



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement
Chapter 173-900 WAC
Electronic Products Recycling Program

Summary of rulemaking and response to comments

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Concise Explanatory Statement

Chapter 173-900 WAC Electronic Products Recycling Program

Waste 2 Resources Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Electronic Products Recycling Program
WAC Chapter(s): 173-900
Adopted date: March 1, 2016
Effective date: April 1, 2016

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: <http://www.ecy.wa.gov/laws-rules/index.html>

Reasons for Adopting the Rule

In response to changes the 2013 Legislature made to the Electronic Product Recycling statute, Ecology revised Chapter 173-900 WAC to account for each manufacturer's financial obligation to the stewardship program based totally on market share, eliminating all references to using return share to calculate their financial responsibility.

Also in response to 2013 legislation, Ecology revised the rule to expand the reporting requirements for organizations operating recycling programs for electronic products. In addition to the information previously required for annual reports on the operation of a recycling program, those reports must now include; (1) an estimate of each type of material recovered from recycling electronics including cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals; (2) an estimate of the weight of all collected products that are ultimately reused, recycled, or end up as residual waste that is disposed; (3) a description of program revenues and costs including the average cost of the program per pound of covered electronic product collected, and costs for education and promotional efforts, collection, transportation, processing and labor, and program administration; and (4) a description of the methods used to collect, transport and process covered electronic products.

The main change initiated by Ecology clarified that retailers of covered electronic products must provide take-home information on recycling electronics to consumers at the time they purchase a covered electronic product. Most retailers already provide take-home information to consumers through a variety of methods. With this change, it will be clear that posting a placard at the check-out stand does not meet the requirement for retailers to provide consumers with recycling information.

In addition, changes and edits include, but are not limited to, allowing Ecology to provide notifications electronically to the organizations operating recycling programs rather than by certified mail, updating references from the previous Program name, the *Solid Waste and Financial Assistance Program*, to the *Waste 2 Resources Program*, and making some language changes for consistency that were identified through public comment on the proposed rule.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on October 19, 2015 and the adopted rule filed on March 1, 2016. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and Ecology's reasons for making them.

Under "Definitions" (WAC 173-900-030) the following changes were made from the proposed rule filed on October 19, 2015.

1. The definitions of "Manufacturers whose CEPs (covered electronic products) are not directly sold in or into Washington state" and "Manufacturers who previously manufactured" were proposed to be stricken entirely, but a commenter noted that these terms were not also stricken from WAC 173-900-280 where the rule explains the tiered administrative fees Ecology uses to charge manufacturers. For clarity, it was decided to only strike the portion of these definitions that referred to return share – the previous system for assigning manufacturer program responsibility that was replaced by a 100% market share system by the 2013 legislation. This allowed Ecology to keep the rule language consistent and accurate without making a number of more convoluted deletions and adjustments to Section 280.
2. As a result of the change noted in #1, above, the proposed subsection (d) to the definition of "Manufacturer" was moved up to immediately follow subsection (c). In the proposed language it appeared following the deletion of the two definitions discussed in #1 above, and if not moved would have been in the wrong location in the adopted rule.

3. The proposed rule amended the following definition, “Small business means a business in Washington State employing less than fifty people.” Commenters noted that the addition of “in Washington state” raised the question as to whether this meant a business must employ less than fifty people company-wide or that less than fifty people could be employed by the company and located in Washington state. Since this attempt at a clarification was unclear and not essential, Ecology opted to delete the proposed change.

In new section WAC 173-900-925, Calculation of market shares, a commenter pointed out that Ecology failed to incorporate the entire passage from the 2013 legislation requiring implementation of a market share system to replace the original return share system. It was Ecology’s intent to use the exact legislative language for the portion of this section in question, so the rule language was amended as follows to match the language in the statute:

173-900-925(2) “Ecology will determine each manufacturer’s percentage of market share by dividing each manufacturer’s total pounds of CEPs sold in or into Washington by the sum total of all pounds of CEPs sold in or into Washington by all manufacturers.”

Response to Comments

Ecology accepted comments from October 19, 2015 through December 10, 2015. This section provides verbatim comments that we received during the public comment period and our responses. (RCW 34.05.325(6)(a)(iii))

Mark Johnson, VP Governmental Affairs, Washington Retail Association

“WAC 173-900-980 Titled “Public Outreach” sub section (5) pertaining to retailers is problematic.

“The addition to the requirement that retailers provide information to consumers describing where and how to recycle covered electronic products be provided in a “take home” form will be costly, difficult, and administratively burdensome for some retailers to comply with. For example: ensuring that employees place stickers on every item is difficult – what if they miss one? Is the store or employee liable – will there be a fine?

“Brochures, flyers, and stickers all have a cost to print and distribute. Additionally, brochures and flyers take up scarce retail space and are often dropped by customers in stores or parking lots. Reprogramming a point of sale system to include a notice on a receipt for a multi-state retailer to comply with a Washington state rule can be costly and complex. Most of these systems are national in nature. Additionally receipts become overly long with new requirements when other notices such as return policies need to be included.

“Unfortunately the more prescriptive the rule becomes the more difficult it is for retailers to comply with. Retailers are experts at communicating with their customers. Please allow us flexibility to get the message out.”

Response: There are several options identified in the rule for retailers to meet this requirement – flyers, shelf-tags, stickers, brochures, and information printed on the sales receipt. In addition, Ecology is open to other options suggested by a retailer that meet the requirement that a consumer be provided take-home information on where and how to recycle their old electronics when they purchase a new covered electronic product.

The clarification that retailers must provide consumers with recycling information in a “take-home” format rather than simply posting it at the check-out stand, for instance, is intended to ensure consumers get the information they want and need through the most effective avenue – the retailer – without creating a burden on the retailer. In fact, all major retailers of electronics are currently using one of these methods to meet this requirement. As a result, Ecology is confident this will result in a minimal disruption to the retail sector. Ecology will work with retailers individually to find a suitable option while providing maximum flexibility to help retailers supply consumers with this valuable information on how they can recycle their electronics.

“As an alternative, perhaps asking manufacturers of CEPs to include the recycling information at the time of production and/or packaging.”

Response: Washington does not have the capability to compel manufacturers who could be located anywhere in the world to meet state-specific requirements.

“Finally, I would suggest the inclusion of language in WAC 173-900-980 public outreach in a new subsection (8) to the effect: If a retailer of CEPs is found to be out of compliance with this chapter, the department will first give a warning and consultation to the retailer to assist them with compliance before any fine is issued.”

Response: Not only does Ecology fully agree with this suggestion, but the existing rule language for Retailer Requirements (WAC 173-900-700) states that if a retailer is found to be in violation of the public outreach requirements in WAC 173-900-980, Ecology must first issue a warning letter giving the retailer thirty days to meet the compliance requirements.

Suellen Mele, Program Director, Zero Waste Washington

“WAC 173-900-030 Definitions: Ecology is proposing to delete the definitions for “manufacturers whose CEPs are not directly sold in or into Washington state” and “manufacturers who previously manufactured.” This makes sense because those definitions include the term “return share” which will no longer be applicable and because those two categories of manufacturers do not have any market share and will not be required to pay into the stewardship program. However, later sections of the rules refer to those categories of manufacturers, e.g. they are included in Tier 7 of the Market Share Tiers Table 280 and in WAC 173-900-280 (5)(c) and (5)(d) as well as in (7)(b)(iii) and (iv) related to tier placement. It makes sense to me that Ecology would want to continue to keep a database on these businesses. However, for clarity, you might want to consider dropping Tier 7 in the Rules or consider including definitions amended to remove the references to return share.”

Response: Ecology has chosen to keep the definitions of the terms “Manufacturers whose CEPs are not sold directly in or into Washington state” and “Manufacturers who previously manufactured” and only strike the portions of these definitions related to return share. As a result, the changes to these definitions appear as follows:

“Manufacturers whose CEPs are not sold directly in or into Washington state” are those entities who never sold or offered to sell covered electronic products in or into Washington state. ~~and whose CEP brand names are identified on the return share list or their CEPs are returned for recycling by a covered entity.~~

“Manufacturers who previously manufactured” are those entities that previously manufactured covered electronic products but no longer do so. ~~and whose brand name of CEPs are identified on the return share list or their CEPs are returned for recycling by a covered entity.~~

“WAC 173-900-030 Definitions: Zero Waste Washington supports the change to the definition of “small business” to clarify that covered businesses must be in Washington state. However, it isn’t clear whether a covered business must employ less than 50 people in Washington state or less than 50 people throughout the U.S. Our suggestion is for covered entities to include businesses with less than 50 people employed in Washington state. A

possible adjustment to the language could be: “Small business” means a business in Washington state employing less than fifty people in Washington state.”

Response: Due to the potential for confusion (noted by two commenters) that was created by the proposed revision to the definition of the term “Small business” Ecology has opted to strike the proposed revision. As a result, the definition of “Small business” will read as follows:

“Small business” means a business employing less than fifty people.

“WAC 173-900-280 *Administrative fee*: To be consistent, Ecology might want to consider adjusting (2)(a)(ii): CEP ~~unit~~ sales data, either by unit or weight, supplied by manufacturers for brands they manufacture or sell.”

Response: Ecology agrees – these edits were made in the final rule language.

“WAC 173-900-370 *Authority or authorized party violations*: There appears to be a typo in (2)(b): Uses a collector, or transporter, that is not in “in compliance” status.”

Response: Ecology agrees – these edits were made in the final rule language.

“WAC 173-900-450 *Performance standards for collectors*: Part (4)(c) requires that a registered collector must cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter. Since return share sampling is no longer required, we suggest that this sentence be deleted unless there is some other reason that recycling programs need to conduct sampling.”

Response: Ecology agrees – these edits were made in the final rule language.

“WAC 173-900-800 *CEP recycling plan annual reports*: There appears to be a typo in (2)(g): An estimate of the weight of each type ~~of~~ of material recovered as a result . . .”

Response: Ecology agrees – these edits were made in the final rule language.

“WAC 173-900-925 *Calculation of market shares*: We recommend that section (2) include more detail using language similar to what was included in Sec 8(4)(b) of ESB 5699: Ecology will determine each manufacturer’s percentage of market share by dividing each manufacturer’s total pounds of CEPs sold in or into Washington by the sum total of all pounds of covered electronic products sold in or into Washington by all manufacturers.”

Response: Ecology agrees – these edits were made in the final rule language.

“WAC 173-900-980 *Public outreach*: Zero Waste Washington supports the clarification that a retailer who sells new CEPs must provide take-home information to consumers. This will help ensure that CEP owners have the information they need to recycle CEPs. The requirement should be feasible for retailers, given the number of ways it can be accomplished and the availability of artwork from Ecology that can be used on flyers, shelf-tags, stickers, etc.”

Response: Your support of this amendment is noted.

Lisa Sepanski, Program/Project Manager III, King County Solid Waste Division

In reference to the proposed amendment to the definition of a “small business,” i.e., “**Small business**” means a business in Washington state employing less than fifty people,” Ms. Sepanski’s comment was, “It is unclear whether this means <50 people company-wide or <50 people employed by the company that are located in Washington?”

Response: As noted, above, due to the proposed change creating confusion as to how to interpret it, Ecology has opted to strike the proposed revision to the definition of a “small business.”

Commenters of Record

Ecology received comments from the following stakeholders:

1. Mark Johnson, VP Governmental Affairs, Washington Retail Association
2. Suellen Mele, Program Director, Zero Waste Washington
3. Lisa Sepanski, Program/Project Manager III, King County Solid Waste Division

Appendix A: Copies of All Written Comments.

Dorsey, Kyle (ECY)

From: Suellen Mele <suellen@zerowastewashington.org>
Sent: Thursday, December 10, 2015 4:29 PM
To: Kuntz, Miles M. (ECY); ECY RE W2R Rulemaking
Cc: Haun, Christine (ECY)
Subject: Electronics Rules Comments
Attachments: Zero Waste WA Electronics Rule comments Dec 2015.pdf

Hi, Miles,

Thank you for this opportunity to provide comments on the proposed amendments to Chapter 173-900 WAC, Electronic Products Recycling Program. Zero Waste Washington supports these rule amendments that reflect the changes to the law made in 2013. My specific comments are attached. Feel free to contact me with any questions.

Suellen Mele,
Program Director
Zero Waste Washington
www.zerowastewashington.org
206-441-1790

From: Kuntz, Miles M. (ECY) [mailto:miku461@ECY.WA.GOV]
Sent: Friday, October 23, 2015 11:31 AM
To: WA-RECYCLES-ELECTRONICS@LISTSERV.WA.GOV
Subject: Notice of E-Cycle Rule Amendment

Dear Washington Recycles Electronics ListServ Subscribers,

The Washington State Dept. of Ecology (Ecology) is proposing to amend the rule governing the E-Cycle Washington program, Chapter 173-900 WAC, Electronic Products Recycling Program. The Rule Proposal Notice which contains important information about the amendment language and rulemaking process is attached. If you cannot see or open the attachment, please let us know and we will be happy to send it to you directly.

In 2013, the Washington state legislature made two changes to the law authorizing the E-Cycle program. These proposed amendments to the E-Cycle rule are in response to those changes. The first requires Ecology to determine electronics manufacturers' responsibility in the E-Cycle program based on market share by weight of the covered products sold in or into the state of Washington. This replaces the existing system of assigning manufacturer responsibility based on each manufacturer's share of the electronics in the recycling stream (return share).

Secondly, organizations operating recycling programs for electronic products (such as the WA Materials Management & Financing Authority) will be required to report additional details about their recycling operations including an estimate of each type of material recovered in the recycling process such as cathode ray tube glass, circuit boards, metals, and plastics and greater details on the revenues and costs of the recycling program.

In addition, the proposed rule amendment clarifies that retailers of electronic products covered by the law must provide take-home information on the recycling of electronics to the consumer at the time of purchase.

The web page where detailed information about this rule amendment can be found is <http://www.ecy.wa.gov/programs/swfa/rules/wac173900/1503time.html>. To see the complete text of the rule language with proposed amendments and other related publications, click on "Documents" on the left-hand side of this page.

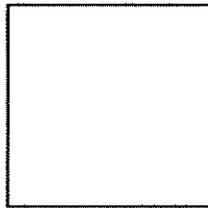
If you have any questions, please feel free to contact me.

Miles Kuntz

WA State Dept. of Ecology

Waste 2 Resources Program

(360) 407-7157 / Miles.Kuntz@ecy.wa.gov



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December 10, 2015

Miles Kuntz
Washington State Department of Ecology
Waste2Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Dear Miles,

Thank you for this opportunity to provide comments on the proposed amendments to Chapter 173-900 WAC, Electronic Products Recycling Program. Zero Waste Washington supports these rule amendments that reflect the changes to the law made in 2013. Specific comments and questions are included below.

Specific Comments

WAC 173-900-030 Definitions: Ecology is proposing to delete the definitions for “manufacturers whose CEPs are not directly sold in or into Washington state” and “manufacturers who previously manufactured.” This makes sense because those definitions include the term “return share” which will no longer be applicable and because those two categories of manufacturers do not have any market share and will not be required to pay into the stewardship program. However, later sections of the rules refer to those categories of manufacturers, e.g. they are included in Tier 7 of the Market Share Tiers Table 280 and in WAC 173-900-280 (5)(c) and (5)(d) as well as in (7)(b)(iii) and (iv) related to tier placement. It makes sense to me that Ecology would want to continue to keep a database on these businesses. However, for clarity, you might want to consider dropping Tier 7 in the Rules or consider including definitions amended to remove the references to return share.

WAC 173-900-030 Definitions: Zero Waste Washington supports the change to the definition of “small business” to clarify that covered businesses must be in Washington state. However, it isn’t clear whether a covered business must employ less than 50 people in Washington state or less than 50 people throughout the U.S. Our suggestion is for covered entities to include businesses with less than 50 people employed in Washington state. A possible adjustment to the language could be: “Small business” means a business in Washington state employing less than fifty people in Washington state.

WAC 173-900-280 Administrative fee: To be consistent, Ecology might want to consider adjusting (2)(a)(ii): CEP unit sales data, either by unit or weight, supplied by manufacturers for brands they manufacture or sell.

WAC 173-900-370 Authority or authorized party violations: There appears to be a typo in (2)(b): Uses a collector, or transporter, that is not in “in compliance” status.

WAC 173-900-450 Performance standards for collectors: Part (4)(c) requires that a registered collector must cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter. Since return share sampling is no longer required, we suggest that this sentence be deleted unless there is some other reason that recycling programs need to conduct sampling.

WAC 173-900-800 CEP recycling plan annual reports: There appears to be a typo in (2)(g): An estimate of the weight of each type ~~or~~ of material recovered as a result . . .”

WAC 173-900-925 Calculation of market shares: We recommend that section (2) include more detail using language similar to what was included in Sec 8(4)(b) of ESB 5699: Ecology will determine each manufacturer’s percentage of market share by dividing each manufacturer’s total pounds of CEPs sold in or into Washington by the sum total of all pounds of covered electronic products sold in or into Washington by all manufacturers.

WAC 173-900-980 Public outreach: Zero Waste Washington supports the clarification that a retailer who sells new CEPs must provide take-home information to consumers. This will help ensure that CEP owners have the information they need to recycle CEPs. The requirement should be feasible for retailers, given the number of ways it can be accomplished and the availability of artwork from Ecology that can be used on flyers, shelf-tags, stickers, etc.

Feel free to contact me with any questions or to further discuss any of these comments. Thank you again for this opportunity to provide input on the proposed rule amendment and for all your work to make this important product stewardship program a success.

Sincerely,



Suellen Mele,
Program Director
Zero Waste Washington
206-441-1790
suellen@zerowastewashington.org

Dorsey, Kyle (ECY)

From: Mark Johnson <mark.johnson@retailassociation.org>
Sent: Thursday, December 03, 2015 3:33 PM
To: Kuntz, Miles M. (ECY)
Subject: E-Waste Proposed Rule - WAC 173-900 Comments

December 3, 2015

Miles Kuntz
Waste 2 Resource Program
Department of Ecology

Dear Mr. Kuntz:

I am writing on behalf of the Washington Retail Association and its members representing over 3,500 storefronts in our state, many of which sell covered e-waste products such as televisions, computers and monitors.

I have shared the proposed rule changes to Washington Administrative Code Chapter 173-900 with my affected members and would like to convey their comments.

While my members are either neutral or even supportive on a majority of the proposed changes, one section has caught their attention and concern.

WAC 173-900-980 Titled "Public Outreach" sub section (5) pertaining to retailers is problematic.

The addition to the requirement that retailers provide information to consumers describing where and how to recycle covered electronic products be provided in a "take home" form will be costly, difficult, and administratively burdensome for some retailers to comply with. For example: ensuring that employees place stickers on every item is difficult – what if they miss one? Is the store or employee liable – will there be a fine?

Brochures, flyers, and stickers all have a cost to print and distribute. Additionally, brochures and flyers take up scarce retail space and are often dropped by customers in stores or parking lots. Reprogramming a point of sale system to include a notice on a receipt for a multi-state retailer to comply with a Washington state rule can be costly and complex. Most of these systems are national in nature. Additionally receipts become overly long with new requirements when other notices such as return policies need to be included.

Unfortunately the more prescriptive the rule becomes the more difficult it is for retailers to comply with. Retailers are experts at communicating with their customers. Please allow us flexibility to get the message out.

As an alternative, perhaps asking manufacturers of CEPs to include the recycling information at the time of production and/or packaging.

Finally, I would suggest the inclusion of language in WAC 173-900-980 public outreach in a new subsection (8) to the effect: If a retailer of CEPs is found to be out of compliance with this chapter, the department will first give a warning and consultation to the retailer to assist them with compliance before any fine is issued.

The Washington Retail Association values its relationship with the Department of Ecology and stands ready to work with you on this and other issues

Thank you.

Sincerely,

Mark Johnson

*Mark Johnson
Vice President Government Affairs
Washington Retail Association*

*Mailing: PO Box 2227
Olympia, WA 98507-2227
Physical: 618 Quince Street SE
Olympia, WA 98501
360-943-9198 x15
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mark.johnson@retailassociation.org*



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Dorsey, Kyle (ECY)

From: Sepanski, Lisa <Lisa.Sepanski@kingcounty.gov>
Sent: Thursday, December 10, 2015 4:40 PM
To: Kuntz, Miles M. (ECY)
Cc: Cole, Lauren
Subject: Comments on Updates to Washington's E-Cycle program
Attachments: p1503a LMS.pdf

Hi Miles,

Attached is my comment on the rules updating the Electronic Product Recycling Law on behalf of King County SWD. It is in the comment bubble on page 5.

Let me know if you have any questions.

Thanks,

Lisa Sepanski – Program/Project Manager III

King County Solid Waste Division • Recycling and Environmental Services • Phone: 206-477-5286
201 S. Jackson St, Suite 701, Seattle WA 98104 • www.kingcounty.gov/solidwaste
Waste Prevention • Resource Recovery • Waste Disposal

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.

"**Cathode ray tube**" or "**CRT**" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"**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.

"**Charity**" means an organization that qualifies for a taxation exemption under section 501 (c) (3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c) (3)).

"**Collection services**" include drop-off collection sites or alternative collection services such as residential at-home pick-up services, curbside collection, or premium services such as those provided when performing system up-grades at small businesses.

"**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 the registration and collector performance standard requirements in Part IV, WAC 173-900-400 through 173-900-490.

"**Component**" includes, but is not limited to, televisions, computers, laptops, portable computers, monitors, keyboards, mice, and external hard drives.

"**Computer**" means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. "**Computer**" does not include any of the following:

(a) ~~((A machine capable of supporting two or more work stations simultaneously for computing;~~

~~(b))~~) Computer servers marketed to professional users; or

~~((c))~~) (b) Retail store terminals or cash registers, used at customer checkout in the retail industry.

"**Contract for services**" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, processing 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" or **"CEP"** 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) Any 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) Any video display device 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 designed for nonportable use.

"Direct processor" means a processor contracted with a CEP recycling plan to provide processing services for the plan.

"Ecology" means the department of ecology.

"Electronic product" includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

"Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer as described in Part IX, WAC 173-900-930, 173-900-940, and 173-900-950.

"Existing manufacturers" are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, ((as-ef)) on or before December 8, 2006.

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

"Implement" or **"plan implementation"** means that collection, transportation, processing, and recycling services and other plan requirements are fully operational as described in the approved CEP recycling plan.

"Independent plan" means a plan for the collection; transportation, processing 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 covered electronic products sold in or into Washington state;

(b) Imports an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America; ((or))

(c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer((or

~~**"Manufacturers whose CEPs are not directly sold in or into Washington state"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose CEP brand names are identified on the return share list or their CEPs are returned for recycling by a covered entity.~~

~~**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are identified on the return share list or their CEPs are returned for recycling by a covered entity);~~
or

(d) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the entity that assumes responsibility fails to comply, the manufacturer as defined under (a) through (c) of this subsection remains fully responsible.

"Market share" means a percent of covered electronic products by weight sold in Washington state representing the manufacturer's share of all covered electronic products sold in Washington state assigned to a registered manufacturer based on the calculations in WAC 173-900-280.

"Material" means processed CEPs, components, and parts.

"Materials of concern" are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

"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 consecutive 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 consecutive 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 only (a) or (b) of this subsection is considered an existing manufacturer and not a new entrant for purposes of this chapter.

"New manufacturers to Washington state" are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after December 8, 2006. These man-

ufacturers become existing manufacturers for all program years after participation the first year.

"Nonprofit organization" means an organization that qualifies for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)).

"Offering for sale" means providing electronic products for purchase, in or into Washington state, 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, or is a brand for which ecology cannot identify an owner.

"Part" means whole pieces out of CEPs, or components such as but not limited to processors, chips, or cathode ray tubes.

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

"Plan" means a CEP recycling plan.

"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)) market share" means the sum of the ((return)) market shares of each manufacturer participating in that plan.

"Portable computer" is a computer.

"Preferred status" means that a direct processor is conforming with the performance standards for electronic product recycling as described in ecology's publication *"Environmentally Sound Management and Performance Standards for Direct Processors."*

"Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling requirements imposed by the covered entity in excess of those required in this chapter. (("))Premium service((")) does not include curbside service.

"Processing facility" means a facility where the processing of CEPs for a plan is conducted by a direct processor.

"Providing processing services" means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and preparing those materials for reclaiming or reuse in accordance with processing standards established by this chapter.

"Processor" means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter; and

(b) That may salvage CEPs, components, and parts to be used ((in new products)) as or in a salvaged or restored CEP.

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

"Program" means the collection, transportation, processing and recycling activities conducted to implement an independent plan or the standard plan. Programs can vary for different areas of the state.

"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.

"Residual" means leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

"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, as is, for the same purpose for which it was originally purchased.

"Sell" or **"sold"** means an electronic product is purchased regardless of sales method.

"Small business" means a business in Washington state 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, processing 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 unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

"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 displays, 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.

WAC 173-900-200 Manufacturers who must register and participate in a CEP recycling plan. (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:

**Table 200
Type of Manufacturer**

Type of Manufacturer		Initial Registration Due Date	Must be Listed as a Plan Participant By:
Existing manufacturers	Those entities whose CEPs are offered for sale or sold in or into Washington state, as of December 8, 2006.	On or before January 1, 2007.	No later than February 1, 2008.
New manufacturers to Washington state	Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after December 8, 2006.	Prior to the offering for sale of their CEPs in or into WA.	Within thirty days of ecology approving registration.
((Manufacturers whose CEPs are not directly sold in or into Washington state	If a CEP brand is identified in the Washington state return share list or is returned for recycling by a covered entity, a manufacturer must register even if that manufacturer has never sold or offered for sale the identified brands directly in or into Washington state.	Within sixty days of receiving notice from ecology that the manufacturer must register.	Within thirty days of ecology approving registration.
Manufacturers who previously manufactured	Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are identified in the Washington state return share list or their CEPs are returned for recycling by a covered entity.	Within sixty days of receiving notice from ecology that the manufacturer must register.	Within thirty days of ecology approving registration.))

(2) A manufacturer is registered under this chapter when:

(a) Ecology has determined the manufacturer's registration form is complete and accurate; and

(b) The manufacturer has paid the required administrative fee (see WAC 173-900-280).

(3) 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.

(4) A manufacturer must participate in either the standard plan or, if approved, an independent plan.

(5) In the event that the plan fails to meet the manufacturers' obligations under this chapter, each manufacturer participating in the plan retains responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of the manufacturer's equivalent share of CEPs as described in this chapter.

WAC 173-900-215 Initial CEP manufacturer registration.

Step 1: Complete the manufacturer registration form.

(1) CEP manufacturers must use the online or paper manufacturer registration form provided by ecology.

(2) A manufacturer must provide all of the following information to ecology:

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

(b) The manufacturer's brand names of CEPs, including:

(i) All brand names sold in Washington state in the past, including the years each brand was sold;

(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name;

(c) All brand names of electronic products for which the registrant assembles but does not have legal ownership of the brand name placed on the product;

(d) 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;

(e) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo, mark, or image and a general description of the logo, mark, or image as it appears on the manufacturer's electronic products;

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

(g) CEP recycling plan participation information.

Step 2: Submit the manufacturer registration form.

(3) The individual responsible for implementing the manufacturer's requirements under this chapter must sign the form. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(4) The manufacturer must submit the form using one of the three options below:

(a) The online registration form;

(b) The original paper version through the U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Program

P.O. Box 47600

Olympia, WA 98504-7600

(c) The original paper version through a courier:

Department of Ecology

Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Program

300 Desmond Drive

Lacey, WA 98503

Step 3: Pay the administrative fee.

(5) The following manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-280 and ecology's web site for administrative fee schedule):

- (a) Existing manufacturers;
- (b) New manufacturers.

(6) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(7) **New manufacturers** must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(8) **Existing manufacturers** must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(9) The manufacturer must send payment to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
(~~Electronic Product Recycling Program~~) Cashiering Unit
P.O. Box ((~~5128~~
~~Lacey, WA 98509-5128~~)) 47611
Olympia, WA 98504-7611

For Courier to:

Department of Ecology
Attn: ((~~Fiscal~~)) Cashiering
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-230 Annual manufacturer registration. (1) After initial registration, to remain registered, manufacturers must submit a registration form and required administrative fee to ecology each year.

(2) Annual registration is due no later than January 1 of each calendar year for the next program year.

(3) The manufacturer must submit the annual registration form using one of the options below:

- (a) Submit the manufacturer's online registration form;
- (b) Submitting a paper version through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review manufacturer registration forms submitted for annual registration under the process described in WAC 173-900-220.

(5) For annual registrations, if ecology denies the manufacturer's registration form, the manufacturer will be removed from the "manufacturer registration list."

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-240 Updates to manufacturer registration. (1) If there are any changes to the information on the manufacturer's registration approved by ecology, a registered manufacturer must submit an updated form within fourteen days of when any change occurs.

(2) The manufacturer must submit updates using one of the options below:

(a) Updating the manufacturer's registration information using the online form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review manufacturer's updated registration forms under the process described in WAC 173-900-220.

WAC 173-900-255 Manufacturer violations. (1) A manufacturer is in violation of this chapter when there is a:

- (a) Registration violation;
- (b) Labeling violation; or
- (c) Plan violation(~~(~~or~~~~);
- ~~(d) Return share violation).~~

Manufacturer registration violations:

(2) A manufacturer is in "registration violation" of this chapter if any of the following occurs:

(a) The manufacturer does not submit an updated registration form within fourteen days of changes in the registration information.

(b) A manufacturer offers for sale or sells its brand of CEPs in or into Washington state and:

(i) The manufacturer's brand is not listed as in "in compliance" or "pending" status on the "manufacturer registration list"; or

(ii) The manufacturer's brand name is not listed as part of the manufacturer's registration.

(c) A retailer offers for sale or sells a manufacturer's brand of CEP in or into Washington state and on the date the products were ordered from the manufacturer or their agent:

(i) The manufacturer's brand was not listed as in "in compliance" or "pending" status on the "manufacturer registration list";

(ii) The brand name of the CEP was not listed as in "in compliance" or "pending" status on the "manufacturer registration list."

(3) A manufacturer may notify retailers, in writing, if the manufacturer's brand of CEPs cannot be offered for sale or sold in or into Washington state. The manufacturer must provide ecology a copy of this notice to avoid a registration violation.

(4) Each unregistered CEP unit offered for sale or sold is a separate violation by the manufacturer.

Manufacturer labeling violation:

(5) A manufacturer is in "labeling violation" of this chapter if any of the following occurs:

(a) The manufacturer offers for sale or sells a manufacturer's electronic product in or into Washington state that does not have a permanently affixed or readily visible label with the manufacturer's brand name.

(b) A retailer offers for sale or sells the manufacturer's electronic product in or into Washington state that the manufacturer has not labeled with the manufacturer's brand name.

(6) Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation by the manufacturer.

Manufacturer plan violation:

(7) Starting February 1, 2008, a manufacturer is in "plan violation" of this chapter if any of the following occurs, the manufacturer:

(a) Has not met the manufacturer's financial obligations to its plan; or

(b) Is not participating in a plan or complying with the manufacturer's responsibilities as described in their ecology approved plan; or

(c) Is participating in a plan that is not fully implemented and the authority or authorized party has not taken action approved by ecology to correct violations.

~~((Return share violation:~~

~~(8) It is a "return share violation" when the manufacturer's brands of CEPs are identified on ecology's return share list posted on the agency web site and:~~

~~(a) Within sixty days of receiving notice from ecology, the manufacturer has not registered with ecology; or~~

~~(b) Within thirty days of registering is not participating in a plan.))~~

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-260 Warnings and penalties for manufacturer violations.

Table 260
Manufacturer Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Labeling Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Plan Violation	Warning Letter	Up to \$10,000	Up to \$10,000
((Return Share Violation	Warning Letter	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.))

Warning letter:

(1) When ecology issues a written warning letter via certified mail, for any violation, the warning will include a copy of the requirements to let the manufacturer know what the manufacturer must do to be in compliance status.

Penalties:

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of re-

ceipt of the warning, ecology will assess a first penalty, as defined in Table 260 above and do one of the following:

- (a) Change the manufacturer's status to "in violation";
- (b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 260 no more often than every thirty days for the same violation.

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

Appeals:

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-270 Corrective actions for manufacturer violations.

(1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

Corrective actions for manufacturer registration violations:

- (2) To correct a registration violation the manufacturer must:
 - (a) Provide evidence that the violation has been corrected; and
 - (b) Pay or settle any penalties to ecology.

Corrective actions for manufacturer labeling violations:

- (3) To correct a labeling violation the manufacturer must:
 - (a) Meet the requirements in WAC 173-900-210;
 - (b) Correct any other violations; and
 - (c) Pay or settle any penalties due to ecology.

Corrective actions for plan violations:

- (4) To correct a plan violation the manufacturer must:
 - (a) Join and participate in an approved plan or a plan currently under review for approval;
 - (b) Correct any other violations; and
 - (c) Pay or settle any penalties due to ecology.

~~((Corrective actions for return share violations:~~

- ~~(5) To correct a return share violation the manufacturer must:
 - ~~(a) Join and participate in an approved plan or a plan currently under review for approval;~~
 - ~~(b) Correct any other violations; and~~
 - ~~(c) Pay or settle any penalties due to ecology-))~~~~

WAC 173-900-280 Administrative fee. (1) Legislative mandate.

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) Data.

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer ~~((unit))~~ sales, either by unit or weight. Ecology will use market share and/or CEP ~~((unit))~~ sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

(i) Generally available market research data;

(ii) CEP unit sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) CEP ~~((unit))~~ sales data, either by unit or weight, supplied by retailers for brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

(3) Distribution:

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated ~~((unit))~~ sales, either by unit or weight, given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it ~~((, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-215) and join a plan))~~.

Table 280
Market Share Tiers

Tiers	Manufacturer's Market Share
Tier 1	5% or greater
Tier 2	1% to < 5%
Tier 3	0.1% to < 1%
Tier 4	0.03% to < 0.1%
Tier 5	0.01% to < 0.03%
Tier 6	< 0.01%
Tier 7	Manufacturers who previously manufactured Manufacturers whose CEPs are not directly sold in or into Washington state

(4) **Calculating the administrative fee:** Ecology will calculate the tiers based on the combined ~~((unit))~~ sales, either by unit or weight, of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recy-

cling program by the legislature. Year one includes start-up costs and it funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

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

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

(ii) The total administrative fee amount will be adjusted (~~biannually~~) biennially by the fiscal growth factor (FGF) as calculated under chapter 43.135 RCW (Fee_{FGF}).

(5) Tier placement:

(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received as described in subsection (2) of this section. If ecology has no data, ecology will place the manufacturer in (~~Tier 4~~) the same tier it was assigned in the previous year.

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. After the initial program year, ecology will treat these manufacturers as an existing manufacturer (see (a) of this subsection).

(c) **Manufacturers whose CEPs are not directly sold in or into Washington state:** Ecology will assign these manufacturers to Tier 7.

(d) **Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

(6) Publication of tier assignment:

(a) **Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

(b) **Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** For program years 2008 through 2015, ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year. For program year 2016 and future years, ecology will publish the preliminary tier schedule on ecology's web site by June 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) For program years 2008 through 2015, manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.) For program year 2016 and future years, manufacturers will have until July 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier.

(ii) **Final tier schedule:** For program years 2008 through 2015, ecology will publish the agency's final tier schedule on ecology's web

site by November 1 of each calendar year. For program year 2016 and future years, ecology will publish the agency's final tier schedule on ecology's web site by August 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) **Tier reassignment requests:**

(a) **Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their online manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

(i) For program years 2008 through 2015, existing manufacturers must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection. For program year 2016 and future years, existing manufacturers must submit the request on or before July 1 prior to the next billing cycle and must follow the steps in WAC 173-900-925 (5) and (6).

(ii) **New manufacturers** to Washington state may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) **Manufacturers whose CEPs are not directly sold in or into Washington state** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(c) **Submitting tier reassignment requests:** To request tier reassignment, the manufacturer must ~~((do one of the following:~~

~~(i) Submit or update their online manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or~~

~~(ii) Send a letter to ecology including the number of units of CEPs sold in the prior calendar year in or into Washington state.~~

~~(iii))~~ follow the steps in WAC 173-900-925 (5) and (6). If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

~~((iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing including a basis for the alterna-~~

~~tive unit sales number and may request this information is certified by a certified public accountant. Ecology may request this if the CEP unit sales data results in a different market share than the national data collected and/or the information changes the tier assignment distribution.)~~

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-300 Covered electronic product (CEP) recycling plans. (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs produced by any manufacturer from covered entities in Washington state.

(2) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(3) The authority or authorized party of a plan must:

(a) Provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled.

(b) Ensure that any CEP that is reused after being received by the processor is not included in any weight counts or used to satisfy an equivalent share.

(4) Collection, transportation, processing, and recycling systems and services for a plan:

(a) To implement the program described in the CEP recycling plan the authority or authorized party must only use the services of registered collectors, transporters, and processors that are in "in compliance" status.

(b) Processing services: The authority shall accept and use any processor that:

(i) Meets the requirements of this chapter; and

(ii) Meets any requirements described in the authority's operating plan or through contractual arrangements.

(c) Collection services: The authority of the standard plan must accept CEPs from registered collectors who meet the requirements of this chapter. The authority must compensate registered collectors for the reasonable costs associated with collection of CEPs. If a collector offers premium or curbside services, the compensation paid by the standard plan does not have to cover additional costs associated with those services.

(d) A plan must provide for the processing of large quantities of CEPs at no charge to small businesses, small governments, charities, and school districts.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-310 An independent plan. (1) A single manufacturer or a group of manufacturers may submit an independent plan to ecology for approval if:

(a) ~~((The manufacturers participating in the proposed plan represent at least five percent return share of CEPs))~~ For program year 2016 and all subsequent program years, the manufacturers participating in the proposed plan represent at least five percent market share of CEPs; and

(b) No manufacturer participating in the proposed plan is a new entrant or a white box manufacturer.

(2) For program year 2016 and all subsequent program years, if an independent plan does not represent five percent ((return)) market share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(3) **Individual independent plan:** A single manufacturer submitting an independent plan to ecology is responsible for collecting, transporting, processing, and recycling its equivalent share of CEPs.

(4) **Collective independent plan:** Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the collective independent plan.

(5) Individual or collective groups of manufacturers submitting an independent plan must designate an "authorized party" that is responsible for submitting the independent plan to ecology. A letter of certification from each of the manufacturers designating the authorized party must be submitted to ecology together with their independent plan.

(6) Prior to beginning implementation of an independent plan, the authorized party for that plan must receive plan approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-325 CEP recycling plan submittal, approval, and implementation.

Step 1: Format of the CEP recycling plan.

(1) All plans must use the "CEP recycling plan template" provided by ecology.

(2) The authority or authorized party must submit paper copies of their plan in a three-ring binder so that individual pages can be submitted and replaced when updates or revisions are required.

Step 2: Submit the CEP recycling plan.

(3) The authority or authorized party must submit one paper copy and one usable electronic copy of their plan to ecology.

(4) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(a) The one paper copy must be submitted by mail to one of the following addresses:

For U.S. Postal Service:
Department of Ecology
Electronic Product Recycling

~~((Solid Waste and Financial Assistance))~~ Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

For Courier:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~ Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(b) The electronic copy may be submitted by e-mail or other electronic format usable by ecology that allows electronic editing and commenting by ecology.

(5) The following section of a plan may be submitted to ecology for review and approval separate from the rest of the plan:

- Standard plan participant assessment of charges or apportionment of costs.

When submitting a section separate from the rest of the plan, the authority must follow the process described in this section.

Step 3: Approval process.

(6) Within ninety days after receipt of a complete plan, ecology will determine whether the plan complies with this chapter. Ecology will determine if the plan is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) Ecology then has an additional ninety days to review the new or revised plan.

(c) Ecology will approve plans for no more than five years. If an independent plan does not represent five percent (~~return~~) market share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(7) **Approval criteria:** Ecology will consider the following when reviewing a plan for approval:

(a) The plan submittal dates were met;

(b) The plan meets the requirements in this chapter;

(c) The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) When reviewing a plan for service level, ecology may contact the local government or community identified in the plan; and

(e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-900-355).

(8) Ecology may ask for additional information or clarification during the review of a plan.

(9) Ecology will post all plans on the agency web site.

(10) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-345 Changing CEP recycling plan participation. (1) After January 1, 2008, no manufacturer may change CEP recycling plans for program year 2009.

(2) For program year 2010 and thereafter, registered CEP manufacturers may change participation in plans if the manufacturer meets the requirements in this section.

The following is the process for changing plan participation:

(3) The plan the manufacturer is joining must, by August 1 prior to the program year for which the change will take effect, submit:

(a) For an existing plan, an update or revision under WAC 173-900-335; or

(b) For a new independent plan, a plan that meets the requirements of WAC 173-900-310.

(4) Ecology will review the plan under the process described in WAC 173-900-325 or 173-900-335, as appropriate. If approved, ecology will send notice, via certified mail, to:

(a) The manufacturer requesting the change; and

(b) The authorized party(ies) and the authority affected by the change.

(5) If ecology does not approve the submitted plan or plan update by January 1 of the program year for which the change was submitted, the change cannot be implemented that program year. Ecology may still review the plan or plan update for approval for the following program year.

(6) Within fourteen days of receiving plan approval notice from ecology, the manufacturer must submit an updated registration form to ecology (see Part II, WAC 173-900-240).

(7) Within sixty days of receiving the notice, the plan the manufacturer left must submit a plan revision to ecology that meets the requirements in WAC 173-900-335.

(8) If an independent plan does not represent five percent (~~return~~) market share after the manufacturer leaves the plan, the independent plan has until the end of the following program year to increase participation to represent the five percent (~~return~~) market share. If the independent plan does not represent five percent (~~return~~) market share at that time, the remaining members will then become members of the standard plan (see WAC 173-900-360).

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-360 Dissolving an independent plan. (1) If an independent plan does not represent five percent (~~return~~) market share for two consecutive program years, ecology will dissolve the independent plan.

(2) After August 1 but prior to the start of the next program year, ecology will dissolve any independent plan that does not meet the independent plan criteria in WAC 173-900-310.

(a) Ecology will send notice, via certified mail, informing all participants in the plan that they must join the standard plan and update their manufacturer registration form (see Part II, WAC 173-900-240).

(b) If a manufacturer does not submit their updated registration form within fourteen days of receiving the notice, it is a registration violation (see WAC 173-900-255) and ecology will follow the warning and penalty procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 of this chapter.

(3) If ecology determines that this change may significantly alter the program described in the standard plan, the authority must submit an updated plan to ecology (see WAC 173-900-335).

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-370 Authority or authorized party violations. (1)

The authority or authorized party is in violation of this chapter when there is:

- (a) A plan violation; or
- (b) An annual report violation; or
- (c) A performance standards violation.

(2) **Plan violation:** As of January 1, 2009, it is a plan violation if the authority or authorized party:

(a) Does not implement the plan so that the plan meets the requirements in this chapter (see Part III of this chapter);

(b) Uses a collector, transporter, that is not in "in compliance" status; or

(c) Uses a direct processor for processing services that is not registered or has not updated their registration as required under this chapter.

~~((d) Does not implement return share sampling as required in WAC 173-900-900.)~~

(3) **Annual report violation.**

As of March 1, 2010, it is an authority or authorized party violation if the plan's annual report is not submitted to ecology and approved under WAC 173-900-800.

(4) **Performance standards violation.**

As of January 1, 2009, it is an authority or authorized party "performance standards" violation if the plan uses a direct processor that does not meet the minimum performance standards in WAC 173-900-650.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-410 Initial registration as a CEP collector.

Step 1: Complete the collector registration form.

(1) Each collector must complete the online or paper registration form provided by ecology and must include all of the following:

- (a) Name of individual responsible for implementing the collector requirements;
- (b) Contact and location information;
- (c) Business license information;
- (d) Permit information, when applicable;
- (e) Description of services provided; and
- (f) Geographic areas where services are provided.

Step 2: Submit the collector registration form.

(2) The individual responsible for implementing the collector requirements must sign the form. Signing the form means the collector has provided accurate and complete information on the form and will comply with the collector performance standards in WAC 173-900-450.

(3) The collector must submit the form using one of the following options:

- (a) Online registration;
- (b) Submitting the original paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Program

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling

((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Program

300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-430 Annual renewal of collector registration. (1) A collector must submit its annual registration renewal form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a collector does not submit an annual registration renewal form, ecology will remove the collector from the "collector registration list."

(3) The collector must submit their annual registration form using one of the options below:

- (a) Submit the online registration form;
- (b) Submit a paper version of a form through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review collector registration forms submitted for annual registration under the process described in WAC 173-900-420.

(5) For annual registrations, if ecology denies the collector's registration form, ecology will remove the collector from the "collector registration list." In order to resume collecting CEPs for a plan, the collector must resubmit an initial registration (WAC 173-900-410) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-440 Updates to collector registration. (1) A registered collector must submit an updated registration form to ecology within fourteen days of any change to the information provided in its registration form.

(2) The collector must submit updates to its registration form by using one of the options below:

(a) Updating the collector's registration information using the online form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review collector updated registration forms under the process described in WAC 173-900-420.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-450 Performance standards for collectors. (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:

(a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;

(b) Curbside collection services to cover the costs not paid by the standard or independent plans; or

(c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

(2) A registered collector must not process CEPs, or components, for purposes of recycling or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(4) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

(b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.

(c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.

(d) Provide enclosed storage areas with impervious floors so that the CEPs and components collected are protected from the weather.

(e) Collectors must post, in a readily visible location, information that can be shared with covered entities about how and where CEPs received into the program are recycled. Recycling information is provided by the plan(s) for which the collector is providing services.

(f) If a registered collector also gleans CEPs or components for reuse, they must notify the covered entity.

~~(5) ((A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.~~

~~(6))~~ A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

~~((7))~~ (6) No entity shall claim to be collecting CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan. Except fully functional CEPs and components may be gleaned for reuse. Collectors shall not include gleaned CEPs and components for reuse in the weight totals for plan compensation.

~~((8))~~ (7) A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if

the collector's days/hours of operations change or the collector changes the CEPs collected.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-510 Initial registration as a CEP transporter.

Step 1: Complete the transporter registration form.

(1) Each transporter must use the 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.

Step 2: Submit the registration form.

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.

(3) The transporter must submit the form using one of the options below:

- (a) Online registration;
- (b) The original paper version through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Pro-
gram
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Pro-
gram
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-530 Annual renewal of transporter registration. (1)

A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a transporter does not submit a renewal registration form, ecology will remove the transporter from the "transporter registration list."

(3) The transporter must submit its annual registration form using one of the options below:

- (a) Submit the online registration form;
- (b) Submit a paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Program

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Program

300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review transporter registration forms submitted for annual registration under the process described in WAC 173-900-520.

(5) For annual registrations, if ecology denies the transporter's registration form, ecology will remove the transporter from the "transporter registration list." In order to resume transporting CEPs for a plan, the transporter must resubmit an initial registration (WAC 173-900-510) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-540 Updates to transporter registration. (1) A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

(2) The transporter must submit updates to its registration form by using one of the options below:

- (a) Updating the transporter's registration information using the online form;
- (b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Program

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:
 Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance)) Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

(3) Ecology will review transporter updated registration forms under the process described in WAC 173-900-520.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-550 Performance standards for transporters. (1) All registered transporters must comply with all applicable laws, rules, and local ordinances.

(2) ((A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

+3)) A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

((+4)) (3) Transporters must deliver CEPs for a plan to registered direct processors.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-610 Initial registration for direct processors.

Table 610
 Direct Processor Registration Types

Type of Registration	Definition	Due Date
Initial registration	Direct processor is not currently registered with ecology under this chapter.	Submit registration form to ecology at any time.
Annual renewal	Direct processor is currently registered with ecology under this chapter.	Submit renewal form to ecology between June 1 and September 1 of each year.

At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

Step 1: Complete a direct processor registration form.

(1) Each direct processor must complete a registration form which includes all the following:

- (a) Contact and location information;
 - (b) Business license information;
 - (c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;
 - (d) Description of services provided;
 - (e) Geographic areas from which electronic products are accepted;
- and
- (f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

Step 2: Submit the direct processor registration form.

(2) The person responsible for implementing the direct processor requirements under this chapter must sign the registration form. The signature certifies the company has provided accurate and complete information on the form and is complying with all applicable state, local, and national laws and regulations.

(3) The person must submit the form to ecology. When mailing in an original paper copy, the person must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~) Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-630 Annual renewal of direct processor registration.

(1) Direct processors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If an annual renewal registration form is not received during this time period, and subsequently approved by ecology, the direct processor will be removed from the "direct processor registration list" and must not process CEPs for a plan until a registration form is submitted and approved.

(3) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review direct processor registration forms submitted for annual renewal under the process described in WAC 173-900-620.

(5) For annual registrations, if ecology denies the direct processor's registration form, ecology will remove the direct processor from the "direct processor registration list." In order to resume processing services for a plan, the processor must resubmit an initial registration (WAC 173-900-610) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-640 Updates to direct processor registration. (1) A direct processor must submit an updated registration form to ecology thirty days prior to providing new, additional, or reducing processing services for a plan.

(2) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
((~~Solid Waste and Financial Assistance~~)) Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review direct processor updated registration forms under the process described in WAC 173-900-620.

WAC 173-900-800 CEP recycling plan annual reports. (1) By March 1, 2010, and each program year thereafter, the authority and each authorized party must file an annual report with ecology for the preceding year's program. Ecology will review the report and notify the authority or authorized party of any deficiencies that need to be addressed.

(2) **Annual report content:** The annual report must include the following information:

(a) The total weight in pounds of each type of CEP((s)), including orphans, for the preceding program year including documentation verifying collection and processing of that material for:

(i) CEPs collected, reported by county, not including CEPs gleaned for reuse;

(ii) CEPs recycled;

(iii) Nonrecycled residuals from CEPs; and

(iv) Final destination for the processing of CEPs and components and final destination for disposal of residuals.

(b) The total weight in pounds of CEPs received from each non-profit charitable organization primarily engaged in the business of reuse and resale used by the plan;

(c) The total weight in pounds of CEPs that were received in large quantities from small businesses, small governments, charities and school districts;

(d) The collection services provided in each county and for each city with a population greater than ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(e) Processor information:

(i) A list of all direct processors used;

(ii) The weight of CEPs processed by each direct processor;

(iii) A description of the processes and methods used by each direct processor to recycle the CEPs including a description of the processing and facility locations; and

(iv) A compliance audit report meeting the requirements in WAC 173-900-365 for each direct processor listed in the authority or authorized party's ecology approved plan;

(f) A list of subcontractors used by the direct processor including their facility addresses;

(g) An estimate of the weight of each type or material recovered as a result of the processing of recycled CEPs including, at a minimum:

(i) Cathode ray tube glass;

(ii) Circuit boards;

(iii) Batteries;

(iv) Mercury containing devices;

(v) Plastics; and

(vi) Metals;

(h) An estimate of the percentage, by weight, of all CEPs that ultimately are reused, recycled, or end up as residual waste that is disposed;

(i) Educational and promotional efforts that were undertaken to inform covered entities about where and how to reuse and recycle their CEPs;

~~((h))~~ (j) For program years 2009 through 2014, the results of sampling as required in WAC 173-900-900;

~~((i))~~ (k) The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the organization for economic cooperation and development or the European Union;

~~((j))~~ (l) The list of manufacturers that are participating in the plan;

~~((k))~~ (m) A description of the program revenues and costs, including:

(i) The total cost of the program; and

(ii) The average cost of the program per pound of CEP collected;

(n) A detailed accounting of the following costs of the program:

(i) Program delivery, including:

(A) Education and promotional efforts;

(B) Collection;

(C) Transportation;

(D) Processing and labor; and

(ii) Program administration;

(o) A description of the methods used by the program to collect, transport, recycle, and process CEPs;

(p) Signature of the authority or the authorized party;

~~((l))~~ (q) Any other clarifying information deemed necessary by ecology to determine compliance with this chapter; and

~~((m))~~ (r) Documentation of work done with the processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(3) **Submittal:** The authority or authorized party must submit ~~((+))~~ one electronic copy in a format usable by ecology that allows electronic editing and commenting ~~((+ and~~

~~(b) Two paper copies 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~~

~~((c) Faxes are not accepted)).~~

(4) All reports must use the "CEP recycling report template" provided by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program or the report.

(a) Within five business days of receipt of the report, ecology will notify the authority or authorized party that the report has been received and it is under review.

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent (~~via certified mail~~) electronically or by U.S. Postal Service.

(c) If ecology determines that additional information is needed, the authority or authorized party must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If ecology determines that there are deficiencies in the authority's or authorized party's program, the authority or authorized party must submit an updated plan to ecology following the process in WAC 173-900-335.

(6) Ecology will post all reports on the agency web site.

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-810 Local government and community satisfaction reports. (1) Starting January 1, 2010, local governments and local communities are encouraged to submit an annual satisfaction report to ecology by March 1 of each calendar year.

(2) The entity responsible for preparing the solid waste management plan for an area is responsible for submitting the satisfaction report to ecology.

(3) **Report content:** If submitting a report to ecology, the report must include information about local government and community satisfaction with the services provided by plans in their community including:

(a) Accessibility and convenience of services;

(b) How services are working in their community;

(c) What services are not working and why;

(d) Suggestions for improvements to the services being provided by plans;

(e) Description of public outreach and education; and

(f) Any other information the local government determines is important to include.

(4) **Submittal:** If submitting a report, the submitting entity must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; (~~and~~) or

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology

Electronic Product Recycling

(~~Solid Waste and Financial Assistance~~) Waste 2 Resources Program

P.O. Box 47600

Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~ Waste 2 Resources Pro-
gram
300 Desmond Drive
Lacey, WA 98503

(5) All reports must use the "local government satisfaction report template" prescribed by ecology.

(6) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the submitting entity of any need for additional information or documentation.

~~((a) Within five business days of receipt of the report, ecology will notify the submitting entity that the satisfaction report has been received and it is under review.~~

~~(b) If ecology determines that no additional information is needed, ecology will send a written notice of approval to the submitting entity.~~

~~(c))~~ If ecology determines that additional information is needed, the submitting entity must submit the additional information to ecology within thirty days of receipt of the notice.

(7) If a report is submitted, ecology will use the information provided in these reports when reviewing plan updates and revisions.

(a) Reports indicating dissatisfaction will be sent to the authority or authorized party.

(b) The authority or authorized party has sixty days to respond to the report submittee(s) and ecology addressing issues raised in the report.

(c) If based on this response, ecology determines that the plan is failing to provide service in a community, ecology will send written notice, ~~((via certified mail))~~ electronically or by U.S. Postal Service, to the authority or authorized party.

(d) The authority or authorized party will have sixty days from receipt of the notice to submit an updated plan to ecology (see WAC 173-900-335).

(8) At any time, communities may submit comments to ecology about the CEP recycling programs in their area.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-820 Nonprofit charitable organization collection reports. (1) Starting in 2010, and every calendar year thereafter, nonprofit charitable organizations that are primarily engaged in the business of reuse and resale that collect CEPs for a plan must submit an annual report to ecology by March 1.

(2) The report must indicate and document the weight of CEPs sent for recycling during the previous program year attributed to each plan that the nonprofit charitable organization is participating in.

(3) **Submittal:** The nonprofit charitable organization must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; ~~((and))~~ or

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling

~~((Solid Waste and Financial Assistance))~~ Waste 2 Resources Pro-
gram

P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling

~~((Solid Waste and Financial Assistance))~~ Waste 2 Resources Pro-
gram

300 Desmond Drive
Lacey, WA 98503

(4) All reports must use the "nonprofit charitable organization report template" prescribed by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the nonprofit charitable organization of any need for additional information or documentation.

~~(a) ((Within five business days of receipt of the report, ecology will notify the nonprofit charitable organization that the collection report has been received and it is under review.~~

~~(b) If ecology determines no additional information is needed, ecology will send written notice to the nonprofit charitable organization.~~

~~(c))~~ If ecology determines that additional information is needed, the nonprofit charitable organization must submit the additional information to ecology within thirty days of receipt of the notice.

~~((d))~~ (b) If a nonprofit charitable organization used by a plan does not submit an annual collection report, that is approved by ecology, the plan cannot receive the five percent credit for using that organization as a collector.

PART IX

~~((SAMPLING, RETURN SHARE,))~~ CALCULATING MARKET SHARE AND EQUIVALENT SHARE

NEW SECTION

WAC 173-900-925 Calculation of market shares. (1) For program year 2016, and all subsequent program years, ecology will determine market share by weight for all manufacturers using any combination of the following data:

(a) Generally available market research data;

(b) CEP sales data supplied by manufacturers for brands they manufacture or sell; or

(c) CEP sales data provided by retailers for brands they sell.

(2) Ecology will determine each manufacturer's percentage of market share by dividing each manufacturer's total pounds of CEPs sold in or into Washington by all manufacturers.

(3) If CEP sales data is provided by manufacturers under subsection (1) or (6) of this section, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(4) Ecology will notify each registered manufacturer of their preliminary market share determination by June 1 of each calendar year.

(5) Manufacturers may challenge their preliminary market share determination by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary market shares.

(6) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) Detailed CEP sales data supporting the challenge; and

(c) Complete contact information for requests for additional information or clarification.

(7) Ecology will notify each registered manufacturer of their final market share determination by August 1 of each calendar year.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-930 Calculating the total equivalent share.

Step 1: Calculating individual manufacturer equivalent share.

(1) ~~((Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total weight in pounds of CEPs collected, not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC 173-900-940.))~~ For program year 2016, and all subsequent program years, ecology will determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the market share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of CEPs collected for that program year not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC 173-900-940.

(2) The manufacturer is responsible for distributing responsibility for equivalent share among its past and present licensees.

Step 2: Calculating a plan's equivalent share.

(3) A plan's equivalent share is equal to the total of the equivalent shares for all manufacturers participating in the plan.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-970 Collecting and paying share payments.

Billing share payments.

(1) By June 1 of each program year, ecology will bill any authorized party or authority that has not attained its plan's equivalent share as determined in WAC 173-900-930 ((share payments)). The authorized party or authority must remit its share payment to ecology within sixty days from the billing date.

Ecology payment of share payments.

(2) By September 1 of each program year, ecology must pay any authorized party or authority that exceeded its plan's equivalent share.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-980 Public outreach.

Independent and standard plans:

(1) Public outreach and marketing requirements: An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

(a) Include a web site or a toll-free number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for recycling;

(b) Describe the method or methods used to provide outreach to covered entities; and

(c) Ensure outreach throughout the state.

Ecology:

(2) Ecology will promote CEP recycling by:

(a) Posting information describing where to recycle unwanted CEPs on its web site;

(b) Providing information about recycling CEPs through a toll-free telephone service; and

(c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.

(3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

Local governments:

(4) Local governments must promote CEP recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

Retailers:

(5) A retailer who sells new CEPs must provide take-home information to consumers describing where and how to recycle CEPs and oppor-

tunities and locations for the convenient collection or return of the products at the point of sale. Providing ecology's toll-free telephone number and web site will fulfill this requirement. This ((outreach)) may include:

(a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, stickers, or brochures for this program(~~(-~~

~~(b) Providing ecology's toll-free telephone number and web site. (e))~~; and

(b) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging((+)), or on sales receipts.

(6) Remote sellers may include the information in a visible location on their web site or on sales receipts as fulfillment of this requirement.

Collaboration:

(7) Manufacturers, state government, local governments, retailers, and collection sites and services must collaborate in the development and implementation of the public information campaign.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-993 Appointing the board of the authority. The board of directors of the authority is comprised of eleven participating manufacturers:

~~(1) ((Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products.~~

~~(2) Six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.~~

~~(3))~~ For program years 2016 and beyond, five board positions are reserved for representatives of the top ten brand owners by market share of covered electronic products and six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.

(2) The board must have representation from both television and computer manufacturers.

~~((4))~~ (3) The board of directors is appointed by the director of the department of ecology.

(a) Manufacturers will indicate their interest in serving on the board of directors to ecology.

(b) Manufacturers expressing interest will be asked to submit the name of their representative.

(c) Ecology will select board members from the candidates that have expressed interest using the following criteria:

~~(i) ((Five from the top ten brand owners by return share of CEPs willing to participate on the board;))~~ For program year 2016 and beyond, five of the top ten brand owners by market share willing to participate on the board;

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

(iv) Representation from small, in-state manufacturers;

(v) Balance between manufacturers whose business is primarily that of television manufacturing and those whose business is primarily that of computer manufacturing; and

(vi) At least one manufacturer that is a new market entrant.

((+5+)) (4) The first board will be appointed from those manufacturers expressing interest in serving on the board in the first registration of manufacturers.

((+6+)) (5) The first board of directors will serve a term of one year.

((+7+)) (6) Subsequent appointments to the board of directors will be made on intervals established in the authority by-laws created by the board.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-997 The standard plan's assessment of charges and apportionment of costs. (1) Manufacturers participating in the standard plan must pay the authority to cover all administrative and operational costs associated with the collection, transportation, processing, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation.

(2) The authority must assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section.

(a) ~~((Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.))~~ For program years 2016 and beyond, such apportionment must be based on market share.

(b) The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state.

(c) Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states.

(d) The authority must adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that

the manufacturer is not participating in the standard plan (see WAC 173-900-350).

(6) The authority must submit its plan for assessing charges and apportioning cost on manufacturers as part of the standard plan (see Part III, WAC 173-900-320).

(7) **Appeals:** Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of cost as collected by the authority.

(a) The manufacturer must pay their charges or apportionment to the authority and submit a written petition to the director of the department of ecology within fourteen calendar days of receipt of notification of charges or apportionment. The written petition must include proof that:

(i) The authority's assessments or apportionment of costs were an arbitrary administrative decision;

(ii) An abuse of administrative discretions is proven; or

(iii) It is not an equitable assessment of apportionment of costs.

(b) Within thirty calendar days of receipt of the written petition, the director or the director's designee will review the appeal.

(c) The director will reverse any assessments of charges or apportionment of costs if the appeal is determined to be correct.

(d) If the director reverses an assessment of charges, the authority must:

(i) Redetermine the assessment or apportionment of costs and submit a plan revision as described in WAC 173-900-335, CEP recycling plan update; and

(ii) Once the revision is approved by ecology, send refunds or assess additional charges to standard plan participants per the revision.

(8) **Arbitration:** Disputes regarding the final decision by the director or the director's designee may be challenged through arbitration.

(a) The director shall appoint one member to serve on the arbitration panel.

(b) The challenging party shall appoint one member to serve on the arbitration panel.

(c) These two members shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person.

(d) The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-900-900	Return share sampling.
WAC 173-900-910	Calculating return share.
WAC 173-900-920	Use and publication of CEP return shares.

Appendix B: Transcripts from public hearings.

Lacey – December 3, 2015

Subject: Chapter 173-900 WAC Public Hearing Recording Transcription

BS: I am Bari Schreiner, hearing officer for this hearing. This afternoon, we are here to conduct a hearing on the proposed amendment to Chapter 173-900 Washington Administrative Code Electronics Products Recycling Program. Let the records show that it is 2:16 PM on December 3, 2015, and this hearing is being held at the Department of Ecology, 300 Desmond Drive SE, Lacey, WA 98503. Legal notices of this hearing were published in the Washington State Register on November 4, 2015, Washington State Register Number 15-21-065. In addition, notices of the hearing were emailed to about 500 interested people. A news release was issued on November 23, 2015. A notice was published in the Washington State Recycling Association newsletter on October 28, 2015.

BS: And we are going to call people up to provide testimony. Please, when you come forward, you can sit here in the chair. And if you would say your name, and if you want, your association, for the record.

MJ: Good afternoon. Mark Johnson, Vice President of Government Affairs for the Washington Retail Association, representing over 3,500 store-fronts in the state, many of which sell covered e-waste products such as televisions, computers, and monitors. I have shared the proposed rule changes to Washington Administrative Code, Chapter 173-900 with my affected members and would like to convey their comments.

MJ: All of my members are either neutral or even supportive on a majority of the proposed changes. One section has caught their attention in concern: WAC 173-900-980, titled Public Outreach, subsection 5 pertaining to retailers is problematic. The addition to the requirement that retailers provide information to consumers describing where and how to recycle covered electronic products be provided in a take-home form will be costly, difficult, and administratively burdensome for some retailers to comply with. For example, insuring that employees place stickers on every items is difficult. What if they miss one? Is the store employee liable or the store itself? Will there be a fine? Brochures, fliers, and stickers all have a cost to print and distribute. Additionally, brochures and fliers take up scarce retail space and are often dropped by customers in stores or parking lots. Reprogramming a point of sale system to include a notice on a receipt for a multi-state retailer to comply with a Washington State rule can be costly and complex. Most of these systems are national in nature. Additionally, receipts become overly long with new requirements when other notices, such as return policies, need to be included on the receipt. Unfortunately, the more prescriptive the rule becomes, the more difficult it becomes for retailers to comply with. Retailers are experts at communicating with their customers. Please allow us the flexibility to get the message out. As an alternative, perhaps asking manufacturers of CEP's to include the recycling information at the time of production or packaging and/or packaging. Finally, I would suggest the inclusion of language in WAC 173-900-980 Public Outreach in a new subsection, subsection 8 to the effect of: "if a retailer of CEP's is found to be out of compliance with this chapter, the Department will first give a warning and consultation to the retailer to assist them with compliance before any fine is issued."

MJ: I will also submit written comments to you as well. Washington Retail Association strongly values its relationship with the Department of Ecology and stands ready to work with you on this and other important issues. Thank you.

BS: At this time, there is nobody else attending the hearing, so there is no one else to provide testimony. If you would like to send Ecology written comments, please remember they are due by December 10, 2015. You can send them to Miles Kuntz, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, or email them to miles.kuntz@ecy.wa.gov. Or you can fax them to (360) 407-6102. All testimony received at this hearing along with all written comments received electronically or post mark no later than December 10, 2015 will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement, or CES Publication, to everyone who provided testimony today and contact information and everyone that is on the agency's interested party list for this rule. The CES, among other things, will contain the agency's response to questions and issues of concern raised during the public comment period. If you want to receive a copy, and you have not given us your information, please see one of us after the hearing, and we will make sure you get added to those lists.

BS: The next step is to review the comments and make a determination about whether to adopt the rule. Ecology Director, Maia Bellon, will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for February 16, 2016. If the proposed rule should be adopted that day and filed with the Code Reviser, it goes into effect 31 days later. If we could be of any further assistance, please let us know. Thank you for coming. We appreciate your cooperation today. Let the records show that this hearing is adjourned at 2:23 PM.