

Guidance on Complying with New Jersey's Electronic Waste Management Act – Draft – August, 2010

I. Introduction

The “Electronic Waste Management Act” (the Act) P.L.2007, c.347 as amended by P.L. 2008 c.130 (N.J.S.A. 13:1E-99.94 et seq.) establishes collection and recycling requirements for manufacturers and consumers of “covered electronic devices”. The Act defines “covered electronic devices” as televisions; portable, desktop or personal computers; and computer monitors.

The Department is currently drafting rules to establish the regulatory requirements for the electronic waste management program as defined by the Act. These rules will provide specific requirements not included in the Act, such as the required content of the recycling plans that manufacturers must develop and implement. These regulations will not be proposed prior to some of the implementation dates of the Act. However, the implementation dates and other requirements of the Act are not dependent upon the promulgation of these rules, nor should any manufacturers delay compliance with these statutory requirements in anticipation of the Department’s rulemaking.

The Department has prepared this Guidance Document to assist the regulated community in complying with the statutory requirements of the Act.

II. Registration and Labeling Requirements for Television Manufacturers

Television manufacturers were required to register with the Department by January 1, 2010. An initial, registration fee of \$5000.00 was due at the time of registration, along with a list of every brand under which the covered electronic devices it manufactures are sold, regardless of whether the manufacturer owns or licenses the brand. The registration renewals and subsequent annual registration fees will be due to the Department on or before January 1 of every year thereafter. **If a manufacturer produces televisions and other covered electronic devices, the manufacturer must register for both categories and pay two registration fees pursuant to the Act.** The registration form to be used by all manufacturers is available on the Department’s website:

<http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>

The Department will accept initial payment of the registration fee in the form of a check or money order, payable to “Treasurer, State of New Jersey.” A web portal that will allow electronic submission of registration renewals and annual fees should be available in time for the registration renewal due on January 1, 2011, at which time electronic submission will be mandatory.

Beginning on January 1, 2010, 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. In addition, the Act (N.J.S.A. 13:1E-99.99a) prohibits any

manufacturer that is not in compliance with all financial and other requirements of the Act from selling or offering for sale a covered electronic device in New Jersey.

Television manufacturers, either singly or in groups, must submit a plan (“collection plan”) to the Department to collect, transport and recycle used televisions based on the manufacturer’s market share, as reflected in its collection obligation. The Department will determine the collection obligation for each manufacturer (see Section IV).. Collection plans for the first program year are due by September 30, 2010 and for the second program year by June 1, 2011. **These submittal dates differ from the dates provided in the Act so that the Department may allow manufacturers an opportunity to challenge the assigned market shares and collection obligations.**

On or before January 1, 2011, each television manufacturer or group of manufacturers shall implement, at its own expense, its plan for the collection, transportation, and recycling of used televisions, regardless of whether the plan has been approved by the Department.

III. Registration and Labeling Requirements for Manufacturers of Covered Electronic Devices, Other than Televisions

Manufacturers of covered electronic devices, other than televisions were required to register with the Department by February 1, 2010. An initial registration fee of \$5000.00 was due at the time of registration, along with a list of every brand under which the covered electronic devices it manufactures are sold, regardless of whether the manufacturer owns or licenses the brand. The registration renewals and subsequent annual registration fees will be due to the Department on or before January 1 of every year thereafter. **If a manufacturer produces televisions and other covered electronic devices, the manufacturer must register for both categories and pay two registration fees pursuant to the Act.** The registration form to be used by all manufacturers is available on the Department’s website:

<http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>

The Department will accept initial payment of the registration fee in the form of a check or money order, payable to “Treasurer, State of New Jersey.” A web portal that will allow electronic submission of registration renewals and annual fees should be available in time for the registration renewal due on January 1, 2011, at which time electronic submission will be mandatory.

Beginning on January 1, 2010, 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. In addition, the Act (N.J.S.A. 13:1E-99.99a) prohibits any manufacturer that is not in compliance with all financial and other requirements of the Act from selling or offering for sale a covered electronic device in New Jersey.

Manufacturers of covered electronic devices, other than televisions, either singly or in groups, must submit a plan (“collection plan”) to the Department to collect,

transport and recycle covered electronic devices based on the manufacturer's return share, as reflected in its return share by weight. The Department will determine the return share by weight for each manufacturer as described in Section V of this guidance document. Collection plans for the first program year are due by September 30, 2010 and the collection plans for the second program year are due by June 1, 2011. **These submittal dates differ from the dates provided in the Act so that the Department may allow manufacturers an opportunity to challenge the assigned return shares and return shares by weight.**

On or before January 1, 2011, each manufacturer of covered electronic devices, other than televisions, or group of manufacturers, shall implement, at its own expense, its plan for the collection, transportation, and recycling of used covered electronic devices, other than televisions, regardless of whether the plan has been approved by the Department.

IV. Collection Plan Requirements

The Act requires, at N.J.S.A. 13:1E-99.96e(1) and 13:1E-99.103e(1), all manufacturers of televisions and other covered electronic devices, to submit a plan to the Department to collect, transport, and recycle covered electronic devices based on either the manufacturer's market share or return share. The Act requires the plans from all manufacturers to include the following:

- 1) The methods that will be used to collect used covered electronic devices, including proposed collection services;
- 2) The processes and methods that will be used to recycle recovered covered electronic devices including a description of the recycling processes that will be used, including the name and location of all authorized recyclers to be directly utilized by the plan;
- 3) The means that will be utilized to publicize the collection services, including specification of a website or toll-free telephone number that provides information about the manufacturer's program in sufficient detail to allow consumers to learn how to return their used covered electronic devices for recycling, including limitations placed by collection sites on the number of used covered electronic devices permitted for drop-off by consumers; and
- 4) The intention of the registrant to fulfill its obligation through its own operations, either individually or with other registered manufacturers, or by contract with for-profit or not-for-profit corporations or local government units.

In addition to the above items, plans submitted by manufacturers of covered electronic devices, other than televisions, must include in their plans information on the processes and methods that will be used to recycle recovered covered electronic devices which originate between business concerns.

The Department is providing guidance on the information manufacturers should include in their plans to comply with the above requirements. The items included below will provide the Department with the necessary information to evaluate the plans and

ensure that they provide for the collection of a manufacturer's market share or return share in a manner that is safe, secure and convenient to the public.

Collection plans submitted to comply with N.J.S.A. 13:1E-99.96e(1) and/or 13:1E-99.103e(1) should include the following information:

1. The methods and services that will be used to collect used covered electronic devices, including:
 - i. The locations, including addresses, of the collection sites to be utilized. The plan should 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 program of another manufacturer, group of manufacturers or other entity;
 - ii. The hours each collection site will be open to the public;
 - iii. A description of how the collection sites 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 sensitive populations; that is, consumers who cannot physically get to a collection site without assistance;
 - vi. A description of the collection methods to be employed for heavy (50 pounds in weight or heavier) and/or unwieldy covered electronic devices, including, but not limited to, flat screen televisions with screens greater than 40" 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 use of a collection site for covered electronic devices by a consumer will be free of charge (see attached template);
 - 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 the parties with which the manufacturer or group of manufacturers has contracted, under the plan, to provide collection and recycling services, including the transportation of material from the collection site to an authorized recycler, are compliant with all applicable requirements at N.J.A.C. 7:26A-13.12.
2. The processes and methods that will be used to recycle recovered covered electronic devices, including:
- i. The names and locations of the authorized recyclers to which recovered covered electronic devices will be transported. The collection plan should also include copies of any permits issued by the state in which the recycler is located and a certification executed by the recycler stating that he is aware of and has agreed to comply with the requirements at N.J.S.A. 13:1E-99.108. For an authorized recycler located in a state other than New Jersey, a letter from the appropriate regulatory agency of the state where the authorized recycler is located verifying that the facility is operating in accordance with all applicable rules and regulations must be included in the collection plan;
 - ii. A description of the recycling processes that will be used by the authorized recycler(s);
 - iii. The processes and methods that will be used, if any, to recycle recovered covered electronic devices, other than televisions, pursuant to any vendor-to-business-purchaser recycling arrangement; and
 - iv. Certification that recovered covered electronic devices will not be exported for disposal in a manner that poses a significant threat to the public health or the environment or sent to prisons for recycling, either directly or through intermediaries;
3. A description of the means that will be utilized to publicize the collection services, including a website or toll-free telephone number that provides information about the registrant's recycling program in sufficient detail to inform a consumer how to return covered electronic devices for recycling, including any limitations placed by collectors on the number of covered electronic devices permitted for drop-off by consumers;
4. A detailed explanation of how the registrant intends to fulfill its obligation, through operation of its own plan, either individually or with other registered covered electronic device manufacturers, or by contract with for-profit or not-for-profit corporations, or local government units, including a commitment to provide for the collection of all types and all brands of covered electronic devices, including orphan devices. This explanation should include, at a minimum, the anticipated collection amounts for each collection site; and

5. The following 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 thereto, 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.”

The certification should be signed as follows:

- i. For a corporation, by a principal executive officer of at least the level of vice president; or
 - ii. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.
6. If a claim of confidentiality is being asserted for any part of a collection plan, both of the submittals shall be certified. That is, the submittal that omits the confidential information, and that includes only the information for which no claim of confidentiality is being made, shall be certified; and also the submittal that includes all the required collection plan information, including the information for which a claim of confidentiality is being made, shall be certified. The Department will hold confidential any information obtained through a collection plan 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.
7. Manufacturers that choose to submit a single plan as a group should also include the names of all of the manufacturers covered by the plan. In addition, the group of manufacturers shall collect, transport, and recycle the sum of the obligations of each participating manufacturing, based on either market share or return share.

V. Calculation of Market Share for Televisions

Market share is defined by the Electronics Management Act 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 required by N.J.S.A. 13:1E-95 and 13:1E-99c, the Department will each year determine the market share for each registered television manufacturer, based on the best publicly available national television sales data. In order to obtain the best available public information, the Department will purchase market share data regarding units sold in the United States either under a competitive request for proposals or telephone quotes, based on projected cost. The Department will use the number of televisions sold in each prior program year to determine the manufacturer's market share, to ensure that each manufacturer bears a proportionate share of the recycling responsibility.

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 will determine collection obligation by multiplying a television manufacturer's market share by the gross television-recycling goal established by the Department for each program year. For the first and second program year, when there will not yet be collection data available for a full program year on which to base the collection obligation and the gross recycling goal, the Department will base the gross television recycling goal on the amount of electronics collected in Washington State in 2009 and 2010, respectively, adjusted so as to reflect statutory differences between the states' programs. Washington State began a mandatory e-waste collection program similar to New Jersey's on January 1, 2009. Although all 21 counties and many municipalities in New Jersey currently hold some form of electronics collections, participation in the programs has always been voluntary. Therefore, the historic data available on the collections will not be indicative of the amount of electronics to be collected under a mandatory program. Therefore, the Department will use the adjusted data from Washington State to determine the gross recycling goals for the first and second program year.

Washington State collected 22.3 million pounds of televisions during 2009, the first year of Washington's program, according to the data posted on their website at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2009Collections.pdf>. The United States Census estimates Washington's population in 2009 as 6.67 million people (available at <http://www.census.gov/>), which provides a television collection rate of 3.3 pounds per capita. The Department will establish the per-capita collection goal for the first program year as 3.3 pounds per capita. The Department will determine a gross recycling goal by multiplying the per capita collection goal by the estimated population of New Jersey (as determined by the US Census Bureau at <http://www.census.gov/>). For 2009, the estimated New Jersey population is 8.71 million people. Therefore, the gross recycling goal for 2011 will be 28.7 million pounds of televisions.

The Department will assign each television manufacturer a collection obligation by multiplying the manufacturer's national market share percentage by the gross recycling goal. For example, during the first program year of 2011, if Company A has a market share percentage of 5%, the collection obligation for Company A for 2011 is 1.43 million pounds of televisions (28.7 million pounds x .05). 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 and will determine each successive television collection obligation in a similar fashion.

VI. Calculation of Return Share for Covered Electronic Devices, other than Televisions

For the first two years of the program (2011 and 2012), when there will not yet be data available for a full program year, 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. The Department has determined that

the best available public return share data has been developed by the National Center for Electronics Recycling (NCER) in the “Brand Data Management System” (BDMS), which is available at <http://www.electronicrecycling.org/BDMS/default.aspx>. 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)
- 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)
- 7) Maine E-Waste Law Program (1/18/06 to 6/30/06).

The BDMS also includes manufacturer claim status and registration data supplied by the [Maine Department of Environmental Protection](#), the [Maryland Department of the Environment](#), and the [Washington Department of Ecology](#).

The Department will project a manufacturer’s return share for the first two program years based on data provided by the BDMS. The Department will use the data from the BDMS to determine the total weight of individual manufacturers’ 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, minus the total weight of orphans as shown by the following formula:

$$R = a / (b - c) \text{ (percentage)}$$

Where:

R represents return share

a is the manufacturer’s total brand weight

b is the total weight of all collected covered electronic devices, other than televisions

c is the total weight of orphan devices

And $a / (b - c)$ is expressed as a percentage

The Department will determine the return share in weight 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 and second program years, when there will not yet be data available for a full program year on which to base the total weight of covered electronic devices returned, the Department will utilize the collection data from Washington State’s 2009 e-waste collection program. Washington State began a mandatory e-waste collection program similar to New Jersey’s on January 1, 2009 and the Department has determined that Washington State’s adjusted collection data is the best available national public weight data. The Department will multiply the adjusted per capita collection rate from Washington State’s first and second program years, 2009 and 2010 respectively, by the estimated New Jersey population, as determined by the US Census Bureau to determine the projected return share in weight.

Washington State collected 15.2 million pounds of covered electronic devices, other than televisions during 2009, the first year of Washington's program, according to the data posted on their website at

<http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2009Collections.pdf> . The United States Census estimates Washington's population in 2009 as 6.67 million people (available at <http://www.census.gov/>), which provides a collection rate of 2.3 pounds per capita. The Department will establish the per-capita collection goal for the first program year at 2.3 pounds per capita. The Department will determine a gross recycling goal by multiplying the per capita collection goal by the estimated population of New Jersey (as determined by the US Census Bureau at <http://www.census.gov/>). For 2009, the estimated New Jersey population is 8.71 million people. Therefore, the gross recycling goal for 2011 will be 20 million pounds of covered electronic devices, other than televisions.

VII. Challenging Collection Obligation

The Electronic Waste Management Act provides, at N.J.S.A. 13:1E-99.105a(3), the timing for the manufacturer's notification of its return share by the Department. The Act provides for the first notification by April 2, 2010 of a return share in weight based on the best available public return share data, as described above.

To allow manufacturers the opportunity to review the collection obligations prior to finalization, the Department will provide a Preliminary Return Share List of all manufacturers and their corresponding brand return share, orphan allocation, and total assigned return share by August 4, 2010 and April 1, 2011 for the first and second program years respectively. For Program Year 1, manufacturers will have until August 18, 2010 to comment on preliminary collection obligation numbers. For all subsequent years manufacturers will have 30 days to comment.

Written comments must include:

- 1) A detailed explanation of the grounds for the challenge;
- 2) An alternative calculation;
- 3) The basis for the alternative calculation. For the program year January 1, 2013 through December 31, 2013, and every program year thereafter, the basis for the alternative calculation must include a sampling report pursuant to proposed N.J.A.C. 7:26A-13.10(c);
- 4) Documentary evidence supporting the challenge; and
- 5) Complete contact information for requests for additional information and clarification.

The Department will review any challenge petitions submitted and by August 10, 2010 and June 1, 2011, respectively, the Department will issue a Final Return Share List, which the manufacturers will use as a basis for their collection plans. The information

that should be included in a collection plan is explained in Section IV of this Guidance Document.

Beginning with the third program year (2013) return shares will be determined by a sampling of covered electronic devices collected in New Jersey. By January 30, 2012, and every January 30 thereafter, the Department will complete an auditable, statistically valid sampling of covered electronic devices collected from consumers in the previous program year.

VIII. Requirements for Retailers

The Act requires at N.J.S.A. 13:1E-99.104a that a retailer provide educational information to the public in a means readily available. For example, this could involve a toll-free number, website, or an information insert with the packaging or sales receipt. The Department will develop educational material to this effect, which it will provide retailers.

In accordance with N.J.S.A. 13:1E-99.104, beginning on January 1, 2011, a retailer shall only sell covered electronic devices from manufacturers with approved collection plans or collection plans for which approval is pending and are otherwise in compliance with the requirements of the Act. A seller of new covered electronic devices can ensure compliance with this requirement of the Act by consulting the compliance list established by the Department and posted on its website. A seller has complied with this requirement 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.

IX. Requirements for Consumers

Beginning January 1, 2011 the Act, at N.J.S.A. 13:1E-99.109 prohibits the disposal of used covered electronic devices as solid waste. Consumers will be required to utilize the established collection centers to recycle their used covered electronic devices. The Department will maintain a toll-free information number and post on the e-waste website a listing of all of the established collection centers, their operating hours, and any restrictions of the collection centers. Consumers will be expected to consult the list to determine where their covered electronic devices may be taken for recycling.

X. Additional Resources

Additional information on New Jersey's e-Waste Program can be found on the Department's Electronic Waste Recycling Website at:

http://www.nj.gov/dep/dshw/recycling/Electronic_Waste/index.html

Following are some additional resources for information on e-waste:

National Center for Electronics Recycling:

<http://www.electronicrecycling.org/Public/default.aspx>

Brand Data Management System, maintained by the National Center for Electronics Recycling:

<http://www.electronicrecycling.org/BDMS/default.aspx>

Washington State's E-Cycle Program:

<http://www.ecy.wa.gov/programs/swfa/eproductrecycle/>

United States Census Bureau:

<http://www.census.gov/>