

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Electronics Stewardship

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2013 Repl. & 2016 Supp.)); the Sustainable Solid Waste Management Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-154; D.C. Official Code §§ 8-1041.01 *et seq.* (2016 Supp.)); the Fiscal Year 2017 Budget Support Emergency Act of 2016, signed July 20, 2016 (D.C. Act 21-463; 63 DCR 9843 (July 29, 2016)); and Mayor's Order 2015-250, dated December 8, 2015, hereby gives notice of amendments to Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) by adopting a new Chapter 41 (Electronics Stewardship) to establish standards for electronic waste.

This rulemaking establishes requirements for electronic equipment manufacturers, who sell the equipment in the District of Columbia. Specifically, the rulemaking sets a *de minimis* limit that exempts certain entities from electronic waste statutory and regulatory requirements, includes additional requirements for annual registration applications, revises registration fees, and revises shortfall fees if a manufacturer or partnership does not meet collection rates.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on July 29, 2016, at 63 DCR 10041. The comment period closed on September 12, 2016, and the Department considered all comments received. A summary of comments and responses is available online at doee.dc.gov/ecycle.

In response to comments, the Department has made revisions that clarify terms or revisions that are reasonably anticipated based on the scope of the proposed rulemaking. Specifically, the Department clarified that *de minimis* manufacturers do not need to report sales weight as this is not needed to determine *de minimis* eligibility. Additionally, the Department lowered the registration fee for individual manufacturers and partnerships of manufacturers. Related, the Department lowered short-fall fees and modified short-fall fees as they relate to sales to the federal and District government. The latter is because both entities have a strong system in place to ensure that covered electronic equipment is reused or properly recycled. The enforcement section was modified to account for amendments recently made in emergency and (pending) legislation. Finally, related to definitions, the Department slightly modified various definitions for clarity, removed some electronic items so that they are no longer considered covered electronic equipment (to be consistent with statutory intent), and added a definition for the term "printer." These changes do not substantially alter or change the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the Notice of Proposed Rulemaking.

These rules were adopted as final on November 4, 2016, and will be effective upon publication of this notice in the *D.C. Register*.

Title 20 DCMR, ENVIRONMENT, is amended by adding a new Chapter 41 as follows:

CHAPTER 41 ELECTRONICS STEWARDSHIP

4100 REQUIREMENTS FOR ELECTRONIC MANUFACTURERS

4101 ELECTRONIC MANUFACTURER RECORDKEEPING

4102 REGISTRATION AND SHORTFALL FEES

4103 ENFORCEMENT

4104 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

4199 DEFINITIONS

4100 REQUIREMENTS FOR ELECTRONIC MANUFACTURERS

4100.1 The rules in this chapter apply to manufacturers, partnerships, and representative organizations, as defined in § 4199.1.

4100.2 A manufacturer that sells less than one hundred (100) covered electronic equipment units in the District in the most recent calendar year shall:

- (a) Be exempt from labeling covered electronic equipment with a readily visible brand identifying the manufacturer;
- (b) Be exempt from submitting an application for registration, pursuant to D.C. Official Code § 8-1041.03(b); and
- (c) Submit a completed application for exemption on a form prescribed by the Department that shall include:
 - (1) Relevant manufacturer contact information;
 - (2) A list of brand names sold by the manufacturer in the District; and
 - (3) Any other information needed in order for the Department to determine whether the applicant qualifies for the exemption.

4100.3 When submitting an annual exemption form the applicant shall calculate the units of covered electronic equipment sold in the District by:

- (a) Using District sales data; or
- (b) Multiplying the units of covered electronic equipment sold nationally with the quotient of the District's population divided by the national population. Populations shall be estimated by using the most recent estimates provided by the United States Census Bureau.

- 4100.4 Except as provided in § 4100.5, when submitting an annual registration application or ensuring compliance with an applicant's minimum collection share, the applicant shall calculate the weight and units of covered electronic equipment sold in the District by:
- (a) Using District sales data; or
 - (b) Multiplying the weight or units of covered electronic equipment sold nationally with the quotient of the District's population divided by the national population. Populations shall be estimated by using the most recent estimates provided by the United States Census Bureau.
- 4100.5 When ensuring compliance with an applicant's minimum collection share, the applicant shall calculate the weight of covered electronic equipment sold to the governments of the United States and District of Columbia by using District sales data.
- 4100.6 Registration submitted in accordance with D.C. Official Code § 8-1041.03 shall be on a form prescribed by the Department.
- 4100.7 When a representative organization submits an implementation plan to the Department according to D.C. Official Code § 8-1041.03(b)(9), the applicant shall calculate the market share percentage of each manufacturer in the representative organization by:
- (a) Using District sales data; or
 - (b) Multiplying the weight or units of covered electronic equipment sold nationally with the quotient of the District's population divided by the national population. Populations shall be estimated by using the most recent estimates provided by the United States Census Bureau.
- 4100.8 The Department may request that registration applicants include data on covered electronic equipment sold in the District broken down by category of covered electronic equipment. If the Department requests such data, the applicant shall provide the units sold in each category and the collective weight of the units sold in each category.
- 4100.9 An applicant that discloses the end markets and electronic recyclers utilized in the previous calendar year shall include the contact information of the electronic recyclers.
- 4100.10 The Department may request that manufacturers submitting a registration application include additional information or data needed to implement the Act or this chapter.

4100.11 In accordance with D.C. Official Code § 8-1041.03(b)(8), the Department shall publish on its website a list of third-party accreditation certifications recognized by the Department.

4100.12 If more than one person is a manufacturer of a covered electronic equipment unit, any such person may assume the registration obligations of the Act or this chapter, however, if no such person assumes responsibility for the registration obligations, any and all such persons may be considered jointly and severally responsible for the registration obligations.

4100.13 In accordance with D.C. Official Code § 8-1041.07, the Department shall publish on its website a list of approved covered electronic equipment disposal methods.

4101 ELECTRONIC MANUFACTURER RECORDKEEPING

4101.1 Manufacturers shall maintain records used to prepare annual applications for registration, pursuant to D.C. Official Code § 8-1041.03(b), or exemption, pursuant to § 4100.2, for three (3) years.

4101.2 The Department may inspect, request, and obtain from a manufacturer any record, including reports, electronic records, or any other document, that is subject to § 4101.1.

4102 REGISTRATION AND SHORTFALL FEES

4102.1 Manufacturers, representative organizations, and partnership organizations shall include the following registration fee when submitting an annual registration application:

- (a) For an individual manufacturer that sold at least one hundred (100) units but less than two hundred and fifty (250) units of covered electronic equipment in the District in the previous calendar year, the individual manufacturer's application for registration under D.C. Official Code § 8-1041.03 shall be accompanied by a registration fee of five hundred dollars (\$500);
- (b) For an individual manufacturer that sold two hundred and fifty (250) or more units of covered electronic equipment in the District in the previous calendar year, the individual manufacturer's application for registration under D.C. Official Code § 8-1041.03 shall be accompanied by a registration fee of one thousand seven hundred and fifty dollars (\$1,750);
- (c) A representative organization's application for registration under D.C. Official Code § 8-1041.03 shall be accompanied by a registration fee of ten thousand dollars (\$10,000); and

- (d) A partnership's application for registration under D.C. Official Code § 8-1041.03 shall be accompanied by a registration fee equal to the sum of its member manufacturers' registration fees, or seventeen thousand five hundred dollars (\$17,500), whichever is less.

4102.2 For an application for registration properly submitted on or after January 1, 2018, if a manufacturer or partnership did not comply with D.C. Official Code § 8-1041.05(a)(1) or (2) in the previous calendar year from when the registration is due, the manufacturer's or partnership's application for registration under § 8-1041.03 shall be accompanied by a shortfall fee determined by the following:

$$(A-B)*C=D$$

$$E/D=F$$

where:

A= The average annual sales in pounds of the manufacturer's covered electronic equipment for the appropriate reporting years, as established by D.C. Official Code § 8-1041.05;

B= The average annual sales in pounds of the manufacturer's covered electronic equipment to the District and federal government for the appropriate reporting years, as established by D.C. Official Code § 8-1041.05;

C= The collection percentage, as established by D.C. Official Code § 8-1041.05;

E= The amount of covered electronic equipment in pounds the manufacturer or partnership collected in the District in the previous calendar year from when registration is due;

F= The percent that a manufacturer has exceeded or fallen short of its minimum collection share, which is subject to shortfall fees

- (a) If F is greater than or equal to 90% but less than 100%, the shortfall fee is $(D-E)*\$0.30$;
- (b) If F is greater than or equal to 50% but less than 90%, the shortfall fee is $(D-E)*\$0.40$; and
- (c) If F is less than 50%, the shortfall fee is $(D-E)*\$0.50$.

4102.3 Beginning in 2017, the Department may annually adjust registration application fees and shortfall fees based on the change in the Consumer Price Index value published by the U.S. Department of Labor for all-urban consumers.

4102.4 If a manufacturer or partnership counts the collection of a single item of covered electronic equipment as twice its weight when that item is donated free of charge for reuse to the District's public or charter schools, to public or charter schools in counties adjoining the District, or to any nonprofit organization with a principal mission of assisting low-income children or families per D.C. Official Code § 8-1041.05(b)(2), the Department may request from the manufacturer or partnership:

(a) Documentation of the donation, which shall include the recipient's written acceptance of the donation on a form stating that the covered electronic equipment is:

(1) No more than three (3) years old; and

(2) In full working condition;

(b) The name and address of the recipient school or organization; and

(c) Relevant contact information from the recipient school or organization.

4103 ENFORCEMENT

4103.1 Violation of any of the requirements of this chapter or the Act shall subject a person to the penalties set forth in Title 16 (Consumers, Commercial Practices, and Civil Infractions), Chapter 40 of the District of Columbia Municipal Regulations.

4103.2 The Department may enforce a violation of this chapter or the Act by issuing one or more of the following:

(a) Notice of violation; or

(b) Notice of infraction.

4103.3 The Department may issue a notice of infraction without first issuing a notice of violation or threatened violation.

4103.3 Each instance or day of a violation of each provision of this chapter shall be a separate violation.

4104 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

- 4104.1 A person adversely affected by an enforcement action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.*), or OAH's successor.
- 4104.2 The appeal to OAH shall be filed in writing within fifteen (15) calendar days of service, or twenty (20) calendar days if service is made by United States mail.
- 4104.3 The Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.
- 4104.4 OAH shall:
- (a) Resolve a notice of infraction by:
 - (1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;
 - (2) Remanding for Department action or further proceedings, consistent with OAH's order; or
 - (3) Providing such other relief as the governing statutes, regulations, and rules support;
 - (b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and
 - (c) Render a final decision that shall constitute a final agency action subject to judicial review.
- 4104.5 The filing of an administrative appeal shall not in itself stay enforcement of an action, except that a person may request a stay according to the rules of OAH.
- 4104.6 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:
- (a) To the party who asserts an affirmative defense; and
 - (b) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.

4104.7 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

4104.8 Nothing in this chapter shall be interpreted to:

- (a) Provide that a filing of a petition for judicial review stays enforcement of an action; or
- (b) Prohibit a person from requesting a stay of the OAH proceedings according to the rules of the court.

4199 DEFINITIONS

4199.1 When used in this chapter or Title I, Subtitle B of the Sustainable Solid Waste Management Amendment Act of 2014, as amended, the following words or phrases shall have the meaning as described (some of the definitions were codified in the Act, indicated as [Statutory], and are reprinted below for regulatory efficiency):

Act - Title I, Subtitle B of the Sustainable Solid Waste Management Amendment Act of 2014, as amended (D.C. Law 20-154; D.C. Official Code §§ 8-1041.01 *et seq.*).

Brand - a manufacturer's name, brand designation, make or model name or number, or other nomenclature by which covered electronic equipment is offered for sale by a manufacturer. [Statutory]

Computer - an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing a logical, arithmetic, or storage function, including a laptop computer or other portable computer, desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include a computer central processing unit; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, server other than a small-scale server, or other similar device. Computer also means a small-scale server, portable digital music players that have memory capability and are battery-powered, or other similar devices.

Computer monitor and display devices - a separate visual display component that can be used with a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, or other similar device, with a display greater than six inches when measured diagonally, and its case, interior wires and

circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

Computer peripheral - any device that is sold primarily for external use with a computer and that provides input into or output from a computer, including: electronic keyboards; electronic mouse or other pointing device; printers; multi-function imaging equipment containing printers, which does not weigh more than one hundred (100) pounds; speakers sold 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.

Covered electronic equipment - computers and computer peripherals, including keyboards, electronic pointing devices, printers, computer monitors and display devices, laptops or other portable computers, and portable digital music players that have memory capability and are battery-powered, televisions, and television peripherals. The term “covered electronic equipment” does not include a motor vehicle, part of a motor vehicle, or a component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; telephones of any type, including mobile telephones, a personal digital assistant, a global positioning system, or a hand-held gaming device, household appliances, or covered electronic equipment that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, air purifier, water heater, or exercise equipment, equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development or commercial setting, security or anti-terrorism equipment, monitoring and control instrument or system, thermostat, hand-held transceiver, server other than a small-scale server, cash register or retail self-checkout system, stand-alone storage product intended for use in industrial, research and development, or commercial settings, medical equipment that contains a cathode ray tube, a flat panel display or similar video display device, and that is not separate from the larger piece of medical equipment, or other medical devices as defined under the Federal Food, Drug, and Cosmetic Act. [Statutory]

Covered electronic equipment stewardship program - a recycling effort for covered electronic equipment established by a manufacturer, partnership, or representative organization. [Statutory]

Department - the Department of Energy and Environment or its successor agency.

Household - an individual or two (2) or more persons who reside together in a

housing unit.

Laptop computer or other portable computer - a computer and display greater than six inches when measured diagonally that can be carried as one unit by an individual, including a laptop computer, tablet, e-reader, or other similar devices.

Manufacturer - a person who:

- (A) Manufactures, imports, assembles, or substantially assembles covered electronic equipment for sale in the District by means of retail, wholesale, or electronic commerce, under its own or another brand name or label, or without affixing a brand name or label;
- (B) Sells in the District by means of retail, wholesale, or electronic commerce, under its own brand name or label, covered electronic equipment produced by another person; or
- (C) Owns a brand name or label that it licenses to another person for use on covered electronic equipment sold in the District by means of retail, wholesale, or electronic commerce. [Statutory]

Market share - the total pounds of covered electronic equipment sold by a manufacturer to District residents and businesses in the previous year divided by the total pounds of all covered electronic equipment sold to District residents and businesses in the previous calendar year. [Statutory]

Minimum collection shares - the amount, in pounds, of covered electronic equipment, as calculated under D.C. Official Code § 8-1041.05(b)(1), that a manufacturer shall collect and recycle or arrange for the collection and recycling or reuse.

Mobile telephone - a telephone that converts sound into multiple-access packets, including, but not limited to, Code-Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), and fourth generation long term evolution (4G LTE or VoLTE), for transmission through a cellular network, which may be marketed as a phone, cellphone, mobile phone, or smartphone. A computer, including portable computer or tablet, that is capable of making calls through Voice over IP or VoIP is not a mobile phone.

Partnership - an organization of manufacturers created to work together to meet the total minimum collection shares of its member manufacturers under D.C. Official Code § 8-1041.05(a)(2). [Statutory]

Printer - a device using laser and LED (electrographic), ink jet, dot matrix, thermal, digital sublimation, or other print technologies that is designed to be placed on a desk or other work surface. This includes a multifunction or "all-in-one" device that, in addition to printing, performs one or more other operations such as copying, scanning, or faxing. Printer does not include a floor-standing printer, a printer with an optional floor stand, a point of sale (POS) receipt printer, a household calculator with printing capabilities or a label maker, a non-stand-alone printer that is embedded into a product other than a covered electronic equipment, or a device that weighs more than 100 pounds.

Representative organization - an organization created to provide convenient collection service to District residents under D.C. Official Code § 8-1041.05(a)(3) and to develop and oversee implementation of a District plan consisting of one or more covered electronic equipment stewardship programs in the District. A representative organization may also oversee plans in other jurisdictions. [Statutory]

Retailer - a person engaged in retail sales. [Statutory]

Reuse - a process by which covered electronic equipment or a component of covered electronic equipment is used for the same purpose for which it was originally purchased. [Statutory]

Sale or sold - any transfer of the absolute title to property for a certain agreed price, from a manufacturer or retailer, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this includes the transfer of title of new products or used products that may have been refurbished by the manufacturer or a manufacturer-approved party, but does not include consumer-to-consumer second-hand transfer, the transfer of used covered electronic equipment or a lease of covered electronic equipment, or wholesale transactions among a manufacturer, wholesaler, and retailer.

Small business - a corporation, partnership, sole proprietorship, or other legal entity that:

- (A) Is formed to make a profit;
- (B) Is independently owned and operated;
- (C) Employs fewer than one-hundred (100) full-time employees; and
- (D) Procures covered electronic equipment through retail channels.

Small nonprofit organization - an organization or institution that:

- (A) Is exempt from federal income tax under the provisions of 26 U.S.C. § 501(c)(3) and that meets the requirements of Chapter 4 of Title 29 of the D.C. Official Code;
- (B) Is independently owned and operated;
- (C) Employs fewer than one-hundred (100) full-time employees; and
- (D) Procures covered electronic equipment through retail channels.

Small-scale server - a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers and for an industry accepted operating system for home or low-end server applications. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; and is capable of operating in a simultaneous multi-user environment serving several users through networked client units.

Telephone - a commercially available electronic product whose primary purpose is to transmit and receive sound over a distance using a voice or data network.

Television - a display system containing a cathode ray tube, flat panel, or any other type of display primarily intended to receive video programming via broadcast, cable, or satellite transmission, and which has a display greater than six inches when measured diagonally.

Television peripheral - devices attached to and used in conjunction with televisions, including video cassette recorders (VCR), digital video recorders (DVR), digital video disc players (DVD), electronic or video game systems, 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.