

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION IS PUBLISHED IN THE MARCH 5, 2012 NEW JERSEY REGISTER AT 44 N.J.R. 577(a). SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICAL VERSION WILL GOVERN.

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

**Adopted Amendments:** N.J.A.C. 7:26-2.8; and 7:26A-1.1 and 1.3  
**Adopted New Rules:** N.J.A.C. 7:26A-13  
**Proposed:** August 15, 2011 at 43 N.J.R. 2087(a).  
**Adopted:** February 6, 2012, 2012 by Bob Martin,  
Commissioner, Department of Environmental  
Protection  
**Filed:** February 8, 2012 as R. 2012 d. 055, with **substantial  
changes** not requiring additional public notice and  
opportunity for comment (see N.J.A.C. 1:30-6.3).  
**Authority:** N.J.S.A. 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.  
**DEP Docket Number:** 11-11-07.  
**Effective Date:** March 5, 2012.  
**Expiration Dates:** October 20, 2016, N.J.A.C. 7:26; January 7, 2016,  
N.J.A.C. 7:26A.

The Department of Environmental Protection (the Department) hereby adopts amendments to the Solid Waste rules at N.J.A.C. 7:26 and the Recycling Rules at N.J.A.C. 7:26A-1 and adopts new rules for the Electronic Waste (E-waste) Management Program at N.J.A.C. 7:26A-13 to establish the Department's E-waste program implementing the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq. (the Act). The proposal was published in the New Jersey Register on August 15, 2011 at 43 N.J.R. 2087(a) and may be viewed or downloaded from the Department's web page at <http://www.nj.gov/dep/rules>. The comment period closed on October 14, 2011. This adoption document may also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

**Summary of Public Comments and Agency Responses**

The following persons submitted comments on the proposal:

1. Walter Alcorn, Consumer Electronics Association

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2. John R. Baron, Cape May County Municipal Utilities Authority
3. Ric Erdheim, Philips
4. Erica Logan, Information Technology Industry Council
5. Eileen A. Sottile, LKQ Corporation

The comments received and the Department's responses are summarized below. The number(s) in parenthesis after each comment identify the respective commenter(s) listed above.

#### Partially disassembled products/scavenged products

1. COMMENT: There is a growing problem of "skimming" electronics destined for recycling - in particular, cathode ray tube (CRT) TVs - whereby valuable components of covered electronic devices (CEDs) are being removed or "cannibalized" before they reach recyclers. For example, in some parts of the State the copper yoke on CRTs is often stripped before it reaches the recycler or a manufacturer-sponsored recycling activity. The skimmed components are presumably sold or broken down for valuable metal components, potentially in a manner that could be hazardous to human health and the environment. Information from recyclers suggests that this problem is becoming more common in economically disadvantaged areas of New Jersey.

The Department should consider designing a regulatory or enforcement measure to ensure that recycling activities are done appropriately, and that manufacturers are given credit for recycling products that have been stripped of all valuable components. Otherwise, the overall environmental integrity of the New Jersey E-waste Program could be jeopardized. (1, 3)

RESPONSE: The Department shares the commenters' concern that this practice of skimming or scavenging products is problematic, and is working with industry and the regulated community to explore options for addressing this problem.

Under the Act and the adopted rules, manufacturers receive credit for all collected CEDs, regardless of whether they are whole, broken, or scavenged. Giving extra credit for scavenged products could allow or encourage fraud. It would not be practicable for the Department to oversee reporting to ensure that the collection of such scavenged products is not over-reported in an attempt to earn extra credits, nor is such oversight required by the Act. It would be better to find a mechanism that would encourage manufacturers and collectors to take steps to prevent scavenging in the first place. To this end, the Department is working with towns and manufacturers on "best management practices" to end the practice of allowing e-waste to be put at curbside for

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collection, or to be left at unattended public works yards or elsewhere. Through the collection agreement process, manufacturers can also get more involved, by including appropriate terms in their agreements regarding how e-waste is to be collected and stored prior to transport to an authorized recycler.

2. COMMENT: Because solid waste disposal sites are prohibited by the Act and the e-waste management program rules at N.J.A.C. 7:26-2.8(s) and 7:26A-13.7(g) from accepting e-waste, and recyclers are refusing to accept e-waste that is broken or scavenged, this material does not have a final destination for recycling or disposal in New Jersey, and will become a source of pollution in our local communities. The Department should modify the e-waste management program rules to require recyclers to accept and recycle broken CEDs and scavenged or broken electronics components and subassemblies. Alternatively, the Department should provide a regulatory "waiver of strict compliance," in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), so that broken CEDs and components can be disposed of at a landfill and not left at the curbside, where they create an environmental and public safety hazard. (2)

RESPONSE: Recyclers can and do accept broken and scavenged CEDs. Not every recycler, however, can accept broken CRT glass. Whether or not an in-State Class D recycler accepts broken CRT glass depends entirely on whether that recycler has established a market for the material, and can demonstrate both the market and compliance with safe handling procedures when seeking a permit from the Department. The Department cannot require a recycler to accept this material if the recycler is unwilling or unable (because not so permitted) to do so.

However, municipalities should enforce the prohibition of disposing of e-waste as curbside trash and should not allow residents to leave CRTs curbside for recycling collection or leave them at unattended Department of Public Works yards since these activities violate the Act's prohibition of such disposal of covered electronic devices. Accordingly, it should not be necessary to issue any waivers to allow broken units to be disposed of as solid waste. It should be noted that the APA does not empower the Department to waive statutory requirements, such as that at N.J.S.A. 13:1E-99.109, which prohibits the knowing disposal of a used covered electronic device, or any of the components or subassemblies thereof, as solid waste.

#### Fees for "premium services"

3. COMMENT: The E-waste Management Program rules permit a fee to be charged to collect e-waste from a consumer's residence as a "premium service" but do not set a limit on how much can be charged for this service. The Department should include in these rules provisions that would ensure that

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special needs residents, such as the elderly and physically challenged, are not burdened with large fees for the transportation of their recyclable electronics to a collection site. In addition, the Department should provide in the rules for annual notification of "local government units" as to the collection methods and fees, if any, for this premium service provided for in plans approved by the Department. (2)

RESPONSE: The Department agrees that fees approved for premium services should be made public and will post any such approved fees on its e-waste program website prior to the start of each program year. The fees in plans submitted to date have been reasonable. The fee is only intended to cover the cost of transporting the e-waste to the collection site (to which the public must otherwise transport e-waste for recycling); the Department will not approve a plan that provides for charges that appear to exceed the reasonable cost of this work.

#### Continuing collections

4. COMMENT: The Department should not require, as it does at N.J.A.C. 7:26A-13.4(g), that a manufacturer continue to carry out the collection program for the entire program year once it has met its collection obligation. Because maintaining "at least one electronic collection opportunity in each county throughout the State" will be a costly effort for most of the small size manufacturers or manufacturers with really low market shares, these manufacturers should be allowed to meet the requirements with only an event or two and/or by purchasing credits from others in lieu of conducting their own collections. Since the State is the one responsible for insuring that collection opportunities are reasonably convenient and free of unreasonable limits on the number of permitted drop-offs for consumers, the responsibility for keeping these collection opportunities open should be the State's - only the municipal and county collection points should be required to be kept open after a manufacturer satisfies its collection obligation. (3, 4)

RESPONSE: With regard to the concern that small and small-volume manufacturers should not be required to maintain at least one electronic collection opportunity in each county throughout the State, this is neither intended by the Department nor required by the E-waste Management Program rules. The rules provide, at N.J.A.C. 7:26A-13.6(a)1.i, that the 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." The Department expects that small and small-volume manufacturers are likely to join other manufacturers in a group plan, in which case they would not be

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individually responsible for ensuring there is a collection site in each county. For those submitting plans individually, there is still the option of demonstrating State-wide coverage by the other plans. Accordingly, there will be no need for these manufacturers to purchase credits in lieu of maintaining at least one electronic collection opportunity in each county.

Regarding the need to provide collection opportunities beyond those offered by the counties and municipalities, N.J.A.C. 7:26A-13.4(g) provides: 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. (Emphasis added.) Manufacturers are welcome to seek the Department's approval to modify their plans if their collection data indicates that the plan is likely to result in exceedance of the collection goals. The Department's approval of a modification would be based on an evaluation of the likelihood that reduced opportunities would still ensure meeting collection obligations and would not compromise a free and convenient year-round collection program for the State. A manufacturer, however, does not have the option of discontinuing collection opportunities without first obtaining the Department's approval in modifying its collection plan.

5. COMMENT: The commenters strongly encourage the Department to design and implement a credit trading program that would allow 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, as provided in the Act at N.J.S.A. 13:1E-99.96.h and 103.h. (1, 3)

6. COMMENT: The Department should allow for the unlimited use of credits in future years. (4)

RESPONSE to COMMENTS 5 and 6: As discussed in the proposal at 43 N.J.R. 2089, the Act does, as the commenters noted, allow 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 Department did not propose new rules reflecting this credit trading program component, as the Department had not yet completed the process of developing an e-waste management credit trading program. Instead, the Department sought public comment on how such a credit trading program should be structured and published in the same Register as the proposal, a notice of opportunity for public comment on how best to implement these provisions of the Act. The Department is considering the comments it received in response to this notice in anticipation of developing a workable credit trading program that ensures the success of the E-waste Management Program.

Use of best available data

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7. COMMENT: There are significant flaws in the two sources of public return share data upon which the Department proposes to rely. The Washington data appears to include televisions, which are not to be included in determining return share in New Jersey. It is not clear on Washington's website that data without televisions is available to New Jersey and so it is not transparent to stakeholders that the Department used data that did not include televisions. The sources of the data used by the Brand Data Management System (BDMS) are stale, going back to 2006 and in some cases to 2004. This is a concern in an industry with significant fluctuation and transition in the manufacturers in the business and their respective market shares. Data must be as current as possible to be accurate and meet the objectives of the New Jersey E-waste Program. The Department should use and share with the public more recent data. (1, 3)

8. COMMENT: The use by BDMS of data as old as from 2006 is particularly problematic for a company such as the commenter, because it ceased manufacturing consumer monitors around 2006, so that this 2006 data would not be as accurate an indicator of return share as would more recent data. The Department should only use the BDMS to search Maine data for monitors from 2009. The remaining BDMS data is too old to be useful. (3)

9. COMMENT: The data sources used by the BDMS are already obsolete and would not meet the definition of "Best Available Return Share Data." The Department should only use its own sampling results to determine collection obligations and only use BDMS or other states' data when the data is not more than two years old. When the scope of products covered by the other states' programs differs from New Jersey's, the Department should make adjustments before using the data. (3, 4)

RESPONSE TO COMMENTS 7 through 9: The Department agrees that the BDMS data is outdated and notes that it did not use it to determine the collection obligations for program year 2012. The Department used the BDMS data to determine program year 2011 obligations because it was the best available public data at that time. For program year 2012, the Department used collection data from Washington and Oregon that was recent and based on sampling. As explained in the proposal at 43 N.J.R. 2096 and 2097, for the first two years of New Jersey's E-waste Management Program, 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. From <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/>, the main page for

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Washington State's e-cycle program, the reader can navigate to Washington's collection data at <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2009TotalCEPPoundsWA.pdf> (for 2009) and <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/2010TotalCEPPoundsWA.pdf> (for 2010). The Washington State data is broken down to reflect televisions, monitors and computers and also indicates the source of the e-waste, so that the Department was able to eliminate televisions in determining collection obligations for computer manufacturers and also eliminate computer e-waste generated by schools and government. By limiting these numbers to covered electronic devices other than televisions from households and small businesses, the Department was able to more closely match the e-waste that would be covered by New Jersey's e-waste management program.

The Department anticipates that the methodology it employs to determine collection obligations will evolve as this new program evolves, and will share an explanation of the developing methodology with the regulated community by posting information on its website at <http://www.nj.gov/dep/dshw/recycling/EWaste/manufacturers.html>. The Department intends to include in each year's preliminary collection obligation report supporting data, such as the results of the sampling conducted by the Department.

#### Certification signature

10. COMMENT: It is very difficult for large multinational companies to obtain a signature from a Vice President for an e-waste registration and plan. The Department should change the certification requirements at N.J.A.C. 7:26A-13.3(e)4i and N.J.A.C. 7:26A-13.6(a)5 to require signature of the certification by the individual responsible for implementing the manufacturer's requirements under the e-waste program rules. (3, 4)

11. COMMENT: The Department should change the requirement at N.J.A.C. 7:26A-13.3(e)4 that certification of the registration statement be signed by a principal executive officer of at least the level of vice president to permit signature by "the individual responsible for implementing the manufacturer's requirements under this subchapter." (1)

RESPONSE to COMMENTS 10 and 11: The Department based the certification requirements in the E-waste Management Program rules on those in the existing Recycling Rules at N.J.A.C. 7:26A-3.2(b)2, which require that the certification be signed by the principal executive officer of at least the level of vice president for a corporation, or by a general partner or the proprietor for a partnership or sole proprietorship. In promulgating those requirements in the recycling rules, the Department determined that it would be necessary to have

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a high-ranking and responsible official of the corporation to sign such certifications in order to protect the integrity of the program in question. Allowing an individual who is merely responsible for implementing the manufacturer's requirements under this subchapter does not provide the same level of assurance so that the Department can rely upon the certification. Accordingly, the Department has determined not to modify the certification requirements for registrations at N.J.A.C. 7:26A-13.3(e)4i and for collection plans at N.J.A.C. 7:26A-13.6 as requested by the commenters.

#### Covered electronic devices

12. COMMENT: The proposed exclusion of automotive parts from the definition of "covered electronic devices" will significantly harm the aftermarket parts industry, its employees, and New Jersey consumers because it is ambiguous and may be interpreted as limited to only those automotive parts assembled by, or for, a vehicle manufacturer or franchised dealer, rather than encompassing the broad range of all electronic devices that are part of a motor vehicle. The Department should modify the proposed rule text to maintain consistency with the original language of the E-Waste Recycling Model Act, which exempts all motor vehicle electronic devices that are part of a motor vehicle. (5)

RESPONSE: The statutory language exempting motor vehicle-related electronic devices appears in the definition of "covered electronic device" in the Act at N.J.S.A. 13:1E-99.95. The exemption applies to "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 replacement parts for use in a motor vehicle." This is identical to the language in the model legislation, which is available at the website of the Northeast Recycling Council (NERC) at

[http://www.nerc.org/documents/electronic\\_recycling\\_legislation/model\\_electronics\\_recycling\\_legislation.pdf](http://www.nerc.org/documents/electronic_recycling_legislation/model_electronics_recycling_legislation.pdf). The model legislation, in the definition of covered electronic device, exempts a "covered 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 replacement parts for use in a motor vehicle."

The exemption in the Department's rule for motor vehicle-related electronic devices appears in the definition of "covered electronic device" at N.J.A.C. 7:26A-13.2. The exemption provides that a covered electronic device does not include 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.

The commenter asks that the Department modify the proposed rule text to maintain consistency with the original language of the E-Waste Recycling



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Model Act, but it is already consistent with that language. There is no difference between the Act and the model statute and the Department's rule regarding this exemption other than the grammatical substitution in the rule of the singular for the plural form of "replacement parts."

13. COMMENT: The Department should modify the exclusion from "covered electronic device," defined at N.J.A.C. 7:26A-13.2, so that it also includes an exclusion for an electronic device that is "connected to" (not just functionally or physically a part of, as proposed) a larger piece of equipment for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment. (3, 4)

RESPONSE: The definition of "covered electronic device" is identical to that in the Act. Arguably, a device that is connected to a larger piece of equipment might be considered to also be functionally or physically a part of that equipment, but to the extent it is not, the modification suggested by the commenters might exclude from the definition of covered electronic device more than is excluded by the Act. The Department does not have the authority to narrow the scope of the Act in this way.

#### Confidential material

14. COMMENT: The Department should modify the registration requirements at N.J.A.C. 7:26A-13.5(b) to permit the submittal of a manufacturer's confidential information by means of paper registration rather than requiring the submittal of registration documents via CD, DVD or other media. (1, 3)

RESPONSE: The Department is modifying N.J.A.C. 7:26A-13.5b on adoption to add a new subsection (f), which provides that a manufacturer or group of manufacturers that has filed a claim of confidentiality regarding its collection plan must submit the collection plan in accordance with the confidentiality claim requirements at N.J.A.C. 7:26A-13.6(c). N.J.A.C. 7:26A-13.6(c) references the submission requirements for material alleged to be confidential at N.J.A.C. 7:26-17.3. As there is no explicit requirement that submittals pursuant to N.J.A.C. 7:26-17.3 be on electronic media, paper submittals would be acceptable. However, the Department does prefer electronic, rather than paper, submissions, so long as the submissions conform to the requirements of N.J.A.C. 7:26-17.3 that are intended to protect the integrity of the alleged confidential material, such as the use of double envelopes and labeling the material as confidential. An electronic submittal on, for example, a flash drive or CD could, like a paper submittal, be placed in double envelopes (one sealed within another), and otherwise marked to indicate which material is sought to be protected as confidential.

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Defined terms: "consumers" and "collectors"

15. COMMENT: It is impossible to determine which clients are small business enterprises and thus considered to be "consumers" (and thereby entitled under the Act to no-cost recycling of covered electronic devices). The State should identify, by name, which entities fall in this category or direct manufacturers to some other source of this information. Alternatively, the Department could limit the number of devices that a consumer could bring in for recycling. (3, 4)

RESPONSE: The Department does not have information identifying small business enterprises in New Jersey. However, the commenters' concern seems to be that collectors may find themselves accepting a large volume of e-waste from a larger business concern that does not qualify for no-cost services as a "consumer." That concern might be addressed by requiring the party to establish to the collector's satisfaction that it does indeed qualify for these services. In addition, a manufacturer may, within reason, place restrictions on the quantity of material to be accepted. The collection plan must include a listing of any such limitation, which will be subject to the Department's review to ensure that the limitation does not in any way affect the manufacturer's ability to provide a free and convenient e-waste management program. This requirement is codified at N.J.A.C. 7:26A-13.6(a)1iv, reflecting statutory requirements at N.J.S.A. 13:1E-99.96e(3) that a television manufacturer's collection plan must include the means that will be used to publicize the collection services, including limitations placed by collection sites on the number of used televisions permitted for drop-off by consumers. The Act does not explicitly require the inclusion of information concerning such limitations in the collection plan of a manufacturer of electronics other than televisions, but it does require, at N.J.S.A. 13:1E-99.104a, that a retailer must provide information regarding any limitations placed by collection sites on the number of covered electronic devices permitted for drop-off by consumers, and does not limit this information to the collection of televisions.

16. COMMENT: The definition of "collector" at N.J.A.C. 7:26A-13.2 would include shipping companies (or shippers) such as UPS, FedEx, or the USPS whose services are utilized in used electronics mail-back programs and would thereby subject them to the Department's requirements for universal waste handlers at N.J.A.C. 7:26A-7.4 and 7.5. Unless such shippers are excluded from the requirements for "collectors," they most likely would not be able to participate in e-waste management plans, potentially reducing the opportunities for more collection points and "home pickup." (3, 4)

RESPONSE: A shipper that receives a covered electronic device that is already packaged and ready for shipment and is not acting pursuant to an approved collection plan does not meet the definition of collector in these rules. If, on

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the other hand, the shipper is included in a manufacturer's approved collection plan as a drop-off location, the shipper would be regulated as a collector. To the extent that the shipper also meets the definition of universal waste handler at N.J.A.C. 7:26A-1.3 (which it would if it were accumulating the covered electronic devices), then the shipper would also be regulated as a universal waste handler.

#### Timing of deadline requirements

17. COMMENT: The State should give a 45- to 60-day grace period for the registration fee payment (due January 1) to allow manufacturers to pay within the year the fee is due, as opposed to the end of the previous year, for budgetary reasons. (3, 4)

RESPONSE: N.J.A.C 7:26-3.3(b) reflects the statutory requirements at N.J.S.A. 99.96.b and 99.102.b that manufacturers are to pay the annual registration fee on or before January 1 of each calendar year. While the Department understands that it may be necessary for some manufacturers to adjust their budgeting procedures to accommodate the payment of the registration fee in the preceding calendar year, payment of this fee prior to or at the start of each program year provides the funding necessary for the Department to administer the program during that program year. Therefore, the Department will not provide a grace period for the payment of the registration fee.

18. COMMENT: Shifting the due date for the annual report from January 1, as required in the Act, to February 1, as provided in the rules, is a positive move, but perhaps moving it to February 15 or March 1 (45 or 60 days) would better allow time for preparation of information if the reports from the recyclers do not come in until three weeks after the end of the month. (3, 4)

RESPONSE: The data must be submitted early in the year so that the Department can determine the recycling goal for the next program year. The recycling goal is used to determine each manufacturer's collection obligation, which the Department shares, in preliminary form, by March 1 of each year. Delaying submission of the annual report would in turn delay release of the preliminary collection obligations by the Department. This would, in turn, give a manufacturer less time to meet its deadline for responding to the preliminary collection obligation report and submitting its collection plan based on the preliminary or final collection obligation report. See N.J.A.C. 7:26A-13.9(d), (e), and (g), and 13.4(a).

#### Use of data from annual report - televisions and computers combined

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19. COMMENT: It is a good idea to allow a manufacturer to apply the total weight of all covered electronic devices collected from consumers to its collection obligation for that program year, but there is a problem if the Department determines a manufacturer's collection obligation based in part on an annual report that includes both televisions and computers without a breakdown regarding the mix. (3, 4)

RESPONSE: N.J.A.C. 7:26A-13.9(b)1 provides that the Department will use a sampling of covered electronic devices, other than televisions, collected from consumers in New Jersey during the previous program year to determine the return share of a manufacturer of covered electronic devices other than televisions. The Department will supplement the sampling data with the data from the most recent submission of the annual report to determine the return share. The Department will only use the annual report data to fill in data gaps when necessary. Should the Department use the data from the annual reports to determine return shares, it will apply an adjustment factor to the total amount of e-waste collected to generate a number that does not reflect collected televisions. Historically, in New Jersey and other states that are keeping track of returned CEDs, the ratio of returned televisions to returned computers (CEDs other than televisions) is roughly 59 to 41. By applying this ratio, the Department will ensure that the collection obligation of a manufacturer of electronics other than televisions is based on a return share that does not reflect the collection of televisions.

#### Vendor-to-business purchaser arrangements

20. COMMENT: The Department does not have the authority to require information on vendor-to-business purchaser arrangements in the collection plans, as provided at N.J.A.C. 7:26A-13.6(a)2iii. (3, 4)

RESPONSE: The requirement at N.J.A.C. 7:26A-13.6(a)2.iii that the collection plan include "the processes and methods that will be used, if any, to recycle collected covered electronic devices, other than televisions, that are the subject of any vendor-to-business purchaser recycling arrangements into which the manufacturer has entered" is based on the Act, which provides, at N.J.S.A. 13:1E-99.103.e3, that every plan filed with the manufacturer's annual registration must include "processes and methods that will be used to recycle recovered covered electronic devices which originated from transactions between business concerns."

The reference in the statutory provision to "transactions between business concerns" appears to refer to transactions between vendor and business purchaser that often include opportunities for end-of life collection and recycling of spent products. As the Department explained in the proposal Summary at 43 N.J.R. 2092, these recycling arrangements are not in any way

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regulated under the Act or the new rules; the manufacturer is only required to provide the Department with information concerning any such arrangement, as required by the Act. These vendor-to-business purchaser recycling arrangements are expected to address the collection of at least some of the e-waste generated by businesses that are not entitled to no-cost e-waste recycling under the Act and these rules. Information concerning the extent of these arrangements will help the Department assess the degree to which they supplement the E-waste Management Program.

### 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 adopting 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 adopted rules. (See 40 CFR 261.4(b)(1).)

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

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## 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) - (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

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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 in this section 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

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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;



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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 paragraphs 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.

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“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

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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

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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 \$5,000.

(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 on 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, 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

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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.

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(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.

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(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] \*Except as provided at (f) below, 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 through 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

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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.

**\*f) A manufacturer or group of manufacturers who has filed a claim of confidentiality regarding its collection plan shall submit that collection plan as required at N.J.A.C. 7:26A-13.6(c).\***

#### 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;



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- 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:
    - (1) A copy of the operating permit or approval issued by the state where the authorized recycler is located;
    - (2) Documentation that the facility is operating in accordance with all applicable rules and regulations; and
    - (3) A certification executed by the recycler stating that the recycler is aware of and has agreed to comply with the requirements of this subchapter;
  - ii. A description of the recycling processes that will be used by each authorized recycler identified in (a)2i above;
  - iii. The processes and methods that will be used, if any, to recycle collected covered electronic devices, other than televisions, that are the subject of any vendor-to-business purchaser recycling arrangements into which the manufacturer has entered; and
  - iv. Certification that no collected covered electronic device has been handled in a manner that would violate N.J.A.C. 7:26A-13.7(f);
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 manufacturer's recycling program in sufficient detail to inform a consumer how to return covered electronic

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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 manufacturer intends to fulfill its obligation, through its own operations, 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 shall include, at a minimum, the anticipated collection amounts for each collection site;

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 shall 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; and
6. Certification that each manufacturer that is party to the collection plan is in compliance with N.J.S.A. 13:1E-99.101, which prohibits the sale or offer for sale in New Jersey of a new covered electronic device that is prohibited from sale in the European Union based on the excessive presence of heavy metals in the product, unless the covered electronic device is exempted from this prohibition 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

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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

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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.

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(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;

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$b$  = 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; and

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

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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; and

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

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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



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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.

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#### 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

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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 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. In making such

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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.