

WSR 06-15-125

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 06-07 -- Filed July 19, 2006, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-024.

Title of Rule and Other Identifying Information: Washington state electronic product recycling program, [chapter 173-900 WAC](#). Department of ecology is proposing new rules to regulate electronic product recycling. These rules will implement ESSB 6428, passed by the 2006 legislature.

This rule making will occur in two phases. The first phase, proposed with this CR-102, will focus on the portions of the law related to registration of manufacturers, collectors, and transporters of electronic products; administrative fee structure; brand labeling; enforcement and penalties; and other related requirements.

This will be followed by a second phase that will address the remaining rules required by the law, such as more details on recycling plans; registration for processors of electronic products; requirements for manufacturers and retailers, collectors, transporters and plan implementers; and performance standards for processors, collectors, and transporters. It is the department's intention to develop these rules in a manner consistent with all agency regulatory rules such as, but not limited to, chapters 173-303 and 173-350 WAC, related to solid and hazardous waste and recycling.

Hearing Location(s): Department of Ecology, Vancouver Field Office Conference Room, 2108 Grand Boulevard, Vancouver, WA, on August 22, 2006, at 7:00 p.m.; at the Snohomish County PUD Electric Building Headquarters, Commissioners Meeting Room, 2320 California Street, Everett, WA, on August 24, 2006, at 7:00 p.m.; and at the Spokane Regional Health District Auditorium, 1101 West College Avenue Spokane, WA, on August 29, 2006, at 7:00 p.m.

Date of Intended Adoption: October 25, 2006.

Submit Written Comments to: Jay Shepard, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail wa-recycles-electronics@ecy.wa.gov, fax (360) 407-6102, by 5:00 p.m., September 7, 2006.

Assistance for Persons with Disabilities: Contact Michelle Payne, voice (360) 407-6109, TTY (360) 407-6006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will propose a new chapter in the Washington Administrative Code to implement the electronic product recycling program created by the legislature in 2006 (ESSB 6428). This rule making will focus on the portions of the law related to registration of manufacturers, collectors, and transporters of electronic products; administrative fee structure; brand labeling; enforcement and penalties; and other related requirements.

Reasons Supporting Proposal: The proposed rule is the first step in implementing the new electronic product recycling law, [chapter 70.95N RCW](#).

Statutory Authority for Adoption: Chapter 183, Laws of 2006 (PV), [chapter 70.95N RCW](#).

Statute Being Implemented: Chapter 183, Laws of 2006 (PV), [chapter 70.95N RCW](#).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Shepard, Olympia, Washington, (360) 407-7040; Implementation and Enforcement: Cullen Stephenson, Olympia, Washington, (360) 407-6103.

A small business economic impact statement has been prepared under [chapter 19.85 RCW](#).

Small Business Economic Impact Statement

If you need this document in another format please call Tami Dahlgren at (360) 407-6880. If you are a person with a speech or hearing impairment call 711 or 1-800-833-6388 for TTY.

1. INTRODUCTION:

DESCRIPTION AND PURPOSE OF THE SBEIS: This small business economic impact statement (SBEIS) evaluates the costs that the proposed rule might impose on businesses. In particular, ecology finds that the costs to businesses of the proposed rule create a disproportionate impact on the state's small businesses.¹

¹ The specific purpose and required contents of the SBEIS is contained in [RCW 19.85.040](#).

This SBEIS evaluates the proposed rule which was developed under ESSB 6428. ESSB 6428 was passed during the 2006 Washington state legislative session and became effective July 1, 2006. Due to the timeline, ecology divided the rule-making process into two phases. The SBEIS evaluates phase one of the rule making and will focus on the following topics:

- **Manufacturer registration process:** All manufacturers who plan to have their covered electronic products sold in or into Washington after January 1, 2007, must be registered with the department of ecology. Ecology must have rules in place in sufficient time to notify manufacturers of the requirements.
- **Manufacturer fee structure and payment schedule:** Manufacturers must pay their fees by January 1, 2007.
- **Mandatory brand labeling:** Manufactures [Manufacturers] must brand label covered electronic products by January 1, 2007.
- **Collector and transporter registration:** In order to provide adequate notice to collectors, transporters, the registration form has been developed for phase 1.

Phase 2 rule making will focus on developing rules to implement the remaining portions of SB 6428. This will include: Recycling plan submittal, review and content; program implementation; return share and equivalent share calculations; processor registration; standards for collectors; transporters and processors; and additional topics identified during the public involvement process. This SBEIS will be modified for the adoption of Phase two.

2. DISCUSSION OF COMPLIANCE COSTS FOR BUSINESSES:

INTRODUCTION: [Chapter 173-900 WAC](#) will establish a state-wide electronic product recycling program in Washington that holds manufacturers responsible for the final disposal costs of the covered electronic products they sell. Under phase 1 of this rule, manufacturers, collectors and transporters will be required to register and manufacturers will pay annual fees. Manufacturers must register in order to be allowed to sell product directly or through retailers in Washington.

Manufacturer Registration: Manufacturers are required to fill out the registration form which includes listing name and contact information, billing information and whether the manufacturer expects to participate in a standard or independent plan. Then the manufacturer must identify all the brands which the company owns. For each brand, a graphic and word description of brand labels used must be submitted to ecology. Manufacturers must also list brand names that are no longer offered for sale but which the company still owns. Additionally, they must list the brands that the company manufactures [manufactures], but does not own. Manufacturers must pay their administrative fee when they submit their registration form. The fee will be based on the tier they are assigned to according to the following Table IIa.

Table IIa

Tiers	Manufacturer's percentage of total unit market share
Tier 1	1% or greater
Tier 2	.1% to < 1%
Tier 3	.03% to < .1%
Tier 4	.01% to < .03%
Tier 5	Below .01%

Fees will be distributed to each tier in order to spread costs based on the unit sales, given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs (See Table IIIb). Manufacturers may request to be reassigned to a different tier if they believe they have been incorrectly assigned. The reassignment process is different for manufactures [manufacturers] assigned to Tier 1 and 2 than the process for manufacturers assigned to Tier 3 and 4. The details and impacts of the registration form, administrative fee and tier reassignment requirements are discussed in Section 3: Costs.

Collector, Transporter Registration: The collector and transporter registration is combined onto the same form. The form does not request any information beyond what the statute requires. The form requires the company unified business identifier (UBI), tax identification number (TIN) and contact information for all registrants. The transporter information required includes standard requests such as several general yes or no transporter questions, operating status of the business, service area, licensing information and commodities transported. The collector information requested includes several general yes or no collector questions, facility location questions, status of business, commodities collected, service area and Washington state business license number.

3. COSTS:

DISTRIBUTION OF COMPLIANCE COSTS: Small businesses are defined for the purpose of the SBEIS to have less than fifty employees. A requirement of the SBEIS is that it must compare the costs of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the proposed rules. This impact statement will focus on the cost per employee, while examining national as well as statewide trends. **Fees:** Table IIIa displays figures for computer manufacturing and audio and video equipment manufacturing for Washington state, at a national level and averages combining the figures.

Table IIIa

Washington Small Business/Large Business Ratio**Computer and Television Manufacturers**

	Small Businesses	Large Businesses
	(less than fifty employees)	(greater than fifty employees)
Total	269	9
Percentage	96.7%	3.3%
Average Employee per establishment	34.5	249.5

National Small Business/Large Business Ratio**Computer and Television Manufacturers**

	Small Businesses	Large Businesses
	(less than fifty employees)	(greater than fifty employees)
Total	485	571
Percentage	81.5%	18.5%
Average Employee per establishment	9.65	318.35

Washington and National Average

	Small Businesses	Large Businesses
	(less than fifty employees)	(greater than fifty employees)
Percentage	89.1%	10.9%
Average Employee per establishment	22.1	283.9

Averaging both statewide and national estimates, ecology found that approximately 90% of computer and television manufacturing establishments are small businesses. There is an estimated average of twenty-two employees per small business establishment. It is expected that small businesses will be assigned to Tiers 2 through 5 on the fee schedule. The fees in the tier schedule are set up to be flexible to vary depending on how many manufacturers are in a given category each year and the amount of unit market share each tier encompasses. Given that there is no set fee associated with each tier, ecology will use the best information available to estimate how small businesses will be impacted by this fee schedule. Table IIIb is an example of how the fee structure may be interpreted for the initial and second year of the program. It should be noted the initial year fees represent significantly higher initial year costs due to start-up expenses ecology will incur. As companies move into and out of fee tiers by declaring the number of units they have sold into Washington, the individual fees will change. Two Scenarios are displayed in Table IIIb.

Table IIIb

Example of how fee structure may be interpreted for 1st and 2nd year of program with a range of units from 1.1 million to 2.2 million.²

² The 1.1 million units estimate comes from data for CEA member companies and the 2.2 million estimate is generated based on data from the Cascadia study.

Scenario 1: 1.1 million units in Washington

First Year

					Minimum	Maximum			
	#	%		Fee	Fee per	Fee per	Total		
Tier	Companies	of Costs	# Units	per Unit	Unit	Unit	Collection	Individual Fee	Rounded
1	25	67.5%	742,500	\$0.42	\$0.07	\$1.14	\$311,850	\$12,474	\$12,500
2	25	20.0%	220,000	\$0.42	\$0.34	\$3.36	\$92,400	\$3,696	\$3,700
3	25	10.0%	110,000	\$0.42	\$1.68	\$5.61	\$46,200	\$1,848	\$1,850
4	50	5.0%	55,000	\$0.42	\$1.44	\$4.32	\$23,100	\$462	\$475
5	50	0.5%	5,500	\$0.42	\$0.41	\$45.00	\$2,310	\$46	\$45
Total			1,100,000				\$475,860		

Second Year

					Minimum	Maximum			
	#	%		Fee per	Fee per	Fee per	Total		
Tier	Companies	of Costs	# Units	Unit	Unit	Unit	Collection	Individual Fee	Rounded
1	25	67.5%	742,500	\$0.20	\$0.03	\$0.55	\$148,500	\$5,940	\$6,000
2	25	20.0%	220,000	\$0.20	\$0.16	\$1.64	\$44,000	\$1,760	\$1,800
3	25	10.0%	110,000	\$0.20	\$0.82	\$2.73	\$22,000	\$880	\$900
4	50	5.0%	55,000	\$0.20	\$0.67	\$2.00	\$11,000	\$220	\$220
5	50	0.5%	5,500	\$0.20	\$0.20	\$22.00	\$1,100	\$22	\$22
Total	175		1,100,000				\$226,600		

Source: Jay Shepard, Dept. of Ecology

Scenario 2: 2.2 million units in Washington

Initial Year

					Minimum	Maximum			
	#	%		Fee	Fee per	Fee per	Total		
Tier	Companies	of Costs	# Units	per Unit	Unit	Unit	Collection	Individual Fee	Rounded
1	18	67.5%	1,415,600	\$0.21	\$0.09	\$0.75	\$297,276	\$16,515	\$16,500

2	25	20.0%	440,000	\$0.21	\$0.17	\$1.68	\$92,400	\$3,696	\$3,700
3	32	10.0%	289,400	\$0.21	\$0.86	\$2.88	\$60,774	\$1,899	\$1,900
4	50	5.0%	110,000	\$0.21	\$0.68	\$2.05	\$23,100	\$462	\$450
5	50	0.5%	11,000	\$0.21	\$0.20	\$45.00	\$2,310	\$46	\$45
Total	175		2,200,000				\$475,860		

Second Year

					Minimum	Maximum			
	#	%		Fee	Fee per	Fee per	Total		
Tier	Companies	of Costs	# Units	per Unit	Unit	Unit	Collection	Individual Fee	Rounded
1	18	67.5%	1,415,600	\$0.10	\$0.02	\$0.36	\$141,560	\$7,864	\$7,900
2	25	20.0%	440,000	\$0.10	\$0.08	\$0.82	\$44,000	\$1,760	\$1,800
3	32	10.0%	289,400	\$0.10	\$0.41	\$1.36	\$28,940	\$904	\$900
4	50	5.0%	110,000	\$0.10	\$0.68	\$2.05	\$11,000	\$220	\$450
5	50	0.5%	11,000	\$0.10	\$0.20	\$45.00	\$1,100	\$22	\$45
Total	175		2,200,000				\$226,600		

Source: Jay Shepard, Dept. of Ecology

Note: This assumes the inclusion of units from Major Retailers that own brand names.

This tier structure is based on a conservative estimate that one hundred seventy-five manufacturers will register with ecology. It is anticipated that twenty-five manufacturers will be assigned to the Tier 1 category thus representing the top 10% of manufacturers. It is assumed the remaining Tiers 2-4 will be assigned to small businesses.

Table IIIc shows the cost per employee for small and large businesses. The cost per employee is 12% higher for small than for large businesses. This table uses Scenario 1 in Table IIIb.

Table IIIc: Fees and cost per employee

	Large Business	Small Business
Cost per employee		
Average # employees	284	22
Total fee collected Tier 1	\$311,850	
Total fee collected Tier 2-5		\$164,010
# Establishments	25	150
# Employees	7100	3300
Cost per employee	\$43.92	\$49.70

Additional manufacturer's costs include registration time and requests for tier reassignment. It is anticipated that registration time and tier reassignment burdens will fall more heavily on larger

businesses.

Manufacturer Registration Application:

- Large businesses will experience greater costs due to independent plans. The registration form requests manufacturers to decide whether they will be participating in the standard plan or an independent plan. Under the law, an independent plan must hold 5% or more of the return share. Manufacturers [Manufacturers] can do this either alone or combined with other manufacturers and it is anticipated that most small businesses will opt to participate in the standard plan and that the very large businesses will experience costs as they analyze the benefits and costs of creating their own independent plan. Forming an independent plan is a complex process as they require collection points in every county and community with a population greater than 10,000, among other qualifications. It is expected that large businesses will spend significantly more time and effort on this decision.
- The registration form also requires manufacturers to list all brand names that their company manufactures, brands that are no longer offered for sale for which the company has legal ownership and brands that the company manufactures [manufactures] but does not have legal ownership for. For each brand, the registering company must identify the year the brand was first sold in Washington state and provide a picture and description of the brand logo. Most small businesses will have fewer brands that they manufacture [manufacture] and thus will not have to spend as much time identifying brands, years sold in Washington and company log pictures and descriptions to submit to ecology. Large businesses will experience greater costs due to the complexity of brand names over time.

Tier Reassignment: After ecology assigns a manufacturer to a tier, they have the option to request reassignment. If assigned to Tier 1 or 2, the manufacturer must provide statistically valid data of the manufacturer's share of covered electronic products sold in or into Washington that is validated by a certified public accountant (CPA). The demonstration must include new data that improves the information ecology used to determine market share distribution for all manufactures. Most businesses assigned to Tier 1 or 2 are expected to be large. For any small business that happened to be assigned to Tier 2, the costs would be disproportionately larger than they are for the large companies. A company is unlikely to request reassignment if the savings is less than the cost of doing so. At this time ecology expects a maximum savings of \$1,850 in the first year. If any company having fifty or fewer employees were to expend this much to show that it should be moved into Tier 3, then the minimum cost per employee would be \$37. If an average large company expended this much then the cost per employee would be \$7.

If a manufacture assigned to Tier 3 or 4 requests to be reassigned, the manufacturer must submit documentation to ecology demonstrating how many units of covered electronic products the manufacture [manufacturer] sold in or into Washington state during the previous calendar year. It is assumed that most small businesses will be subject to this reassignment criterion. No certified public accountant is required.

The requirements for tier reassignment are much more stringent for large manufacturers than small manufacturers. In addition, the change in the fee as a company moves from one tier to the next places a cap on the likely expenditures. Thus, the requirement will generally not be disproportionate for most smaller companies but may be disproportionate for a few. There is a small probability of lost sales. Ecology expects that manufacturers will register rather than foregoing sales because the cost per unit is generally small by comparison to the price (\$5.61 is the estimated maximum). However, at the very low end of the manufacturing spectrum, in theory, a company that manufactured less than four computers will experience higher per unit costs and may opt out. Ecology does not believe that there are any TV or Monitor manufacturers [manufacturers] that create units in this range. A computer manufacturer in this range is also highly unlikely and would be likely to incorporate a reused part. Thus the scenario is unlikely.

Collector and Transporter Registration: The collector and transporter registration form requires basic information that should be readily available for the businesses to provide. Filling out this form is expected to cause only minor costs. Minor costs are exempt from analysis.

SECONDARY IMPACTS: It is probable that some or all of the increased costs associated with the proposed rule revisions will be passed on to consumers in the form of higher electronic product costs. Given that the fee was computed by ecology assuming \$0.42 average per unit charge the initial year and a \$0.20 average per unit charge in the subsequent year, it is not expected that prices will be impacted beyond those values. Table III d shows the percentage of increases in prices given that average prices of the electronic products associated with this rule. The maximum fee impact was calculated using the initial year value which will be the highest fees charged due to first year start-up costs.

Table III d

	Personal Computers (Includes notebooks, desktops including monitor)	Televisions
Average price 2005	\$820.00	\$670.00
Fee impact	\$0.42	\$0.42
Percentage fee impact	0.05%	0.06%

CONCLUSION: Businesses engaged in the manufacturing of electronic products will incur increased costs as a result of the rule implementation. These costs will vary depending upon the amount of manufacturers that are identified to register for this program, the unit market share that manufacturers possesses [possess], the time it takes to gather information for the registration form and the resources required for tier reassignment requests. Ecology has analyzed the effects of this rule and finds that the impacts on sales should be minimal but that the rule may likely have quantifiable disproportionate

impacts to small businesses and qualitative disproportionate impacts to large businesses.

4. BUSINESS INVOLVEMENT AND INDUSTRY:

ACTIONS TAKEN TO REDUCE THE IMPACT ON SMALL BUSINESS: The rule is likely to have disproportionate impacts on smaller firms. Ecology must therefore reduce the impact to small businesses if it is legal and feasible to do so.

(a) Reducing, modifying, or eliminating substantive regulatory requirements; ecology must base the fee on sales. It is not legal to eliminate, reduce or modify this component.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;

- The forms for the application process have been simplified. The forms minimize the requirements of duplicate information.

- The companies only have to submit additional information if they are requesting placement in a different tier.

- The tier reassignment process for most small manufacturers is much less stringent than for large businesses. Manufacturers who request to be reassigned from Tier 3 or 4 do not have to provide statistically valid market share data validated by a certified public accountant.

- Ecology has attempted to minimize time and expense for all businesses by striving to allow manufacturers, collectors and transporters to register via the internet and e-mail.

(c) Reducing the frequency of inspections; there are no inspections associated with the fee.

(d) Delaying compliance timetables; this would not help the companies. They need to be listed as manufacturers in order to market their product.

(e) Reducing or modifying fine schedules for noncompliance; fine schedules are in the RCW. No modification is possible.

(f) Any other mitigation techniques. The tiered fee structure that allows companies that manufacture fewer units to contribute less for the administrative costs of this rule.

LIST OF INDUSTRIES REQUIRED TO COMPLY: The most likely industries to which Phase 1 of this rule will apply will be those involved in the manufacturing of covered electronic products. Other firms that participate in the form of collectors, transporters and processors will be sending us information but will be more heavily affected in phase two of this rule making. Table 4.1 contains a list of industries

required to comply with the rule. The North American industry classification system (NAICS) is the industry classification system used by the statistical agencies of the United States.

Table 4.1. Industries Likely to be Required to Comply with the Rule

NAICS Code	Description
334111	Computer Manufacturing
334310	Audio and Video Equipment Manufacturing
562111	Recyclable material collection services
	Recyclable material hauling, local

HOW WAS SMALL BUSINESS INVOLVED IN THE DEVELOPMENT OF THIS RULE? In 2004, ESHB 2488 directed ecology, in consultation with the solid waste advisory committee created under [RCW 70.95.040](#), to conduct, research and develop recommendations for the implementation and financing of an electronic product collection, recycling, and reuse program. During that time, ecology and the solid waste advisory committee consulted with stakeholders. These stakeholders included small and large business among the representatives of covered electronic product manufacturers, covered electronic product retailers, waste haulers, electronics recyclers, charities. Other stakeholders included cities, counties, environmental organizations, public interest organizations, and other interested parties that have a role or interest in the collection, reuse, and recycling of covered electronic products.

As a result, ESSB 6428 was passed during the 2006 Washington state legislative session to become effective July 1, 2006. Since the passage of the law, ecology has encouraged the participation of all entities in considering the impacts and outcomes of the proposed rules throughout the rule-making process. Small businesses were represented on the advisory panel that helped to develop this rule. This public process was open to both small and large businesses. Small businesses presented information to the committee. Further input will be encouraged during the public comment period for the proposed rule.

Ecology requests comments on this SBEIS and any new information that may be of value in decision making.

APPENDIX A: REFERENCES:

1. *CEA Study Finds Most Unwanted Electronics Go To Secondary Users*, December 2005, <http://www.findarticles.com/p/articles/mi_m0KWH/is_12_43/ai_n15978785/print> (June 2006), Recycling Today.

2. *E-Waste Recycling Fees: Will They Cover Costs Over Time? An assessment of the Fees Needed to Sustain Recycling of Covered Electronic Products under ESHB 2488 Draft Report*, September 2005,

Cascadia Consulting Group.

3. U.S. Census Bureau, NAICS Directory, 2002, www.census.gov (July 2006).

4. *Workforce Explorer Washington*, < <http://www.workforceexplorer.com> > (July 2006) Washington State Employment Security.

APPENDIX B: 2002 U.S. Census data*Audio and Video Equipment Manufacturing**Computer Manufacturing NAICS code 334111**NAICS code 334310**Small Business**Small Business*

<i># Employees</i>	<i>Average</i>	<i>Establishments</i>	<i>Employees</i>	<i># Employees</i>	<i>Average</i>	<i>Establishments</i>	<i>Employees</i>
<i>1 to 4</i>	2.5	207	517.5	<i>1 to 4</i>	2.5	249	622.5
<i>5 to 9</i>	7	72	504	<i>5 to 9</i>	7	70	490
<i>10 to 19</i>	14.5	58	841	<i>10 to 19</i>	14.5	87	1261.5
<i>20 to 49</i>	34.5	51	1759.5	<i>20 to 49</i>	34.5	68	2346
<i>Total</i>		388	3622	<i>Total</i>		474	4720
<i>Average</i>				<i>Average</i>			

*employees**employees**per SB**per SB**establishment: 9.3**establishment: 10.0**Large Business**Large Business*

<i># Employees</i>	<i>Average</i>	<i>Establishments</i>	<i>Employees</i>	<i># Employees</i>	<i>Average</i>	<i>Establishments</i>	<i>Employees</i>
<i>50 to 99</i>	74.5	42	3129	<i>50 to 99</i>	74.5	39	2905.5
<i>100 to 249</i>	174.5	20	3490	<i>100 to 249</i>	174.5	38	6631
<i>250 to 499</i>	374.5	16	5992	<i>250 to 499</i>	374.5	9	3370.5
<i>500 to 999</i>	749.5	10	7495	<i>500 to 999</i>	749.5	10	7495
<i>1000 to 2499</i>	1749.5	4	6998	<i>1000 to 2499</i>	1749.5	1	1749.5
<i>2500 or more</i>	2500	5	12500	<i>2500 or more</i>	2500	-	-
<i>Total</i>		97	39604	<i>Total</i>		97	22151.5
<i>Average</i>				<i>Average</i>			

*employees**employees**per LB**per LB**establishment: 408.3**establishment: 228.4**Calculations**Calculations*

<i>% SB</i>	<i>% LB</i>	<i>% SB</i>	<i>% LB</i>	<i>% SB</i>	<i>% LB</i>	<i>% SB</i>	<i>% LB</i>
<i>employees</i>	<i>employees</i>	<i>establishments</i>	<i>establishments</i>	<i>employees</i>	<i>employees</i>	<i>establishments</i>	<i>establishments</i>
8.4%	91.6%	80.0%	20.0%	17.6%	82.4%	83.0%	17.0%

A copy of the statement may be obtained by contacting Jay Shepard, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7040, fax (360) 407-6102, e-mail wa-recycles-electronics@ecy.wa.gov.

A cost-benefit analysis is required under [RCW 34.05.328](#). A preliminary cost-benefit analysis may be obtained by contacting Jay Shepard, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7040, fax (360) 407-6102, e-mail wa-recycles-electronics@ecy.wa.gov.

July 19, 2006

Polly Zehm

Deputy Director

OTS-9021.3

Chapter 173-900 WAC

ELECTRONIC PRODUCTS RECYCLING PROGRAM

PART I

GENERAL REQUIREMENTS

NEW SECTION

WAC 173-900-010 Purpose. (1) The Washington state legislature has required that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products be established throughout Washington state. The legislature determined that such a system must encourage the design of electronic products that are less toxic and more recyclable and that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.

(2) This chapter implements the Electronic Product Recycling Act, [chapter 70.95N RCW](#). This chapter:

- Defines the administrative and enforcement responsibilities delegated to the department of ecology; and

- Describes the processes and procedures that ecology will use to carry out those responsibilities.

□

NEW SECTION

WAC 173-900-020 Applicability. This chapter applies to:

(1) Any manufacturer, as defined in this chapter.

(2) Any person who collects or transports covered electronic products in Washington state for recycling.

(3) Any retailer that sells electronic products and covered electronic products in or into Washington state.

□

NEW SECTION

WAC 173-900-030 Definitions. "**Authority**" means the Washington materials management and financing authority.

"**Authorized party**" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

"**Board**" means the board of directors of the Washington materials management and financing authority.

"**Brand**" means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

"**Brand label**" typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

"**Certified**" means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

"**Collector**" means an entity that is licensed to do business in Washington state and that gathers

unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by ecology.

"Computer" means a machine designed for manipulating data according to a list of instructions known as a program.

"Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

"Covered electronic product" includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

- (a) A cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) A cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

- (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;
- (b) Monitoring and control instruments or systems;
- (c) Medical devices;
- (d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;
- (e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television 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; automatic teller machines, vending machines or similar business transaction machines; or

(g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

"Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

"Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

"Desktop" is a computer.

"Ecology" means the department of ecology.

"Electronic product" is a covered electronic product that has not yet been used by a covered entity.

"Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer as described in this chapter.

"Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

"Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

"Laptop" is a computer.

"Manufacturer" means the person who:

(a) Has legal ownership of the brand, brand-name or cobrand of electronic products sold in or into Washington state;

(b) Imports, or sells at retail, electronic products and meets (a) of this subsection; or

(c) Imports and sells at retail an electronic product branded by a manufacturer that has no physical presence in the United States of America.

"Monitor" is a video display device without a tuner that can display pictures and sound and is used with a computer.

"New entrant" means:

(a) A manufacturer of televisions that have been sold in Washington state for less than ten years; or

(b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five years;

(c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

"Offering for sale" means the electronic product is available for retail purchase, either directly or by a third party, regardless of sales method.

"Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

"Person" means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, nonprofit organization, or government agency.

"Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

"Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

"Portable computer" is a computer.

"Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. **"Premium service"** does not include curbside service.

"Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and ecology. A processor may also salvage parts to be used in new products.

"Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

"Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

"Program year" means each full calendar year after the program has been initiated.

"Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration.

"Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

"Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

"Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.

"Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

"Sell" or **"sold"** means a retail purchase of an electronic product.

"Small business" means a business employing less than fifty people.

"Small government" means a city in Washington state with a population less than fifty thousand, a county in Washington state with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

"Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

"Television" is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

"Transporter" means an entity that transports covered electronic products from collection sites or

services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

"Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

"White box manufacturer" means a person who manufactured electronic products without a brand label offered for sale in Washington state.

"Video display devices" include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma display, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

□

NEW SECTION

WAC 173-900-040 Required brand labeling. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

□

NEW SECTION

WAC 173-900-050 Selling covered electronic products in Washington. (1) In order for a manufacturer to offer for sale or sell a covered electronic product in or into Washington state, the brand name must be on the "Manufacturer Registration List for the Electronic Product Recycling Program" and the manufacturer must be in "pending" or "registered" status.

(2) In order for a retailer to offer for sale or sell a covered electronic product in or into Washington state, on the date the product was ordered, the brand name must be on the "Manufacturer Registration List for the Electronic Product Recycling Program" and the manufacturer must be in "pending" or "registered" status.

[]

PART II

MANUFACTURER REQUIREMENTS

NEW SECTION**WAC 173-900-200 Manufacturer registration. Registration:**

(1) Starting January 1, 2007, no manufacturer's covered electronic products can be offered for sale or sold in Washington state unless the manufacturer is registered with ecology.

(a) Successful registration under this chapter means that ecology has determined there are no deficiencies in the manufacturer's submitted registration form and the manufacturer has paid their administrative fee.

(b) To confirm registration status of a manufacturer a person must check the "Manufacturer Registration List for the Electronic Product Recycling Program" posted on ecology's web site.

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

Manufacturer annual registration form:

(3) All manufacturers selling covered electronic products in or into Washington state on July 1, 2006, or before must register by January 1, 2007. All manufacturers must submit an annual registration form to ecology.

(a) **Existing manufacturers** on the effective date of this chapter, who plan to continue to sell or offer for sale covered electronic products, through any sales method to covered entities in Washington state, must register with ecology no later than January 1, 2007.

(b) **New manufacturer registration:** Manufacturers who begin operating after the effective date of this chapter may submit their initial registration form to ecology at any time prior to the sale of their covered electronic products in or into Washington state.

(c) **Annual renewals:** Manufacturers must submit their annual renewal registration form to ecology no later than January 1 of each calendar year.

(d) **Updates:** A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.

(4) The manufacturer must use the form provided by ecology which must include all of the following:

(a) The name, contact, and billing information of the manufacturer;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in Washington state in the past, including "years sold," all brand names currently being sold in Washington state, including the year the manufacturer started using the brand name, all brand names the manufacturer manufactures but does not have legal ownership of the brand, and all brand names for which the manufacturer has legal responsibility;

(i) When a word or phrase is used as the label the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;

(ii) When a logo or image is used, the manufacturer must include a graphic representation of the logo or image and a general description of the different ways in which it may appear on the manufacturer's electronic products;

(c) The method or methods of sale used in Washington state; and

(d) Recycling plan participation information.

(5) The registration form must be certified by the individual responsible for implementing the manufacturer's requirements under this chapter. The certification means the manufacturer has provided accurate and complete information on the form and understands their responsibilities under the electronic product recycling program.

(6) The manufacturer must either submit the:

(a) Form via e-mail or internet service; or

(b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

300 Desmond Drive

Lacey, WA 98503

Administrative fee:

(7) All manufacturers must pay an annual administrative fee to ecology (see [WAC 173-900-210](#) Administrative fee calculation).

(8) Ecology will send a written billing statement by mail or electronic mail to manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(9) The manufacturer must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(10) The manufacturer must send payment to the following address:

Department of Ecology

Cashiering Section

P.O. Box 5128

Lacey, WA 98509-5128

Registration review and status:

(11) Upon receipt of a registration form and the administrative fee, ecology will post the manufacturer's name on a list called "Manufacturer Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of manufacturers, their brand names and their registration status. Each manufacturer on the list will be assigned to one of the following registration status categories:

(a) **Pending** means ecology has received the appropriate manufacturer's administrative fee and is reviewing the manufacturer's registration form. The manufacturer's covered electronic products are allowed to be sold or offered for sale in Washington state while in "pending" status.

(i) If no deficiencies are found on the form, ecology will change the manufacturer's status from "pending" to "registered."

(ii) If deficiencies are found on the form, ecology will send notice, via certified mail, to the manufacturer identifying the deficiencies and requesting a revised form. The manufacturer will have thirty days from receipt of the deficiency notice to submit to ecology a revised registration form correcting the deficiencies. If the deficiencies are corrected, ecology will change the manufacturer's status from "pending" to "registered."

(iii) If the deficiencies are not corrected within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."

(b) **Registered** means no deficiencies exist on the form, and the manufacturer has paid the administrative fee. The manufacturer's covered electronic products are allowed to be sold or offered for sale in or into Washington state.

(c) **In violation** means the manufacturer is in violation of this chapter. The manufacturer's covered electronic products are not allowed to be offered for sale or sold in Washington state and the manufacturer, retailer, and seller are subject to the violation and penalties sections of this chapter.

(12) In order to offer for sale or sell a covered electronic product in or into Washington state the brand name must be on the "Manufacturer Registration List for the Electronic Product Recycling Program" and it must be associated with a manufacturer in "registered" or "pending" status.

Registration violation:

(13) It is a manufacturer violation if a manufacturer offers for sale or sells covered electronic products in or into Washington state and is not registered as required above, or commits any other violations under this chapter:

(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer

Registration List for the Electronic Product Recycling Program";

(b) The manufacturer's covered electronic products cannot be sold or offered for sale in Washington state; and

(c) The manufacturer is subject to penalties under [WAC 173-900-600](#).

Corrective actions:

(14) If a manufacturer is in "in violation" status, ecology will not return them to "pending" status while the manufacturer corrects the violations.

(15) If ecology changes a manufacturer to "in violation" as a result of a violation, then in order to once again be listed as "registered" on the "Manufacturer Registration List for the Electronic Product Recycling Program," the manufacturer must:

(a) Submit their registration form and ecology must determine there are no deficiencies in their registration form;

(b) Pay their appropriate administrative fee;

(c) Correct any other violations; and

(d) Pay any penalties due to ecology ([WAC 173-900-600](#)).

□

NEW SECTION

WAC 173-900-210 Administrative fee calculation. (1) The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under [chapter 70.95N RCW](#). It does not include the fees for ecology's review of the standard plan or independent plans.

(2) A tiered fee system is established to distribute administrative fees on a sliding scale that is representative of annual sales of covered electronic products in the state.

(3) Ecology will base the tiers on the combined unit sales of covered electronic products sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state as follows:

Tiers	Manufacturer's percentage of total unit market share
Tier 1	1% or greater
Tier 2	0.1% to < 1%
Tier 3	0.03% to < 0.1%
Tier 4	0.01% to < 0.03%
Tier 5	Below 0.01%

(4) Ecology will use generally available national market research data in order to assign companies to the tiers. Ecology will extrapolate these data to Washington using available data specific to Washington state. Ecology will calculate manufacturer unit sales to assign each manufacturer to an administrative fee tier.

(5) Costly research and detailed market studies to determine absolute sales for each manufacturer within the state will not be pursued.

(6) Fees will be distributed to each tier in order to spread costs based on the unit sales given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(7) **New entrant registration and tier assignment:** Manufacturers that are new entrants into the covered electronic product market in Washington state will be assigned to Tier 3.

(a) New entrant manufacturers may request to be assigned to a different tier. The manufacturer must submit the request within thirty calendar days of receipt of the billing statement.

(b) To request a tier reassignment to Tier 4 or 5, new entrant manufacturers must submit documentation to ecology stating the maximum number of units of covered electronic products the manufacturer expects to sell in or into Washington state during the first calendar year.

(c) Ecology will determine if a tier reassignment is justified based on the documentation provided and national market data. Ecology may request additional information.

Administrative fee tier calculations for program year 2007:

(8) For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

(9) Ecology will publish the tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2006. Ecology will send out written billing statements to manufacturers. The tiers will be based on data available to ecology and received from manufacturers prior to October 27, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (12) of this section prior to October 27, 2006.

Administrative fee tier calculations for program year 2008 and future years:

(10) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the amount appropriated in the budget for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

This program cost amount will be adjusted annually by the fiscal growth factor (FGF) as calculated under [chapter 43.135 RCW](#) (Fee_{FGF}) unless ecology is provided with an exemption from the legislature.

(11) For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule on ecology's web site by September 1 of each calendar year.

This preliminary schedule will include the tiers and a list of each manufacturer assigned to each tier.

(12) Requests for tier reassignment:

(a) Manufacturers assigned to Tier 1 or Tier 2:

(i) Manufacturers assigned to Tier 1 or Tier 2 may request to be assigned to a different tier.

(ii) The manufacturer must submit the request between September 1 and October 1 of each calendar year for administrative fees due January 1 of the next calendar year.

(iii) The request must include statistically valid data of the manufacturer's share of covered electronic products sold in or into Washington state and must be validated by a certified public accountant.

(A) This demonstration must include new data that improves the data used by ecology to determine market share distribution for all manufacturers.

(B) Ecology may request additional information.

(b) Manufacturers requesting tier reassignment from Tier 3 or 4 to Tier 4 or 5:

(i) To request to be placed in Tier 4 or 5 a manufacturer must submit documentation to ecology demonstrating how many units of covered electronic products the manufacturer sold in or into

Washington state during the previous calendar year.

(ii) Based on this documentation ecology will decide what tier to assign the manufacturer.

(iii) The manufacturer must submit the request to ecology between September 1 and October 1 of each calendar year for administrative fees due January 1 of the next calendar year.

(iv) Ecology may request additional information.

(13) Final tier schedule and billing:

(a) Ecology will publish the final tier schedule on ecology's web site by November 1 of each calendar year.

(b) Starting in 2007, ecology will send out written billing statements to manufacturers.

(14) Proprietary information related to tier reassignment: Under [RCW 42.56.270](#) financial and proprietary information submitted to ecology or the authority to implement [chapter 70.95N RCW](#) and this chapter is exempt from public disclosure.

(a) When submitting financial and/or proprietary information to ecology, a manufacturer must separate that information from other information and clearly identify the proprietary and/or financial information by placing it in a separate envelope.

(b) On the front of the envelope the manufacturer must mark "financial" and/or "proprietary" and must include a written explanation as to why the information is either financial or proprietary and a written request that it not be disclosed.

(c) Ecology will determine if the information submitted meets the criteria for exemption from disclosure under Washington state law.

□

PART III

TRANSPORTERS AND COLLECTORS

NEW SECTION

WAC 173-900-300 Transporter and/or collector registration. Registration:

(1) No transporter and/or collector may collect or transport covered electronic products in Washington state unless the transporter and/or collector is registered with ecology. To confirm registration status of a

transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

Transporter and/or collector annual registration form:

(3) Each transporter and/or collector must submit an annual registration form to ecology. As of September 1, 2008, all transporters and collectors must be registered with ecology in order to transport or collect covered electronic products.

(a) **Existing transporters and/or collectors:** Transporters and/or collectors who transport or collect covered electronic products from covered entities in Washington state on the effective date of this chapter, who plan to continue doing so, must register with ecology no later than September 1, 2008.

(b) **New transporter and/or collector registration:** Transporters and/or collectors who begin to transport or collect covered electronic products from covered entities in Washington state after the effective date of this chapter may submit their registration form to ecology at any time prior to beginning to transport or collect covered electronic products.

(c) **Annual renewals:** Transporter and/or collector must submit their annual renewal registration form to ecology between September 1 and July 1 of each calendar year.

(d) **Updates:** A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.

(4) Each transporter and/or collector must use the registration form provided by ecology and must include all of the following:

(a) Contact and location information;

(b) Business license information;

(c) Permit information;

(d) Description of services provided; and

(e) Geographic areas where services are provided.

(5) The registration form must be certified by the individual responsible for implementing the

requirements under this chapter for the transporter and/or collector. The certification means the company has provided accurate and complete information on the form and is in compliance with all applicable state laws and regulations.

(6) The transporter and/or collector must either submit the:

(a) Form via e-mail or internet service, as long as it includes the electronic signature of the individual responsible for implementing the transporter's or collector's requirements under this chapter; or

(b) Original of the registration form to one of the following addresses:

For U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology

Electronic Product Recycling

Solid Waste and Financial Assistance Program

300 Desmond Drive

Lacey, WA 98503

Registration review and status:

(7) After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:

(a) **Pending** means ecology is reviewing the transporter's and/or collector's registration form. The transporter and/or collector is allowed to transport or collect covered electronic products in Washington state while in "pending" status.

(i) If no deficiencies are found on the form, ecology will change the transporter's/collector's status from "pending" to "registered."

(ii) If deficiencies are found on the form, ecology will send notice, via certified mail, to the transporter and/or collector identifying the deficiencies and request a revised form. The transporter and/or collector will have thirty days from receipt of the deficiency notice to submit to ecology a revised registration form correcting the deficiencies.

(iii) If the deficiencies are not corrected within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."

(b) **Registered** means no deficiencies exist on the form. The transporter and/or collector is allowed to transport or collect covered electronic products in Washington state while in "registered" status.

(c) **In violation** means the transporter and/or collector is in violation of this chapter (see [WAC 173-900-630](#) and [173-900-620](#)). The transporter and/or collector must not transport or collect covered electronic products in Washington state while in the "in violation" category.

Registration violation:

(8) If a transporter/collector does not submit their registration form as required above:

(a) Ecology will assign the transporter and/or collector to the "in violation" category on the "Transporter/Collector Registration List for the Electronic Product Recycling Program";

(b) A transporter must not transport covered electronic products in Washington state;

(c) A collector must not collect covered electronic products in Washington state;

(d) The transporter is subject to penalties under [WAC 173-900-630](#); and

(e) The collector is subject to penalties under [WAC 173-900-620](#).

Corrective action:

(9) In order to change from the "in violation" category to the "registered" category on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:

(a) Submit their registration form and ecology must determine that there are no deficiencies on the form; and

(b) Pay any penalties to ecology.

□

PART IV

WARNING, VIOLATIONS, AND PENALTIES

NEW SECTION

WAC 173-900-600 Manufacturer -- Warning, violations, and penalties. As of January 1, 2007, all manufacturers of covered electronic products must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.

(1) Ecology will place a manufacturer in "in violation" status if a violation is committed by the manufacturer.

Types of violations:

(2) **Registration violation:** After January 1, 2007, it is a manufacturer violation if a manufacturer offers for sale or sells covered electronic products in or into Washington state and is not registered under this chapter.

(a) In the case of a retailer offering for sale or selling a covered electronic product, it is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "registered" or "pending" status.

(b) Each unit offered for sale or sold is a separate violation.

(3) **Unlabeled electronic products:** After January 1, 2007, it is a violation if a manufacturer, or a retailer, offers for sale or sells an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the

manufacturer.

(4) Warnings and penalties:

(a) Notice of violation: Ecology will issue a written warning, via certified mail, for the first violation of either subsection (2) or (3) of this section. The written warning will include a copy of the requirements to let the manufacturer know what is needed for them to be in compliance.

(b) The manufacturer must come into compliance immediately. If the compliance requirements in the written warning are not corrected within thirty days of receipt of the warning, ecology will assess a penalty of up to:

(i) One thousand dollars for the first violation; and

(ii) Up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under [RCW 70.95N.130](#).

□

NEW SECTION

WAC 173-900-610 Retailer -- Warning, violations, and penalties.

Types of violations:

(1) **Registration violation:** After January 1, 2007, it is a retailer violation if a retailer "offers for sale" or "sells" covered electronic products if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "registered" or "pending" status.

(a) When the violation consists of the sale or offering for sale of a covered electronic product, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the retailer.

(b) Each unit offered for sale or sold is a separate violation.

(c) If the retailer can prove that the products were ordered from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a violation even if the

manufacturer fails to register.

(2) **Unlabeled products:** After January 1, 2007, a retailer must not "offer for sale" or "sell" an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(a) Each unlabeled unit offered for sale or sold is a separate violation for the retailer.

(b) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the "offering for sale" or "sale" of these electronic products is not a violation.

(3) **Warning and penalties:**

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the retailer for the first violation for either subsection (1) or (2) of this section. The written warning will include a copy of the requirements to let the retailer know what is needed for them to be in compliance.

(b) The retailer must come into compliance immediately. If the compliance requirements in the written warning are not corrected within thirty days of receipt of the warning, ecology will assess a penalty of up to:

(i) One thousand dollars for the first violation; and

(ii) Up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(4) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under [RCW 70.95N.130](#).

□

NEW SECTION

WAC 173-900-620 Collector -- Warning, violations, and penalties. (1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect covered electronic products in Washington state.

(2) **Collection of covered electronic products for the standard or an independent plan without being registered with ecology:** After September 1, 2008, it is a violation for collectors to collect covered

electronic products in Washington state if the collector is not registered with ecology.

(3) Collector warning and penalties:

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the collector for the first violation of this section. The written warning will include a copy of the requirements to let the collector know what is needed for them to be in compliance.

(b) The collector must come into compliance immediately. If the compliance requirements in the written warning are not corrected within thirty days of receipt of the warning, ecology will assess a penalty of up to:

(i) One thousand dollars for the first violation; and

(ii) Up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(4) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under [RCW 70.95N.130](#).

□

NEW SECTION

WAC 173-900-630 Transporter -- Warning, violations, and penalties. (1) Ecology will place a transporter in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the transporter.

For a transporter, "in violation" status means the transporter must not transport covered electronic products in Washington state.

(2) Transportation of covered electronic products for the standard or an independent plan without being registered with ecology: After September 1, 2008, it is a violation for transporters to transport covered electronic products in Washington state if the transporter is not registered with ecology.

(3) Transporter warning and penalties:

(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the transporter for the first violation of this section. The written warning will include a copy of the requirements to let the transporter know what is needed for them to be in compliance.

(b) The transporter must come into compliance immediately. If the compliance requirements in the written warning are not corrected within thirty days of receipt of the warning, ecology will assess a penalty of up to:

(i) One thousand dollars for the first violation; and

(ii) Up to two thousand dollars for the second and each subsequent violation.

(iii) Ecology will issue a penalty no more often than every thirty days for each violation.

(4) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under [RCW 70.95N.130](#).

□

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