2012. Fees for manufacturers in proposed Tier 2 (the

low end of existing Tier 1) and proposed Tier 3 (existing Tier 2) decrease because they are disproportionately higher per unit cost (market share) than the fees of other manufacturers under the existing fee structure, as seen in Table 6.

- DEQ did not use the existing fees as a starting point for the proposed fee structure and could not match proposed to existing fees without moving to a fixed fee structure.

**Table 5**  
**Cost per Unit - Proposed Fee Structure**  
**Using E-Cycles data for 2012**  
**Revenue generated: \$413,906**

Existing Fee Structure			Units Sold in Oregon			Cost/Unit Sold <sup>1</sup>	
Tier	Market Share (MS)	Fee	Total	Range High-Low MS	Average	Range High-Low MS	Average
1	5% or greater	\$35,000	1,059,319	108,397 - 272,251	176,553	\$0.13 - \$0.32	\$0.20
2	1% to < 5%	\$17,468	400,777	17,345 - 71,000	44,531	\$0.25 - \$1.01	\$0.39
3	0.1% to < 1%	\$1,847	89,444	1,651 - 13,658	4,708	\$0.14 - \$1.12	\$0.39
4	0.03% to < 0.1%	\$406	8,274	471 - 1,481	1,034	\$0.27 - \$0.86	\$0.39
5	0.01% to < 0.03%	\$200	2,424	176 - 394	303	\$0.51 - \$1.14	\$0.66
6	50 units to < 0.01%	\$200	1,372	50 - 148	91	\$1.35 - \$4.00	\$2.20
7	< 50 units	\$40	406	1 - 46	20	\$0.87 - \$40 <sup>2</sup>	\$2.00 <sup>2</sup>
<b>Totals:</b>			<b>\$413,906</b>	<b>1,562,016</b>			

<sup>1</sup>Cost per unit sold varies each year based on the total number of units sold and a manufacturer's market share and fee.

<sup>2</sup>Calculations include manufacturers with reported market share (exclude those with no market share.)

Table 6  
**Cost per Unit - Existing Fee Structure**  
**Using E-Cycles data for 2012**  
**Revenue generated: \$327,560**

Existing Fee Structure			Units Sold in Oregon			Cost/Unit Sold <sup>1</sup>	
Tier	Market Share (MS)	Fee	Total	Range High-Low MS	Average	Range High-Low MS	Average
1	> 1%	\$15,000	1,460,096	17,345 - 272,251	97,340	\$0.06 – 0.86	\$0.15
2	0.1% ≤ 1%	\$5,000	89,444	1,651 – 13,659	4,708	\$0.37 – 3.03	\$1.06
3	0.01% < 0.1%	\$200	10,697	176 – 1,481	669	\$0.14 – 1.14	\$0.30
4	< 0.01%	\$40	1,777	1 - 148	51	\$0.27 - \$40 <sup>2</sup>	\$0.78 <sup>2</sup>
<b>Totals: \$327,560</b>			<b>1,562,014</b>				

<sup>1</sup>Cost per unit sold varies each year based on the total number of units sold and a manufacturer's market share and fee.

<sup>2</sup>Calculations include manufacturers with reported market share (exclude those with no market share.)

## 6. Two-tier fee structure would more equitably meet program objectives

Commenters 5 and 8

- a. Adopt a two-tier fee structure: \$7,000 for manufacturers with market share over 0.01% and \$500 for all others. (5, 8) Allow DEQ to increase the upper tier fee to \$10,000 without rulemaking if the number of registered manufacturers changes so that revenue does not meet the \$415,000 base budget. (5)
- b. This two-tier fee structure would allow DEQ to meet its revenue targets with a small reserve; provide manufacturers with a stable, predictable registration fee; and allocate costs of registration and program administration equitably among all program participants. (5)

### Response

- Table 7 compares fees under the proposed fee structure and the two-tier structure using E-Cycles manufacturer data and \$415,000 revenue need for 2012. The two-tier fee structure with a \$7,000 upper and \$500 lower tier fee generates \$10,500 less than the revenue needed. Raising the upper tier fee as suggested would generate the current and projected revenue need under 2012 market conditions. However, since the two-tier structure is not tied directly to revenue need, changes in market conditions such as market consolidation could result in revenue shortfalls.

Table 7  
**Fee Comparison**  
**Proposed Fee Structure and Two-Tier Structure**  
**Using 2012 E-Cycles data**  
**Revenue Need: \$415,000**

Proposed Fee Structure				Two Tier Fee Structure		
Tier	Market share	Fee	# Mfrs	Tier	Fee	# Mfrs
1	5% or greater	\$35,000	6	1	\$7,000	50
2	1% to < 5%	\$17,468	9			
3	0.1% to < 1%	\$1,847	19			
4	0.03% to < 0.1%	\$406	8			
5	0.01% to < 0.03%	\$200	8			
6	50 units to< 0.01%	\$200	15	2	\$500	109
7	< 50 units	\$40	94			
Total mfr		159		159		
Total revenue generated		\$413,906		\$404,500		

- Under the two-tier structure, the 15 large manufacturers in Tiers 1 and 2 of the proposed fee structure would see large fee reductions while the other 144 manufacturers would see large fee increases. The largest increase, from \$200 to \$7,000 for Tier 5 in the proposed fee structure, represents a 3,400 percent increase.
- The two-tier fee structure does not scale fees to market share, except to provide a separate tier for the smallest manufacturers. Both the existing and proposed fee structures graduate fees with market share, and, as noted in response to comment 5, market share is important in evaluating impacts of registration fees on manufacturers. Table 8 shows those impacts measured as cost per unit sold in Oregon under the proposed two-tier structure using 2012 E-Cycles market share data. As seen in the ranges in Table 8, the two-tier structure results in major differences in unit costs among manufacturers both within and between tiers.
- DEQ has not recommended the two-tier fee structure because it is not tied to revenue need and does not adequately consider market share – resulting in significant fee increases for all but the largest manufacturers, who would see large fee decreases, and large disparities in cost per unit sold among manufacturers.

Table 8  
**Cost per Unit - Two Tier Structure**  
**Using E-Cycles data for 2012**  
**Revenue generated: \$404,500**

Existing Fee Structure			Units Sold in Oregon			Cost/Unit Sold <sup>1</sup>	
Tier	Market Share (MS)	Fee	Total	Range High-Low MS	Average	Range High-Low MS	Average
1	≥ .01%	\$7,000	1,560,237	176 - 272,251	31,205	\$0.03 - \$39.77	\$0.22
2	< .01%	\$500	1,777	1 - 148	51	\$3.38 - \$500 <sup>2</sup>	\$9.80 <sup>2</sup>
<b>Totals:</b>			<b>\$404,500</b>	<b>1,562,014</b>			

<sup>1</sup>Cost per unit sold varies each year based on the total number of units sold and a manufacturer's market share and fee.

<sup>2</sup>Calculations include manufacturers with reported market share (exclude those with no market share.)

## 7. Proposed fee schedule is inconsistent with fee schedules in other states

Commenter 8

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

### Response

- Comparing registration fees among the 25 states that have electronics recycling programs is difficult because the programs are so different. Any comparison needs to consider variables such as the services covered by fees, fee models, whether fees fully fund a program and program maturity.
- DEQ's proposed fee structure is comparable to the fee structures in three other states (WA, CT and VT) that use a similar approach: establish a revenue need and allocate fees based on market share to meet that need. Washington's program and fee structure are most comparable to Oregon's. Washington's 2011 registration fee for the top tier was \$43,721. Connecticut's highest registration fee for 2011 was \$71,229.
- Seven other state programs DEQ reviewed (ME, HI, MN, NC, NY, PA and MI) used one, two or three tier fee schedules with fees ranging from \$3-15,000, but their programs and funding requirements were not similar to Oregon's. For example, five of those are not fully funded by registration fees and two were start ups and did not yet know their total revenue needs.

## **8. Revenue need adjustments provide little incentive for DEQ to pare costs**

Commenter 7

- a. Adjusting the revenue target upward for subsequent years and guaranteeing an annual revenue stream provides little incentive for DEQ to seek program efficiencies or cost savings. (7)
- b. The revenue need adjustment implies that DEQ can increase guaranteed revenue targets upward if it asserts it needs more revenue. (7)
- c. Allowing DEQ to raise revenue for uncollected fees provides little incentive for DEQ to collect fees owed. (7)

### **Response**

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

## **9. DEQ should reduce its administrative costs for the E-Cycles program**

Commenters 5, 6 and 8

- a. DEQ assured stakeholders that possible revenue reductions and cost containment strategies would be presented along with tier revisions, but stakeholders have not been provided with a good faith effort to provide this information. (5)
- b. With the program in its fourth year of operations and start-up activities completed, program oversight should be streamlined to reflect that it is now an ongoing program that is running effectively. (5)
- c. DEQ should work with the Consumer Electronics Association to develop a plan to reduce program oversight costs by 90% during the coming years so that manufacturers' resources are spent on recycling and other direct program costs. (6)



**Response**

As promised to the E-Cycles advisory workgroup in June 2010, DEQ reduced costs by \$232,000 in its budget for the two-year period ending June 2013 and is achieving those cost reductions. The program reduced staff from 2.7 to 1.7 FTE and significantly reduced program activities such as education and outreach, legislative work and design of sampling methodology. To operate within the proposed revenue need, DEQ expects to further reduce program activities and gain efficiencies to offset cost increases from salary and benefit adjustments and inflation and other factors.

DEQ is also committed to continue working with manufacturers, E-Cycles recycling program representatives and other stakeholders to identify and pursue additional opportunities to improve and streamline the program and costs for both DEQ and manufacturers, who fund their recycling programs as well as DEQ's oversight. DEQ has determined that program costs cannot be reduced by 90 percent, as suggested, without significant changes in program design that would require legislation; DEQ is willing to discuss such changes. DEQ has appreciated the Consumer Electronics Association's interest and involvement in the E-Cycles program and looks forward to its participation in these ongoing dialogs.

**10. DEQ should continue dialog on whether to base market share on units or weight**

Commenter 7

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

**Response**

DEQ will continue the dialog requested as part of discussions with stakeholders on program improvements. The electronics recycling law describes market share as a percentage of the total number of units of covered devices sold in or into Oregon the previous calendar year, and the proposed rules continue using units.

## Commenters

Comments received by close of public comment period

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

- 1 **Commenter:** Tom Sherman **Affiliation:** Interested Party  
This commenter submitted comments under Comment 2 in the *Summary of comments and DEQ responses* section above.
- 2 **Commenter:** Chris Chenoweth **Affiliation:** Acupro-Oregon  
This commenter submitted comments under Comment 3 in the *Summary of comments and DEQ responses* section above.
- 3 **Commenter:** Patrick Ewing **Affiliation:** Gizmobyte Computers  
This commenter submitted comments under Comment 3 in the *Summary of comments and DEQ responses* section above.
- 4 **Commenter:** Paul Aziz **Affiliation:** Paul's Computer Repair  
(transmitted by Rep. Sprenger)  
This commenter submitted comments under Comment 3 in the *Summary of comments and DEQ responses* section above.
- 5 **Commenter:** Betty Patton **Affiliation:** Electronic Manufacturers Recycling Management Company, Oregon E-Cycle Registration Fee Advisory Committee Member  
This commenter submitted comments under Comments 4, 5, 6 and 9 in the *Summary of comments and DEQ responses* section above.
- 6 **Commenter:** Walter Alcorn **Affiliation:** The Consumer Electronics Association  
This commenter submitted comments under Comments 1 and 9 in the *Summary of comments and DEQ responses* section above.
- 7 **Commenter:** Kelly McKechnie **Affiliation:** TechAmerica  
This commenter submitted comments under Comments 1, 4, 5, 8, and 10 in the *Summary of comments and DEQ responses* section above.
- 8 **Commenter:** Frank Marella **Affiliation:** Marella Environmental Consulting  
This commenter submitted comments under Comments 1, 4, 5, 7 and 9 in the *Summary of comments and DEQ responses* section above.

Comments received after close of public comment period

DEQ did not receive any comments after the close of public comment.

## Attachment A: Proposed Rules

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### DIVISION 98

#### SOLID WASTE: Electronics Recycling

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

###### **Applicability**

These rules apply to manufacturers of covered electronic devices sold or offered for sale in the State of Oregon for calendar years 2012 and beyond.

Stat Auth: ORS 468.020, ORS 468.065, ORS 459A.345

Stats. Implemented: ORS 459A.315

##### **OAR 340-098-0010**

###### **Definitions**

Terms used in OAR 340-098-0000 through 340-098-0200 have the meaning provided in ORS 459A.305. Definitions for additional terms used in OAR 340-098-0000 through 340-098-0200 are:

- (1) “DEQ” means the Department of Environmental Quality.
- (2) “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.
- (3) “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).

Stat Auth: ORS 468.020, ORS 468.065, ORS 459A.345

Stats. Implemented: ORS 459A.305, ORS 459A.315

##### **OAR 340-098-0100**

###### **Revenue Need**

- (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 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.

Stat Auth: ORS 468.020, ORS 468.065, ORS 459A.345

Stats. Implemented: ORS 459A.315

## **OAR 340-098-0150**

### **Registration Fees**

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

(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.

Stat Auth: ORS 468.020, ORS 468.065, ORS 459A.345

Stats. Implemented: ORS 459A.315

### **340-098-0200**

#### **Notifications**

(1) **Preliminary determination.** Beginning in 2013 and each year thereafter, 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).

Stat Auth: ORS 468.020, ORS 468.065, ORS 459A.345

Stats. Implemented: ORS 459A.315