

Consumer Technology Association™

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March 19, 2018

Office of Legal Affairs
Attention: Rulemaking Petitions
Department of Environmental Protection
Mail Code 401-04L
401 East State Street, 7th Floor
PO Box 402
Trenton, New Jersey 08625-0402

Re: Petition for rulemaking to implement amendments to the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 *et seq.*

Dear Acting Commissioner McCabe,

On behalf of the Consumer Technology Association (CTA)™ and its members, I am writing to petition the New Jersey Department of Environmental Protection (DEP) for a rulemaking to implement recent amendments the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 *et seq.* (Act) pursuant to Section 18(a) of the Act, N.J.A.C. 13:1E-99.111(a), Section 4(f) of the Administrative Procedure Act, N.J.S.A. 52:14B-4(f), the procedural rules of the Office of Administrative Law (OAL), N.J.A.C. 1:30-4.1 *et seq.*, and the DEP's General Practice and Procedure Rules, N.J.A.C. 7:1D-1.

CTA is the trade association representing the U.S. consumer technology industry, which supports more than 15 million U.S. jobs – including several major corporate headquarters in New Jersey. Our membership includes more than 2,200 companies – 80 percent are small businesses and startups; others are among the world's best-known brands. CTA and its members have a direct interest in this petition because many members are manufacturers of covered electronic devices (CEDs) and thus are subject to requirements to collect and recycle their market share in weight of CEDs each program year.

The rulemaking proposed by CTA is required because the amendments to the Act, enacted through S981 (P.L. 2016, Chapter 87), impose a market share by weight obligation for all CEDs, not just televisions; expand the definition of covered consumers and CEDs; and significantly revise the process by which DEP determines manufacturer collection obligations, the process by which DEP determines manufacturer compliance with the obligations, and the penalties associated with non-compliance with these obligations. None of these statutory changes are reflected in the current regulations and, as a result, there is significant confusion in the regulated community and a detrimental lack of transparency in the DEP's implementation and enforcement of the Act.

Producer of



In addition to amending regulations to accurately reflect the Act's text, CTA's proposes that DEP describe clear procedures, timeframes and standards under which the DEP establishes market share-based collection obligations for manufacturers and determines their compliance with those obligations. Obligated manufacturers need a greater level of certainty regarding the procedures for establishing and meeting collection obligations, clearly defined criteria for any convenience requirements imposed on them by DEP that they must adhere to in addition to meeting their collection obligations, and the procedures for how to "make good" on their obligations if they are on the path to not meeting market share in weight obligations during the course of a program year. Such rules would allow manufacturers a consistent and transparent process for ensuring that CEDs are properly collected and recycled from consumers in the state.

CTA proposes that the rulemaking be guided by the following principles:

1. DEP should issue clear rules explaining where and how DEP will obtain, verify, and use the data to calculate and enforce manufacturers' market share in weight obligations.
2. DEP should issue clear criteria for any convenience requirements imposed on manufacturers such as the number of permanent collection sites required per county, how many residents must have access to collection sites, how far residents may be required to drive to reach collection sites, and when collection events may be used in lieu of permanent collection sites. The current regulations have very specific convenience requirements that the DEP has repeatedly chosen to ignore while implementing the amendments to the Act, without giving manufacturers any insight into the criteria DEP is using to determine these convenience requirements.
3. DEP should allow manufacturers or manufacturer-designated organizations such as CTA or hired third-party auditors to audit recyclers and collectors to ensure the accuracy of data reported to DEP for the purpose of establishing and enforcing market share in weight obligations.
4. DEP should provide a clear process and timeframes by which DEP calculates market share in weight obligations for upcoming program years and provide manufacturers the opportunity to comment on and suggest revisions to DEP's calculations.
5. DEP should provide a clear process and timeframes by which DEP determines whether manufacturers have met their market share in weight obligation for a previous program year and provide them notice of same.
6. DEP should provide clear guidance about the process and timeframes by which manufacturers may apply additional covered electronic device collection and recycling pounds toward their market share in weight obligations, including "credit" pounds from overcollection by other manufacturers, to avoid imposition of a "non-compliance" fee for failing to meet their market share in weight obligation.

CTA is committed to working with DEP to help draft language for the proposed rulemaking as needed to ensure that the regulations are operationally feasible for DEP. CTA respectfully

petitions DEP to accept and docket for public comment a proposed rulemaking to give the regulated community the guidance it needs to meet the shared goals of ensuring that CEDs are properly collected and recycled from consumers in New Jersey.

Respectfully submitted,
THE CONSUMER TECHNOLOGY ASSOCIATION

A handwritten signature in black ink, appearing to read "Walter Alcorn", with a long horizontal flourish extending to the right.

Walter Alcorn
Vice President, Environmental Affairs and Industry Sustainability

cc: Mary Jo Aiello, Director, Division of Solid and Hazardous Waste