

NOTE: In the spirit of Governor Chris Christie's Executive Order No. 2, this document is provided as a DRAFT of the proposed rule text for an electronics waste management program rules proposal. Comments will be accepted through Monday, November 15, 2010 ecycle@dep.state.nj.us

The Department subsequently will submit its official rules proposal for publication in the *New Jersey Register*, triggering the 60-day public comment period and any public hearings. This pre-proposed rules comment period is in addition to, not in place of, that 60-day period.

**ENVIRONMENTAL PROTECTION
CLIMATE AND ENVIRONMENTAL MANAGEMENT
SOLID AND HAZARDOUS WASTE MANAGEMENT PROGRAM
COMPLIANCE AND ENFORCEMENT
DIVISION OF COUNTY ENVIRONMENTAL AND WASTE ENFORCEMENT**

Electronic Waste Management Rules

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

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

Authorized By: Bob Martin, Commissioner
Department of Environmental Protection

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

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

DEP Docket No:

Proposal Number: PRN 2010-_____

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

CHAPTER 26. SOLID WASTE

SUBCHAPTER 2. DISPOSAL

7:26-2.8 Registration and general prohibitions

(a) – (r) (No change.)

(s) On and after January 1, 2011, no person shall knowingly dispose of a used covered electronic device, as defined at N.J.A.C. 7:26A-13.2, or any of its components or subassemblies, as solid waste. A used covered electronic device shall be recycled in accordance with N.J.A.C. 7:26A.

CHAPTER 26A. RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department governing the operation of recycling centers and the conduct of recyclable materials generators and transporters, and of governing municipalities and counties that have jurisdiction over recyclable materials pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq. **This chapter also includes the Department’s electronic waste recycling program rules regarding the recycling of a used covered electronic device, pursuant to the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq.**

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

7:26A-1.3 Definitions

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

NOTE: Because the following proposed new subchapter 13 is all new, the Department has not set it in bold font, as there is no existing text from which to differentiate it.

SUBCHAPTER 13. ELECTRONIC WASTE RECYCLING

7:26A-13.1 Scope and authority

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

7:26A-13.2 Definitions

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

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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 not currently committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, who:

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

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

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

“Business concern” means any corporation, association, firm, partnership, sole proprietorship, trust or other form of commercial organization. “Business concern” shall 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 recycling depot, 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” includes, but is not limited to, a personal, desktop, portable or laptop computer, but does not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

“Consumer” means a person, other than a business concern, who purchases a covered electronic device in a retail sale.

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

1. An electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including a replacement part for use in a motor vehicle;

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

“Gross television recycling goal” means the overall television collection goal established by the Department for each program year, expressed in pounds, or pounds per capita, 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,
3. Who manufactures or manufactured covered electronic devices without affixing a brand;

4. Who manufactures or manufactured covered electronic devices to which it affixes or affixed a brand that it neither owns or owned nor is or was licensed to use;
5. On whose account covered electronic devices were manufactured outside the United States and were imported into the United States, unless, 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-99.102b; or
6. Who assumes the obligations and responsibilities for a manufacturer.

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

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

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

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

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

“Program year” means a full calendar year, running from January 1st through December 31 of each year, beginning on January 1, 2011.

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

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

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

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

“Sale” or “sell” means any transfer of title for consideration, 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;
3. Can display standard consumer video formats, receive and display different broadcast channels and support sound capability; and
4. Includes its case, the interior wires and circuitry, the cable to the central processing unit and the power cord.

“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 determines that it no longer has use for the device.

“Video display” means an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display and cannot be easily removed from the display by the consumer and that produces the moving image on the screen. A “video display” typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology.

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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.

(b) Each manufacturer shall register with the Department by submitting a registration package as set forth at (c) below, as follows:

1. Each television manufacturer shall register with the Department by January 1, 2010;
2. Each manufacturer of a covered electronic device other than a television shall register with the Department by February 1, 2010; and
3. On or before January 1, 2011, and by every subsequent January 1st, each registered manufacturer shall renew its registration with the Department by submitting a registration package as set forth at (c) below.

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

1. A completed registration form, available at the Department's website at <http://www.nj.gov/dep/dshw/recycling/ElectronicWaste/ewastemanufacturers.html>;
2. A registration fee of \$5000.00;
3. A current brand list; and
4. The following written certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I certify further that no covered electronic device manufactured under the above-listed brands that are offered for sale in New Jersey are prohibited from being sold or offered for sale in

the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the covered electronic device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002-95-EC (European Union document 2005-618-EC), or as specified in a subsequent amendment to the Directive, except as otherwise provided at N.J.A.C. 7:26A-13.7(d).”

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.

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

(e) Off-cycle registration is required of manufacturers as follows:

1. Any television manufacturer not previously required to register with the Department as of the commencement of any registration year shall submit a registration package in accordance with (c) above within 30 days after beginning to sell televisions in New Jersey.
2. Any manufacturer to whom the Department provides a notification of a return share and a return share in weight pursuant to N.J.A.C. 7:26A-13.9 who has not previously registered with the Department shall submit a registration package in accordance with (c) above within 30 days of receiving return share notification from the Department.

7:26A-13.4 Collection plan submission requirements

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(a) By September 30, 2010 and by June 1 of each subsequent year, each television manufacturer and each manufacturer for which the Department identifies a return share in weight that is greater than zero shall, either individually or as part of a group of television manufacturers or a group of manufacturers of covered electronic devices other than televisions, submit a collection plan to the Department. A collection plan submitted on behalf of a group must also identify the group, its membership and contact person, as provided at (e) below. The collection plan must provide for recycling resources and capacity sufficient to address the collection obligation of the manufacturer or group of manufacturers, as determined by the Department pursuant to N.J.A.C. 7:26A-13.9, and must otherwise conform with N.J.A.C. 7:26A-13.6. An individual manufacturer's collection plan must provide for the collection, transportation, and recycling of the individual manufacturer's collection obligation. A collection plan submitted by a group of manufacturers must provide for the collection, transportation, and recycling of the sum of the collection obligation of each participating manufacturer.

(b) With each collection plan submitted pursuant to (a) above, each manufacturer or group of manufacturers shall submit an annual report to the Department that includes the following:

1. For a television manufacturer or group of television manufacturers:
 - i. The total number of all new televisions manufactured by each television manufacturer that were sold in New Jersey in the previous program year; and
 - ii. Beginning with the collection plan submitted by June 1, 2012, the total weight of televisions collected for recycling in the previous program year pursuant to the collection plan; and
2. For a manufacturer or group of manufacturers of covered electronic devices other than televisions, beginning with the collection plan submitted by June 1, 2012, the total amount by weight of covered electronic devices other than televisions collected for recycling in the previous program year pursuant to the collection plan.

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(c) On or before January 1, 2011, each manufacturer or group of manufacturers shall implement, at its own expense, its plan for the collection, transportation, and recycling of covered electronic devices.

(d) 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.

(e) A manufacturer that 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/ElectronicWaste/ewastemanufacturers.html>. The group of manufacturers shall use the Group Designation Form to 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; and
3. For each manufacturer participating in the group, its name, the program interest number assigned to it when it initially registered with the Department, and the name of the manufacturer's contact person.

Each manufacturer's contact person and the group's contact person will sign and certify the veracity of the information contained in the Group Designation Form and all attachments thereto.

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

(a) A manufacturer shall submit the required completed registration form, collection plan, annual report, and registration or registration renewal fee payment as follows:

1. If, at the time of submission, the Department's web-based registration system is available, the manufacturer shall submit the required documents, including the annual reports and collection plans, and, except as provided at (a)3 below, the registration fee or registration renewal fee payment, by means of the web-based electronic method listed at <http://www.njdeponline.com>. The date of the web-based submission can be documented by printing the appropriate website confirmation screen;

2. If, at the time of submission, the Department's web-based registration system is not available, (except for a temporary unavailability), the manufacturer shall submit the required documents, including the annual reports and collection plans, and, except as provided at (a)3 below, the registration fee or registration renewal fee payment, by sending a copy on a compact disc (CD) in portable document format (PDF) or any equivalent format as approved of 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. The date of the submission of the completed registration form, collection plan, annual report, and registration fee payment can be documented by submitting the documents in a way that will provide documentation of the submittal date, such as by certified mail; and

3. Until such time as the electronic payment component of the Department's web-based registration system is operational, the registration fee shall be paid via check or money order payable to "Treasurer, State of New Jersey" and submitted with the registration form. Once the Department has developed the capability to accept payment electronically, the registration fee shall be paid by means of the web-based electronic method listed at <http://www.njdeponline.com>. The date of the web-based electronic payment can be documented by printing the appropriate web-based registration system confirmation screen.

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

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

(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 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 sensitive populations; that is, consumers who cannot physically get to a collection site without assistance;
 - vi. A description of the collection methods to be employed for heavy (50 pounds in weight or heavier) and/or unwieldy covered electronic devices, including, but not limited to, flat screen televisions with screens greater than 40 inches measured diagonally and projection televisions;
 - vii. A description of how the collected covered electronic devices will be stored prior to transport to an authorized recycler;
 - viii. Certification that any covered electronic device may be dropped off at the collection site by a consumer free of charge;
 - ix. An explanation of the extent to which, if any, there is coordination with county and municipal government recycling programs;

- x. A description of the methods to be used to ensure that personal information contained on hard drives or similar data storage devices is secured from access by the general public and any untrained persons or employees; and
 - xi. Certification that the parties with which the manufacturer or group of manufacturers has contracted under the collection plan to provide collection and recycling services, including the transportation of material from the collection site to an authorized recycler, are compliant with all applicable requirements of N.J.A.C. 7:26A-13.12;
2. The processes and methods that will be used to recycle collected covered electronic devices, including:
- i. The names and locations of the authorized recyclers to which collected covered electronic devices will be transported. The collection plan must also include copies of any permits issued by the state in which the recycler is located and a certification executed by the recycler stating that the recycler is aware of and has agreed to comply with the requirements of this subchapter. For an authorized recycler located in a state other than New Jersey, a letter from the appropriate regulatory agency of the state where the authorized recycler is located verifying that the facility is operating in accordance with all applicable rules and regulations must be included in the collection plan;
 - ii. A description of the recycling processes that will be used by the authorized recyclers;
 - 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), which prohibits sending a collected covered electronic device to a detention institution as described more fully therein;

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 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 upon a showing by the manufacturer that the information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of the registered manufacturer. A manufacturer asserting confidentiality shall submit its claim by following the procedures at N.J.A.C. 7:26-17.3.

(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.

(d) The Department will review each manufacturer's collection plan or plan jointly submitted by a group of manufacturers in accordance with proposed new N.J.A.C. 7:26A-13.10. 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 is deemed to be administratively complete by the Department will be considered as "pending approval" for the purposes of compliance with N.J.A.C. 7:26A-13.7. Upon completion of a technical review, the Department will make a final determination to either reject or approve the collection plan.

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

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(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-13.6(d), and N.J.S.A. 13:1E-99.94 et seq.

(b) Beginning on January 1, 2010, a manufacturer or retailer of a covered electronic device shall not sell or offer for sale a covered electronic device in New Jersey unless the covered electronic device is labeled with the manufacturer's brand, and 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) Beginning on January 1, 2011, no person shall sell or offer for sale in New Jersey a new covered electronic device from a manufacturer unless the manufacturer has a collection plan that has been approved by the Department or for which approval is pending, and the manufacturer is otherwise in compliance with the requirements of this subchapter.

(d) Beginning on January 1, 2011, no person shall sell or offer for sale in New Jersey a new covered electronic device that is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture because it contains one or more heavy metals in a concentration that exceeds the maximum concentration value specified in the Annex to the European Union Directive 2002/95/EC, as supplemented or amended and incorporated by reference herein, and available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0095:20080524:EN:PDF>, unless the exceedance of the heavy metal maximum concentration value results from the inclusion of a substance in order to comply with the consumer, health, or safety requirements of the Underwriters Laboratories, or with Federal or State law.

(e) A seller of new covered electronic devices can 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) On and after January 1, 2011, 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) The Department will develop information that it will provide to retailers describing where and how to recycle the covered electronic devices they sell, and where and how consumers can drop off the covered electronic devices for collection or return.

(b) Every retailer shall provide the information described at (a) above, using one or more of the following methods:

1. A toll-free telephone number and website;
2. Information included in the packaging for the covered electronic device; or
3. Information provided accompanying the sale of the covered electronic device.

7:26A-13.9 Collection obligation determination

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

(b) The Department will calculate the collection obligation for each manufacturer of covered electronic devices other than televisions, by August 4, 2010, March 1, 2011, and March 1, 2012 for program years 2011, 2012 and 2013, using the following data and steps:

1. In 2010 and 2011, only, the Department will collect data from the Brand Data Management System (BDMS) developed by the National Center for Electronics Recycling (NCER), which is available at <http://www.electronicrecycling.org/BDMS/default.aspx>, concerning 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;
2. In 2012, the Department will complete a sampling of covered electronic devices, other than televisions, collected from consumers in New Jersey during the previous program year (2011) in accordance with the protocol set forth in (c)2 below;
3. The Department will use the data collected pursuant to (b)1 and 2 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 collected at (b)3 above, the Department will calculate the return share of each manufacturer as follows:

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

Where:

R = return share expressed as a percentage;

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

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

c = the total weight of collected orphan devices;

5. The 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 2011, 2012 and 2013 program years by multiplying the per capita collection rate for the Washington State e-waste program in 2009, 2010, and 2011, respectively, by the most recent estimated New Jersey population, as determined by the United States Census Bureau. For 2009, the Washington State per capita collection rate is 2.3 pounds and the New Jersey population is 8.7 million; and

6. The Department will determine the collection obligation of each manufacturer by calculating its return share by weight 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)3 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, determined at (b)4 above.

(c) For the 2014 program year and each subsequent program year, the Department will calculate the collection obligation for each manufacturer of covered electronic devices other than televisions, using the following data and steps:

1. By January 30, 2013, and every January 30 thereafter, the Department will complete 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 (c)2 below;

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 (c)1 and 2 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. The Department will calculate the return share of each manufacturer as follows:

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

Where:

R = return share expressed as a percentage;

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

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

c = the total weight of collected orphan devices;

5. The 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; and

6. Using the return shares calculated in (c)4 above, the Department will determine the collection obligation for each manufacturer for which a return share is determined by calculating its return share by weight as follows:

$$RW = R \times TW$$

Where:

RW = return share in weight, expressed in pounds;

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

TW = 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 (c)5 above.

(d) The Department will determine the collection obligation for each manufacturer of televisions using the following data and steps:

1. By June 1, 2010, and by February 1 of every year thereafter, the Department will purchase national market share data from a firm that has expertise in gathering market share sales data in the electronics sector, in particular, the television market. The Department will purchase 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 purchased in accordance with (d)1 above to:
 - i. Generate a list of brands of televisions and the number of televisions that are identified for each brand; and
 - ii. Assign each identified brand to the appropriate television manufacturer;
3. The Department will calculate the television collection share of each manufacturer 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 Department will determine the gross television recycling goal for the 2011, 2012 and 2013 program years by multiplying the per capita collection rate from the Washington State e-waste program in 2009, 2010 and 2011, respectively, by the most recent estimated New Jersey population, as determined by the United States Census Bureau. For 2009, the Washington State per capita collection rate is 3.3 pounds and the New Jersey population is 8.7 million. For the fourth program year, (2014), and every program year thereafter, 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; and

5. The Department will determine the collection obligation of each manufacturer by calculating its television collection share by weight 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)4 above.

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(f) By August 15, 2010, and by every March 1 thereafter, the Department will publish on its website and provide to each identified manufacturer, a Preliminary Collection Obligation Report. 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 (c)1 above.

(g) By August 30, 2010, by every April 1 thereafter, a manufacturer may comment on the collection obligation or any supporting data provided in the Preliminary Collection Obligation Report by submitting comments to the Department at the following address:

New Jersey Department of Environmental Protection
Solid and Hazardous Waste Management Program
Bureau of Recycling and Planning
401 East State Street
P.O. Box 414
Trenton, New Jersey 08625-0414.

Support for an alternative collection obligation shall include:

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.

(h) The Department will review any collection obligation comments received pursuant to (g) above and will, by October 15, 2010 and by every May 1 thereafter, publish a Final Collection Obligation Report. The Final Collection Obligation Report will include the final collection obligations and a summary of any comments received and the Department's response to the comments.

7:26A-13.10 Review of collection plans

(a) The Department will review every 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 recycling of the collection obligation.

(b) In reviewing the collection plans, the Department will ensure that at least one electronics collection opportunity is available in each county throughout the State and in such a manner as to be convenient, to the maximum extent practicable and feasible, to all consumers in a given county.

(c) The Department will ensure that collectors do not place unreasonable limits on the number of covered electronic devices permitted for drop-off by consumers.

(d) No fees or costs may be charged to consumers for the collection, transportation, or recycling of covered electronic devices in accordance with any plan under these rules.

(e) After the Department reviews a manufacturer's collection plan it will issue a letter, 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.

(f) 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 at (b), (c) and

(d) above and this subchapter. Upon completion of the technical review, the Department will issue a letter 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.

(g) Failure to timely and fully respond to a request for additional information shall constitute a failure to provide a plan in violation of this subchapter and the Electronic Waste Management Act.

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 EPA'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 New Jersey's Universal Waste Handler rules 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 New Jersey's Universal Waste Transporter rules 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, which is available at <http://www.epa.gov/waste/consERVE/materials/ecycling/r2practices.htm>, or another third party certification as approved by the Department. 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 et seq. 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 Fees and penalties

Any person who violates the provisions of this subchapter or the provisions of the Electronic Waste Management Act is subject to a penalty of not less than \$500.00 nor more than \$1000.00 for each offense, to be collected in a civil action by a summary proceeding under the "Penalty Enforcement Law of 1999," (N.J.S.A. 2A:58-10 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues constitutes an additional, separate, and distinct offense.

7:26A-13.13 Appeal procedure

(a) A party that believes it is aggrieved with respect to the following decisions made by the Department may appeal the decision within 20 calendar days after the date of the decision and request an administrative hearing:

1. Any term of a collection plan approval; or
2. Disapproval of a collection plan, or any part thereof.

(b) Requests for an administrative hearing shall be submitted to:

Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
Department of Environmental Protection
401 East State Street, PO Box 402
Trenton, New Jersey 08625-0402

and to:

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New Jersey Department of Environmental Protection
Solid and Hazardous Waste Management Program
Bureau of Recycling and Planning
401 East State Street, 2nd floor, East Wing
PO Box 414
Trenton, New Jersey 08625-0414

- (c) All requests for an administrative hearing shall be submitted in writing to the Department and shall contain:
1. The name, address and telephone number 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 applicant's 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).
- (d) A hearing request not received by the Department within 20 calendar days after the date of the Department decision being appealed will be denied by the Department.
- (e) If the applicant or interested party fails to include all the information required by (c) above, the Department may deny the hearing request.
- (f) Following receipt of a complete request for a hearing pursuant to (c) above, the Department may attempt to informally settle the dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

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

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