

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment

November 18, 2016

Re: Response to Comments; Proposed Rulemaking: Draft DCMR Title 20 Environment; Chapter 41 Electronics Waste

The Department of Energy and Environment (DOEE) published a proposed rulemaking for the Electronics Stewardship Program in the July 29, 2016 issue of the DC Register (63 DCR 10041). The comment period was open for 45 days and closed on September 12, 2016. DOEE appreciates the time and effort taken by all parties who reviewed and commented on the proposed rulemaking. DOEE received comments from five parties. The comments received, and DOEE's response to the comments, are attached in the spreadsheet. DOEE only responded to comments on the proposed rulemaking. The Department did not respond to comments and suggested amendments pertaining to the statute, the Sustainable Solid Waste Management Amendment Act of 2014, as amended (D.C. Official Code §§ 8-1041.01 *et seq.*), because the comments did not pertain to the rulemaking.

Commenter	Topic	Comment	Response
Sims Recycling Solutions	Labeling Requirements for De Minimis Manufacturers	Section 4100.2(a) of the rule is inconsistent with the Chapter. §8-1041.03(a)(1) of the Chapter states that “The equipment is labeled with a readily visible brand identifying the manufacturer.” The definition of manufacturer used in the Chapter (§8-1041.01(7)) contains no minimum sales qualifier. In fact, the only exemption given to manufacturers who sold fewer than 100 units in the District is the exemption from paying the annual registration fee (§8-1041.04(a)(1)). There is no exemption from registering (including the report as outlined in §8-1041.03(b)(3)) or the labeling requirement. There is a benefit to the residents and the Department for requiring all products sold in the District to be labeled, not just requiring it of larger manufacturers. If there are an unusually large number of unlabeled products showing up in the recycle stream, how would the Department know if they are not all from the same manufacturer? Should the residents of the District have safety issues with a product, how are they to know who is responsible if the product is not labeled? An internal inconsistency exists between Section 4100.2(a) and Section 4100.2(c)(2). If the manufacturer is not required to label the product with their brand, the manufacturer does not need to list the brands (or even have a brand) since they will not be on the products covered by this Chapter.	Section 4100.2 of the rulemaking established the de minimis exemption that operates under D.C. Official Code § 8-1041.03(2). Per this subsection of the statute, qualifying for the de minimis exception exempts entities from the provision of § 8-1041.03, which includes the labeling, registration, and reporting requirement. The de minimis exemption that is established through the rulemaking statutorily requires the Department exempt de minimis manufacturers from all requirements of § 8-1041.03, including registration, reporting, the paying of fees, which is consistent with § 8-1041.04(a)(1) and labeling. The Department cannot exempt only some of the requirements. The Department believes it is important to have the de minimis level set at 100 so that there is not an economic hardship placed on smaller manufacturers.
Sims Recycling Solutions	Definition of business in market share	The statute and the proposed rules define market share as “the total pounds of covered electronic equipment sold by a manufacturer to District residents and businesses in the previous year ... in the previous year.” The DOEE has verbally interpreted that sales data for all business and government agencies is applicable for market share determination, however, neither document expressly defines what constitutes a business in the District or specifically, whether government agencies (federal and local) fall under this definition.	<p>Any term or word, such as "business" as used in the statutory definition of "market share" per D.C. Official Code § 8-1041.01(8), that is not defined, is defined by the dictionary or how it is commonly understood by the regulated community. Accordingly, the Department does not find it necessary to define this term.</p> <p>However, the definition of "market share" or "business" within that definition, does not influence collection targets. Collection targets for manufacturers registering as individual manufacturers or in a partnership are determined by D.C. Official Code § 8-1041.05(b)(1). Specifically, for 2017, the collection target is "40% of the average annual sales of the manufacturer's covered electronic equipment in the District, reported by weight," in 2015. The term "market share" in the statute does not determine collection targets.</p> <p>The Department has lowered the shortfall fees resulting from sales to the federal and District government to \$0.00/lbs in the final rulemaking. Doing so is consistent with the goals of the statute, that covered electronic items are diverted from the landfill to being reused or recycled. Specifically, the federal and District governments have processes in place to collect unwanted covered electronic equipment and help ensure they are properly reused or recycled.</p>
Sims Recycling Solutions	Covered Entity	The statute and proposed rules clearly define Covered Entity for Representative Organization run programs. It has been interpreted by the DOEE that individual OEMs and OEM partnerships must service District households and all business and government agencies, however, there is no clear statement within the statute or proposed rule in terms of what entities an individual OEM or OEM partnership must service.	It is not DOEE's interpretation that individual manufacturers and partnerships must service households and all business and government agencies. Rather, the statute allows individual manufacturers and partnerships to count collections from all entities towards their collection targets, but does not require service for any particular entity. Alternatively, the statute allows for manufacturers to register as a representative organization, and if doing so, must provide convenient collection service for covered entities free of charge.
Sims Recycling Solutions	Large Business and Government Sales	Sims Recycling Solutions recommends that the DOEE consider removing sales from large businesses and government agencies from the market share determination equation and suggests that large businesses and government agencies are removed from the list of entities OEMs must provide collection and recycling services to under the Act. This would be consistent with Chapter 10B.	The term "market share" in the statute does not determine collection targets for manufacturers registering as individual manufacturers or partnership of manufacturers. Collection targets are determined by D.C. Official Code § 8-1041.05(b)(1). For 2017, the collection target is "40% of the average annual sales of the manufacturer's covered electronic equipment in the District, reported by weight," in 2015. The Department has lowered the shortfall fees resulting from sales to the federal and District governments to \$0.00/lbs in the final rulemaking.

Neil Seldman (ILSR)	Mandating Reuse	<p>Providing double credit for contributions of computers provided to schools, and other non profits is a good start.</p> <p>I suggest the close monitoring of the flow of used but repairable and usable machines as there is no reliable data on repairable and reusable machines in any other EPR program in the US. In Illinois similar credits are given to companies that segregate out reusable and repairable but the state keeps no data on how effective these credits are.</p> <p>I suggest that in future review of the program you may want to consider making the segregation of reusable and repairable machines mandatory.</p>	<p>The Department will monitor the utilization of the reuse credits outlined in the statute, but the statute does not authorize the Department to mandate the segregation of reusable and repairable machines. Under D.C. Official Code § 8-1041.10(b), the Department may make recommendations of changes in the statute to Council.</p>
Neil Seldman (ILSR)	Local Entrepreneurialism	<p>In Oregon after EPR for e scrap was made law in 2006, existing reuse and resale enterprises were cut off from access to used machines. Community based companies with dozens of employees, hundreds of volunteers and thousands of young people acquiring know how would have had to close. There are no such enterprises in DC. But the regulations can set up the infrastructure to encourage such local entrepreneurialism</p>	<p>The statute does not authorize the Department to mandate that manufacturers work with local enterprises.</p>
Neil Seldman (ILSR)	Ft. Totten Collections	<p>Will the city's current drop off program at Ft Totten continue after the EPR program is established?</p>	<p>The collection of electronics at the Ft. Totten transfer facility is operated by the District of Columbia's Department of Public Works (DPW). The use of Ft. Totten as a collection point for a manufacturer's program is a decision that will be made by DPW.</p>
Neil Seldman (ILSR)	How Will Material Be Handled?	<p>What will Goodwill do with these machines, repair, resell, shred for metal value or donated?</p>	<p>If CEE collected by Goodwill is counted towards a manufacturer's collection target, it must be either reused or recycled at a third-party certified facility recognized by the Department. Currently, the Department will be recognizing R2 and e-Stewards.</p>
Neil Seldman (ILSR)	Fees	<p>What will the fees charged to companies that get access to DC's e scrap cover?</p>	<p>Per D.C. Official Code § 8-1041.04(d), the registration fees paid by manufacturers covers the Department's costs of implementing the program.</p>
Neil Seldman (ILSR)	How Will Material Be Handled?	<p>Will the companies that operate under the DC e scrap program be required to process the materials within the city to guarantee that the program creates jobs for DC residents?</p>	<p>The statute does not authorize the Department to mandate that manufacturers process materials within the city. The only mandate is for the facilities to be third-party certified.</p>
Neil Seldman (ILSR)	How Will Material Be Handled?	<p>How will CRT and low value plastics be handled under the DDOEE program?</p>	<p>Items collected under a manufacturer's program will be handled according to requirements of the third-party certifying the facility.</p>
Dell	Sales Definition	<p>Sales of refurbished and reused CEE should not be included in manufacturer sales to covered entities in the District.</p>	<p>The definition of "sale" was taken from the Electronics Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department believes it is important to include refurbished items as those are items that will end up in the waste stream in the future. Furthermore, the inclusion of refurbished items does not constitute double counting because when the used item is collected for refurbishment, the weight of the item can count towards the collection targets under D.C. Official Code § 8-1041.05(a). The definition of "sale" in the rulemaking only includes sales of used products that have been refurbished by the manufacturer or a manufacturer-approved party but does into include the transfer of used products that are not refurbished.</p>

Dell	CEE Definition	Changes to the scope of products included in the definition of CEE should be done through amendments to the statute, not through rulemaking. Adding products fundamentally changes the types of manufacturers who may be required to register and establish collection programs. Manufacturers not covered by the current law should not become subject to the law by a rulemaking interpretation of the law.	The Department's rulemaking only defines statutory terms and clarifies "computer," "computer peripheral," "television," and "television peripheral"-- terms that are used in the statute to define "covered electronic equipment." See D.C. Official Code 8-1041.01(4). The Department defined terms based on market and industry definitions, and consulting the Electronic Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department also consulted other state laws with similar programs. Including this specificity makes it more clear which items the Department will consider as covered electronic equipment. Having said this, in final rules, the Department is removing the following items from the rulemaking definitions: thumb drives, external hard-drives, game controllers used in conjunction with computers, digital picture frames, and game console controllers. After further analysis and consideration of the comments, the Department finds that these items are inconsistent with the purpose of the statute.
Dell	Registration and Shortfall Fees	Changes to registration and shortfall fees should not be arbitrarily made by regulation above the fee levels enacted in the statute. This is an unwarranted and excessive use of regulatory authority. For example, the statutory registration fee for a manufacturer that sold more than 250 units of CEE is \$1,000, while the proposed rule TRIPLES that amount to \$3,000. There is no basis for an increase of this magnitude. Considering the size of the District, the \$1,000 fee should be adequate to cover administrative costs. Shortfall fees for failure to meet the minimum collection share are set in the statute at \$.30 per pound multiplied by the amount that the manufacturer failed to collect to meets its minimum collection share. Under the proposed regulations, this amount could DOUBLE to \$.60 per pound, a totally arbitrary and capricious level not justified by any cost-benefit analysis.	<p>Per D.C. Official Code § 8-1041.04(c), the Department has authority to increase the fees and modify the fee structure via rulemaking. Per D.C. Official Code § 8-1041.04(d), the proposed rulemaking revised registration fees to match expected program costs.</p> <p>However, after considering comments, the Department is lowering registration fees under various registration options. The rulemaking creates tiered shortfall fees that are utilized by a number of states with similar programs. A tiered system ensures manufacturers have the correct incentives to actually collect CEE. After reviewing comments, the Department is lowering shortfall fees to match the tier rates from Electronics Takeback Coalition's model bill, Minnesota, and Wisconsin, which were part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014).</p>
CompTIA	Covered Entity	We would therefore recommend that the District clarify that a manufacturer’s recycling obligation under the eCYCLE DC program be based on a manufacturer’s sales to District residents, nonprofits, and small businesses that procure CEE through retail channels. Unlike government offices, schools and larger businesses who have existing recycling options through the procurement process, these consumers should be the focus of the District’s program. By not making this clarification, a manufacturer would have an unreasonably high recycling obligation and could face exorbitant shortfall fees and other penalties.	Collection targets are determined by D.C. Official Code § 8-1041.05(b)(1). For 2017, the collection target is "40% of the average annual sales of the manufacturer's covered electronic equipment in the District, reported by weight," in 2015. Section 8-1041.05(b)(1) does not limit the calculations by whom the CEE is sold to, thus the collection target is 40% of all sales. Having said this, the Department has lowered the shortfall fees resulting from sales to the federal and District governments to \$0.00/lbs in the final rulemaking. Doing so is consistent with the goal's of the statute, that covered electronic items are diverted from the landfill to being reused or recycled. Specifically, the federal and District governments have processes in place to collect unwanted covered electronic equipment and help ensure they are properly reused or recycled.

CompTIA	CEE Definition	<p>If adopted, the list of products considered to be CEE would be one of the broadest in the country. While we appreciate that there is equity in the scope of CEE between IT-related products and TV-related products, the District should have an accounting of what products covered entities are bringing to collection sites and events before mandating that other classes of products be listed as CEE. The responsible recycling of products which pose the greatest strain on recycling resources in the District, such as CRTs, should be the focus of the program.</p> <p>We would therefore encourage the District to limit the scope of products until more data is available suggesting that other products are not being recycled.</p>	<p>The Department's rulemaking only defines statutory terms and clarifies "computer," "computer peripheral," "television," and "television peripheral"-- terms that are used in the statute to define "covered electronic equipment." See D.C. Official Code 8-1041.01(4). The Department defined terms based on market and industry definitions, and consulting the Electronic Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department also consulted other state laws with similar programs . Including this specificity makes it more clear which items the Department will consider as covered electronic equipment. Having said this, in final rules, the Department is removing the following items from the rulemaking definitions: thumb drives, external hard-drives, game controllers used in conjunction with computers, digital picture frames, and game console controllers. After further analysis and consideration of the comments, the Department finds that these items are inconsistent with the purpose of the statute.</p>
CompTIA	Printer Definition	<p>We are concerned that the proposed rule leaves “printers” undefined. Without a clear definition we are concerned that the program will provide duplicitous coverage where an incentive to properly manage obsolete electronics already exists. The B2B waste stream is somewhat unique in that, due to existing collection systems, infrastructure and collection provisions in B2B sales contracts, these products are being collected and recycled at high rates.</p> <p>We therefore urge the District to define what type of printers are considered CEE. Specifically, the rule should provide a narrow definition including only household desktop printers. We recommend including a definition of “printers” such as those found in other e-waste laws like Illinois, Michigan or Vermont to specifically tailor any requirement for recycling printers to focus on those used by consumers in their residences.</p>	<p>For the reasons given in this and other comments, in the final rulemaking, the Department has included a definition of printer that is similar to the definition used by Michigan.</p>
CompTIA	Shortfall Fee and Registration Fee	<p>It is unclear as to the reasoning for the proposed rule’s increase in the shortfall fee before the program has been fully implemented...Similarly, registration fees under the proposed rule differ from the statute by three-fold for individual manufacturers. We therefore recommend that the registration and shortfall fee increases in the proposed rule be struck.</p>	<p>Per D.C. Official Code § 8-1041.04(c), the Department has authority to increase the fees and modify the fee structure via rulemaking. Per D.C. Official Code § 8-1041.04(d), the proposed rulemaking revised registration fees to match expected program costs.</p> <p>However, after considering comments, the Department is lowering registration fees under various registration options. The rulemaking creates tiered shortfall fees that are utilized by a number of states with similar programs. A tiered system ensures manufacturers have the correct incentives to actually collect CEE. After reviewing comments, the Department is lowering shortfall fees to match the tier rates from Electronics Takeback Coalition's model bill, Minnesota, and Wisconsin, which were part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014).</p>
CompTIA	Collection Sites and Locations	<p>The proposed rule does not specify if collection sites or events set up by a manufacturer have to accept all CEE or only certain CEE (i.e., CEE the manufacturer produces).</p>	<p>The Department is not providing proposed rules on this topic because the statute already specifies applicable requirements. Specifically, the statute states that collection sites or events that are operated by manufacturers that are registered as a representative organization must accept all types of CEE from covered entities for free. D.C. Official Code § 8-1041.05(a)(3)(C). Similar requirements do not exist for manufacturers that are registered as individuals or in a partnership.</p>

CTA and ITA	CEE Definition	CTA and ITI recommend that DOEE refrain from overreach of legislative intent and refrain from attempting to expand the list of covered electronic equipment as contained in Act 20-423 and only provide clarification where necessary. Using the terms “computer peripherals” and “television peripherals” to insert a longer list of other “nice to have” devices that intuitively sound appropriate on paper, in practice only adds economic unfairness to and needlessly complicates the recycling system. In economic terms, this would amount to forcing original equipment manufacturers (OEMs) to internalize costs into certain products, where the products have no real externalities. In simple terms, it equates to blatantly taxing DC residents through the increased cost of certain products, and taxing OEMs through paying registration fees and compliance costs for products that are of value in the recycling stream. Further, retailers of CEE have significant concerns over the unprecedented nature of the breadth of the proposed CEE list, the wide net this casts for registration requirements, and the high risk to retailers of the potential for non-compliant sales. Our specific recommendations for the proposed list of CEE are enclosed in Appendix A [included below] as a redline to the draft rule.	The Department's rulemaking only defines statutory terms and clarifies "computer," "computer peripheral," "television," and "television peripheral"-- terms that are used in the statute to define "covered electronic equipment." See D.C. Official Code 8-1041.01(4). The Department defined terms based on market and industry definitions, and consulting the Electronic Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department also consulted other state laws with similar programs. Including this specificity makes it more clear which items the Department will consider as covered electronic equipment. Having said this, in final rules, the Department is removing the following items from the rulemaking definitions: thumb drives, external hard-drives, game controllers used in conjunction with computers, digital picture frames, and game console controllers. After further analysis and consideration of the comments, the Department finds that these items are inconsistent with the purpose of the statute.
CTA and ITA	Computer Definition	Strike "including a laptop computer or other portable computer."	"Laptop computer and other portable computer" are included as CEE under the statute. See D.C. Official Code 8-1041.01(4). The inclusion of these items under the definition of "computer" in the rulemaking is so that laptop computers and other portable computers are reported in the computer category when manufacturers are reporting sales and collection totals.
CTA and ITA	Computer Definition	Strike "and may include a computer central processing unit."	The inclusion of a computer's central processing unit is included in Electronics Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department believes this is important to include in the definition of computer as a CPU is a key component of a computer system.
CTA and ITA	Computer Definition	Strike "computer also means a small scale servers, portable digital music players that have memory capability and are battery powered, or other similar devices."	These are items that are included as CEE under the statute. See D.C. Official Code § 8-1041.01(4). The inclusion of these items under the definition of "computer" is so that they can be reported in the computer category when manufacturers are reporting sales and collection totals.
CTA and ITA	Computer Definition	Not a computer: small-scale server, tablet, multi-function e-reader	Small-scale servers are included as CEE under the statute when it states that "servers other than small-scale servers" are not CEE. See D.C. Official Code § 8-1041.01(4).Tablets and e-readers are included under the rulemakings definition of "laptop computer or other portable computers" as they exhibit the characteristics of a portable computer and are important to keep out of the solid waste stream.
CTA and ITA	Computer Monitor and Display Devices Definition	Strike "type of"	For consistency purposes with the other regulatory definitions, the Department has deleted this phrase in the final rulemaking.

CTA and ITA	Computer Peripheral Definition	Strike "any device that is sold primarily for external use with a computer and that provides input into or output from a computer, including:" and "printers; multi-function imaging equipment containing printers, which does not weigh more than one hundred (100) pounds; game controllers used in conjunction with computers; external hard drives; flash drives; speakers for use with computers; computer monitors and display devices; or other similar devices; and any cable, cord, or wiring permanently affixed to or incorporated into any such product."	The Department's rulemaking only defines statutory terms and clarifies "computer," "computer peripheral," "television," and "television peripheral"-- terms that are used in the statute to define "covered electronic equipment." See D.C. Official Code 8-1041.01(4). The Department defined terms based on market and industry definitions, and consulting the Electronic Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department also consulted other state laws with similar programs . Including this specificity makes it more clear which items the Department will consider as covered electronic equipment. Having said this, in final rules, the Department is removing the following items from the rulemaking definitions: thumb drives, external hard-drives, game controllers used in conjunction with computers, digital picture frames, and game console controllers. After further analysis and consideration of the comments, the Department finds that these items are inconsistent with the purpose of the statute.
CTA and ITA	Computer Peripheral Definition	Computer monitor and display devices are listed separately under the statutory definition of CEE.	The Department's interpretation is that these two items are listed together in the statutory definition of "covered electronic equipment," D.C. Official Code § 8-1041.01(4), as an example of computers and computer peripherals. The inclusion of these items under the definition of "computer peripheral" in the rulemaking is so that computer monitor and display devices are reported in the computer peripheral category when manufacturers are reporting sales and collection totals.
CTA and ITA	Printer Definition	[Printers] Are listed separately under the statutory definition of CEE. It is important to distinguish that printers are limited to consumer desktop printers and do not include large commercial printers. Definition should only include desktop printers weighing no more than 100 pounds.	For the reasons given in this and other comments, in the final rulemaking, the Department has included a definition of printer that is similar to the definition used by Michigan. Printer is included in the definition of "computer peripheral" so that it is included in the computer peripheral category when manufacturers are reporting sales and collection totals.
CTA and ITA	External Hard Drives	External hard drives are not going to wind up in the waste stream. These are storage devices that are retained by covered entities for long periods of time.	For the reasons given in this and other comments, in the final rulemaking, external hard-drives are removed from the definition of "computer peripheral."
CTA and ITA	Flash Drives	Flash drives are not electronic equipment, have no power source and are too small to be part of an e-waste program. Their presence in the waste stream in DC is likely negligible, and they hold little recycling value due to their size. Further, the margin of profit on the sale of a \$5 flash drive is almost non-existent. How can DOEE economically justify a registration fee of \$3,000 per year to a manufacturer that sells 250 flash drives in DC for \$5 each for a total of \$1,250? This product is not covered under any other e-waste law and if left under scope for CEE would likely result in manufacturers of flash drives going out of business or withdrawing their products from the DC market.	For the reasons given in this and other comments, in the final rulemaking, flash drives are removed from the definition of "computer peripheral."
CTA and ITA	Laptop Computer or Other Portable Computer Definition	Not a computer: tablet, e-reader, digital picture frames.	Tablets and e-readers are included under the rulemakings definition of "laptop computer or other portable computer" as they exhibit the characteristics of a portable computer and are important to keep out of the solid waste stream. Digital picture frames are removed from the definition of "laptop computer or other portable computer" as the Department agrees they do not exhibit the characteristics of laptops or other portable computers.
CTA and ITA	Laptop Computer or Other Portable Computer Definition	Strike "or other similar devices"	The inclusion of "other similar devices" is important as the terms used to describe future portable computers that meet the definition of portable computers are hard to predict.

CTA and ITA	Mobile telephone Definition	Insert "with a screen size of less than X inches"	The statute excludes telephones, including mobile telephones, from the definition of covered electronic equipment. See D.C. Official Code § 8-1041.01(4). The Department will not include a screen size limit in the definition because this could create obligations for mobile telephone manufacturers if the device exceed a certain screen size. This is not the intent of the statute.
CTA and ITA	Sale Definition	Insert "to a covered entity" in sales definitions so that new definition reads "to a covered entity any transfer of the absolute title to property for a certain agreed price, from a manufacturer or retailer...."	The Department will not insert this phrase into the definition of sale because this would substantially narrow the sales covered by the statute. Considering the Council of the District of Columbia did not include the term covered entity in the statute (other than as a requirement for representative organizations, see D.C. Official Code § 8-1041.05(a)(3)(C)), the Department believes limiting sales to only covered entities would run contrary to statutory intent.
CTA and ITA	Sales Definition	Refurbishment inclusion- This provision will discourage sale of refurbished products in DC as the weight of the refurbished CEE is not going to the waste stream and will have to be reported and counted twice.	The definition of "sale" was taken from the Electronics Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department believes it is important to include refurbished items as those are items that will end up in the waste stream in the future. Furthermore, the inclusion of refurbished items does not constitute double counting because when the used item is collected for refurbishment, the weight of the item can count towards the collection targets under D.C. Official Code § 8-1041.05(a).
CTA and ITA	Small Business Definition	Replace 100 with 10 employees.	The Department is mirroring the definition of "small business" as used in another part of the D.C. Official Code. See § 2-1210.01(11). Accordingly, the Department believes using this definition is appropriate because it is a reasonable interpretation of the Council of the District of Columbia's intent. Keeping the definition at 100 employees also follows Council's intent to increase diversion rates and ensure that electronics are recycled at third-party facilities that protect human health and the environment because small businesses will have access to free recycling services from a representative organization.
CTA and ITA	Small Business Definition	Insert "Procures covered electronic equipment through retail channels."	The Department agrees with this change and it is included in the final rulemaking. Specifically, this change is consistent with the statute's definition of "covered entity." See D.C. Code § 8-1041.01(6).
CTA and ITA	Small Nonprofit Organization Definition	Replace 100 with 10 employees.	The Department is limiting the number of employees as consistent with the definition of "small business." Keeping the definition at 100 employees also follows Council's intent to increase diversion rates and ensure that electronics are recycled at third-party facilities that protect human health and the environment because small non-profits will have access to free recycling services from a representative organization.
CTA and ITA	Small Nonprofit Organization Definition	Insert "Procures covered electronic equipment through retail channels."	The Department agrees with this change and it is included in the final rulemaking. Specifically, this change is consistent with the statute's definition of "covered entity." See D.C. Code § 8-1041.01(6).
CTA and ITA	Small-scale Server Definition	Replace "home" with "consumer"	Small-scale servers are included as CEE under the statute when it states that "servers other than small-scale servers" are not CEE. See D.C. Official Code § 8-1041.01(4). The Department has relied upon Illinois, New York, and the Electronics Takeback Coalition's model bill to create the definition, which is consistent with statutory intent. The Department will keep the word "home," instead of "consumer," because of the specificity of the word's definition.

CTA and ITA	Television peripheral	Insert "means any cable, cord, or wiring permanently affixed to or incorporated into a television"	The Department believes the use of the term "permanently affixed to or incorporated into a television" would be too narrow as many peripherals are not permanently attached to a television, just as many computer peripherals are not permanently attached to a computer. Additionally, limiting peripheral in this manner would be contrary to the term "peripheral" and how it is commonly understood in the industry and among consumers.
CTA and ITA	Television peripheral	Strike "electronic or video game systems, game controllers, signal converter boxes, cable receivers, satellite receivers, digital media receivers or set top boxes, or other similar devices, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product."	The Department defined terms based on market and industry definitions, and consulting the Electronic Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Electronic Takeback Coalition's model bill also lists "television peripherals" under the definition of "covered electronic equipment." Including this specificity makes it more clear which items the Department will consider as covered electronic equipment. Having said this, in final rules, the Department is removing the following items from the rulemaking definitions: thumb drives, external hard-drives, game controllers used in conjunction with computers, digital picture frames, and game console controllers. After further analysis and consideration of the comments, the Department finds that these items are inconsistent with the purpose of the statute.
CTA and ITA	Television peripheral	The production of VCRs officially ceased in summer of 2016. This technology is no longer manufactured.	While the production of VCRs has ceased, it is important that these items be available for collections and have the disposal restrictions that are placed on CEE.
CTA and ITA	Television peripheral	Almost all set-top boxes (STBs) are leased to covered entities (not sold through retail channels) by a provider, which offers STB exchange and recycling as part of the lease.	The definition of "sale" in the rulemaking does not include leased items, thus leased set-top boxes would not be counted towards a manufacturer's obligation.
CTA and ITA	Market Share and Covered Entity	As defined in DC statute, § 8-1041.01, “covered entity” means “a District household or small nonprofit or small business entity that procures covered electronic equipment through retail channels.” Nowhere in the statute does “covered entity” constitute “any entity” including large businesses, schools and government institutions. We call to your attention suggested language in the attached Appendix A to clarify the use of this term and how it relates to obligation and market share. We also call to your attention the attached letter to Director Wells dated August 4, 2016 explaining the enormity of the financial consequences of including sales to government institutions (federal and DC), large businesses and schools in manufacturer obligations - due to the unique nature of the District of Columbia.	<p>Collection targets for manufacturers registering as individual manufacturers or in a partnership are determined by the statute at D.C. Official Code § 8-1041.05(b)(1). For 2017, the collection target is "40% of the average annual sales of the manufacturer's covered electronic equipment in the District, reported by weight," in 2015. The Department interprets this requirement as not being limited by the terms "market share" or "covered entity." Specifically, the Council defined these terms but chose to only use them to explain the requirements for representative organizations and not manufacturers registering as individuals and partnerships.</p> <p>However, the Department has lowered the shortfall fees resulting from sales to the federal and District government to \$0.00/lbs in the final rulemaking. Doing so is consistent with the goal's of the statute, that covered electronic items are diverted from the landfill to being reused or recycled. Specifically, the federal and District governments have processes in place to collect unwanted covered electronic equipment and help ensure they are properly reused or recycled.</p>

CTA and ITA	Business Sales	<p>At the September 7, 2016 DOEE listening session, DOEE Product Stewardship staff explained that they reviewed New York’s e-waste law and used this as the basis for staff’s decision to propose the inclusion of devices acquired through business-to-business sales. As was explained by Larry King of Sims Recycling Solutions to DOEE staff and reiterated by Fran Valluzzo of Dell and CTA on September 7, New York is still in the process of evaluating its e-waste law and one of the provisions that is being considered for removal from the program is the one related to business mandates. New York is discussing doing away with this provision because it has had the unintended consequence of increased focus on much larger business collections (that typically do not require a mandate to be recycled) rather than focusing on the much smaller consumer/residential market, which typically requires a mandate and/or external resources to be recycled. Large businesses and institutions in DC by and large already have outlets for responsibly recycling their electronics. In fact, many large institutions in DC operate closed electronics recycling systems that are not accessible to manufacturers. CTA and ITI recommend that DOEE should not look at New York as a model; rather, the Department should focus its attention exclusively on covered entities: DC residents, small businesses and small non-profits.</p>	<p>The inclusion of devices acquired through business-to-business sales was not a decision made by the Department through rulemaking, but rather by the Council of the District of Columbia via D.C. Official Code § 8-1041.05(b)(1). For 2017, the collection target is "40% of the average annual sales of the manufacturer's covered electronic equipment in the District, reported by weight," in 2015. The Department interprets this requirement as not being limited by the terms "market share" or "covered entity." Specifically, the Council defined these terms but chose to only use them to explain the requirements for representative organizations and not manufacturers registering as individuals and partnerships.</p> <p>However, the Department has lowered the shortfall fees resulting from sales to the federal and District governments to \$0.00/lbs in the final rulemaking. Doing so is consistent with the goal's of the statute, that covered electronic items are diverted from the landfill to being reused or recycled. Specifically, the federal and District governments have processes in place to collect unwanted covered electronic equipment and help ensure they are properly reused or recycled.</p>
CTA and ITA	Collection Sites and Locations	<p>The draft rule does not currently address collection requirements for collection locations and events, and we strongly encourage the Department to maintain flexibility and provide further clarification in this regard. There are existing DC collection locations (charitable organizations and retail locations) and regular community-based electronics recycling events (such as the Hearst School annual event) that might not be able to accommodate collection for every item of proposed CEE, as the CEE list is unprecedented and so much broader than any other existing state e-waste program.</p>	<p>The statute specifies that representative organization's collection sites or events must accept all types of CEE from covered entities for free. See D.C. Official Code § 8-1041.05(a)(3)(C). The statute also defines what constitutes a collection event or site for representative organizations. D.C. Official Code § 8-1041.03(b)(9).</p> <p>Having said this, the statute does not impose similar requirements on manufacturers that are registered as individuals or in a partnership. Absent these statutory limitations, manufacturers registering individually or in a partnership have flexibility in how they reach their collection targets, as determined by D.C. Official Code § 8-1041.05(b)(1).</p>
CTA and ITA	Registration fees	<p>CTA and ITI question DOEE as to why the Department has in almost all cases tripled the registration fees set in statute, as well as increased the shortfall fees at the outset of the program? This coupled with the unprecedented number of proposed CEE items is unheard of at the start of a state e-waste program. If these fees are only to be used for administering the District’s e-waste program and are tripled as proposed, DC would likely have the highest administrative overhead cost of any e-waste program in the country on a per capita basis, especially when taking into account that DC taxpayers continue to fund the Department of Public Works electronics recycling program at Fort Totten. We recommend that registration fees and shortfall fees remain at the levels set in statute. A program evaluation with stakeholder input can be conducted after the first year of DOEE’s program to determine if there is an economic need to adjust registration and shortfall fees.</p>	<p>The Department has authority to increase registration and shortfall fees and to modify fee structures, per D.C. Official Code § 8-1041.04(c). Accordingly, the proposed rulemaking revised registration fees to match expected program costs. See D.C. Official Code § 8-1041.04(d). However, after reviewing comments, the Department is lowering registration fees in various registration categories.</p>
CTA and ITA	Shortfall and registration fees	<p>Per Statute §8-1041.04 (a)(2) the registration fee for this number of units sold to covered entities should be \$500. \$1,500 per year for sales of less than 250 units of CEE to covered entities in a jurisdiction the size of DC is highly onerous, especially on low-cost CEE. DOEE must provide an economic cost-benefit analysis and data on a per capita basis that demonstrates need/ economic justification for tripling registration fees at the outset of the program. Per Statute §8-1041.04(a)(3) the registration fee for this number of units sold to covered entities should be \$1,000. \$3,000 per year for sales of 250 units or more of CEE is highly onerous. DOEE must provide an economic cost-benefit analysis on a per capita basis that demonstrates economic justification for tripling registration fees at the outset of the program. Per Statute §8-1041.04(a)(4) the registration fee for a partnership should be no more than \$10,000. DOEE must provide an economic cost-benefit analysis on a per capita basis that demonstrates need/economic justification for tripling registration fees at the outset of the program. Per Statute §8-1041.04(b) the shortfall fee should be \$0.30/lb. DOEE must provide an economic cost-benefit analysis on a per capita basis that demonstrates economic justification for creating a tiered shortfall fee system, and for raising the statute-set shortfall fees up to double the amount set by statute at the outset of the program.</p>	<p>The Department has authority to increase registration and shortfall fees and to modify fee structures, per D.C. Official Code § 8-1041.04(c). Accordingly, the proposed rulemaking revised registration fees to match expected program costs. See D.C. Official Code § 8-1041.04(d). However, after reviewing comments, the Department is lowering registration fees in various registration categories. The rulemaking creates tiered shortfall fees that are utilized by a number of states with similar programs. A tiered system ensures manufacturers have incentives to collect CEE. Modifying the fees in this manner is consistent with the Electronics Takeback Coalition's model bill (also utilized by Minnesota and Wisconsin) and statutory intent. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014).</p>

CTA and ITA	Refurbishment	As discussed at the September 7 listening session, the rule as drafted provides a disincentive for manufacturers to refurbish products and sell those products again in DC, as the pounds are counted toward a manufacturer’s obligation in full on both the initial sale and the secondary sale of refurbished equipment. To address this disincentive, we recommend a double credit for CEE donated or sold to schools, non-profits, and individuals/households. For example, as currently drafted, a CEE device that is donated for reuse to a charitable organization and then sold to an individual would not go through the recycling stream, and individuals are currently out of scope for reuse. We suggest addressing refurbishment credits so as to ensure existing resale programs remain available and affordable for DC residents.	The definition of "sale" was taken from the Electronics Takeback Coalition's model bill, which was part of the basis of the statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014). The Department believes it is important to include refurbished items as those are items that will end up in the waste stream in the future. Furthermore, the inclusion of refurbished items does not constitute double counting because when the used item is collected for refurbishment, the weight of the item can count towards the collection targets under D.C. Official Code § 8-1041.05(a).
CTA and ITA	De minimis form requirements	Manufacturers who meet the de minimis and are exempt should not be required to calculate weight of units of CEE, only report number of CEE units sold.	The Department agrees with this change and it is included in the final rulemaking. Specifically, considering the Department's de minimis rulemaking requirement is based on the number of covered electronic equipment units sold, and not weight, the Department is eliminating weight reporting requirements for de minimis manufacturers.
CTA and ITA	Categories for reporting	Data sets by category or individual type of CEE are more costly to create. Due to the unprecedented nature of the proposed CEE list, we strongly discourage overly onerous and costly reporting requirements.	Sales and collection totals are to be reported to the Department in the four broad categories of CEE (computers, computer peripherals, televisions, and television peripherals). These reporting categories are similar to other states with similar laws, such as Minnesota, which was relied upon by Council to draft the District's statute. See Committee Report, Bill 20-641, at p. 10 (June 16, 2014)
CTA and ITA	Reporting on end markets	It is sufficient for manufacturers to disclose the electronic recyclers used.	D.C. Official Code § 8-1041.03(b)(3)(F) requires annual registration reports to include end markets utilized.
CTA and ITA	Shortfall Fee Start Date	Beginning shortfall collection on January 1, 2017 is an error and the date also should have been changed as part of the technical amendments to statute on June 21, 2016. DOEE cannot initiate a compliance effort to collect shortfall fees on the start date of the program. It should start no earlier than one year later in 2018.	Under the statute, the first time shortfall fees will be collected is when the registration due December 31, 2018 is filed. This registration reports the collection totals for the previous year (2017) and after staff review and approve of the registration, manufacturers will be invoiced any shortfall fees for calendar year 2016 along with their registration fees covering calendar year 2019. The Final Rulemaking clarifies that the Department does not intend to collect shortfall fees until when the registration due December 31, 2018 is filled, approved, and invoiced.
CTA and ITA	Annual adjustments to registration fees	The change from 2017 to 2020 would be consistent with a similar provision in 4006.3 of the rules for the Paint Stewardship Act of 2014, which does not impose such a CPI-linked adjustment provision until 2019 for a program that began in 2016. Initiating a CPI-linked adjustment for registration fees and shortfall fees on the start year of the e-waste program is unnecessary. Any future adjustment to registration fees and shortfall fees should take into account the overall revenue collected from registration fees and shortfall fees vis-à-vis the operating budget for the e-waste program at DOEE, expenditures on DOEE FTE on a per capita basis, total pounds collected in a calendar year, etc. to arrive at a total DOEE e-waste program administrative overhead amount per calendar year. ...	The Department has authority to increase registration and shortfall fees and to modify fee structures, per D.C. Official Code § 8-1041.04(c). Accordingly, the registration fees are set at levels to match expected program costs. See D.C. Official Code § 8-1041.04(d). The Department will maintain the current CPI language to start in 2017. This is because, as inflation changes the cost of administering the program, so should the fees associated with the program.