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**ENVIRONMENTAL PROTECTION
ENVIRONMENTAL MANAGEMENT
SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM
COMPLIANCE AND ENFORCEMENT
DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT
Electronic Waste Management Rules**

Proposed Amendments: N.J.A.C. 7:26-2.8(s), N.J.A.C. 7:26A-1.1, and 1.3

Proposed New Rules: N.J.A.C. 7:26A-13

Authorized By: Bob Martin, Commissioner
Department of Environmental Protection

Authority: 13:1B-3, 13:1D-1 et seq., 13:1D-125 et seq., N.J.S.A.
13:1E-1 et seq., 13:1E-9, 13:1E-99.94 et seq., 26:2C-1 et
seq., 47:1A-1 et seq., 58:10-23.11 and 58:10A-1 et seq.

Calendar Reference: See summary below for explanation of exception to calendar requirement.

DEP Docket No: 11-11-07

Proposal Number: PRN 2011-_____

Submit written comments by October 14, 2011 to:

Janis Hoagland, Esq.
Attention: DEP Docket Number: 11-11-07
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 4th Floor
Mail Code 401-04L
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on CD or DVD as well as on paper. Submission of a CD or DVD is not a requirement. Submittals on a CD or DVD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of electronically submitted comments. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal document may be viewed or downloaded from the Department's web page at <http://www.nj.gov/dep/rules>.

The agency proposal follows.

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes amendments and new rules to implement the “Electronic Waste Management Act,” P.L. 2007, c.347 as amended by P.L. 2008 c.130 (N.J.S.A. 13:1E-99.94 et seq.) (the Act). The Act establishes recycling requirements for manufacturers and consumers of “covered electronic devices” – that is, with some exceptions, televisions; portable, desktop or personal computers; and computer monitors that are sold to consumers. It also requires the Department to promulgate rules to implement the Act through an electronic waste (e-waste) management program (N.J.S.A. 13:1E-99.111).

Following, as described in more detail below, are highlights of the Act:

- Bans the disposal of covered electronic devices as solid waste, beginning January 1, 2011 (N.J.S.A. 13:1E-99.109);
- Requires manufacturers of “covered electronic devices,” by June 1, 2010 and annually thereafter, to provide the Department, for its review and approval, plans for the collection, transportation and recycling of their share (as determined by the Department) of televisions and all other covered electronic devices that must be recycled (N.J.S.A. 13:1E-99.96e and 13:1E-99.103e);
- Prohibits charging consumers for the collection, transportation, or recycling of covered electronic devices, except that an authorized recycler may charge fees to schools or local government units for the reasonable costs incurred by the authorized recycler for the collection, transportation, or recycling of covered electronic devices (N.J.S.A. 13:1E-99.106d);
- Prohibits the sale of covered electronic devices that are not labeled to properly reflect the brand of the device (N.J.S.A. 13:1E-99.100);
- Prohibits retailers from selling new covered electronic devices supplied by a manufacturer that is not in compliance with the Act (N.J.S.A. 13:1E-99.99 and 13:1E-99.104b);
- Requires every retailer to clearly post and provide information from the Department describing how and where to recycle covered electronic devices (N.J.S.A. 13:1E-99.104a);
- Requires there to be at least one electronics collection opportunity in each county throughout the State (N.J.S.A. 13:1E-99.105c(1)); and
- Requires the Department to calculate the quantity of covered electronic devices to be collected by each manufacturer (N.J.S.A. 13:1E-99.96c and 99.105).

Background – The importance of regulating e-waste disposal in New Jersey and nationally

According to the United States Environmental Protection Agency (EPA), e-waste makes up almost two percent of the municipal solid waste stream. Although currently a relatively small percentage of the total municipal solid waste stream, the quantity of e-

waste entering the waste stream is increasing as electronics become more affordable and are bought by more people. In addition, the increasingly frequent introduction of newer models of electronic equipment causes consumers to more quickly discard older models as obsolete. The predictions of Moore's law, which states that the number of transistors on a chip will double about every two years, have generally held true, resulting in a rapid increase in computing speeds and capability coupled with significant cost decreases. This provides the impetus for consumers to purchase newer, faster computers more frequently than is the case for other durable goods such as refrigerators or stoves.

Furthermore, while the volume of discarded televisions and computers is relatively small, this e-waste accounts for a significant percentage of the nation's hazardous waste. Electronic devices such as desktop or personal computers, computer monitors and television sets contain numerous heavy metals and hazardous substances. Lead, mercury, cadmium and brominated flame-retardants are among the substances of concern in electronics. These substances are used in electronics for important performance characteristics, but can cause problems if the products are not properly managed at the end of their useful life. Lead is used in glass in cathode ray tube (CRT) monitors and televisions, and in solder and interconnects. Older CRTs contain, on average, four pounds of lead (and sometimes as much as seven pounds), while newer CRTs contain closer to two pounds of lead. Mercury is contained in fluorescent bulbs used to light flat panel computer monitors and notebook computers.

Brominated flame-retardants are widely used in plastic cases and cables for fire retardancy; the more hazardous ones have been phased out of newer products but remain in older products. Cadmium was used in nickel-cadmium (ni-cd) rechargeable batteries for laptops and other portable electronic devices. Newer batteries - nickel-metal hydride and lithium ion - do not contain cadmium.

The improper handling of discarded electronics can release hazardous chemical compounds known to adversely affect human health and the environment. This can happen, for example, when recyclers dismantle equipment without the necessary environmental and safety controls or when consumers discard their used computers, components and televisions in the trash. This is particularly a concern when e-waste is exported to countries where improper handling is generally the rule, rather than the exception.

According to estimates by the EPA, about 61 percent of CRT monitors and televisions collected in the United States for recycling in 2005 were exported. See EPA Fact Sheet – Management of Electronic Waste in the United States; April 2007 (revised July 2008), EPA530-F-08-014, available at <http://www.epa.gov/waste/consERVE/materials/ecycling/docs/fact7-08.pdf>. Often, e-waste is exported from the United States to developing countries, where toxic components are burned, dumped or smashed apart by impoverished workers and children without proper protection. This practice is currently illegal under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which bans the exportation of hazardous waste to developing countries. The United States has signed, but has not ratified, the Basel Convention. More information is available regarding the Basel Convention at <http://www.basel.int/>.

Federal and state e-waste management programs and requirements

The EPA adopted a final rule on July 28, 2006 (71 FR 42928) regulating the recycling and processing of CRTs. See 40 C.F.R. Part 261 Subpart E. This EPA rule exempts CRTs sent for recycling from hazardous waste regulation if certain conditions are met, but does not address any other forms of e-waste.

In the absence of a national program for the management of e-waste, many states are passing legislation similar to New Jersey's. The National Center for Electronics Recycling (NCER) maintains a database of the states that have passed e-waste legislation. According to NCER, 24 states, including New Jersey, have passed some form of legislation pertaining to e-waste. The Act recognizes that a comprehensive nationwide approach to the financing, collection, transportation and recycling of electronic devices that supersedes individual state action is ultimately the best solution for all stakeholders, including, manufacturers, distributors, retailers, collection agencies, recyclers, governments at all levels, and consumers. To this end, the Department continues to work with several stakeholder groups on local, regional, State, and national levels to implement an e-waste management strategy that will address the impacts of New Jersey materials in harmony with the efforts of other jurisdictions, until a nationwide law or system is put into effect.

What the Act does

The following description of the provisions of the Act upon which the proposed rules are based is offered as an aid to understanding the proposed structure and requirements of the Department's e-waste management program. The proposed rules are described in detail later in this summary.

The Act requires all manufacturers of covered electronic devices to register with the Department, pay a statutorily mandated registration fee that will help fund the Department's administration of the program, and provide the Department, for its review and approval, plans for the collection, transportation and recycling of their share (as determined by the Department) of televisions and all other covered electronic devices that must be recycled. The Act's ban on the disposal of covered electronic devices as solid waste went into effect on January 1, 2011, which was also the statutory start date for manufacturers' collection plans, so that the public would have adequate access to collection sites at the start of the disposal ban. The disposal ban is expected to increase public awareness of this issue and participation in recycling, resulting in the diversion of millions of pounds of electronic waste from landfills and incinerators.

The Act defines "manufacturer" broadly to cover a variety of scenarios regarding the manufacturing and selling of covered electronic devices, with or without a brand (see N.J.S.A. 13:1E-99.95 for definitions promulgated in the Act).

The Act defines "consumer" as "a person who purchases a covered electronic device in a transaction that is a retail sale," and specifically excludes from this definition "any business concern," defined as "any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization." However, a "business concern" does not include a small business enterprise, which is any business that has its principal place of business in New Jersey, is independently owned and operated, and

employs the equivalent of fewer than 50 full time employees. Accordingly, a small business enterprise is a “consumer” for the purposes of the Act, and the recycling of used covered electronic devices purchased by a small business enterprise must be accounted for in the manufacturers’ recycling plans.

The Act defines “covered electronic device” to generally include computers and televisions. Electronic devices that are excluded from the definition of “covered electronic device” include those that are part of a motor vehicle; those that are part of a larger piece of equipment designed for use in an industrial, commercial, or medical setting (including diagnostic, monitoring, or control equipment); and those that are contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier or air purifier. The Act also excludes from the definition of “covered electronic device” a telephone of any type, unless it contains a video display area greater than four inches, measured diagonally. The Act also limits the definition of “computer” to exclude certain automated typewriters, calculators and portable digital assistants. Similarly, “television” does not include certain stand-alone display systems that contain a cathode ray tube (CRT) or a flat panel display similar to those found in televisions if the viewable area of the display is not greater than four inches measured diagonally or does not otherwise conform to certain other format and reception requirements.

The Act divides manufacturers of covered electronic devices into two subgroups, namely, manufacturers of televisions, and manufacturers of covered electronic devices other than televisions. The primary difference in the requirements between the two subgroups pertains to the method of determining how many covered electronic devices each manufacturer must collect (the collection obligation). The collection obligation of a television manufacturer is determined by market share, which is based on sales of televisions (N.J.S.A. 13:99-96). The collection obligation of a manufacturer of covered electronic devices other than televisions is determined by return share, which is based on the amount of devices collected for recycling (N.J.S.A. 13:99-105).

Other differences in the statutory treatment of the two subgroups of manufacturers include the required submittal of annual sales data by television manufacturers (to assist in determining television collection share) (N.J.S.A. 13:99.96) and the required submittal of information regarding any vendor-to-business purchaser recycling arrangements for covered electronic devices other than televisions (N.J.S.A. 13:99.103e(3)). The Department uses annual sales data in determining and evaluating market or collection share for television manufacturers, but sales data are not relevant in determining return share for the other manufacturers. Because more and more computer manufacturers are offering their business purchasers recycling options referred to in the proposed new rules as “vendor-to-business purchaser recycling arrangements,” this information is useful to the Department in developing and reviewing its goals for this program. There is no comparable level of participation in such arrangements by the television manufacturers.

The Act, at N.J.S.A. 13:1E-99.96h and 103h, allows a manufacturer that exceeds its collection obligation to sell credits to another manufacturer or use those credits to reduce its collection obligation for the following program year. The proposed new rules do not reflect this credit trading program component, as the Department has not yet

completed the process of developing it. The Department is seeking public comment on how such a credit trading program should be structured and has published, elsewhere in this Register, a Notice of Opportunity for Public Comment on how best to implement these provisions of the Act.

The Act shifts the financial responsibility for the collection, transportation and recycling of e-waste from New Jersey taxpayers to the producers of the electronic equipment and establishes a comprehensive Statewide collection and recycling program. These statutorily mandated e-waste recycling and management requirements are consistent with the overall State solid waste management strategy, including the intent to pursue and implement an integrated approach to solid waste management and to aggressively promote waste reduction, reuse and recycling as the preferred methods of solid waste management.

The Act requires that all e-waste collected by manufacturers be recycled in compliance with all applicable local, State and Federal laws and not be exported for disposal in a manner that poses a significant risk to the public health or the environment. This reflects the legislative determination that manufacturers should provide for the responsible end disposition of those materials attributable to items sold and used in New Jersey. The Act also prohibits the recycling of the collected covered electronic devices by prisons and their inmates, since inmates work without Federally protected health, safety or labor rights.

As discussed above, there are advantages to New Jersey participating in a national e-waste program, if and when one emerges. Accordingly, the Act provides, at N.J.S.A. 13:1E-99.113, for the expiration of the provisions of the Act 60 days after notification by the Department that it has determined that there is an equivalent national program to collect or recycle covered electronic devices. This notification is to be in writing to the Governor, the President of the Senate and the Speaker of the General Assembly and the members of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee, or their successors, and in the form of a notice in the New Jersey Register. At that time, the Department will also take any administrative action necessary to implement the national program and repeal rules governing the e-waste program.

Recycling in New Jersey before the Act

Since June 2002, New Jersey has been regulating the transportation and recycling of electronic equipment generated by businesses under the Department's rules for the management of Class D recyclable material at N.J.A.C. 7:26A-7. N.J.A.C. 7:26A-7 sets forth the Department's requirements for the management of universal waste, including, among other things, consumer electronics.

The difference between the regulation of electronic devices as universal waste under Subchapter 7 of the Recycling rules and the regulation of covered electronic devices under the Act and under the proposed new rules is that Subchapter 7 of the Recycling rules does not impose any requirements on consumers, retailers or manufacturers of consumer electronics. Rather, it governs collectors and transporters of recyclable electronics. Even though many of New Jersey's municipalities and counties offer computer and electronics collections as part of household hazardous waste collections, special events, or other arrangements, these collections are voluntary; before

the enactment of the Act, consumers could legally dispose of their used electronic devices as solid waste. (Such disposal has been banned by the Act since January 1, 2011.) While some of the county collections are held at permanent locations, many counties are only able to offer single-day collection events that may not be convenient for all residents.

Stakeholder outreach in connection with these proposed new rules

The Department conducted stakeholder outreach on the proposed new e-waste rules by the following means:

- New Jersey Wastewise Business Network biannual meeting, November 18, 2008 at PSEG's Hadley Road facility in South Plainfield, with about 80 attendees;
- Association of New Jersey Recyclers (ANJR) annual conference, March 19, 2009 at the Rutgers EcoComplex in Bordentown, with more than 220 attendees;
- Department-initiated stakeholder meeting held March 30, 2009 at the Department in Trenton, with 40 attendees. Attendees included representatives of the Association of New Jersey Household Hazardous Waste Coordinators (ANJHHWC), the electronics recycling industry and original equipment manufacturers (OEMs), and county officials;
- ANJHHWC Annual Conference, December 1, 2009, in West Long Branch, with 30 attendees;
- ANJHHWC conference concerning the Act, May 25, 2010 at Waterfront Park in Trenton, with about 30 attendees, including consumer electronic manufacturers, e-waste recyclers and local recycling coordinators;
- New Jersey Recycling Certification Series training, December 16, 2009 held at Ocean County's Northern Recycling Center in Lakewood;
- General Stakeholder Meeting, June 10, 2010, at the Rutgers EcoComplex in Bordentown, attended in person and by telephone conference by manufacturers, recyclers, local county and municipal recycling and household hazardous waste coordinators, ANJR and ANJHHWC. The Department provided notice of this meeting through an announcement during a national conference call held in May by the Electronics Recycling Coordination Clearinghouse (ERCC). The Department also announced the meeting by an e-mail to all stakeholders and by posting notice of the meeting on the Department's web page;
- Press release, mailing to interested parties and posting of draft rule text on the Department's website on or about October 19, 2010, available for comment through November 15, 2010. The Department received approximately 40 comments on the draft proposed rule text from 15 commenters, including manufacturers, retailers, recyclers, and industry groups;
- Electronics Recycling Clearinghouse's "Harmonizing the State Electronic Recycling Programs – A Roundtable Discussion," September 28, 2010 in New Orleans, Louisiana, with more than 60 participants from government, manufacturer, recycler, and other stakeholder groups;

- Atlantic County Utilities Authority (ACUA) Recycling Coordinators' Meeting, October 21, 2010 at ACUA in Atlantic City, with 20 attendees, all municipal recycling coordinators;
- Bergen County Utilities Authority (BCUA) Recycling Coordinators' Meeting, December 9, 2010 at BCUA, Little Ferry, with about 50 attendees, consisting of Bergen County Recycling Coordinators;
- The NJ/NY Regional Meeting of the Auditing Roundtable, March 16, 2011 at PSE&G Training Center, Edison, with about 15 attendees, including environmental, health and safety specialists; and
- ANJHHWC conference concerning the Act, June 1, 2011 at Waterfront Park in Trenton, with about 30 attendees, including consumer electronic manufacturers, e-waste recyclers and local recycling coordinators.

As mentioned above, the Act requires manufacturers to register and pay registration fees as of January 1, 2010 for television manufacturers and as of February 1, 2010 for manufacturers of covered electronic devices other than televisions. It also requires the submission of recycling plans as of June 1, 2010. As the Department was unable to adopt its rules for the program before some of the Act's deadlines passed, it took the following actions to guide the regulated community:

- Published a public notice in the New Jersey Register on December 7, 2009 (41 N.J.R. 4563(b)), advising of upcoming program requirements and providing a link to the registration form posted on the Department's website; also provided directions for the submission of the registration fee and gave notice of the Department's intent to promulgate rules to implement the program;
- On or about June 9, 2010, mailed a letter to manufacturers advising them of the program requirements; also posted this letter and a notice of these requirements on the Department's website at <http://www.state.nj.us/dep/dshw/recycling/index.html> and provided additional guidance; and
- Extended some of the e-waste program milestone dates, as explained further below, to facilitate start-up and implementation.

This proposal reflects the input the Department received during its stakeholder outreach. Many of the concerns raised by the commenters relate to provisions of the Act and therefore cannot be addressed in this rulemaking. These comments include changing the definition of "recycling" to include incineration, adding additional wastes to the definition of "consumer electronics," changing the definition of "manufacturer" to exclude retailers who directly import electronics from factories, allowing retailers additional time to comply with the "do not sell" list, changing or removing the requirement for compliance with European Union standards, requiring manufacturers to use only approved New Jersey Class D Recycling Facilities for collection and processing, not requiring the submittal of recyclers' permits with collection plans, an objection to the requirement of a new collection plan every year and the submission of annual reports for

television manufacturers; and allowing manufacturers to participate in more than one collection plan.

Based on stakeholder input, the Department extended the due date for plan submissions to reflect start-up difficulties experienced by both the Department and the regulated community. The Act requires the submission of collection plans by June 1, 2010; the Department extended this due date, in its communications with manufacturers and as posted on its website, to September 30, 2010. Additionally, based on information and guidance sought and received from the manufacturers, the Department corrected and refined its use of recycling data from Washington State to generate initial recycling obligations (the Act requires the use of such “best available public return share data” in establishing these obligations for the first two years of the program).

Other commenters raised issues that were already addressed by the draft rule text. These comments include: increased enforcement and public awareness to ensure the success of the program; requiring collectors and transporters to be licensed and held to the Class D universal waste standards; allowing retailers to provide consumer education by means of a website or a message printed on a sales receipt instead of through signs, brochures or printed paper material available at the retail location; adding language for a credit-trading program; and defining “collector” to include a “not-for-profit” group.

A number of additional comments suggested changes to the rules that would not provide for a better implementation of the Act than would the posted draft rule text, and so the Department has not made these changes. They are as follows: objections to the timing provided in the rule for reporting and collection of data and for providing collection obligations; requiring documentation from recyclers for selling for repair or reuse to prevent sham exporting; relying on out-of-state data for determining collection obligations; changes to the certification signature requirements; and not requiring electronic payment of registration fees.

Several of the commenters suggested that the Department not require out-of-State recyclers to submit a letter of compliance from the regulating state agency. Additional commenters suggested the following: requiring recyclers to be certified as e-Stewards, an independent certification launched in April 2010 by leaders from the e-waste recycling industry and the environmental community; establishing a procedure for adding collection sites or authorized recyclers during the program year; allowing the collection of all covered electronic devices to count towards collection obligations; and using a professional statistician to develop the protocol for the sampling required at N.J.S.A. 13:1E-99.102. To address these concerns, the Department has determined to make some changes to the rule text, as reflected in this proposal.

The Department agrees that it may be difficult for an out-of-State recycler to obtain a letter from its home state’s regulating state agency indicating the facility operates in compliance with applicable regulations. Accordingly, the proposed rules instead require an out-of-State recycler to submit a copy of its operating permits, along with documentation of the facility’s regulatory compliance history. The Department also agrees that there are many different certifications available for electronics recyclers and

additional certifications are being developed for the future. Therefore, the proposed rules provide that the Department can approve additional forms of certification in addition to the “Responsible Recycling (R2) Practices.” The proposed rules also allow manufacturers to amend an approved collection plan to change collection sites or authorized recyclers. In addition, the proposed rules clarify that all covered electronic devices collected by a manufacturer will count towards that manufacturer’s collection obligation.

Finally, as to the suggestion that the Department use a professional statistician to develop the sampling protocol for the collection obligations, the Department notes that the staff who developed the sampling protocol did include a statistician. The methodology used in developing the sampling protocol is discussed in the summary below.

Amendments to the Solid Waste rules, N.J.A.C. 7:26

The Solid Waste rules are codified at N.J.A.C. 7:26. N.J.A.C. 7:26-2.8 sets forth a number of general prohibitions regarding the disposal of solid waste. The Department proposes, at new N.J.A.C. 7:26-2.8(s), to add the prohibition from the Electronic Waste Management Act at N.J.S.A. 13:1E-99.109, of knowingly disposing of a used covered electronic device as solid waste. This statutory prohibition went into effect on January 1, 2011. The proposed amendment further directs that electronic waste be recycled pursuant to the Recycling rules, N.J.A.C. 7:26A, including proposed new N.J.A.C. 7:26A-13, discussed below.

Amendments to the Recycling Rules, N.J.A.C. 7:26A

The Department proposes to implement the Act principally by adding proposed new subchapter 13 to the Recycling rules, N.J.A.C. 7:26A, discussed in detail below. Accordingly, the Department proposes amending the statement of scope at N.J.A.C. 7:26A-1.1(a) to reflect that the rules also govern e-waste recycling pursuant to the Act.

N.J.A.C. 7:26A-1.3 contains definitions for terms used throughout the Recycling rules. Some of the terms defined in N.J.A.C. 7:26A-1.3 also pertain to proposed N.J.A.C. 7:26A-13. However, because some of the terms as used in N.J.A.C. 7:26A-13 may be used in a way that is unique to the new e-waste recycling program, the Department proposes to state in both N.J.A.C. 7:26A-1.3 and N.J.A.C. 7:26A-13.2 that the latter definitions apply to the use of terms in N.J.A.C. 7:26A-13, even if the terms are also defined at N.J.A.C. 7:26A-1.3.

Proposed new Subchapter 13 – Electronic Waste Recycling

7:26A-13.1 Scope and authority

The Department proposes to codify the requirements of the Act at new subchapter 13. Proposed new N.J.A.C. 7:26A-13.1(a) sets forth the scope and authority for these proposed new rules. The Department proposes to identify the Act as the implementing

and enabling authority for the proposed new rules, and the purpose and scope of the recycling program that the Act establishes.

Proposed new N.J.A.C. 7:26A-13.1(b) provides that a waiver from the strict compliance with any portion of these rules may be sought on or after the effective date of rules governing waivers promulgated by the Department pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and that the Department will publish a notice of administrative change that amends this section to cross-reference those rules on or after that date. This provision implements the directive in Executive Order 2 (2010) concerning the common sense principles for rules that agencies adopt rules for “waivers” that recognize that rules can be conflicting or unduly burdensome, but that directs that such waivers may not be inconsistent with the core mission of the agency. The Department proposed rules concerning the waiver of Department rules on March 7, 2011. See 43 N.J.R. 473(a).

7:26A-13.2 Definitions

At proposed new N.J.A.C. 7:26A-13.2, the Department proposes to define certain terms used in the proposed new subchapter, many of which are defined statutorily at N.J.S.A. 13:1E-99.95.

The Department proposes definitions for the following terms that are identical to their statutory definitions: “cathode ray tube,” “covered electronic device,” “local government unit,” “manufacturer,” “market share,” “orphan device,” “person,” “purchase,” “retailer,” “sale” or “sell,” and “video display.” The proposed definition of “television” paraphrases the statutory definition of this term.

Some of the definitions of terms used in the e-waste recycling rules required only minor grammatical or stylistic modification from the statutory definitions. Such changes are made in the definitions of “business concern,” “consumer,” “recycling” and “small business enterprise.”

The Department proposes modifying the statutory definition of “computer” to substitute “that is designed to perform” for “performing” in recognition that the computer may no longer be performing, but, for the purposes of the e-waste recycling program, is still to be considered a computer.

The Department proposes a definition of “monitor” substantively identical to the statutory definition of this term, but has reorganized the wording to make it easier to understand. Also, to simplify and remove redundancy, the definition does not include the reference in the statutory definition to a display area being greater than four inches measured diagonally, since “monitor” is defined as a “video display” component with certain characteristics, and “video display” is defined in both the Act and the proposed new rules as being greater than four inches measured diagonally.

The proposed definition of “portable computer,” a term that is only used in the definition of “covered electronic device,” is substantively identical to the statutory definition but has been modified for greater syntactic clarity.

The Department has added text to the proposed definition of “program year,” to state explicitly that the term “full calendar year” used in the definition means one

running from January 1 through December 31. It also deleted the reference to a start date of January 1, 2011, since that date has already passed and all program years are currently full calendar years.

“Retail sale” is only used in the proposed rules in the definition of “consumer,” where it is used in the singular. Accordingly, the Department proposes to define this term identically to the statutory definition, but in the singular.

The Department proposes to add the phrase “other than televisions” to the statutory definition of “return share” to make clear that this term is not used in connection with manufacturers of televisions; it applies only to manufacturers of covered electronic devices other than televisions. The statutory definition of “return share” refers to N.J.S.A. 13:1E-99.105 as the authority for the Department’s determination of the manufacturer’s return share. The Department proposes to substitute a reference to the parallel provision in the new rules at N.J.A.C. 7:26A-13.9. The Department also proposes to add a parallel definition of “television collection share” to refer to the proportion of televisions for which a television manufacturer is determined to be responsible under N.J.A.C. 7:26A-13.9. The Act does not use or define this term.

The Department proposes to define “return share in weight” to match the statutory definition of this term, but proposes replacing text in the statutory definition with the equivalent defined term “return share.” The proposed definition of “television collection share in weight” parallels the definition of “return share in weight” to refer to the total weight of televisions for which the television manufacturer is determined to be responsible under N.J.A.C. 7:26A-13.9. The Act does not use or define this term. For simplicity’s sake, the Department proposes a definition of the term “collection obligation” to refer generically to both “television collection share in weight” and “return share in weight.”

The proposed definition of “authorized recycler” matches the statutory definition of this term at N.J.S.A. 13:1E-99.95, but adds text to match the statutory prohibition at N.J.S.A. 13:1E-99.96e and 99.103e that disqualifies any person committed to a jail, prison or other institution for the detention of persons charged with or convicted of an offense from being an authorized recycler. N.J.S.A. 13:1E-99.96e and 99.103e also prohibit sending collected covered electronic devices to prisons for recycling and prohibit recycling by prisoners.

The proposed definition of “brand” is substantively identical to the statutory definition of this term, with an additional explanatory sentence restating the statutory exclusion of symbols, words or marks that identify a component rather than the covered electronic device as a whole.

The Department proposes to define “brand list,” a term neither used nor defined in the Act, to identify the list of brands under which a manufacturer’s covered electronic devices are sold that must be identified as part of the registration package at N.J.A.C. 7:26A-13.3(c)3.

The proposed definition of “collection plan” or “plan” identifies the statutorily required plan for the collection, transportation, and recycling of covered electronic

devices that a manufacturer must submit to the Department. Collection plans are required pursuant to N.J.S.A. 13:1E-99.96e (for registered television manufacturers) and pursuant to N.J.S.A. 13:1E-99.103a (for manufacturers of covered electronic devices other than televisions). The Department proposes to codify new rules concerning collection plans primarily at N.J.A.C. 7:26A-13.6.

The term “collector” is used, but not defined, in the Act. In these rules, the term is used at proposed new N.J.A.C. 7:26A-13.6 (Required contents of collection plan; confidentiality; review of plans), N.J.A.C. 7:26A-13.10 (Review of collection plans), and N.J.A.C. 7:26A-13.11 (Performance requirements for collectors, transporters, and authorized recyclers). As proposed at N.J.A.C. 7:26A-13.2, “collector” means a facility specified in a manufacturer’s approved collection plan that receives and accumulates covered electronic devices prior to their transportation to an authorized recycler.

“Collector” includes entities typically involved in the collection of recycled material, for example, a solid waste transfer station or materials recovery facility, a solid waste sanitary landfill, a universal waste handler, a Class D recycling center or a retailer. The draft rule text that the Department posted on its website for informal comment on October 19, 2010 included, as an example of a collector, “recycling depot,” a term that is also defined at N.J.A.C. 7:26A-1.3 and regulated by other provisions of N.J.A.C. 7:26A. A commenter correctly noted that, as defined at N.J.A.C. 7:26A-1.3, a recycling depot can only accept Class A recyclables or non-container plastics; that is, it cannot accept e-waste, because e-waste is a Class D recyclable. The Department therefore is not including “recycling depot” in the proposed definition of “collector.” A municipality that had been operating as a recycling depot will be able to act as a collector under a manufacturer’s collection plan, but it must do so as a universal waste handler and not as a recycling depot.

Some of the entities that fall under the proposed definition of “collector” are already regulated by the Department. A collector that is also a “universal waste handler” or a “Class D recycling center,” as defined at N.J.A.C. 7:26A-1.3, is regulated by other provisions of N.J.A.C. 7:26A. A collector that is also a “transfer station” or a “solid waste sanitary landfill,” as defined in the Solid Waste rules at N.J.A.C. 7:26-1.4, is also regulated by provisions of the Solid Waste rules.

The Department proposes defining “gross television recycling goal” to refer to the overall goal that the Department will establish each year for the collection, transport and recycling of televisions covered by the Act as covered electronic devices. The methodology the Department will use to determine this goal is proposed at N.J.A.C. 7:26A-13.9(d).

The Department proposes defining “premium service” to describe a collection service that exceeds the Act’s requirements for a convenient collection system. In response to comments submitted as part of the stakeholder process, the Department proposes at new N.J.A.C. 7:26A-13.10(e) to allow a manufacturer to charge a fee for providing a premium service to a consumer, provided the Department has approved the service and the service fee as part of the collection plan.

The Department does not propose to define “registrant” in these rules, relying instead on the commonly accepted definition of this term as one who is registered. This

term is defined in the Act to mean “a manufacturer of covered electronic devices *that is in full compliance with the requirements of this act.*” (Emphasis added.) This statutory definition is problematic, since, for example, a manufacturer could comply with registration requirements yet fail to comply with other program requirements regarding preparation and implementation of an approved collection plan. Such a registered manufacturer would not, under the statutory definition, be a registrant. To avoid this confusion, the Department has determined to rely instead on the common use of this term without reference to “full” compliance with the Act.

The Act does not define “television manufacturer”; instead it establishes registration requirements at N.J.S.A. 13:1E-99.96 for “each manufacturer of televisions offered for sale for delivery in this State.” Additional statutory requirements apply to “registered television manufacturers,” thus including only manufacturers of televisions offered for sale for delivery in New Jersey, since only they are required to register. To keep the rule text simple and straightforward, the Department proposes defining “television manufacturer” to refer only to manufacturers of televisions offered for sale for delivery in New Jersey.

The Department proposes a definition of “transporter” modeled on the definition of “universal waste transporter” at N.J.A.C. 7:26A-1.3, since “transporter,” as used in subchapter 13, describes a subset of “universal waste transporter.”

Computer vendors often enter into agreements with business customers to provide for the recycling of the computers at the end of their useful life by the vendor. The Act, at N.J.S.A. 13:1E-99.103e(3), and the proposed new rules, at N.J.A.C. 7:26A-13.6(a)iii, recognize this practice and require that a collection plan for manufacturers of covered electronic devices other than televisions include the processes and methods that will be used to recycle collected covered electronic devices that originated from “transactions between business concerns,” that is, sales between a vendor and a business purchaser, both of whom meet the definition of “business concern.” Because “business concern” excludes small business enterprises, this means that sales where either party is a small business enterprise would not be covered by this reporting requirement. The Department proposes to define the term “vendor-to-business purchaser recycling arrangement,” which is used at N.J.A.C. 7:26A-13.6(a)iii, as a shorthand reference to such an arrangement between vendor and business purchaser addressing the recycling, for a fee or otherwise, of the purchased or leased electronic equipment. These recycling arrangements are not in any way regulated under the Act or the proposed new rules; the manufacturer is only required to provide the Department with information concerning any such arrangement.

7:26A-13.3 Registration requirements for manufacturers of covered electronic devices

Proposed new N.J.A.C. 7:26A-13.3 sets forth the registration requirements for television manufacturers and manufacturers of all other covered electronic devices. Consistent with N.J.S.A. 13:1E-99.96a and N.J.S.A. 13:1E-99.102b, registration is required only for those manufacturers who manufacture covered electronic devices for sale and delivery in New Jersey. N.J.A.C. 7:26A-13.3(a) specifies that N.J.A.C. 7:26A-13.3 applies both to television manufacturers and manufacturers of other covered

electronic devices. In some cases, the registration requirements are the same for both groups of manufacturers; in others, they differ, as explained below.

The Act requires manufacturer registration beginning in 2010. N.J.S.A. 13:1E-99.96a requires that a television manufacturer register with the Department beginning on January 1, 2010, and N.J.S.A. 13:1E-99.102b requires that a manufacturer of covered electronic devices other than televisions register with the Department on or before February 1, 2010. Proposed new N.J.A.C. 7:26A-13.3(b) reflects the requirements at N.J.S.A. 13:1E-99.96a and 99.102b that registration continue for all regulated manufacturers by January 1 of every year after 2010 and requires payment of an initial \$5,000.00 registration and thereafter an annual \$5,000.00 registration renewal fee, as set by the Act at N.J.S.A. 13:1E-99.96a and 99.96b for television manufacturers and at N.J.S.A. 13:1E-99.102b for manufacturers of covered electronic devices other than televisions.

Proposed new N.J.A.C. 7:26A-13.3(c) provides the timing and registration requirements for the initial registration of manufacturers of covered electronic devices other than televisions who were not required to register as of January 1 of any given year. The proposed requirement mirrors the Act, which provides at N.J.S.A. 13:1E-99.102b that any such manufacturer who is subsequently notified by the Department of a return share and return share by weight must register within 30 days of such notification. The Department will also identify manufacturers who, although required to register, have failed to do so, by, among other measures, checking lists of manufacturers registered in other states, inspecting retailers to determine brands being sold in New Jersey, and gathering information from other manufacturers. The manufacturer registration form is available for download from the Department's website.

The Act requires annual renewal of registration on or before January 1, 2011 and by January 1 of every year thereafter. Accordingly, proposed new N.J.A.C. 7:26A-13.3(d) reflects the registration renewal requirements at N.J.S.A. 13:1E-99.96b and 13:1E-99.102b that registered manufacturers renew their registrations by January 1 every year.

The contents of the registration package are set forth at proposed new N.J.A.C. 7:26A-13.3(e)1 through 4; that is, the registration form, the statutorily required annual registration or registration renewal fee of \$5,000.00 (set by the Act at N.J.S.A. 13:1E-99.96a and 99.96b for television manufacturers and at N.J.S.A. 13:1E-99.102b for manufacturers of covered electronic devices other than televisions), a list of the brands the manufacturer is currently selling in New Jersey and a written certification as to both the veracity of the submitted information and the manufacturer's compliance with European Union (EU) heavy metal standards, as discussed more fully in the summary of N.J.A.C. 7:26A-13.7, below.

In order to provide the Department time to re-allocate television collection shares as needed for the following program year, proposed new N.J.A.C. 7:26A-13.3(f) requires a television manufacturer to give written notice to the Department at least 30 days before it stops selling televisions in New Jersey. The Department based this on the provisions of the Act at N.J.S.A. 13:1E-99.96d, which requires a television manufacturer to give notice

of intent to cease selling “as soon as it knows.” The Department is substituting a 30-day notice requirement to give more certainty to the registrants and the Department.

N.J.A.C. 7:26A-13.4 Collection plan and annual report submission requirements

Proposed new N.J.A.C. 7:26A-13.4(a) reflects the statutory requirements at N.J.S.A. 13:1E-99.96e and N.J.S.A. 13:1E-99.103a that a manufacturer, either individually or as part of a group, must submit a plan to collect, transport and recycle used covered electronic devices (collection plan) based on the manufacturer’s market share or return share, as reflected in its collection obligation. Determination and notification of a manufacturer’s collection obligation is addressed at proposed new N.J.A.C. 7:26A-13.9, discussed below.

The Act requires the initial submission of these collection plans by June 1, 2010 (see N.J.S.A. 13:1E-99.96e for television manufacturers and N.J.S.A. 13:1E-99.103a for manufacturers of covered electronic devices other than televisions). In 2010, as it rolled out the e-waste program, the Department extended this deadline to September 30, 2010, in recognition of start-up issues encountered in the initial implementation of this program that made it difficult to meet the June 1 deadline.

For 2011, the Department extended the plan submission deadline to September 1, reflecting and accommodating the slight delay in the release of collection obligations to the manufacturers caused by program start-up concerns. The proposed plan submission deadline of June 1 for future years at N.J.A.C. 7:26A-13.4(a) differs only slightly from the statutory due date, at N.J.S.A. 13:1E-99-103b, of March 15. Again, the Department is proposing this modification of the statutory timing requirements to accommodate the time and effort that will be required for the preparation and submission of these plans.

N.J.S.A. 13:1E-99.96e does not explicitly establish a plan submission deadline for television manufacturers after the first year, but N.J.S.A. 13:1E-99.103b requires a manufacturer of covered electronic devices other than televisions that has been given a return share to submit its first plan by June 1, 2010, and, beginning in 2012, by March 15 every year thereafter. (In apparent conflict, the Act also provides at N.J.S.A. 13:1E-99.103e that every plan is to be filed with a manufacturer’s annual registration, due by January 1 of each year.) The Department interprets the Act as predicating the March 15 deadline on the Department’s providing collection obligations by February 15 of each year, just as the June 1, 2010 filing deadline is predicated on the provision of the collection obligation by April 2, 2010. Since the Department proposes, at new N.J.A.C. 7:26A-13.9(g), to provide collection obligations by May 1 of every year after 2011, a due date of June 1 in those years provides the same length of time before the collection plan is due as that provided by the Act. Accordingly, the Department proposes a collection plan submission deadline of June 1 at N.J.A.C. 7:26A-13.4(a).

Finally, it is not clear whether the Act requires a manufacturer of a covered electronic device other than a television to submit a collection plan in the year immediately following the submission of the first plan. See N.J.S.A. 13:1E-99.103a and b, which the Department interprets as requiring it to provide return shares by April 2, 2010 and February 15, 2012 (and every February 15, thereafter) and requiring a manufacturer of covered electronic devices other than televisions to submit a plan by June 1, 2010 and March 15, 2012 (and every March 15 thereafter). See also, in contrast,

N.J.S.A. 13:1E-99.105a(3), which the Department interprets as requiring it to provide return shares by April 2, 2011 and February 15, 2013 (and every February 15, thereafter). However, the Department did require manufacturers to submit their collection plans in the year immediately following the submission of the first plan, that is, in 2011. The Department's concern was that skipping a year in determining collection obligations could mean that manufacturers would be implementing plans based on data that may no longer be current. The Department would have, in effect, missed an opportunity to adjust collection obligations to more accurately reflect more recent data regarding sales of televisions and return shares of covered electronic devices other than televisions. This is particularly critical at the outset of the program. The success of this program depends upon the establishment of uniformly equitable collection obligations. Accordingly, the Department is obtaining the most current market share and return share information to use to determine the collection obligations for the 2012 program year. In addition, updating the collection obligations allows the Department to identify any additional or new manufacturers who have not yet been provided with collection obligations and who will be required to submit an initial collection plan.

Proposed new N.J.A.C. 7:26A-13.4(b) reflects the statutory requirement at N.J.S.A. 13:1E-99.96e, generally, and more specifically at N.J.S.A. 13:1E-99.103c and d, that the plans of individual manufacturers provide for the individual's collection obligation, and that group plans provide for the combined collection obligation of all the participating individual manufacturers.

The Department is required by N.J.S.A. 13:1E-99.96a.b and N.J.S.A. 13:1E-99.105f to prepare, post on the Department's website, and submit to the Legislature, an annual report regarding the effectiveness of the e-waste management program in the recycling of televisions and of covered electronic devices other than televisions, respectively. N.J.S.A. 13:1E-99.96a.b(1) and (2) and N.J.S.A. 13:1E-99.105f(2) and (5) require the inclusion of the progress made toward achieving the Department's overall annual total recovery and recycling goals for covered electronic devices and an evaluation of the existing collection and processing infrastructure for covered electronic devices. N.J.S.A. 13:1E-99.105f(1), (3) and (4) also require inclusion of the total weight of covered electronic devices other than televisions collected in the previous year, information on the collection sites operated the previous year, and an evaluation of the education and outreach program.

Proposed new N.J.A.C. 7:26A-13.4(c) requires a manufacturer or group of manufacturers to submit an annual report containing information to assist the Department in establishing goals for the e-waste program, determining the collection obligations for manufacturers and preparing the reports required at N.J.S.A. 13:1E-99.96a and N.J.S.A. 13:1E-99.105f. For television manufacturers, this information includes annual television sales data. For all manufacturers of covered electronic devices and groups of manufacturers, the required information includes the weight of televisions and covered electronic devices other than televisions collected pursuant to their plans.

Before it was amended in 2008 to provide for the mandatory administration of the television e-waste management program by the television manufacturers, the Act provided that the Department would run a television e-waste management program, but

gave television manufacturers or groups of television manufacturers the option of running their own television e-waste management programs, in which case they were required to include information in the annual report concerning the weight of televisions collected in the previous program year. See former N.J.S.A. 13:1E-99.96f, which provided:

"A registered television manufacturer or group of registered television manufacturers may conduct its own collection, transportation, and used television recycling program. . . . The registered television manufacturer or group of manufacturers shall submit a report to the department annually by January 30, beginning the year after the program is initiated. The report shall include the total weight of used televisions collected from consumers in this State during the previous program year and documentation verifying collection and recycling of these used televisions."

However, as amended in 2008, the Act no longer requires a television manufacturer to reflect the amount of televisions collected in the previous program year in the annual report it submits to the Department.

Nor does the Act require the submission of collection data in the annual report for manufacturers of covered electronic devices other than televisions. The Act anticipates that the Department's sampling will be the primary source of information in determining return share and return share by weight, and permits a manufacturer of covered electronic devices other than televisions to do its own sampling and provide those results to the Department as part of an annual report. See N.J.S.A. 13:1E-99.102a(1) and (2).

However, even with sampling, in the case of both television manufacturers and manufacturers of covered electronic devices other than televisions, it will be very difficult for the Department to obtain a reliably accurate picture of what has been collected in the previous year under the manufacturers' collection plans absent reporting and documentation by the manufacturers. This reporting works to the benefit of all concerned insofar as it will lead to an equitable and uniform distribution of the responsibility for the management of the State's e-waste. The Department also needs this information in order to evaluate the success of the collection plans and the e-waste program overall in order to ensure the integrity of the program and to assist in the preparation of the annual report required at N.J.S.A. 13:1E-99.96a.b and N.J.S.A. 13:1E-99.105f.

Since the manufacturers will need to track this information for their own purposes (credit trading, payment to plan participants, documentation of compliance with collection obligation) they will already have the information, so that providing it to the Department in an annual report should not be unduly burdensome.

The Act provides for the submission of the annual report with the registration renewal, namely, by January 1 of each year. However, it would not be possible to include the data from the entire previous year (through December 31) by the registration due date of January 1. Accordingly, in order to effectively administer the e-waste recycling program, the Department proposes to shift the submission date for the annual report from January 1 to February 1 of each year. Using this later date provides a manufacturer sufficient time to gather the information required to be submitted with the annual report.

The Act, at N.J.S.A. 13:1E-99.96e and N.J.S.A. 13:1E-99.103d, allows television manufacturers and manufacturers of covered electronic devices other than televisions to submit collection plans either individually or as part of a group. The Department proposes at N.J.A.C. 7:26A-13.4(c) and (d) the requirements for submitting a collection plan and annual report as a group. The Department has developed a Group Designation Form that is available on-line at <http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>. Proposed new N.J.A.C. 7:26A-13.4(e) requires manufacturers to use this form to identify the individual manufacturers participating in the group, including the program interest number the Department assigned them when they registered under this program, as well as a single point of contact with whom the Department will correspond.

The Act explicitly requires the implementation, at the manufacturer's expense, of television collection plans by January 1, 2011 at N.J.S.A. 13:1E-99.96e. While the Act does not provide a specific deadline for implementation of collection plans for manufacturers of covered electronic devices other than televisions, for program implementation purposes, the Department imputed the same deadline for the requirements at N.J.S.A. 13:1E-99.103, and imputed January 1 as the starting date for every year thereafter, as reflected at proposed N.J.A.C. 7:26A-13.4(f).

The Department recognizes that a manufacturer may meet or exceed its return share in weight before the end of a program year. This could happen if the collection goals for a program year, particularly in the early years of the program, are set too low, or if a collection program is particularly efficient. However, if a manufacturer were to discontinue a collection plan before the end of the program year because it had already satisfied its collection obligation, this could compromise the State's statutory obligation to ensure that collection opportunities are reasonably convenient and free of unreasonable limits on the number of permitted drop-offs by consumers. Accordingly, the Department proposes, at N.J.A.C. 7:26A-13.4(g), to require a manufacturer to operate the collection centers in its collection plan for the entire program year, even if this results in the manufacturer exceeding its collection obligation by collecting more covered electronic devices than required.

Proposed N.J.A.C. 7:26A-13.4(h) allows manufacturers to amend an approved collection plan during the program year to change elements of the plan, including adding, removing or changing collection sites or authorized recyclers. This provides manufacturers with additional flexibility to optimize their collection program. However, an amendment may not be implemented until approved by the Department.

N.J.A.C. 7:26A -13.5 Submission and certification of required documents and payments

Proposed new N.J.A.C. 7:26A-13.5 establishes the requirements concerning the submission and certification of manufacturers' documents and payments. Proposed new N.J.A.C. 7:26A-13.5(a) describes the required submissions, to be submitted as set forth in N.J.A.C. 7:26A-13.5(b) through (e).

The Department is exploring the option of accepting registrations, group designation forms, annual reports, collection plans and registration and registration renewal fees, electronically via the internet; however, the Department is not able, at this

time, to accept these submissions electronically through a web-based submission program. Accordingly, the Department proposes, at new N.J.A.C. 7:26A-13.5(b), that registrations, annual reports and collection plans are to be delivered to the Department on electronic media (such as a compact disk (CD), digital versatile or video disk (DVD) or flash drive) so the information can be entered into the Department's database. The Department will notify manufacturers when its web-based submission program is operational. Manufacturers will be required to submit these documents electronically beginning 180 days after the Department issues this notice. Proposed N.J.A.C. 7:26A-13.5(c) provides for the non-electronic payment of registration and registration renewal fees, that is, by check or money order, until 180 days after notification by the Department that its electronic payment system is operational. Proposed N.J.A.C. 7:26A-13.5(d) describes how filing and payment dates will be documented, both for electronic and non-electronic submissions. Proposed N.J.A.C. 7:26A-13.5(e) references the certification requirements for registration forms at N.J.A.C. 7:26A-13.3(e)4.

N.J.A.C. 7:26A -13.6 Required contents of a collection plan; confidentiality

Proposed new N.J.A.C. 7:26A-13.6(a) identifies the components of the collection plan to be submitted by the manufacturers of all covered electronic devices, including televisions, pursuant to the Act. Proposed new N.J.A.C. 7:26A-13.6(a)1, at i. through x, implements and expands on the statutory requirements at N.J.S.A. 13:1E-99.96e(1) and 13:1E-99.103e(1), for television manufacturers and manufacturers of all other covered electronic devices, respectively, that these plans reflect the methods to be used to collect the covered electronic devices. This will provide the Department with the necessary information to evaluate the plans and ensure that they provide for the collection of a manufacturer's collection obligation in a manner that is safe, secure and convenient to the public.

The Act, at N.J.S.A. 13:1E-99.106d, prohibits the charging of fees or costs to consumers for the collection, transportation, or recycling of covered electronic devices. As described in the summary of N.J.A.C. 7:26A-13.2, the definition of "premium service," the Department proposes at new N.J.A.C. 7:26A-13.10(e) to allow a manufacturer to charge a fee for providing a premium service to a consumer, that is, one that goes beyond the requirements of the Act, provided the Department has approved the service and the service fee as part of the collection plan. Consistent with this elaboration on the provisions of N.J.S.A. 13:1E-99.106d, the Department proposes at new N.J.A.C. 7:26A-13.6(a)1.viii to require certification that there be no charge to consumers for the collection, transportation or recycling of covered electronic devices other than a fee for a premium service provided for in an approved collection plan.

Proposed new N.J.A.C. 7:26A-13.6(a)1.xi requires certification that there has been compliance with N.J.A.C. 7:26A-13.11 (and thus the statutory requirements at N.J.S.A. 13:1E-99.108b), requiring collectors, transporters and authorized recyclers to comply with the EPA's "Plug-In to eCycling Guidelines for Materials Management," and otherwise to meet the Department's performance standards for these entities.

Proposed new N.J.A.C. 7:26A-13.6(a)2, at i. through iv, implements and elaborates on the statutory requirements at N.J.S.A. 13:1E-99.96e(2) and 99.103e(2), for television manufacturers and manufacturers of all other covered electronic devices, respectively, that a collection plan reflect the recycling methods to be employed.

Proposed new N.J.A.C. 7:26A-13.6(a)2i and ii require information identifying each authorized recycler to be used under the collection plan, including documentation of permitting and compliance by the state where the authorized recycler is located and a description of the recycling processes to be used by the authorized recycler.

Proposed new N.J.A.C. 7:26A-13.6(a)2iii codifies the statutory requirements at N.J.S.A. 13:1E-99.103e(3) that the collection plan of a manufacturer of covered electronic devices other than televisions include information concerning any vendor-to-business purchaser recycling arrangement whereby the manufacturer has agreed to accept for recycling a purchased or leased electronic device when notified by the business that it no longer has a use for that device. Because the Act only requires a manufacturer's collection plan to provide for the collection of covered electronic devices from consumers and small businesses, the covered electronic devices collected from businesses pursuant to such a vendor-to-business purchaser recycling arrangement will not be allocated towards a manufacturer's obligation.

Proposed new N.J.A.C. 7:26A-13.6(a)2iv requires certification that there has been compliance with N.J.A.C. 7:26A-13.7(f) (and thus the statutory requirements at N.J.S.A. 13:1E-99.96e and 99.103e), prohibiting recycling of collected covered electronic devices at prisons and other such institutions.

Proposed new N.J.A.C. 7:26A-13.6(a)3 reflects the statutory requirements at N.J.S.A. 13:1E-99.96e(3) and 99.103e(4) that the plans describe how the manufacturer will publicize the collection services.

Proposed new N.J.A.C. 7:26A-13.6(a)4 expands upon the statutory requirements at N.J.S.A. 13:1E-99.96e(4) and 99.103e(5) that the plans express the manufacturer's intent to fulfill its obligation by requiring a more detailed explanation of how the plan will enable it to meet its collection obligation.

The Department proposes at N.J.A.C. 7:26A-13.6(a)5 and 6 to require two certifications to accompany each plan. The first addresses the veracity of the submission. The second reflects the statutory prohibition at N.J.S.A. 13:1E-99.111, reflected at proposed new N.J.A.C. 7:26A-13.7(e), of the sale of a new covered electronic device that cannot be sold in the European Union because it exceeds the EU standards for heavy metals, including the statutory exemption for a covered electronic device that would have been in compliance with the EU standards had it not included a substance used to comply with consumer, health or safety requirements of Underwriters Laboratories or Federal or State law.

Proposed new N.J.A.C. 7:26A-13.6(b) reflects the statutory provision at N.J.S.A. 13:1E-99.96e that the Department will hold confidential any information provided by a manufacturer, provided the manufacturer demonstrates that competitive business information would be divulged if the information was made public, and otherwise complies with the procedures for asserting a confidentiality claim under the Solid Waste

rules at N.J.A.C. 7:26-17.3. As provided in new N.J.A.C. 7:26A-13.6(b)1, this provision is in addition to and is not intended to limit any confidentiality claims that may be asserted under the Open Public Records Act, N.J.S.A. 47:1A-1.1 et seq. or common law. A manufacturer asserting confidentiality must submit two versions of the documents for which protection is sought, as provided by proposed new N.J.A.C. 7:26A-13.6(c), and must certify both the document containing the asserted confidential information, and the copy from which the material to be protected has been removed.

N.J.A.C. 7:26A-13.7 Prohibitions on the sale and disposition of all covered electronic devices

The Act provides, at N.J.S.A. 13:1E-99.99a, that only a manufacturer who is compliant with all financial and other requirements of the Act can sell (or offer for sale) a covered electronic device in New Jersey. The Department proposes to reflect this requirement at new N.J.A.C. 7:26A-13.7(a), and to also explicitly require compliance with the terms of an approved collection plan or a collection plan for which approval is pending. This means that, for example, failure to register or pay a registration fee would be grounds for barring the sale of a covered electronic device, including a television, until such time as the manufacturer comes into compliance with the applicable financial or other requirement.

The initial stage of the electronic waste management program began on January 1, 2010, with the required registration of manufacturers. As of that date, the Act prohibits, at N.J.S.A. 13:1E-99.100, the sale of any new covered electronic device in New Jersey unless it is labeled with the manufacturer's brand. Proposed new N.J.A.C. 7:26A-13.7(b) reflects this requirement.

As of January 1, 2011, the Act prohibits, at N.J.S.A. 13:1E-99.99b and 99.104b, the sale of a new covered electronic device from any manufacturer that has not fully complied with the statutory requirements of the Act. This prohibition is reflected at proposed new N.J.A.C. 7:26A-13.7(c), which prohibits the sale or offer for sale in New Jersey of such a device where the manufacturer's collection plan has not been approved by the Department or is not pending the approval of the Department or the manufacturer has otherwise failed to comply with the e-waste management program rules. Reflecting the statutory provisions at N.J.S.A. 13:1E-99.99d and 99.104b, proposed new N.J.A.C. 7:26A-13.7(e) requires the seller to ensure compliance with this sale requirement by consulting a compliance list that the Department will compile and post on its website. The Department will maintain the website and the compliance list to ensure that retailers can readily determine the compliance status of all manufacturers when they are ready to place their orders with the manufacturer or supplier.

Proposed new N.J.A.C. 7:26A-13.7(d) reflects the statutory prohibition, in effect since January 1, 2011, of the sale of new covered electronic devices containing heavy metals in excess of the European Union standards, at N.J.S.A. 13:1E-99.101. Proposed new N.J.A.C. 7:26A-13.7(d) also reflects the statutory exception at N.J.S.A. 13:1E-99.111a(2)(a) for a product that exceeds the heavy metal standard only because it includes a substance needed to meet certain consumer, health or safety requirements of Underwriters Laboratories or Federal or State law. A seller can use the compliance list referenced in N.J.A.C. 7:26A-13.7(e) to ensure compliance with this sale requirement as

well as the sale requirement in N.J.A.C. 7:26A-13.7(c). Because part of the collection plan approval process involves certification by the manufacturer that it is compliant with these European Union standards, inclusion in the compliance list will serve to protect the seller in this regard as well.

Proposed new N.J.A.C. 7:26A-13.7(f) reflects the prohibition at N.J.S.A. 13:1E-99.96e and N.J.S.A. 13:1E-99.103e that covered electronic devices collected under a collection plan shall not be sent to prisons for recycling.

By January 1, 2011, the Act at N.J.S.A. 13:1E-99.96e and 13:1E-99.103 requires the implementation of all collection plans. The Act also prohibits at N.J.S.A. 13:1E-99.109 the disposal of used covered electronic devices as solid waste from that date forward. Proposed new N.J.A.C. 7:26A-13.7(g) reflects this statutory prohibition.

N.J.A.C. 7:26A-13.8 Educational requirements for retailers of covered electronic devices

The Act recognizes that an important factor in the success of an e-waste recycling program in New Jersey is the education of the public concerning what it must recycle, and how. The Department will develop educational material to this effect, which it will provide to retailers. Proposed new N.J.A.C. 7:26A-13.8 reflects the statutory requirement at N.J.S.A. 13:1E-99.104a that a retailer provide this educational information to the public. Providing this information in a way readily available to the public (by means, for example, of a toll-free number, website, or an information insert with the packaging or sales receipt) is required at N.J.S.A. 13:1E-99.104a.

N.J.A.C. 7:26A-13.9 Collection obligation determination

The proposed new rules use the term “collection obligation” to refer to the amount of covered electronic devices (in weight) for which a manufacturer must provide a recycling plan. Consistent with the provisions of the Act, the Department will each year determine the collection obligation for either a television manufacturer or a manufacturer of covered electronic devices other than televisions, to be addressed in the manufacturer’s collection plan for the following year. As directed by the Act, the Department will employ a different methodology for each of these two types of manufacturer. For a television manufacturer, the share of the total collection obligation is based on the manufacturer’s share of televisions sales; for the manufacturer of a covered electronic device other than a television, the share of the collection obligation is based on the manufacturer’s share of covered electronic devices that are being returned for recycling. This annual determination is reflected at proposed new N.J.A.C. 7:26A-13.9(a).

For a manufacturer of covered electronic devices other than televisions, the Department proposes the methodology for determining the collection obligation at new N.J.A.C. 7:26A-13.9(b). These proposed new provisions reflect the methodology set forth at N.J.S.A. 13:1E-99.105a(1) that the Department will employ to determine the return share for manufacturers of covered electronic devices other than televisions. The Department will determine the return share by dividing the weight of covered electronic devices identified for a particular manufacturer by the total weight of covered electronic devices other than televisions identified for all manufacturers, minus the total weight of orphan devices.

The Act provides for the determination of return share to be made the year before each program year – it is the basis for the collection plan, which goes into effect January 1 of the following year. This means that the return share determination for the first two years of the program, 2011 and 2012, was to have been made in 2010 and 2011, before a full program year’s data would have been available as to the weight and brands of covered electronic devices other than televisions collected in New Jersey under the program. In recognition of this situation, for 2011 and 2012, N.J.S.A. 13:1E-105a(1) directs the Department to base the manufacturer’s return share on the best available public return share data from the United States, including data from other states. In 2011, the Department will sample covered electronic devices collected from consumers in New Jersey, as required at N.J.S.A. 13:1E-99.102a.1 and described at proposed N.J.A.C. 7:26A-13.9(b)2, which it will use in determining collection obligations for manufacturers of covered electronic devices other than televisions, beginning in 2012 for use in program year 2013. The Department may find it useful, however, to supplement the sampling by continuing to use the best available public return share data from other states.

The Department has determined that the best available public return share data is available from two sources: Washington State’s e-waste collection program, which is available at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2010PrelimRSbyMfg.pdf> and the “Brand Data Management System” (BDMS), which has been developed by the National Center for Electronics Recycling (NCER) and is available at <http://www.electronicrecycling.org/BDMS/default.aspx>. Washington State began a mandatory e-waste collection program similar to New Jersey’s on January 1, 2009.

According to the NCER, it developed the BDMS as of part of the Mid-Atlantic Recycling Center for End-of-Life Electronics (MARCEE) Project, and the National Electronics Recycling Infrastructure Clearinghouse (www.ecyclingresource.org) – a joint project with the Consumer Electronics Association (CEA) (see <http://www.ce.org>). The NCER designed the BDMS to allow all stakeholders interested in emerging electronics recycling systems in the United States the opportunity to view and customize brand return share reports from across the country. With this database, the NCER has compiled the known electronics brand count studies (referred to on its site as “data sources”), and will be adding more as they become available. Maine (see <http://www.maine.gov/dep/rwm/ewaste>) and Washington State (see <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/>) utilize these and similar data to determine manufacturer recycling obligations for their electronics recycling programs.

The BDMS allows for the management and sorting of the hundreds of different brands reported by recent brand return studies in order to gain a more detailed comparison of trends, such as variations in brand return share in different regions, brand ranking trends over time (including changes of top brands collected), and the number of officially designated orphan brands. Currently the BDMS includes monitors, televisions, desktop computers and laptop computers in its scope of products.

The BDMS uses seven sources of recent brand counts from throughout the United States:

1. Florida Electronics Brand Distribution Study (2004/2005 data);

2. Hennepin County “Consumer Electronics Brand Tally” (2004, Minnesota);
3. Good Guys Electronics Take-back Pilot Project (2004, Washington State);
4. Staples Reverse Distribution Pilot (2004, New England states);
5. NCER West Virginia Collection Event Program (2006);
6. Kane County Collection (December 9, 2006, Illinois); and
7. Maine E-Waste Law Program (1/18/06 to 6/30/06).

Each of these sources provides data on brands of returned electronic products. While the NCER found data across all seven sources to be generally compatible, it manually harmonized differences across program data, such as brand name spellings and units of measure (units vs. weight). The NCER provides more information on each study at its website at <http://www.electronicrecycling.org/BDMS/Datasources.aspx>. The NCER also provides the methodology for determining the total items/return share on its webpage at <http://www.electronicrecycling.org/BDMS/Calculations.aspx>.

The BDMS also includes registration data supplied by the Maine Department of Environmental Protection, the Maryland Department of the Environment (see <http://www.mde.state.md.us/Programs/LandPrograms/Recycling/SpecialProjects/registeredManu.asp>) and the Washington Department of Ecology.

From the report page on the BDMS website, the Department selects “all sources” in the DataSource Reports box. From the next page, the Department narrows the report by weight, and, of the 14 categories of products to include, the Department selects “all-in-one PC,” “CED,” “combo,” “computer,” “computer equipment,” “desktop,” “laptop” and “monitor.” The Department then matches each identified brand to a manufacturer.

The Department used data provided by Washington State and the BDMS to project return shares for the first two program years, 2011 and 2012. Beginning with the third program year, 2013, the Department may continue to use data from the Washington State program, but will primarily base return share on the sampling performed in 2011, the first year of New Jersey’s program. The Department will use the data from Washington State and the BDMS to determine the total weight of each manufacturer’s brands, as well as the total weight of orphaned brands. The Department will divide a manufacturer’s brand weight by the total weight of all collected devices to yield return share, as a percentage. This process is reflected at proposed new N.J.A.C. 7:26A-13.9(b)1 - 4.

The Department will determine the return share in weight (that is, the collection obligation) in accordance with N.J.S.A. 13:1E-99.105a(2), by multiplying the return share for each manufacturer by the total weight, in pounds, of covered electronic devices projected to be collected. For the first two program years, when data was not available for a full program year on which to base the total weight of covered electronic devices returned, the Department utilized the collection data from Washington State’s e-waste collection program, available at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle>. As stated above, Washington State’s e-waste collection program is similar to New Jersey’s. However, there are some differences between the two programs. Washington

State's program allows school districts, non-profit organizations, and small governments to participate in the free collections. New Jersey's program does not require manufacturers to accept electronics from these types of entities for free. Therefore, when using data from Washington State's program, the Department only utilizes data on the number of electronics collected from households and small businesses.

For the first two years, the Department multiplied the per capita collection rate from Washington State's first two program years, 2009 and 2010, which is available at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle>, by the estimated New Jersey population, as determined by the United States Census Bureau, to determine the projected return share in weight. Census data is available at <http://www.census.gov/>. In 2009 Washington State collected 2.3 pounds per capita of covered electronic devices other than televisions from households and small businesses (see <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2009TotalCEPPoundsWA.pdf> for Washington State's data). According to the United States Census Bureau, the estimated population in New Jersey in 2009 was 8.7 million people. Therefore, for New Jersey's first program year (2011), the total weight in pounds of covered electronic devices other than televisions projected to be collected is 20 million pounds. The Department used these figures in calculating the return share in weight for each manufacturer in 2010.

In 2010 Washington State collected 2.1 pounds per capita of covered electronic devices other than televisions from households and small businesses (see <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2010TotalCEPPoundsWA.pdf> for Washington State's data). According to the United States Census Bureau, the estimated population in New Jersey in 2010 was 8.8 million people. Therefore, for New Jersey's second program year (2012), the total weight in pounds of covered electronic devices other than televisions projected to be collected is 18.3 million pounds. The Department used these figures in calculating the return share in weight for each manufacturer in 2011.

As the program matures, data will become available as to the total weight and brands of covered electronic devices other than televisions that are collected in New Jersey. As required by the Act at N.J.S.A. 13:1E-99.102a(1)(a), the Department will, by January 30, 2012, and each January 30 thereafter, complete an auditable, statistically valid sampling of covered electronic devices other than televisions collected from consumers in New Jersey in the previous program year. The Department proposes the sampling procedure to be utilized at new N.J.A.C. 7:26A-13.9(b)2. This sampling will reflect the brands of the collected devices and the weight of devices collected for each brand, to generate the return share for each manufacturer. The Department will randomly select a minimum of six collection sites. In order to make them geographically representative, at least three sites will be from Northern New Jersey and at least three sites will be from Southern New Jersey. At each site, a total of at least 200 units of covered electronic devices other than televisions will be sampled to determine the brand and weight of each device. The weight proportion of each brand will be calculated. A sampling of this size will provide 95 percent confidence intervals for that proportion with approximate confidence interval length of 0.02 for a proportion of 0.2, 0.01 for a proportion of 0.1 and 0.002 for a proportion of 0.01. These confidence interval lengths

are considered small enough to satisfy the requirement that the sampling be “statistically valid.”

After the first two years, the Department will no longer need to look to any other state’s program to determine the total weight of covered electronic devices other than televisions that was collected the previous year. For those years (third year and later) the Department will use the information provided by the manufacturers in their annual reports to determine the total weight of collected covered electronic devices, other than televisions, including orphan devices (devices for which the manufacturer cannot be determined or no longer is in business) for the previous program year in New Jersey. The Department will multiply this total weight, in pounds, by each manufacturer’s return share to determine the return share in weight (collection obligation) in accordance with N.J.S.A. 13:1E-99.105a(2), as reflected in proposed new N.J.A.C. 7:26A-13.9(b)5 and 6.

The process begins with a search of the BDMS for return share data from all data sources (all electronics count studies) for those products included in the Act’s definition of covered electronic devices other than televisions. This query of the BDMS yielded some 1,500 brands and corresponding return shares in both 2010 and 2011. In order to assign a collection obligation to the manufacturer of each of these brands, the Department utilized brand-to-manufacturer data also compiled by the NCER, and, where the NCER data was incomplete, searched the internet for information identifying the manufacturer of unidentified brands. From these sources, the Department was able to identify a manufacturer for brands representing approximately 75 percent of the return share universe (in weight). The Department has included the remaining 25 percent in the “orphan share” category. The Department cross-checked the list of brands/manufacturers/return share it created against collection obligation data from the states of Oregon and Washington. The Department chose to use data from these states because Oregon’s and Washington’s e-waste recycling programs are very similar to New Jersey’s in terms of the scope of products and the scope of the collection programs and because the return share data compiled for these states is more recent than that in the BDMS database.

Both these states, however, differ from New Jersey in that they use return share to determine collection obligations for television manufacturers, as well as for manufacturers of covered electronic devices other than televisions. Therefore, in order to approximate the return shares for manufacturers of covered electronic devices other than televisions, it was necessary to deduct the return share weight for televisions and recalculate the resultant return share for manufacturers of covered electronic devices other than televisions. The Department then compared this result to the collection obligations originally determined using the BDMS. Where there was more than a 10 percent difference in these figures, the Department worked with e-waste program managers in other states and looked to any other comparable data from any other state with an e-waste recycling program to arrive at the most accurate collection obligation figures.

While manufacturers of covered electronic devices other than televisions with return shares over 0.01 percent in the aggregate account for approximately 80 percent of the total return weight, the balance of the return weight is distributed among a universe of

more than 1,000 brands. Given a Statewide recycling goal of approximately 20 million pounds for these covered electronic devices in 2010, a return share of 0.01 percent corresponds to a collection obligation of about 2,000 pounds. The Department determined to not assign a collection obligation to a manufacturer with a return share less than 0.01 percent, based on the assumption that such a manufacturer would be a small one. Although this resulted in a larger amount of “orphan” covered electronic devices that would have to be proportionally divided among those manufacturers with return shares greater than 0.01 percent (approximately six percent more than one would predict if utilizing either the BDMS data or the 2009 return share data from the State of Washington), the Department determined that this was preferable to imposing a disproportionate burden on such a presumably small business, given the small amount of its recovered product and the disproportionate anticipated cost of developing, submitting and implementing a collection plan.

For a television manufacturer, the Department uses a different methodology to determine collection obligation. That is, the Department determines a television manufacturer’s market share, television collection share and television collection share by weight (or collection obligation), based on national television sales data, as described at proposed new N.J.A.C. 7:26A-13.2 (definition of “market share”) and 13.9(c).

As discussed earlier in connection with proposed new N.J.A.C. 7:26A-13.2, the Act defines market share as a television manufacturer’s national sales of televisions, expressed as a percentage of the total of all television manufacturers’ national sales, based on the best available public data. As provided by N.J.S.A. 13:1E-95 and 13:1E-99c, each year the Department determines the market share for each registered television manufacturer. In order to obtain the best available public information, the Department purchases market share data regarding the number of television units sold in the United States, by obtaining telephone quotes from at least three market research firms with expertise in gathering market share sales data in the electronics sector. The Department bases its selection on cost and data availability. The purchased information will reflect sales of television units by any means, including, but not limited to, internet sales and retail sales. The data will identify the manufacturer and the manufacturer’s brand name, and will include as many television brands as is necessary and practicable in order to account for as close as possible to 100 percent of the United States market. The data will also reflect the number of products and market share for each brand and the total unit sales for all manufacturers’ brands.

As required by the Act at N.J.S.A. 13:1E-99.96b and c, beginning in 2012, each television manufacturer must provide the Department with New Jersey sales data for its brands for the prior program year. This is reflected at proposed new N.J.A.C. 7:26A-13.4(c)2, as discussed above. The Department will compare the New Jersey sales data to the national data to help ensure that each manufacturer is assigned the appropriate market share and collection obligation, and each bears a proportionate share of the recycling responsibility, as described below.

The collection obligation for television manufacturers is the total weight of televisions that a manufacturer is responsible to collect, transport and recycle each program year. The Department proposes to determine collection obligation in a series of

steps at proposed new N.J.A.C. 7:26A-13.9(c)1 through 5. In step 1, the Department will acquire the national market share data. In step 2, the Department will use the data to create a list of brands, identified by manufacturer, and indicating the number of televisions for each brand. In step 3, the Department will use this information to determine each manufacturer's share of the national sales of televisions (adjusted, as warranted, by television sales data for New Jersey in the previous program year), that is, its television collection share. In step 4, the Department will determine the total weight of televisions to be recycled the following year, referred to as the gross television recycling goal. In step 5, the Department will take the percentage that the television collection share represents and apply it to the gross television recycling goal. In the first program year, and presumably this will be the case in future years, the total market share for the identified manufacturers came close to but did not equal 100 percent (it was 96.28 percent). The Department applied an equalizing factor to each manufacturer's return share in weight to more closely approximate a total of 100 percent. The Department referred to this number in its notification of television manufacturer collection obligations as the "adjusted NJ percent by weight."

For the first two program years, collection data was not yet available for a full program year on which to base the collection obligation and the gross television recycling goal. Although all 21 counties and many municipalities in New Jersey currently hold some form of electronics collections, participation in the collections has always been voluntary. Therefore, the historic data available on the collections was not indicative of the amount of electronics to be collected under a mandatory program. Instead, the Department used data from the Washington State e-cycle program, available at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle>, to determine the gross television recycling goals for the first three program years in New Jersey. The Department based the gross television recycling goal on the amount of televisions collected in Washington State in 2009 and 2010.

Washington State collected 22.3 million pounds of televisions from households and small businesses during 2009, the first year of Washington's program, according to the data posted on its website at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2009TotalCEPPoundsWA.pdf>. The United States census estimates Washington's population in 2009 as 6.7 million people (available at <http://www.census.gov/>), which yields a television collection rate of 3.3 pounds per capita. Based on these data, the Department established the per capita collection goal for the first program year as 3.3 pounds per capita. The Department determined a gross television recycling goal by multiplying the per capita collection goal by the estimated population of New Jersey (as determined by the United States Census Bureau at <http://www.census.gov/>). For 2009, the estimated New Jersey population is 8.7 million. Therefore, the Department determined the gross television recycling goal for 2011 to be 28.7 million pounds of televisions. The Department used this gross television recycling goal to assign each television manufacturer a collection obligation, as described above. For example, during the first program year of 2011, if Company A has a television collection share of five percent, the collection obligation for Company A for 2011 is 1.4 million pounds of televisions (28.7 million pounds times 0.05).

Washington State collected 24.9 million pounds of televisions from households and small businesses during 2010, the second year of Washington's program, according to the data posted on its website at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2010TotalCEPPoundsWA.pdf>. The United States census estimates Washington's population in 2010 as 6.7 million people (available at <http://www.census.gov/>), which yields a television collection rate of 3.7 pounds per capita. Based on these data, the Department established the per capita collection goal for the second program year as 3.7 pounds per capita. The Department determined the second year gross television recycling goal by multiplying the per capita collection goal by the estimated population of New Jersey (as determined by the United States Census Bureau at <http://www.census.gov/>). For 2010, the estimated New Jersey population is 8.8 million. Therefore, the gross television recycling goal for 2012 is 32.6 million pounds of televisions. The Department will determine the collection obligation for the third program year (2013) based on the actual collection data obtained for the first program year in New Jersey and will determine each successive television collection obligation in a similar fashion.

N.J.S.A. 13:1E-99.103a and b and 99.105a(3) provide the timing for the Department to notify a manufacturer of covered electronic devices other than televisions of its return share. Although there seems to be some internal inconsistency between these statutory provisions for the first few years (N.J.S.A. 13:1E-99.103a and b address 2010 and the years 2012 and later, respectively, and N.J.S.A. 13:1E-99.105a(3) addresses 2011 and the years 2013 and later), read together they provide a schedule as follows: For the first year of the program, the Department was to provide a return share by April 2, and the manufacturer was to respond with a collection plan by June 1 of that year. In subsequent years, the Department would provide a return share by February 15 and the manufacturer would provide the collection plan by March 15 of that year. In contrast, the Act does not explicitly address the timing for the Department to notify a television manufacturer of its market share, but the Department has, in 2010 and 2011, and intends to do so in the future, provided a television manufacturer with as much advance notice of its collection obligation as the Department provides to a manufacturer of covered electronic devices other than televisions.

The Department notified all television manufacturers of their collection obligations on or about July 6, 2010 and all manufacturers of covered electronics other than televisions on August 4, 2010 for program year 2011, by means of a letter that served as a "preliminary collection obligation report," and which contains the collection obligations for all manufacturers. The Department notified all manufacturers of their collection obligations in late June 2011 for program year 2012. In both 2010 and 2011, the Department posted these notifications on its website.

The Department proposes, at new N.J.A.C. 7:26A-13.9(d), to provide for the notification of all manufacturers of their collection obligations using the same mechanism of a mailed and posted preliminary collection obligation report. The report, to be released by March 1 of each year, will, as it did in 2010 and 2011, include the data that supports the Department's determination of each manufacturer's collection obligation, including any sampling that was conducted and best available public data used in the determinations. The August 15, 2010 posting of the preliminary collection obligation

report reflects the delay in the first program year caused by difficulties encountered in obtaining the necessary market share and return share data and with the startup of the program, generally. Similarly, the Department was unable to release the preliminary collection obligation report until the end of June, 2011, not by March 1, 2011, as originally anticipated and as reflected in the draft rule text the Department posted on its website for comment on or about October 19, 2010.

In the future, the Department expects to release the preliminary collection obligation report by March 1, which is a close, if not an exact match to the statutory date for providing a manufacturer with its return share in weight by February 15, beginning in 2011. However, since the Department will not complete sampling until January 30, 2012 (and by every January 30 thereafter), at least for those years when return shares will be based on this sampling, there would not be adequate time (two weeks) to make use of this sampling data in time for the release of the collection obligation report. A release date of March 1 should provide the Department with adequate time to generate and use the sampling data.

The Department proposes, at new N.J.A.C. 7:26A-13.9(e) and (f), a procedure whereby a manufacturer may comment on a collection obligation (or any data supporting the collection obligation determination). The Department advised manufacturers of this procedure in the preliminary collection obligation report letters sent to manufacturers on July 6 and August 4, 2010. For future program years, proposed N.J.A.C. 7:26A-13.9(e) requires comments to be submitted to the Department by April 1 of the same year in which the Department released the collection obligation. The proposal of an alternative collection obligation would be due at that same time. The manufacturer must provide contact information in case the Department needs to request additional information.

The proposed procedure for submitting comments is consistent with N.J.S.A. 13:1E-99.102a(2), which allows a manufacturer of covered electronic devices other than televisions to submit the results of its own sampling of covered electronic devices by March 1 of each program year in which the return share is based on sampling performed by the Department pursuant to N.J.S.A. 13:1E-99.102a(1). Proposed new N.J.A.C. 7:26A-13.9(e) and (f) extend the opportunity to comment to television manufacturers as well as manufacturers of covered electronic devices other than televisions. The Department allowed manufacturers to submit comments in the first two years of the program, when return share was based on national public return share data rather than on sampling.

As proposed at new N.J.A.C. 7:26A-13.9(g), the Department will publish a final collection obligation report by May 1 of each year. This final report will set forth the final collection obligations and will summarize all properly and timely filed comments on the preliminary collection obligation report. For the first program year, because there were no comments submitted regarding the preliminary collection obligation report for the television manufacturers, the Department did not release a final collection obligation report per se. The Department did receive some comments on the preliminary collection obligation report for the manufacturers of covered electronic devices other than televisions. The Department worked with the commenting manufacturers to arrive at

mutually satisfactory obligations and published the final collection obligations in April 2011.

Once they have been advised of their collection obligations, manufacturers will be able to complete their collection plans, consistent with N.J.A.C. 7:26A-13.4.

Proposed N.J.A.C. 7:26A-13.9(h) allows a manufacturer to apply the total weight of all covered electronic devices collected from consumers to its collection obligation for that program year. Since a manufacturer is required to accept for collection and recycling all types of covered electronic devices, it would be unduly burdensome to require the subsequent segregation of covered electronic devices (televisions, and those other than televisions) to determine the total weight of covered electronic devices collected and eligible for satisfying the manufacturer's collection obligation. In addition, since the manufacturers are required to finance the transportation and recycling of all devices collected, there would be an additional financial burden if manufacturers were not allowed to apply the weight of all devices collected to their collection obligation.

N.J.A.C. 7:26A-13.10 Review of collection plans

Proposed new N.J.A.C. 7:26A-13.10(a) through (f) set forth the criteria for approval of collection plans by the Department. N.J.A.C. 7:26A-13.10(a) requires a plan to comply with proposed new N.J.A.C. 7:26A-13.6, and be reasonably expected to result in the attainment of the manufacturer's obligation. Proposed new N.J.A.C. 7:26A-13.10(b) reflects the statutory requirements, at N.J.S.A. 13:1E-99.105c that at least one convenient collection opportunity is available in each county of the State. Proposed new N.J.A.C. 7:26A-13.10(c) reflects the statutory prohibition at N.J.S.A. 13:1E-99.106d of the charging of fees to consumers for the collection, transportation and recycling of covered electronic devices as provided for under the plan. Typically, this means that there is no charge to a consumer dropping off a covered electronic device at a collection location. However, N.J.S.A. 13:1E-99.106d does make a distinction in the case of schools and local government units and provides that they may be charged a fee for reasonable costs incurred for the collection, transportation, and recycling of the devices, as appropriate. The Department proposes to codify this provision in proposed new N.J.A.C. 7:26A-13.10(d).

Some consumers, however, because of special needs or circumstances, may find it difficult or impossible to take advantage of the collection opportunities provided by a plan, even though that plan fully meets statutory requirements that it be reasonably convenient in terms of collection opportunities. Because the Department feels it would best serve the public interest to make special arrangements available to such consumers, such as curbside pick-up, it proposes to allow a manufacturer to charge a fee for providing such a premium service. Proposed N.J.A.C. 7:26A-13.10(e) provides that a fee may be charged for the additional transportation costs involved with a premium service, provided the fees are included in the manufacturer's approved collection plan. No fees for a premium service may be charged to consumers that are not specified in an approved collection plan.

As provided at proposed new N.J.A.C. 7:26A-13.10(f), the Department will issue a written determination after completing its review of a manufacturer's collection plan, in which it will either request additional information or determine the application to be

administratively complete. An application is administratively complete if it contains all of the required information in proposed new N.J.A.C. 7:26A-13.6(a). A manufacturer must respond to any request by the Department for additional information within 30 days of receipt of the request.

Once the Department determines that a plan is administratively complete, it will begin a technical review of the plan, as proposed at new N.J.A.C. 7:26A-13.10(g). The technical review will determine if the plan meets the intent of the Act and the provisions of N.J.A.C. 7:26A-13.10. The plan must provide sufficient opportunities for residents to recycle their used covered electronic devices. Upon completion of the technical review, the Department will approve the plan, request additional information or reject the plan. A manufacturer must respond to any request for additional information within 30 days of receipt of the request.

The failure to timely provide information requested pursuant to N.J.A.C. 7:26A-13.10(f) or (g) will be considered the same as having failed to submit a plan, as proposed at new N.J.A.C. 7:26A-13.10(h), subjecting the manufacturer to penalties under N.J.S.A. 13:1E-99.110 and triggering the prohibition of the sale of the manufacturer's covered electronic devices pursuant to N.J.S.A. 13:1E-99.99.

Proposed N.J.A.C. 7:26A-13.10(i) provides that the Department may partially or wholly reject the collection plan, and may impose additional requirements as a condition of approval. However, a plan that is administratively complete will be considered as "pending approval" so that the submitting manufacturer's covered electronic devices could be sold by retailers during the remainder of the Department's review of the collection plan. Failure to submit a plan and failure to have a plan approved will both subject the manufacturer to enforcement under the Act (N.J.S.A. 13:1E-99.110) and will trigger the prohibition of the retail sale of the manufacturer's covered electronic devices pursuant to N.J.S.A. 13:1E-99.99b and proposed N.J.A.C. 7:26A-13.7(c).

N.J.A.C. 7:26A-13.11 Performance requirements for collectors, transporters, and authorized recyclers

The Act at N.J.S.A 13:1E-99.108b requires collectors, transporters, and authorized recyclers to demonstrate compliance with the EPA's "Plug-In to eCycling Guidelines for Materials Management," available from <http://www.epa.gov/waste/partnerships/plugin/pdf/guide.pdf>. This EPA document provides guidelines for the safe handling of electronic equipment to maximize reuse, refurbishment, or recycling and to ensure that exported electronic equipment is managed at legitimate end markets. Proposed new N.J.A.C. 7:26A-13.11(a) reflects the required compliance with these Federal guidelines.

The Act also requires at N.J.S.A 13:1E-99.108b that the Department establish performance requirements for collectors, transporters, and authorized recyclers of covered electronic devices that are participating in manufacturers' collection plans. As required by the Act, the Department will maintain a website that includes a list of those collectors, transporters and authorized recyclers who meet the performance requirements.

Proposed new N.J.A.C. 7:26A-13.11(b) and (c) reflect the fact that the requirements imposed on universal waste handlers and transporters apply to collectors and transporters of covered electronic devices participating in manufacturers' collection plans. Collectors of consumer electronics, which includes all of the covered electronic devices, are already regulated as universal waste handlers in New Jersey. Therefore, any collector operating under a manufacturer's collection plan is also regulated as a universal waste handler and must comply with the requirements for universal waste handlers (N.J.A.C. 7:26A-7.4 and 7.5). Since the covered electronic devices are also regulated as universal waste in New Jersey, transporters of covered electronic devices participating in manufacturers' collection plans must also comply with the requirements for universal waste transporters (N.J.A.C. 7:26A-7.6).

Proposed new N.J.A.C. 7:26A-13.11(d) requires authorized recyclers of covered electronic devices participating in manufacturers' collection plans to also comply with the "Responsible Recycling (R2) Practices for use in Accredited Certification Programs for Electronics Recyclers" (R2 Practices), available at <http://www.decideagree.com/R2%20Document.pdf>. The R2 Practices are guidelines to assess the environmental, worker health and safety, and security practices of electronics recyclers. The guidelines were developed by a multi-stakeholder group facilitated by the EPA. Compliance with these guidelines will help ensure that the covered electronic devices collected under this program are managed safely and securely. In addition, if the authorized recycler is located in New Jersey, it must comply with the requirements for Class D recycling facilities at N.J.A.C. 7:26A-3 and obtain a Class D Recycling Center Approval. The recycling of consumer electronics, which includes covered electronic devices, is regulated under the Department's Class D rules; any facility processing or recycling consumer electronics must have a valid Class D Recycling Center Approval issued by the Department. Proposed new N.J.A.C. 7:26A-13.11(d) also requires any authorized recycler located outside of New Jersey to operate in compliance with the rules and regulations of the state in which it is located. Any recycler not operating in compliance with its state's rules and regulations cannot be an authorized recycler under a manufacturer's collection plan. This allows the Department to ensure the same level of compliance for plans using out-of-State recyclers as for those using New Jersey recyclers.

7:26A-13.12 Requests for administrative hearings

Proposed new N.J.A.C. 7:26A-13.12 describes the procedures to be followed in appealing the Department's decision to approve or disapprove a collection plan. These procedures, set forth at proposed new N.J.A.C. 7:26A-13.12(b) through (f), are similar to those in effect at N.J.A.C. 7:26A-3.14 regarding appeals of Department actions concerning the approval of recycling centers for class B, C and D recyclable materials.

Social Impact

The proposed amendments and new rules that implement the Act will have a positive social impact on New Jersey residents and others by providing for the management of covered electronic devices so that they are not disposed of or exported in a way that endangers public health.

When electronics are disposed of in a landfill, the harmful constituents found in these products, such as lead, mercury, cadmium and brominated flame retardants, may be

released and may leach into nearby bodies of water or into aquifers. When electronics are disposed of in a solid waste incinerator, the harmful constituents found in these products may be released into the air as pollution.

Lead in these electronic devices is of major concern. Lead is found in the glass of cathode ray tubes (CRTs) and is in the solder used in CRTs and other electronics. The EPA, in its final rule amending its rules governing the recycling of used CRTs and glass removed from CRTs (71 FR 42928, July 28, 2006), discussed this threat to human health:

Manufacturers generally employ significant quantities of lead in the glass used to make color CRTs. Televisions and color computer monitors contain an average of four pounds of lead (the exact amount depends on the size and make). Lead is a toxic metal that can cause delayed neurological development in children and other adverse health effects in adults, including increased blood pressure, nephritis, and cerebrovascular disease. It is reasonably anticipated to be a human carcinogen. (References and footnotes omitted.)

71 FR at 42930 – 42931.

The EPA referred to recent studies performed at the University of Florida that found that most color CRTs leach lead in the Toxicity Characteristic Leachate Procedure (TCLP) test at concentrations above the toxicity characteristic regulatory level of five milligrams per liter (mg/l) that is used to classify lead-containing wastes as hazardous (40 CFR 261.24(b)). One of the studies cited in the EPA Final Rule found the average concentration of lead in leach tests of color computer monitors was 47.7 mg/l, which is considerably above the toxicity characteristic regulatory level of five mg/l.

In addition to lead, electronic products may contain brominated flame retardants (BFRs), which are used in circuit boards and plastic casings. BFRs are used to reduce the flammability of the products; however, they can also be a cause of concern. The EPA noted, in its proposed Significant New Use Rule for Certain Polybrominated Diphenylethers, (69 FR 70404, December 6, 2004), that BFRs do not readily break down and can build up in the environment. Long term exposure to BFRs may lead to liver, thyroid, and neurodevelopmental toxicity. (69 FR at 70407, references omitted) The European Union banned the use of some forms of BFRs in electronic products as of July 2006 (Directive 2003/11/EC of the European Parliament and of the Council of 6 February 2003).

Mercury is contained in fluorescent bulbs used to light notebook computers and flat-panel computer monitors and televisions. Mercury is a persistent, bioaccumulative toxin that can cause a variety of harmful health effects, including damage to the brain, central nervous system, and kidneys, and is particularly harmful to children, infants, and prenatal life through the exposure of pregnant and nursing women to the toxin. An individual can be exposed when a product containing mercury is broken or when mercury is emitted from products being burned in incinerators.

By removing covered electronic devices from the solid waste stream, the Department can better protect water and air quality in New Jersey, and thus promote public health.

The proposed amendments and new rules should also help ensure that covered electronic devices are not exported for disposal in a manner that poses a significant risk to the public health or the environment. While legitimate recycling end-markets exist in foreign countries, the proposed amendments and new rules will help reduce the development of unsafe and environmentally destructive electronics-dismantling operations in foreign countries that have low labor costs and little or no environmental regulation. The United States Government Accountability Office (USGAO) noted, in its 2008 Report to the Chairman, Committee on Foreign Affairs, House of Representatives on Electronic Waste:

According to surveys made on behalf of the United Nations Environment Programme, many developing countries lack the infrastructure to safely manage waste, including hazardous waste. These surveys found that large quantities of used electronic items are imported by developing countries, particularly in Southeast Asia, where they are improperly handled and, in some cases, informally recycled in “backyard” operations involving open-air burning of copper wire and acid baths to recover valuable metals. . . . For instance, in some cases, workers burn the plastic coating off wires to recover copper and submerge circuit boards in open acid baths to extract gold and other metals. Unsalvageable computer parts are often burned in the open air.

. . .

Recent studies have highlighted the dangers of working and living near these facilities, particularly for children. For example, a study conducted by a Chinese medical school and published in 2007 in the journal Environmental Health Perspectives found that children in Guiyu [a city in China where more than 300 groups were active in electronic waste recovery efforts, including open burning and acid baths to recover metals] had lead levels in their blood that were more than 50 percent higher than the limit for lead exposure set by the Centers for Disease Control and Prevention in the United States. The study also found that lead levels among children in Guiyu were also more than 50 percent higher than among children in a neighboring village where used electronics were not dismantled.

(GAO Report, Electronic Waste: EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation, August 2008)

By helping to ensure that used electronic devices are properly disposed of in New Jersey, the Act and the proposed amendments and new rules will serve to reduce the impact on the health of those exposed to the dangerous practices reviewed by the GAO Report.

Economic Impact

The proposed amendments and new rules will not have an economic impact beyond that imposed by the Electronic Waste Management Act, which they implement. There will be economic impacts, of varying degrees, on manufacturers, retailers, consumers (purchasers) of covered electronic devices, authorized recyclers of electronics and taxpayers.

As of January 1, 2010, and February 1, 2010, manufacturers of televisions and manufacturers of covered electronic devices other than televisions, sold for delivery in

New Jersey, respectively, must pay the Department an initial annual registration of \$5,000.00 and, thereafter, an annual registration renewal fee of \$5,000.00. Based upon information derived from other states that have initiated electronic waste recycling programs, the Department estimates that approximately 100 companies are required to pay this annual fee, representing a fund of approximately \$500,000.00, from which the Department will administer the e-waste recycling program. Sixty-one manufacturers registered with the Department in Fiscal Year (FY) 2010 and paid a total \$305,000 in registration fees. Fifty manufacturers have registered in FY2011 for a total of \$250,000 in registration fees. The Department is taking appropriate action with manufacturers that have not registered to ensure their compliance with the Act. The registration fees are being used by the Department for determining market share and return share obligations of manufacturers, outreach and education costs, compliance and enforcement costs, and other costs to the Department (including salaries) to administer the program.

The success of individual manufacturers to meet their obligations under the Act and these rules will be measured by their development and implementation of a collection and recycling plan and the recovery, in pounds per capita and gross pounds, of their obligation as determined in the formula set forth in the Act and these rules. In addition, the success of the program as a whole will be monitored by the Department and summarized in tri-annual plans and annual reports available to the public.

Each television manufacturer and each manufacturer of covered electronic devices other than televisions for which the Department has provided a return share will also incur annual expenses associated with the development and implementation of their collection plans, which will include collection, processing and advertising costs, as well as administrative costs. It is likely that manufacturers will realize an economy of scale for some of the administrative requirements, such as education and advertising, where the manufacturer is already complying with similar requirements of other states.

While the annual fee and other compliance costs represent new business expenditures for electronics manufacturers, the Act imposes them in order to provide the Department with the resources needed to carry out the requirements of the Act and to otherwise further the goals of the Act. Since a manufacturer of covered electronic devices is now responsible for the end-of-life management of its products, these additional and new costs should provide the manufacturer with a greater incentive to make its electronic devices more readily recyclable through design change. This concept is referred to as “product stewardship.” Ultimately, greater product stewardship could lead to a scenario where the revenue derived from recycling electronic products is greater than the cost to collect and process these items.

The National Center for Electronics Recycling (NCER) recently updated its study for the National Electronics Recycling Infrastructure Clearinghouse (NERIC) on projected costs to the electronics manufacturing industry to comply with state and local electronics recycling mandates in 2010. See NERIC’s website at <http://www.ecyclingresource.org> for the results of the study. This updated study identified and estimated all manufacturer compliance costs resulting from e-waste legislation adopted in the following jurisdictions: Arkansas, California, Connecticut,

Illinois, Hawaii, Maine, Maryland, Minnesota, Missouri, North Carolina, Oklahoma, Oregon, Rhode Island, Texas, Virginia, Washington, West Virginia and New York City.

Using data from the NCER study, the Department estimates it may cost all manufacturers combined approximately \$12 million to comply with New Jersey's electronics recycling requirements in 2011. Using the percentages provided by the national study, this breaks down to approximately \$9.5 million for collection, transportation, and recycling; \$1.9 million for internal compliance costs such as tracking and reporting; and \$6,000 in government-incurred administration costs (for example, registration activities). The Department is utilizing national data and then adjusting it for New Jersey, because of the nature of the market share reporting of the industry. The best available data is generally national sales data. The Electronics TakeBack Coalition published "Facts and Figures on E-waste and Recycling" using data from multiple sources. This document is available at <http://www.electronicstakeback.com>. Based on this information, the Department estimates that 130.5 million units of covered electronic devices were sold nationally in 2009. Since manufacturers set their prices for products on a national basis and the total estimated cost for manufacturer compliance nationally is \$90 million, the cost to the manufacturers equals a \$0.69 increase per unit. The NCER estimate for the overall cost of compliance to the manufacturers is based upon cost information provided by the State of Oregon since Oregon's law is similar to the Act, which was then adjusted for New Jersey's population. However, even though there are similarities between Oregon's e-waste law and New Jersey's, there are also differences that may lower the actual costs to the manufacturers under New Jersey's program design. Oregon's law allows a manufacturer to either develop its own collection plan or participate in a group collection plan run by the State of Oregon. In New Jersey, a manufacturer may develop its collection plan in any manner it chooses, provided the collection plan meets the basic requirements of the Act and proposed new N.J.A.C. 7:26A-13.6. This will allow a manufacturer the flexibility of designing a cost efficient collection program.

Unlike many other states, New Jersey has an existing e-waste collection and recycling infrastructure. New Jersey's infrastructure has been in place for the past 10 years. Every county in New Jersey and 147 municipalities have some form of e-waste collection program for residents. These collection programs range from single-day events to permanent collection facilities. Under New Jersey's new e-waste recycling program, a manufacturer of covered electronic devices may choose to utilize the existing infrastructure and develop collection centers in conjunction with the counties and municipalities that have e-waste collection experience. It is likely that most manufacturers will take advantage of national/regional economies of scale and design their recycling programs in collaboration with each other and with retailers to minimize costs.

The Association of New Jersey Recyclers (ANJR) conducted a survey of New Jersey residential e-waste collections in 2009. According to the survey, the cost for collection, transportation, and recycling of electronic devices ranged up to \$ 0.29 per pound and over 2,500 tons of covered electronic devices were collected from consumers. See ANJR's website at http://www.anjr.com/news_front/2009/OverviewE-Waste.pdf for the results of the survey.

The Maine Department of Environmental Protection (Maine DEP) prepared a report to the Maine Legislature entitled “Report on Maine’s Household E-Waste Recycling Program” (dated January 15, 2010), in which the costs of Maine’s e-waste collection program were compared to the costs in other states. According to the report, Washington State’s program costs \$ 0.27 per pound, Rhode Island’s program costs anywhere from \$ 0.26 per pound to \$ 0.38 per pound, and Oregon’s program costs approximately \$ 0.27 per pound. See Maine DEP’s website at <http://www.maine.gov/dep/rwm/publications/legislative-reports/pdf/2010ewastereportfinal.pdf> for the report. These figures suggest that the cost of collecting, transporting, and recycling covered electronic devices in New Jersey is likely to remain approximately \$0.29 per pound and is similar to costs in other states.

Taxpayers will benefit from the program put in place under the proposed rules since tax revenues collected at the municipal, county and state levels are the current means by which most electronics recycling programs are funded. The transfer of the cost of these programs to the manufacturers means that New Jersey taxpayers will no longer have to shoulder the expenses associated with local e-waste recycling programs. Based upon the collection figures from Washington State’s collection program, the Department estimates that 10,000 tons of covered electronic devices will be collected from New Jersey consumers annually. This represents an increase of approximately 7,500 tons of electronic waste over what is currently collected under the voluntary drop-off program. Using an average landfill disposal rate of \$74 per ton, this represents a cost savings to New Jersey residents of approximately \$740,000 per year as this material is diverted from the municipal solid waste stream. In addition, the taxpayers of New Jersey will be saving approximately \$5.8 million which is the estimated cost to properly collect and recycle 10,000 tons of covered electronic devices per year at \$0.29 per pound, resulting in a total savings of approximately \$6.5 million per year.

Because the Act does not prohibit a manufacturer from factoring these costs into the price of its products, those purchasing computers and other electronic devices, may ultimately bear the costs for these new, statutorily mandated electronics recycling programs. While this may raise the price of these products, the estimated incremental increase (about \$0.69 per unit) is balanced by the environmental and public health and safety benefits gained through this program and discussed in the environmental impact statement and the social impact statement. The impact on consumers may ultimately be minimized by product changes made over time by manufacturers that increase the cost-effectiveness of recycling these items, as well as the end-of-use value of electronic devices.

An authorized recycler of electronics may also be impacted by the proposed amendments and new rules, depending upon whether its services are reflected in the collection plan of a manufacturer or a group of manufacturers. An authorized recycler that is included in a collection plan should have greater quantity of incoming material than in the past, as a larger percentage of electronic devices will now be captured. Conversely, an authorized recycler that is not included in a collection plan may initially see a decline in the quantity of incoming material at its facility if the authorized recycler previously received electronics from county or municipal collections that are now being

collected through a manufacturer's collection plan and therefore no longer being sent to the recycler.

There may also be an economic impact on retailers of covered electronic devices. If a manufacturer of covered electronic devices fails to submit a collection plan, fails to receive Department approval of a collection plan or fails to comply with all the terms and conditions of an approved plan, retailers (including those located in New Jersey) will not be permitted to sell that manufacturer's covered electronic devices for delivery in New Jersey. Thus, a retailer (including a New Jersey retailer) may not be able to sell certain product brands for delivery in New Jersey at its stores or through its internet sales network, which could affect the profitability of particular retail establishments.

In conclusion, the proposed amendments and new rules will impose additional costs on electronics manufacturers, but they will also decrease costs to taxpayers and divert significant volumes of waste, including potentially hazardous waste, from landfills.

Environmental Impact

The proposed amendments and new rules will have a positive environmental impact by diverting used electronics away from landfills and incinerators to a recycling program.

Users of computers, televisions and other electronic devices are often unaware of the environmental impacts associated with today's electronic products. Such products can have significant negative impacts on the environment if they are not handled properly at the end of their useful lives. As discussed in the Social Impact statement above, these items can contain lead, mercury, cadmium and brominated flame retardants, among other harmful constituents, all of which are detrimental to the natural environment should they be released into the air, water or land as a result of end-of-life management that fails to adequately address their release. When electronics are disposed in a landfill, the harmful constituents found in these products may be released and can leach through unlined landfills into nearby bodies of water or into aquifers. When electronics are disposed in a solid waste incinerator, the harmful constituents found in these products may be released into the air as pollution.

The proposed amendments and new rules address these environmental issues by prohibiting the disposal of used covered electronic devices as solid waste (which became effective by the terms of the Act on and after January 1, 2011), and requiring manufacturers to develop plans to address their share of the electronics to be recycled. These requirements will have a positive impact upon the environment, since they will prevent the disposal of electronics at landfills and incinerators.

Electronics recycling facilities that are regulated as Class D recycling facilities in New Jersey can recycle electronics through a demanufacturing process that will remove and recycle the harmful constituents in an environmentally sound manner. In addition, disposal capacity at landfills is conserved by recycling electronics rather than disposing of them as waste. Using data from EPA's "Management of Electronic Waste in the United States: Approach Two," Draft Final Report April 2007, EPA530-R-07-004b (available at <http://www.epa.gov/wastes/conservation/materials/ecycling/docs/app-2.pdf>), the Department estimates the diversion of 2.3 million pounds of lead, 42,600 pounds of

arsenic, 5,668 pounds of mercury, 394 pounds of cadmium, and 67 pounds of chromium from New Jersey solid waste facilities per year.

Recycling electronics also conserves natural resources and saves energy that would have been expended in raw material extraction. Furthermore, recycling waste materials, including end-of-life electronic devices, has been shown to reduce the amount of greenhouse gases generated, which in turn promotes New Jersey's greenhouse gas reduction goals.

The proposed amendments and new rules will also have a significant positive impact by prohibiting the export of used electronics for disposal in a manner that poses a significant risk to the public health or the environment. In particular, this will help prevent the development of unsafe and environmentally destructive electronics-dismantling operations in foreign countries that have low labor costs and little or no environmental regulation. Such facilities have not only proven to be detrimental to the people working in them, but also extremely polluting to the air, water and land of these locales.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department is proposing rules based on the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq., to establish an electronic waste management program. These new rules and amendments are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis.

Televisions, computers, and monitors discarded by businesses and other non-residential entities may be subject to the Federal Resource Conservation and Recovery Act (RCRA) hazardous waste regulations, 40 CFR 260 through 273. In addition, there are Federal hazardous waste regulations that specifically address the glass video component commonly found in computer or television monitors, known as cathode ray tubes or CRTs, as well as circuit boards. See 40 CFR 261.4(a)(14) and 40 CFR 261.39 to 261.41, inclusive. However, these Federal regulations do not apply to household waste and so have no application to the covered electronic devices that will be collected from consumers under the proposed rules. (See 40 CFR 261.4(b)(1).)

Therefore, there are no comparable Federal standards that pertain to the activities regulated by these proposed rules, and no further analysis under Executive Order No. 27 (1994) or N.J.S.A. 52:14B-1 et seq. is required.

Jobs Impact

The proposed amendments and new rules are expected to have a positive impact on jobs in the State, since they should result in a significant increase in the amount of

electronic waste that will be collected for recycling. It is expected that manufacturers of covered electronic devices will use the existing electronics recycling infrastructure in New Jersey for their collection plans. However, a manufacturer may choose or need to open new collection facilities. Establishment and use of these new collection facilities would result in an increase in jobs. Existing electronics waste handlers and Class D recycling facilities may experience an increase in incoming waste, which would also create new jobs. Some electronics manufacturers may not include existing electronics waste handlers and Class D recycling facilities in their collection plans, which could affect the amount of material these entities receive and process, resulting in reduced employment for those entities. However, any potential job loss at a particular facility will most likely be more than offset by potential job gains at other facilities, thereby making the net impact of this program on New Jersey jobs a positive one.

Agriculture Industry Impact

The Department anticipates that the proposed amendments and new rules will not have a direct impact on the agricultural industry. However, the Department anticipates that the proposed rules will indirectly impact the agricultural industry in a positive way to the extent that their implementation should result in a reduction of the environmental damage associated with the disposal of spent electronics, particularly insofar as this damage affects the soil and the water involved in the agriculture industry.

Regulatory Flexibility Statement

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department evaluated the reporting, record-keeping, and other compliance requirements that the proposed amendments and new rules would impose upon small businesses. The Regulatory Flexibility Act defines the term "small business" as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees."

While most manufacturers of televisions and other covered electronic devices employ 100 or more full time employees, there are some New Jersey manufacturers that employ fewer than 100 employees that will be subject to the reporting, record keeping and other compliance requirements of the proposed amendments and new rules. These manufacturers will have to submit collection plans to the Department that address the recycling of covered electronic devices throughout New Jersey, submit annual reports, and annual registration statements. In addition, these manufacturers must implement their collection plans and monitor their progress. While these requirements may have a proportionally greater impact on smaller manufacturers than larger manufacturers, the proposed amendments and new rules allow manufacturers to work together to submit a plan that covers the recycling strategies for multiple manufacturers. Manufacturers that submit a group collection plan may also submit a group annual report. This provision should mitigate administrative and implementation costs that arise from this program. Manufacturers that choose to work together on a plan will still need to each submit an annual registration statement and pay the \$5,000.00 annual fee that is required by law. It is anticipated that this fee will have a greater impact upon smaller manufacturers as opposed to larger ones. However, this fee is statutorily required and necessary to ensure the Department is able to adequately oversee this program. The Department does not

anticipate small businesses having to employ professional services to comply with the provisions of this proposal.

The proposed amendments and new rules also impose reporting, record-keeping and other compliance requirements on small business electronics waste handlers and Class D recycling facilities located in New Jersey. Based upon facility information maintained by the Department, it is estimated that this new program may affect almost 40 of such businesses, most of which would be classified as "small businesses," as that term is defined in the New Jersey Regulatory Flexibility Act. In regard to administrative compliance requirements, these facilities are already required to keep records and report their recycling tonnage to the Department pursuant to N.J.A.C. 7:26A-3.17. Thus the proposed amendments and new rules will not increase the administrative compliance requirements or the compliance costs for these small businesses.

Retailers of televisions and electronic devices, many of which employ fewer than 100 persons, may also be impacted by the proposed amendments and new rules, since they will be prohibited from selling covered electronic devices from those manufacturers whose plans are not approved or pending approval. In order to comply with this provision, retailers will need to periodically check the Department's electronics waste recycling website before ordering products to sell in New Jersey. This requirement could potentially change a retailer's supply chain and thus lead to some degree of additional administrative work on its part. However, the need to verify a manufacturer's approval status by checking a website is not overly burdensome, even for small businesses, and would not require the services of a consultant or other specialist. Therefore, no lesser requirements or exemptions for small business retailers are provided.

Smart Growth Impact

Executive Order No.4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan).

The proposed amendments and new rules do not impact the State's official land use and development policies in a way that would either encourage or discourage any development or redevelopment in the State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth, or implementation of the State Plan. The proposed amendments and new rules do not involve land use policies or infrastructure development.

The electronic waste management rules neither encourage nor discourage the achievement of smart growth. However, these rules are intended to protect public and environmental health, in furtherance of the State Plan goal of protecting the environment and preventing and cleaning up pollution.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated the proposed new rules and amendments to determine their impact, if any, on the affordability of housing.

The proposed amendments and new rules regulate the recycling of electronic waste, which may result in slight increases to consumers of the cost of televisions and other electronic devices. It is extremely unlikely that this cost to consumers would translate into a change in the average costs associated with housing. Accordingly, the Department has determined that the impact imposed by the proposed amendments and new rules, if any, would be insignificant.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments and new rules to determine their impact, if any, on smart growth development. The rules regulate the recycling of electronic waste. The Department has determined that the proposed amendments and new rules will impose an insignificant impact, because there is an extreme unlikelihood that the rules will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 26. SOLID WASTE

SUBCHAPTER 2. DISPOSAL

7:26-2.8 Registration and general prohibitions

(a) – (r) (No change.)

(s) No person shall knowingly dispose of a used covered electronic device, as defined at N.J.A.C. 7:26A-13.2, or any of its components or subassemblies, as solid waste. A used covered electronic device shall be recycled in accordance with N.J.A.C. 7:26A.

CHAPTER 26A. RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department governing the operation of recycling centers and the conduct of recyclable materials generators and transporters, and of governing municipalities and counties that have jurisdiction over recyclable materials pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq. **This chapter also includes the Department's electronic waste recycling program rules**

regarding the recycling of a used covered electronic device, pursuant to the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq.

(b) through (e) (No change.)

7:26A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the meanings set forth below. All terms which are used in this chapter and which are not defined herein but which are defined in N.J.A.C. 7:26 shall have the same meanings as in that chapter. **If any of the words or terms defined below or at N.J.A.C. 7:26 are defined differently at N.J.A.C. 7:26A-13.2, the definitions at N.J.A.C. 7:26A-13.2 shall apply to the use of those words or terms in N.J.A.C. 7:26A-13.**

SUBCHAPTER 13. ELECTRONIC WASTE MANAGEMENT

7:26A-13.1 Scope and authority

(a) This subchapter implements the “Electronic Waste Management Act,” N.J.S.A. 13:1E-99.94 et seq., to establish a recycling system for the safe and environmentally sound management of covered electronic devices and components, including televisions, and establishes requirements for manufacturers and retailers of these covered electronic devices. This subchapter applies to manufacturers, retailers and consumers of covered electronic devices, as well as to collectors, transporters and authorized recyclers whose services are engaged under the manufacturers’ collection plans.

(b) A waiver from the strict compliance with any portion of these rules may be sought on or after the effective date of rules governing waivers promulgated by the Department pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B -1 et seq. The Department will publish a notice of administrative change that amends this section to cross-reference those rules.

7:26A-13.2 Definitions

The following words and terms, when used in this subchapter, shall have the meanings set forth below. Any term used in this subchapter that is not defined herein but that is defined in N.J.A.C. 7:26 or 7:26A-1.3 shall have the same meaning as in that chapter or section. If any of the words or terms defined below are defined differently at N.J.A.C. 7:26 or at N.J.A.C. 7:26A-1.3, the definitions at N.J.A.C. 7:26A-13.2 will apply to the use of those words or terms in N.J.A.C. 7:26A-13.

“Authorized recycler” means a person who is not committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, who:

- 1. Engages in the manual or mechanical separation of covered electronic devices to recover components and commodities contained therein for the purpose of re-use or recycling; or**
- 2. Changes the physical or chemical composition of a covered electronic device by deconstructing, reducing the size, crushing, cutting, sawing, compacting, shredding, or refining, for the purpose of segregating components and for the purpose of recovering or recycling those components, and who arranges for the transport of those components to an end user.**

“Brand” means a symbol, word or mark that identifies a covered electronic device. A symbol, word or mark that identifies only a component of a covered electronic device, and not the covered electronic device as a whole, is not the brand of the covered electronic device unless the device as a whole is so identified.

“Brand list” means, for a manufacturer of covered electronic devices, including televisions, a list of every brand under which the covered electronic devices manufactured by the manufacturer are sold, regardless of whether the manufacturer owns or licenses the brand.

“Business concern” means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization. “Business concern” does not include a small business enterprise.

“Cathode ray tube” means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

“Collection obligation” means the return share in weight or the television collection share in weight identified for an individual manufacturer.

“Collection plan” or “plan” means a plan for collecting, transporting, and recycling covered electronic devices prepared pursuant to N.J.S.A. 13:1E-99.96e and 99.103a, and this subchapter.

“Collector” means a facility specified in a manufacturer’s approved collection plan that receives and accumulates covered electronic devices prior to their transportation to an authorized recycler. Collector includes, but is not limited to, a solid waste transfer station or materials recovery facility, a solid waste sanitary landfill, a universal waste handler, a Class D recycling center, a retailer, or any other entity specified in a manufacturer’s approved collection plan.

“Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that is designed to perform a logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor. Computer does not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant or other similar device.

“Consumer” means a person who purchases a covered electronic device in a transaction that is a retail sale. Consumer does not include any business concern purchasing covered electronic devices.

“Covered electronic device” means a desktop or personal computer, computer monitor, portable computer, or television sold to a consumer. A covered electronic device does not include any of the following:

- 1. An electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including a replacement part for use in a motor vehicle;**
- 2. An electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;**
- 3. An electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or**
- 4. A telephone of any type, unless it contains a video display area greater than four inches measured diagonally.**

“Gross television recycling goal” means the overall goal established by the Department for the collection, transport and recycling of televisions for each program year, expressed in pounds and determined in accordance with N.J.A.C. 7:26A-13.9(d).

“Local government unit” means any county or municipality, or any agency, instrumentality, authority, or corporation of any county or municipality, including, but not limited to, sewerage, utilities, and improvement authorities, or any other political subdivision of the State.

“Manufacturer” means any person:

- 1. Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;**
- 2. Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;**
- 3. Who manufactures or manufactured covered electronic devices without affixing a brand;**
- 4. Who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned nor is or was licensed to use;**
- 5. For whose account covered electronic devices manufactured outside the United States are or were imported into the United States, provided however, if, at the time of importation, another person has registered as the**

manufacturer of the brand of the covered electronic devices pursuant to N.J.S.A. 13:1E-99.102, then part 5 of this definition shall not apply; or

6. Who assumes the obligations and responsibilities for a manufacturer pursuant to parts 1. through 5. of this definition.

“Market share” means a television manufacturer’s national sales of televisions, expressed as a percentage of the total of all television manufacturers’ national sales, based on the best available public data.

“Monitor” means a separate video display component of a computer containing a cathode ray tube or any other type of display, including, but not limited to, a liquid crystal display, gas plasma, digital light processing, or other image projection technology, that:

- 1. Is sold separately or sold together with a computer central processing unit and computer box; and**
- 2. Includes its case, the interior wires and circuitry, the cable to the central processing unit and the power cord.**

“Orphan device” means a covered electronic device for which no manufacturer can be identified, or for which the original manufacturer no longer exists.

"Person" means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government department, partnership, limited liability company, or association.

“Portable computer” means a computer and a video display greater than four inches in size, including a laptop computer, that can be carried as one unit by an individual.

“Premium service” means a collection service provided under an approved collection plan that exceeds the requirements in the Electronic Waste Management Act, (N.J.S.A. 13:1E-99.94 et seq.), for a convenient collection system, including, but not limited to the collection of a covered electronic device from a consumer’s residence.

“Program year” means a full calendar year, running from January 1 through December 31.

“Purchase” means the taking, by sale, of title in exchange for consideration.

“Recycling” means any process by which materials that would otherwise become solid waste are collected, separated or processed, and returned to the economic mainstream in the form of raw materials or products. Recycling does not include energy recovery or energy generation by means of incinerating electronic waste, whether apart from or in combination with other wastes.

“Retail sale” means the sale of a covered electronic device through sales outlets, via the Internet, mail order, or other means, whether or not the retailer has a physical presence in this State.

“Retailer” means a person who owns or operates a business that sells new covered electronic devices in this State by any means to a consumer.

“Return share” means the proportion of covered electronic devices, other than televisions, that an individual manufacturer of covered electronic devices other than televisions is responsible to collect, transport, and recycle, as determined by the Department pursuant to N.J.A.C. 7:26A-13.9.

“Return share in weight” means the total weight of an individual manufacturer’s return share.

“Sale” or “sell” means any transfer for consideration of title, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, and excluding leases.

“Small business enterprise” means any business that has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees.

“Television” means a stand-alone display system containing a cathode ray tube or any other type of display that:

- 1. Is primarily intended to receive video programming via broadcast;**
- 2. Has a viewable area greater than four inches measured diagonally; and**
- 3. Can display standard consumer video formats, receive and display different broadcast channels and support sound capability.**

“Television collection share” means the proportion of televisions that an individual manufacturer is responsible to collect, transport, and recycle, as determined by the Department pursuant to N.J.A.C. 7:26A-13.9.

“Television collection share in weight” means the total weight of an individual television manufacturer’s television collection share.

“Television manufacturer” means a manufacturer of televisions offered for sale for delivery in New Jersey.

“Transporter” means a person engaged in the transportation of covered electronic devices off the collection site, by any means, including by air, rail, highway, or water.

“Vendor-to-business purchaser recycling arrangement” means an arrangement between a business concern that purchases or leases a covered electronic device and the manufacturer of the device, whereby the manufacturer, for an additional fee or otherwise, commits to accept for recycling the purchased or leased covered electronic device when the business concern determines that it no longer has use for the device.

“Video display” means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of

motion, including, if applicable, a device that is an integral part of the display and cannot be easily removed from the display by the consumer and that produces the moving image on the screen. A video display typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology.

7:26A-13.3 Registration requirements for manufacturers of covered electronic devices

(a) This section applies to television manufacturers and manufacturers of all other covered electronic devices who sell covered electronic devices for delivery in New Jersey.

(b) On or before January 1 of each calendar year, each manufacturer of covered electronic devices sold for delivery in New Jersey on and after December 1 of the previous year shall register with the Department by submitting a registration package in accordance with (e) below and pay a registration fee of \$5000.00.

(c) Any manufacturer of covered electronic devices other than televisions to whom the registration requirements of (b) above did not apply on January 1 of any year shall register with the Department by submitting a registration package in accordance with (e) below within 30 days of receiving from the Department a notification of a return share and a return share in weight pursuant to N.J.A.C. 7:26A-13.9.

(d) Each registered manufacturer shall renew its registration by January 1 of the calendar year immediately subsequent to the calendar year of its initial registration, and by January 1 of each calendar year thereafter, by submitting a registration package in accordance with (e) below.

(e) To register or renew its registration, a manufacturer shall submit, in accordance with the procedures at N.J.A.C. 7:26A-13.5, a registration package that includes:

- 1. A completed registration form, available at the Department's website at <http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>;**
- 2. A registration or registration renewal fee of \$5,000.00, as provided by the Act at N.J.S.A. 13:1E-99.9696a and 99.96b for television manufacturers and at N.J.S.A. 13:1E-99.102b for manufacturers of covered electronic devices other than televisions, and as has been implemented since January 1, 2010, and February 1, 2010, respectively, in accordance with these provisions of the Act;**
- 3. A current brand list; and**
- 4. The following written certification:**

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is

true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I certify further that no covered electronic device manufactured under the above-listed brands that are offered for sale in New Jersey are prohibited from being sold or offered for sale in the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the covered electronic device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002-95-EC (European Union document 2005-618-EC), or as specified in a subsequent amendment to the Directive, except as otherwise provided at N.J.A.C. 7:26A-13.7(d)."

i. The certification shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president; or**
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.**

(f) A registered television manufacturer who determines to cease selling televisions in New Jersey shall, at least 30 days before it does so, inform the Department, in writing, of the date on which it will cease selling televisions in New Jersey.

7:26A-13.4 Collection plan and annual report submission requirements

(a) Each manufacturer for whom the Department has identified a collection obligation shall submit a collection plan to the Department, either individually or as part of a group of manufacturers, by June 1 in the calendar year of the notification of the collection obligation.

(b) In addition to meeting the content requirements at N.J.A.C. 7:26A-13.6, a collection plan must provide for recycling resources and capacity sufficient to address the collection obligation of the submitting manufacturer or group of manufacturers as follows:

- 1. An individual manufacturer's collection plan must provide for the collection, transportation, and recycling of the individual manufacturer's collection obligation; and**
- 2. A collection plan submitted by a group of manufacturers must provide for the collection, transportation, and recycling of the sum of the collection obligations of all participating manufacturers.**

(c) Each manufacturer or group of manufacturers shall submit an annual report to the Department by February 1 of the year following a calendar year in which it had a collection obligation that includes the following:

- 1. The total weight of televisions and covered electronic devices other than televisions collected for recycling in the previous program year pursuant to the collection plan; and**

2. For a television manufacturer or a group of manufacturers that includes one or more television manufacturers, the total number of all new televisions manufactured by the television manufacturer or, for a group of manufacturers, by each television manufacturer in the group, that were sold in New Jersey in the previous program year.

(d) A manufacturer who chooses to submit a collection plan and an annual report as part of a group, shall, at least 30 days prior to the submittal of each group collection plan, participate in the preparation and submission to the Department of a Group Designation Form, which is available on the Department's website at <http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>.

(e) Each Group Designation Form submitted pursuant to (d) above shall provide the following information:

- 1. A name identifying the group;**
- 2. The name, title, telephone number, email address and mailing address of the group's contact person, to whom the Department should address all communication regarding the submission of the collection plan and the annual report and whom the group has authorized to act on its behalf;**
- 3. For each manufacturer participating in the group, its name, the program interest number assigned to it when it initially registered with the Department under N.J.A.C. 7:26A-13.3 and the name of the manufacturer's contact person;**
- 4. Signature and certification by each manufacturer as to the veracity of the information contained in the Group Designation Form and all attachments thereto and to the authorization of the named contact person to act on its behalf in all matters pertaining to the submittal of collection plans and annual reports; and**
- 5. Signature and certification by each manufacturer's contact person and the group's contact person as to the veracity of the information contained in the Group Designation Form and all attachments thereto.**

(f) Each manufacturer or group of manufacturers shall implement, at its own expense, its plan for the collection, transportation, and recycling of covered electronic devices by January 1 of each calendar year for which it has a collection obligation.

(g) A manufacturer shall continue to carry out the collection program as set forth in the approved plan for the entire program year, even if that manufacturer meets or exceeds its collection obligation before the end of the program year.

(h) A manufacturer or group of manufacturers may amend any element of an approved plan, but shall not implement any such amendment unless and until the Department has approved it.

7:26A-13.5 Submission and certification of required documents and payments

(a) Each manufacturer shall submit the following completed forms and payment as set forth in (b) through (e) below:

- 1. The registration form, as required at N.J.A.C. 7:26A-13.3(e)1;**
- 2. The group designation form, as required at N.J.A.C. 7:26A-13.4(d);**
- 3. The collection plan, as required at N.J.A.C. 7:26A-13.4(a);**
- 4. The annual report, as required at N.J.A.C. 7:26A-13.4(c); and**
- 5. The registration or registration renewal fee payment, as required at N.J.A.C. 7:26A-13.3(e)2.**

(b) Each manufacturer shall submit the required documents in (a) above by sending a copy on electronic media, such as a compact disk (CD), digital video/versatile disk (DVD) or flash drive, in portable document format (PDF) or any equivalent format as approved by the Department, via the postal service, a delivery service, or other commonly accepted method of delivery, to the address listed on the registration form until such time that the Department requires the electronic submission of these documents through a web-based submission program. Within 180 days after receipt of written notification from the Department that its web-based submission program is operational, all required documents under (a)1-4 above shall be submitted to the Department through the web-based submission program in a manner compatible with the Department's computer system.

(c) The manufacturer shall pay the registration or registration renewal fee required under (a)5 above, by check or money order payable to "Treasurer, State of New Jersey" and shall submit the payment with the registration form, until such time that the Department requires the electronic payment of this fee. Within 180 days after receipt of written notification from the Department that its electronic payment system is operational, the fee shall be submitted to the Department through the electronic payment system in a manner compatible with the Department's computer system.

(d) The date of the submission of the completed registration form, collection plan, annual report, and registration or registration renewal fee payment that are not submitted through a web-based submission program can be documented by submitting the documents in a way that will provide documentation of the submittal date, such as by certified mail. The date of the web-based submission can be documented by printing the appropriate website confirmation screen.

(e) Each registration form shall be certified in accordance with N.J.A.C. 7:26A-13.3(e)4.

7:26A-13.6 Required contents of a collection plan; confidentiality

(a) A collection plan submitted in accordance with N.J.A.C. 7:26A-13.4 shall include the following:

- 1. The methods and services that will be used to collect used covered electronic devices, including, but not limited to:**
 - i. The locations, including street addresses, of the collection sites to be utilized. The collection plan must provide for at least one collection site in**

- every county in the State, unless the plan provides documentation that the county for which the plan does not provide collection coverage is already adequately covered by the collection plan of another manufacturer, group of manufacturers or other entity;**
- ii. Each collection site's hours of operation;**
 - iii. A description of how each collection site will be staffed and secured;**
 - iv. A listing of any limitations to be imposed on the quantity and type of material to be accepted, and whether any additional electronic equipment not required to be collected under the Electronic Waste Management Act will be accepted (for example, DVD players, VCRs, scanners, printers, or other computer and television peripherals and equipment);**
 - v. A description of the collection methods to be utilized for consumers who are not physically able to travel to a collection site without assistance;**
 - vi. A description of the collection methods to be employed for heavy (50 pounds in weight or heavier) or unwieldy covered electronic devices, including, but not limited to, flat screen televisions with screens greater than 40 inches measured diagonally and projection televisions;**
 - vii. A description of how the collected covered electronic devices will be stored prior to transport to an authorized recycler;**
 - viii. Certification that there will be no fee or cost charged a consumer for the collection, transportation or recycling of any covered electronic device other than a fee for a premium service provided for in an approved collection plan;**
 - ix. An explanation of the extent to which, if any, there is coordination with county and municipal government recycling programs;**
 - x. A description of the methods to be used to ensure that personal information contained on hard drives or similar data storage devices is secured from access by the general public and any untrained persons or employees; and**
 - xi. Certification that each collector, transporter, or authorized recycler of covered electronic devices who is participating in a manufacturer's or group of manufacturers' approved collection plan is compliant with all applicable requirements of N.J.A.C. 7:26A-13.11;**
- 2. The processes and methods that will be used to recycle collected covered electronic devices, including, but not limited to:**
- i. The name and location of each authorized recycler to which collected covered electronic devices will be transported. The collection plan must also include, for an authorized recycler located in a state other than New Jersey:**
 - a. A copy of the operating permit or approval issued by the state where the authorized recycler is located;**
 - b. Documentation that the facility is operating in accordance with all applicable rules and regulations; and**

under N.J.S.A. 13:1E-99.111(2)(a). For any covered electronic device exempted under N.J.S.A. 13:1E-99.111(2)(a), the manufacturer will include certification that the covered electronic device would have been in compliance with European Union standards for heavy metals, but for the inclusion of a substance in order to comply with the consumer, health or safety requirements of the Underwriters Laboratories or Federal or State law.

(b) The Department will hold confidential any information obtained in connection with a collection plan submitted pursuant to (a) above, if the Department determines, based upon a showing by the manufacturer, that the information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of the registered manufacturer. A manufacturer asserting confidentiality shall submit its claim by following the procedures at N.J.A.C. 7:26-17.3.

1. This provision is in addition to and shall not be deemed to limit any claims of confidentiality under the Open Public Records Act, N.J.S.A. 47:1A-1.1 et seq., or common law.

(c) If a manufacturer asserts a claim of confidentiality pursuant to N.J.A.C. 7:26-17.3 for any part of a collection plan, it must submit two copies of its collection plan – one that omits the confidential information, and includes only the information for which no claim of confidentiality is being made, and a second that includes all the required collection plan information, including the information for which a claim of confidentiality is being made. The manufacturer shall certify both of these submittals.

7:26A-13.7 Prohibitions on the sale and disposition of all covered electronic devices

(a) No manufacturer shall sell or offer for sale a covered electronic device in New Jersey, unless the manufacturer complies with all financial and other requirements of this subchapter, including all conditions and terms of an approved plan or a plan for which approval is pending pursuant to N.J.A.C. 7:26A-13.10(f), and N.J.S.A. 13:1E-99.94 et seq.

(b) No manufacturer or retailer of a covered electronic device shall sell or offer for sale a covered electronic device in New Jersey unless:

- 1. The covered electronic device is labeled with the manufacturer's brand; and**
- 2. The label is permanently affixed to the device in such a way as to ensure that the brand is readily visible without removing or disassembling any portion of the device.**

(c) No person shall sell or offer for sale in New Jersey a new covered electronic device from a manufacturer that is not in full compliance with the requirements of the Act. The prohibition of the sale or offer for sale of its covered electronic devices does not apply to the covered electronic devices of a manufacturer who has not yet obtained the Department's approval of its collection plan so long as the manufacturer is otherwise in compliance with the requirements of this subchapter

and the collection plan is pending approval by the Department as provided at N.J.A.C. 7:26A-13.10(f).

(d) No person shall sell or offer for sale in New Jersey a new covered electronic device that is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture because it contains one or more heavy metals in a concentration that exceeds the maximum concentration value specified in the Annex to the European Union Directive 2002/95/EC, as supplemented or amended and incorporated by reference herein, and available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0095:20080524:EN:PDF>, unless the exceedance of the heavy metal maximum concentration value results from the inclusion of a substance in order to comply with the consumer, health, or safety requirements of the Underwriters Laboratories, or with Federal or State law.

(e) A seller of new covered electronic devices shall ensure compliance with (c) and (d) above by consulting the compliance list established by the Department and posted on its website. A seller has complied with (c) and (d) above if, on the date that the covered electronic device was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the Department's website or the website indicates that approval is pending for that manufacturer.

(f) No person shall, pursuant to any collection plan, send a collected covered electronic device to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, for the purpose of recycling, including manual or mechanical separation to recover components and commodities contained therein for re-use or recycling, either directly or through intermediaries, and nothing in this subchapter shall be construed to allow for the recycling of covered electronic devices by prisoners.

(g) No person shall knowingly dispose of a used covered electronic device, or any of its components or subassemblies, as solid waste.

7:26A-13.8 Educational requirements for retailers of covered electronic devices

(a) Every retailer shall obtain from the Department information that describes where and how a consumer can recycle the covered electronic device sold by the retailer, and where and how a consumer can drop off the covered electronic device for collection or return, and shall provide that information to the public, using one or more of the following methods:

- 1. A toll-free telephone number and website;**
- 2. A written document that is included in the packaging for the covered electronic device; or**
- 3. A written document that is provided to the purchaser of the covered electronic device at point of sale.**

7:26A-13.9 Collection obligation determination

(a) Each year the Department will determine the collection obligation for each manufacturer of covered electronic devices to be used for the following program year.

(b) The Department will determine the collection obligation for each manufacturer of covered electronics other than televisions, that is, its return share by weight, using the following data and steps:

1. The return share of each manufacturer of covered electronic devices other than televisions, will be calculated as described at (b)4 below, using a sampling of covered electronic devices, other than televisions, collected from consumers in New Jersey during the previous program year, in accordance with the protocol set forth in (b)2 below. The sampling data will be used to extrapolate the number and weight of covered electronic devices other than televisions, including brand identification, if provided, collected from consumers in collections held throughout New Jersey. The Department will supplement the sampling data with the data from the most recent submission of the annual report and may also supplement it with the best available return share data in the United States, including data from other states, including, but not limited to, data from the Brand Data Management System (BDMS) developed by the National Center for Electronics Recycling (NCER). This BDMS data includes the number and weight of covered electronic devices other than televisions, including brand identification, if provided, collected from consumers in collections held throughout the United States. The BDMS data is available at <http://www.electronicrecycling.org/BDMS/default.aspx>;

2. Sampling will be conducted at a minimum of six randomly selected collection sites, at least three of which will be located in Northern New Jersey and at least three of which will be located in Southern New Jersey. At each site, a minimum of 200 units of covered electronic devices other than televisions will be sampled to determine the brand and weight of each sampled device;

3. The Department will use the data collected pursuant to (b)1 above to:

- i. Generate a list of brands and the weight of covered electronic devices other than televisions that are identified for each brand;**
- ii. Assign each identified brand to the appropriate manufacturer; and**
- iii. Determine the total weight of orphan devices;**

4. Using the data in (b)3 above, the return share is calculated as follows:

$$R = \frac{a}{b-c} \times 100$$

Where:

R = return share expressed as a percentage;

a = the total weight of all of an individual manufacturer's brands;

b = the total weight of all collected covered electronic devices, other than televisions; and

c = the total weight of collected orphan devices;

5. The collection obligation of each manufacturer of covered electronic devices other than televisions for which a return share is determined, that is, its return share in weight, is determined as follows:

$$RW = R \times TW$$

Where:

RW = return share in weight expressed in pounds;

R = return share expressed as a percentage, calculated at (b)4 above; and

TW = total weight in pounds of covered electronic devices other than televisions projected to be collected in New Jersey from consumers during the program year to which the return share in weight will apply, or the total weight in pounds of covered electronic devices other than televisions collected in New Jersey from consumers during the most recent program year for which the Department has data, as determined at (b)6 below.

6. The Department will project the total weight in pounds of covered electronic devices other than televisions that will be collected in New Jersey from consumers during the following program year by calculating the sum of the weight in pounds of covered electronic devices other than televisions reflected in the most recently submitted manufacturers' annual reports.

(c) The Department will determine the collection obligation for each manufacturer of televisions, that is, its television collection share, using the following data and steps:

1. The Department will acquire national market share data from an entity that has expertise in gathering market share sales data in the electronics sector, in particular, the television market. The Department will acquire sales data for the most recent 12-month period available for purchase at the time concerning televisions, including brand identification, sold to consumers throughout the United States;

2. The Department will use the market share data acquired in accordance with (c)1 above to:

i. Generate a list of brands of televisions and the number of televisions that are identified for each brand; and

ii. Assign each identified brand to the appropriate television manufacturer;

3. Using the data in (c)2 above, the television collection share of each manufacturer is calculated as follows:

$$S = \frac{a}{b} \times 100$$

Where:

S = television collection share, expressed as a percentage;

a = the total units sold of all of an individual manufacturer's brands; and

b = the total units sold of all brands;

4. The collection obligation of each television manufacturer, that is, its television collection share by weight is determined as follows:

$$CW = S \times GW$$

Where:

CW = television collection share in weight, expressed in pounds;

S = television collection share expressed as a percentage, calculated at (d)3 above; and

GW = the gross television recycling goal in pounds to be collected in New Jersey from consumers during the program year to which the return share in weight will apply, determined at (d)5 below.

5. The Department will determine the gross television recycling goal for the following program year by calculating the sum of the weight in pounds of televisions reflected in the most recently submitted manufacturers' annual reports.

(d) By March 1 of each year the Department will publish on its website and provide to each identified manufacturer a Preliminary Collection Obligation Report for the following program year. The Preliminary Collection Obligation Report will set forth the collection obligation of each identified manufacturer, including, as appropriate, the return share or television collection share for each of its brands, and the total return share or television collection share thereof. The Preliminary Collection Obligation Report will also include supporting data, such as the results of the sampling conducted by the Department pursuant to (b)1 above.

(e) A manufacturer may comment on the collection obligation or any supporting data provided in the Preliminary Collection Obligation Report by submitting comments by April 1 of the year the Department provided the Preliminary Collection Obligation Report to the Department at the following address:

**DEP Climate and Env. Mgt. Solid and Hazardous Waste
Mail Code 401-02C
P.O. Box 420
Trenton, New Jersey 08625-0420.**

(f) A manufacturer commenting under (e) above who proposes that it receive an alternative collection obligation shall include in the proposal:

1. A detailed explanation of the grounds for the alternative collection obligation;

2. An alternative calculation;

3. The basis for the alternative calculation. If the alternative collection obligation is not based on the results of the Department's sampling, the basis for the alternative calculation of the return share shall include a report documenting the sampling conducted by the manufacturer in accordance with (c)2 above;

4. Documentary evidence supporting an alternative collection obligation; and

5. Complete contact information for requests for additional information and clarification.

(g) By May 1 of each year, the Department will review any collection obligation comments received pursuant to (e) and (f) above and will publish on its website and provide to each identified manufacturer a Final Collection Obligation Report that will include the final collection obligations, a summary of any comments received and the Department's response to the comments.

(h) When determining compliance with a collection obligation, a manufacturer or group of manufacturers may apply the total weight of all covered electronic devices collected from consumers during a program year towards that program year's collection obligation.

7:26A-13.10 Review of collection plans

(a) The Department will review each submitted plan for the collection of covered electronic devices to ensure the plan includes all the information required pursuant to N.J.A.C. 7:26A-13.6, and that implementation of the plan could reasonably be expected to result in the attainment of the manufacturer's or group of manufacturers' collection obligation.

(b) In reviewing the collection plans, the Department will ensure that at least one electronics collection opportunity is available in each county throughout the State and in such a manner as to be convenient, to the maximum extent practicable and feasible, to all consumers in a given county. In the event there is not at least one such collection opportunity provided for in each county, the Department will work with the manufacturers to assign responsibility for additional collection opportunities based on the collection obligations of each manufacturer and the relative burden such an additional collection opportunity would place on the manufacturer.

(c) Except as provided at (d) and (e) below, no fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic devices under these rules.

(d) A school or local government unit may be charged a fee for the reasonable costs incurred by an authorized recycler in the collection, transportation or recycling of covered electronic devices generated by that school or local government unit.

(e) The plan may provide for a fee to be charged to a consumer for a premium service if the Department has approved both the premium service and the fee for the service.

(f) After the Department reviews a manufacturer's collection plan it will issue a written determination, either requesting additional information or determining the plan to be administratively complete. A collection plan is administratively complete if it contains all of the information required in N.J.A.C. 7:26A-13.6(a). If the Department requests additional information, the manufacturer shall submit the additional information within 30 days of receipt of the request.

(g) Upon the Department's determination that a collection plan is administratively complete, the Department will perform a technical review to determine if the plan fulfills the intent of the Electronic Waste Management Act and the requirements of this section and this subchapter. Upon completion of the technical review, the Department will issue a written determination either requesting additional information or approving or rejecting the plan. If the Department requests additional information, the manufacturer shall submit the additional information within 30 days of receipt of the request.

(h) Failure to timely and fully respond to a request for additional information under (g) above for administrative completeness or under (h) for the technical review constitutes a failure to provide a plan in violation of this subchapter and the Electronic Waste Management Act.

(i) The Department may reject the collection plan, in whole or in part, and may impose additional requirements as a condition of approval. A collection plan that the Department deems to be administratively complete will be considered as "pending approval" for the purposes of compliance with N.J.A.C. 7:26A-13.7.

7:26A-13.11 Performance requirements for collectors, transporters, and authorized recyclers

(a) A collector, transporter, or authorized recycler of covered electronic devices who is participating in a manufacturer's or group of manufacturers' approved collection plan shall comply with the United States Environmental Protection Agency's "Plug-In to eCycling Guidelines for Materials Management," incorporated herein by reference and available at <http://www.epa.gov/waste/partnerships/plugin/pdf/guide.pdf>.

(b) In addition to the requirements at (a) above, a collector of covered electronic devices participating in a manufacturer's or group of manufacturers' approved collection plan shall comply with the Department's requirements applicable to universal waste handlers at N.J.A.C. 7:26A-7.4 and 7.5.

(c) In addition to the requirements at (a) above, a transporter of covered electronic devices participating in a manufacturer's or group of manufacturers' approved collection plan shall comply with the Department's requirements applicable to universal waste transporters at N.J.A.C. 7:26A-7.6.

(d) In addition to the requirements at (a) above, an authorized recycler shall comply with “Responsible Recycling (R2) Practices for Use in Accredited Certification Programs for Electronics Recyclers,” as supplemented or amended, and incorporated herein by reference, available at <http://www.epa.gov/waste/consERVE/materials/ecycling/r2practices.htm>. An authorized recycler of covered electronic devices shall also comply with the requirements for Class D recycling facilities at N.J.A.C. 7:26A-3. An authorized recycler of covered electronic devices located in a state other than New Jersey shall also comply with the receiving state’s rules and regulations, including any requirements for the maintenance of any permit or approval.

7:26A-13.12 Requests for administrative hearings

(a) Subject to the limits on third party hearings at N.J.S.A. 52:14B-3.1 through 3.3, a party who believes it is aggrieved with respect to the Department’s decision to approve or disapprove the collection plan of a manufacturer or group of manufacturers may, within 20 calendar days after the date of the decision, request an administrative hearing by submitting the request, in writing to:

**Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street, 4th Floor
Mail Code 401-04L
PO Box 420
Trenton, NJ 08625-0420
and to:**

**Climate and Env. Mgt. Solid and Hazardous Waste
Department of Environmental Protection
401 East State Street, 2nd Floor
Mail Code 401-02C
P.O. Box 420
Trenton, NJ 08625-0420.**

(b) A request for an administrative hearing shall contain:

- 1. The name, address, telephone number and e-mail address of the person making the request;**
- 2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;**
- 3. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the appeal;**
- 4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included; and**

5. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).

(c) A hearing request not received by the Department within 20 calendar days after the date of receipt of the Department decision being appealed will be denied by the Department.

(d) If the requester does not include all the information required by (b) above, the Department may deny the hearing request.

(e) Following receipt of a complete request for a hearing pursuant to (b) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(f) If the Department determines that the matter is a contested case, the Department will transmit the matter to the Office of Administrative Law. Any proceedings will be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for an administrative hearing shall constitute the final decision of the Department for the purposes of judicial appeal.