

## **ENVIRONMENTAL PROTECTION**

### **OFFICE OF LEGAL AFFAIRS**

#### **Notice of Action on Petition for Rulemaking**

#### **N.J.A.C. 7:26A-13**

#### **Recycling; Electronic Waste Management**

Petitioner: Walter Acorn, Vice President, Environmental Affairs and Industry Sustainability, Consumer Technology Association.

**Take notice** that the Department of Environmental Protection (Department) has determined to refer the petition for rulemaking described below, which was filed by Walter Acorn, Vice President, Environmental Affairs and Industry Sustainability, Consumer Technology Association (petitioner), for further deliberation.

#### The Petition

Petitioner requests that the Department amend its Electronic Waste Management rules at N.J.A.C. 7:26A-13 to implement P.L. 2017, c. 981, which amended the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq. (the Act). The petitioner is a trade association representing the United States consumer technology industry, including manufacturers of electronic devices subject to the Act. Petitioner states that P.L. 2017, c. 981, imposed a market share by weight obligation for all covered electronic devices, not just televisions; expanded the definition of covered consumers and covered electronic devices; and significantly revised the process by which the Department determines manufacturer collection obligations, the process

by which the Department determines manufacturer compliance with the obligations, and the penalties associated with non-compliance.

The petitioner requests that the Department amend its Recycling rules, in particular the Electronic Waste Management rules at N.J.A.C. 7:26A-13, to:

1. Issue clear rules explaining where and how the Department will obtain, verify, and use the data to calculate and enforce manufacturers' market share in weight obligations;
2. 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;
3. Allow manufacturers or manufacturer-designated organizations, such as the petitioner's organization or hired third-party auditors, to audit recyclers and collectors to ensure the accuracy of data reported to the Department for the purpose of establishing and enforcing market share in weight obligations;
4. Provide a clear process and timeframes by which the Department calculates market share in weight obligations for upcoming program years and provide manufacturers the opportunity to comment on and suggest revisions to the Department's calculations;
5. Provide a clear process and timeframes by which the Department determines whether manufacturers have met their market share in weight obligation for a previous program year and provide them notice of same; and
6. 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.

#### The Department’s Response to the Petition

The Department is in the process of reviewing the electronic waste program in light of the 2017 amendments to the Act. While the amendments were effective immediately, because of how the Act is structured and because of new requirements imposed, including reporting obligations, full implementation of the Act remains ongoing. The Department accordingly is continuing to evaluate implementation of the 2017 amendments to determine whether the goals of the Act are being met, and what rulemaking, if any, would enhance the effectiveness of the program. Accordingly, the Department is referring the matter for further deliberation for a period not to exceed 90 days in order to provide time for this evaluation.

A copy of this notice has been mailed to the petitioner as required by N.J.A.C. 1:30-4.2. In accordance with N.J.A.C. 7:1D-1.1, the Department will subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition.