

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

ENVIRONMENTAL PROTECTION

AIR, ENERGY, AND MATERIALS SUSTAINABILITY

DIVISION OF SUSTAINABLE WASTE MANAGEMENT

Electronic Waste Management

Proposed Amendments: N.J.A.C. 7:26-2.8 and 7:26A-1.1 and 1.3

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

Proposed Repeals: N.J.A.C. 7:26A-13

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

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

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

DEP Docket Number: 02-24-04.

Proposal Number: PRN 2024-055.

A public hearing concerning this notice of proposal will be held on Wednesday, June 12, 2024, at 1:00 P.M. The public hearing will be conducted virtually through the Department of Environmental

Protection's (Department) video conferencing software, Microsoft Teams. A link to the virtual public hearing with telephone call-in option will be provided on the Department's website at <https://www.nj.gov/dep/rules/notices.html>.

If you are interested in providing oral testimony or submitting written comments at the virtual public hearing, please email the Department at Daniel.Midgett@dep.nj.gov, no later than 5:00 P.M. on June 10, 2024, with your contact information (name, organization, telephone number,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

and email address). You must provide a valid email address, so the Department can send you and email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer or mobile device that can connect to Microsoft Teams. This hearing will be recorded. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared remarks to the Department through email.

Submit comments by July 5, 2024, electronically at <http://www.nj.gov/dep/rules/comments>. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment. The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice Previte, Esq.

Attn: DEP Docket Number: 02-24-04

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

This notice of proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Overview

The Department is proposing this rulemaking to implement P.L. 2016, c. 87 (the 2016 Amendment), which amended the Electronic Waste Management Act (the Act), N.J.S.A. 13:1E-99.94 et seq. This rulemaking additionally reflects changes determined to be appropriate through the process the Department committed to in response to a petition for rulemaking filed by the Consumer Technology Association (see 50 N.J.R. 2098(a)).

The Act establishes recycling requirements for manufacturers and consumers of "covered electronic devices," which is defined in the Act to mean, with some exceptions, televisions, desktop or personal computers, computer monitors, and desktop printers and faxes that are sold to consumers. As amended, the Act requires each manufacturer of "covered electronic devices" to provide for the collection, transportation, and recycling of its market share in weight of all covered electronic devices collected in a program year. Prior to the 2016 Amendment, manufacturers of televisions were required to collect, transport, and recycle their "market-share-in-weight," while manufacturers of other covered electronic devices were required to collect, transport, and recycle their "return-share-in-weight," for a program year, both of which were calculated by the Department. Pursuant to this scheme, the Department calculated a "return share" for manufacturers of covered electronics devices, other than televisions using "auditable, statistically significant sampling of covered electronic devices collected from consumers in the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

State during the previous program year” and a separate “market share” for television manufacturers using available market sales data for the most recent 12-month period. The 2016 Amendment eliminated this bifurcated scheme, and it repealed the sections of the Act specific to television manufacturers. Under the 2016 Amendment, both television manufacturers and manufacturers of other covered electronic devices are required to collect, transport, and recycle their respective “market shares in weight,” which are calculated using the available national market share data for the most recent 12-month period. The 2016 Amendment also amended the definition of “covered electronic devices” to include desktop printers and desktop faxes. The Act, at N.J.S.A. 13:1E-99.111, authorizes the Department to promulgate rules to implement an electronic waste management program.

To address these changes, the Department is proposing to repeal the existing Recycling Rules at N.J.A.C. 7:26A-13, Electronic Waste Management, and promulgate a new stand-alone chapter for Electronic Waste Management at N.J.A.C. 7:26J. As the proposed new chapter will entirely replace the existing requirements for electronic waste management in the Recycling Rules at N.J.A.C. 7:26A-13, the Department proposes to repeal and reserve N.J.A.C. 7:26A-13.

As discussed in further detail below, the proposed amendments and new rules include provisions that:

- Require a manufacturer of “covered electronic devices” to register with the Department, and require those with a market share of greater than .01 percent of the total to pay an annual registration fee of \$5,000 (N.J.S.A. 13:1E-102);
- Require a manufacturer of “covered electronic devices” that has been determined by the Department to have a market share greater than .01 percent of the total to submit to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department, for its review and approval, plans for the collection, transportation, and recycling of its market share of covered electronic devices (N.J.S.A. 13:1E-99.103);

- Require an authorized recycler to register with the Department and pay a registration fee of \$15,000, unless the authorized recycler is an approved Class D recycling center (N.J.S.A. 13:1E-99.105b);
- Prohibit charging consumers for the collection, transportation, or recycling of covered electronic devices (N.J.S.A. 13:1E-99.106);
- Prohibit the sale of covered electronic devices that are not labeled to properly reflect the brand of the device (N.J.S.A. 13:1E-99.100);
- Prohibit retailers from selling new covered electronic devices supplied by a manufacturer not in compliance with the Act (N.J.S.A. 13:1E-99.99 and 99.104);
- Require every retailer to clearly post and provide information from the Department describing how and where to recycle covered electronic devices (N.J.S.A. 13:1E-99.104);
- Ensure there is at least one electronics collection opportunity in each county throughout the State (N.J.S.A. 13:1E-99.105);
- Require the Department to calculate the quantity of covered electronic devices to be collected by each manufacturer (N.J.S.A. 13:1E-99.105);
- Require manufacturers, authorized recyclers, and operators of collections sites to submit semiannual reports to the Department on February 1 and August 1 of each year (N.J.S.A. 13:1E-99.105a. through 99.105c.);
- Ban the knowing disposal of covered electronic devices as solid waste (N.J.S.A. 13:1E-99.109);

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- Provide for the assessment against a manufacturer that fails to collect, transport, or recycle its required market share of covered electronic devices a noncompliance fee equal to \$0.50 per pound times the manufacturer's market-share-in-weight (N.J.S.A. 13:1E-99.105d.); and
- Provide for the assessment of penalties for violations of the Act or any rule or regulation adopted pursuant thereto. The Commissioner of the Department is authorized to assess a civil administrative penalty of not less than \$500.00, nor more than \$1,000 for violations of the Act and its implementing rules, with a maximum penalty of \$25,000 available for violations of eight specific statutory provisions. Each day that a violation continues constitutes an additional, separate, and distinct offense for which a penalty may be assessed. (N.J.S.A. 13:1E-99.110)

The Recycling Rules and Electronic Waste Management

Since June 2002, New Jersey has been regulating the transportation and recycling of electronic equipment generated by businesses pursuant to the Department's Recycling Rules, N.J.A.C. 7:26A. Pursuant to those rules, "consumer electronics" are classified as universal wastes and must be managed in conformity with the Standards for the Management of Class D Universal Waste, N.J.A.C. 7:26A-7.

The universal waste provisions of the Recycling Rules, however, govern only handlers and transporters of recyclable electronics. Also while, in the past, many of the State's municipalities and counties offered computer and electronics collections as part of household hazardous waste collections, special events, or other arrangements, those collections were voluntary, and many counties were only able to offer single-day collection events that were not

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

necessarily convenient for all residents, which changed with the enactment of the Act in 2007.

Pursuant to the Act, which was amended in 2008, 2012, and 2016, consumers, retailers, manufacturers, and authorized recyclers have a role in the management of electronic waste, with manufacturers paying for the collection, transportation, and recycling of consumer electronics pursuant to an annual collection plan. The annual collection plan requires inclusion of at least one conveniently located collection site in each county that accepts all types of covered electronic devices and is accessible to all residents of the county. The Department's proposed new rules and amendments continue to provide the framework for the electronic waste program, as established by the Act.

Stakeholder Process

The Department met with select authorized recyclers in 2018 to discuss rule requirements for semiannual reports and existing report discrepancies. In developing the proposed rules, in 2019 and 2022, the Department met with stakeholders, including representatives of manufacturers of covered electronic devices, authorized recyclers, Class D recyclers, group plan administrators, local government units, consultants, industry lobbyists, and the Consumer Technology Association. During the COVID-19 pandemic, the Department regularly kept in contact with these stakeholders through both email and virtual meetings to discuss the issues, suggestions, and recommendations of the stakeholders in preparing the proposed rules.

Significant issues raised by meeting attendees included the statutory noncompliance fee, the proposed adjustment to a manufacturer's market-share-in-weight, which the Department would provide to the manufacturer in the spring of the year following the program year in which the estimated weight was collected as the manufacturer's actual-market-share-in-weight, and the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

calculation of credits for manufacturers determined to have exceeded their actual-market-share-in-weight. Meeting records are available on the Department's website at

<https://www.nj.gov/dep/workgroups/past.html>.

Amendments to the Solid Waste Rules, N.J.A.C. 7:26

N.J.A.C. 7:26 establishes the Solid Waste rules for the Department. N.J.A.C. 7:26-2.8, Registration and general prohibitions, sets forth general prohibitions regarding the disposal of solid waste. The Department proposes to amend N.J.A.C. 7:26-2.8(s) to replace the existing cross-reference to the definition of covered electronic device at N.J.A.C. 7:26A-13.2, Definitions, to reflect its new codification at proposed N.J.A.C. 7:26J-1.3, Definitions.

Amendments to the Recycling Rules, N.J.A.C. 7:26A

N.J.A.C. 7:26A, Recycling Rules, governs the operation and management of recycling facilities, and applies to the use or reuse of material that would otherwise become solid waste. Existing N.J.A.C. 7:26A-13, Electronic Waste Management, governs the electronic waste recycling program, establishing a recycling system for the safe and environmentally sound management of covered electronic devices and components, including desktop or personal computers, computer monitors, portable computers, or televisions, sold to consumers. As the rules for electronic waste management are proposed to be relocated to new N.J.A.C. 7:26J, the Department proposes to amend N.J.A.C. 7:26A-1.1, Scope and authority, at subsection (a) and N.J.A.C. 7:26A-1.3, Definitions, to delete the references to the electronic waste recycling program.

Proposed New N.J.A.C. 7:26J, Electronic Waste Management

The Department proposes to establish, in one new chapter, N.J.A.C. 7:26J, rules

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

governing the management of electronic waste recycling. As the proposed new chapter will entirely replace the existing requirements for electronic waste recycling in the Recycling Rules at N.J.A.C. 7:26A-13, the Department proposes to repeal N.J.A.C. 7:26A-13. Several of the requirements in the proposed new chapter are the same as those at existing N.J.A.C. 7:26A-13.

General Provisions

Subchapter 1 provides the general provisions for the new chapter. Proposed N.J.A.C. 7:26J-1.1 sets forth the scope and authority for the proposed chapter. The Department proposes to identify the Act, as amended, as the implementing and enabling authority for the proposed rules and the purpose and scope of the Department's recycling program established pursuant to the Act.

Proposed N.J.A.C. 7:26J-1.1 updates the language at existing N.J.A.C. 7:26A-13.1(b) to include the citation to the Waiver of Department Rules, N.J.A.C. 7:1B.

Similar to other Department rules, N.J.A.C. 7:26J is to be liberally construed in accordance with proposed new N.J.A.C. 7:26J-1.2, Construction and severability. Pursuant to proposed new N.J.A.C. 7:26J-1.2, if a court finds any section, subsection, provision, clause, or portion of the chapter to be invalid or unconstitutional, the remaining rules will remain in effect.

Proposed N.J.A.C. 7:26J-1.3, Definitions, sets forth definitions of various terms used throughout the proposed new chapter. This proposed section is discussed in more detail below in the “Definitions” section of the Summary.

Proposed N.J.A.C. 7:26J-1.4, Signatures and certifications, sets forth the signature and certification requirements for manufacturers, group plan administrators, authorized recyclers, and operators of collection sites submitting documents to the Department. See proposed N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26J-1.4(a). Pursuant to proposed N.J.A.C. 7:26J-1.4(b), the signature of a responsible individual is required on all forms and documents submitted to the Department by a corporation, limited liability company, or a partnership. A responsible corporate officer for a corporation is a person possessing policy or decision-making authority; for a limited liability company, a company official possessing the authority to bind the company must sign; and for a partnership, a general partner. For a sole proprietorship, the signature of the proprietor is required. For a local government unit, the signature of a duly-authorized certified recycling professional or other duly-authorized representative is required. The certification language included at proposed N.J.A.C. 7:26J-1.4(c) serves as the general certification for the noted submissions to the Department, which are required by the new chapter and are applicable to manufacturers, group plan administrators, authorized recyclers, and operators of collection sites.

Proposed N.J.A.C. 7:26J-1.5, Right to inspect, codifies the Department's authority, pursuant to N.J.S.A. 13:1D-9, Powers of department, to enter and inspect any property, facility, building, premises, site, or place for the purpose of ascertaining compliance or noncompliance with the requirements of the Act and this chapter.

Definitions

At proposed N.J.A.C. 7:26J-1.3, the Department proposes to delete or amend several definitions at existing N.J.A.C. 7:26A-13.2 to comport with the 2016 Amendment to the Act. The Department also proposes to define several new terms used in the proposed new rules.

The following definitions at proposed new N.J.A.C. 7:26J-1.3 are identical to the definitions in the existing rules at N.J.A.C. 7:26A-13.2: "authorized recycler," "business concern," "computer," "local government unit," "manufacturer," "monitor," "orphan device,"

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

“person,” “program year,” “recycling,” “retail sale,” “retailer,” “sale” or “sell,” “small business enterprise,” “television,” “vendor-to-business purchaser recycling arrangement,” and “video display.”

The Department also proposes to continue the following definitions found at existing N.J.A.C. 7:26A-13.2 at new N.J.A.C. 7:26J-1.3 with amendments described below: “brand,” “brand list,” “cathode ray tube” (amended to mirror the statutory definition), “collector” (replaced with the term “collection site” and amended), “consumer,” “covered electronic device” or “CED,” and “transporter.”

The Department proposes to add the following new definitions to the proposed chapter: “Act,” “actual-market-share-in-weight,” “bulky covered electronic device,” “certified recycling professional,” “collection event,” “collection plan” or “plan,” “credit,” “end-user,” “estimated-market-share-in-weight,” “estimated-market-share-in-weight notice,” “group plan administrator,” “premium service,” “program-eligible-weight,” “program-year-market-share,” “registrant,” and “residue.”

Finally, the following definitions found at existing N.J.A.C. 7:26A-13.2 are not proposed to be continued in the proposed new chapter: “collection obligation” (replaced with the definitions “estimated-market-share-in-weight” and “actual-market-share-in-weight”), “gross television recycling goal,” and “market share” (replaced with the new definition of the term, “program-year-market-share”).

Generally, proposed new N.J.A.C. 7:26J amends the existing rules to account for changes to the electronic waste management program resulting from the 2016 Amendment to the Act. The proposed chapter also adds provisions that improve the Department’s implementation of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

electronic waste management program. The most significant definitions are discussed below.

The remaining existing definitions proposed for amendment are amended to correct cross-references changing because of this rulemaking and to make other administrative changes not affecting such definitions' meanings.

The proposed amendments use terminology that reflect the practices used by the Department in implementing its electronic waste management program. For example, the proposed rules use the terms "estimated-market-share-in-weight" and "actual-market-share-weight" in lieu of the existing rules' "collection obligation." Those terms, discussed further below, more accurately describe how the Department determines a manufacturer's market-share-in-weight than the term "collection obligation." Specifically, the Department provides a manufacturer with an estimated-market-share-in-weight for a program year, which the manufacturer must collect during the program year. In the spring of the following calendar year, the Department determines the manufacturer's actual-market-share-in-weight for the completed program year. The Department compares the actual-market-share-in-weight to the manufacturer's estimated-market-share-in-weight to determine if the manufacturer's actual weight was equal to, greater than, or less than its estimated weight. A manufacturer whose actual-market-share-in-weight is greater than its estimated-market-share-in-weight must collect weight to make up the shortfall.

The Department also proposes new definitions to identify persons in the regulated community who are regularly involved in the electronic waste management program. The proposed term "certified recycling professional" means a person who has been certified as a Certified Recycling Professional upon completing the two-tiered certification program offered by

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Rutgers University. This term is used at proposed new N.J.A.C. 7:26J-1.4, Signatures and certifications. The proposed definition of “group plan administrator” means any person who enters into a contract with one or more manufacturers to collect, transport, and recycle the total of those manufacturers' estimated-market-shares-in-weight pursuant to the Act. Group plan administrators are referenced throughout the proposed new chapter. Consistent with the Act, the Department also proposes to define a manufacturer of covered electronic devices that is in full compliance with the requirements of the Act and N.J.A.C. 7:26J, Electronic Waste Management, as a “registrant.” This term appears principally at proposed N.J.A.C. 7:26J-8.1, Requirements for credit accumulation and trading.

New Definitions for Calculation of Market-Share-in-Weight Obligation

A manufacturer’s market-share-in-weight, which the manufacturer must collect during a program year, is first provided to the manufacturer as an estimate. The Department provides the estimate to the manufacturer through an “estimated-market-share-in-weight notice” in the spring of the calendar year preceding the program year for which the estimated weight is to be collected. After the program year is complete and the total weight collected during the program year is tallied – which is determined in the spring of the following calendar year after review of the February 1 semiannual reports – the Department calculates the manufacturer’s actual-market-share-in-weight, which represents a manufacturer’s ultimate collection obligation for that program year.

In light of the two-step process described above, the Department is including two new terms in the proposed rules - “estimated-market-share-in-weight,” and “actual-market-share-in-weight.” “Estimated-market-share-in-weight” means the market-share-in-weight assigned to a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

manufacturer for collection in a program year, which the Department provides to the manufacturer in its estimated-market-share in-weight notice. “Actual-market-share-in-weight” means the weight of covered electronic devices for which an individual manufacturer is responsible to collect, transport, and recycle in a completed program year, calculated by multiplying the total weight of covered electronic devices actually collected during the completed program year by the manufacturer’s program-year-market-share.

A manufacturer whose actual-market-share-in-weight for a completed program year is greater than its estimated market-share-in-weight for that year must acquire additional weight to cure the shortfall. The manufacturer must cure that shortfall through the acquisition of program-eligible-weight during the credit trading period established in the proposed rules. As discussed further below, such weight may be acquired from any source, including from other manufacturers possessing credits for the completed program year.

While some manufacturers will need to cure a deficit if their actual-market-share-in-weight for the program year exceeds their estimated-market-share-in-weight, other manufacturers may be determined to have collected more than their actual-market-share-in-weight for the program year. Those manufacturers would receive credits for the excess weight collected. The term “credit” is defined in the proposed chapter to mean the unit representing each pound of program-eligible-weight collected by a registrant in excess of the registrant’s actual-market-share-in-weight for a program year, which a registrant may apply to satisfy up to 25 percent of its estimated-market-share-in-weight for the next program year, transfer to another registrant with a shortfall in its actual-market-share-in-weight, or both, where a single pound of excess weight is equal to a single credit.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

In order to ensure that the electronic waste program is achieving its desired results, it is necessary that the electronic waste collected, transported, and recycled is collected from consumers in New Jersey, includes only electronic devices covered by the Act, and is appropriately recycled. Devices not covered by the Act, those collected from out-of-State consumers, and those not appropriately recycled cannot be credited to a manufacturer in determining if the manufacturer has satisfied its obligations pursuant to the Act. To help ensure the Act's objectives are achieved, the Department proposes a definition of "program-eligible-weight." Pursuant to the proposed definition, program-eligible-weight is the weight of covered electronic devices collected from State consumers, whether collected through a collection plan or not, that is recycled in compliance with the Act by an authorized recycler certified by the Sustainable Electronics Recycling International's Responsible Recycling Standard for Electronics Recyclers, the e-Stewards Standard for Responsible Recycling and Reuse of Electronics Equipment, or other accredited standard approved by the Department, and who is otherwise in compliance with the performance requirements of this chapter. Program-eligible-weight does not include the weight of covered electronic devices that are exported for disposal in a manner that poses a significant risk to the public health or the environment.

The Department proposes to define "program-year-market-share" as a manufacturer's market-share-in-weight of covered electronic devices for a program year, expressed as a percentage, which is based upon the best available national sales data of covered electronic devices for the most recent 12-month period. The Department's wording of this term, to include "program-year," distinguishes it from the "national market share" the Department uses to calculate a manufacturer's estimated-market-share-in-weight. For each program year, the total

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

national sales in weight of each of the following three categories of covered electronic devices—televisions, computers, including computer monitors and portable computers, and desktop printers and faxes—for the 12-month period, expressed as a percentage of the weight of all covered electronic devices sold during that period, are multiplied by each manufacturer’s national market share of each category. That product is divided by 100 to determine each manufacturer’s separate market share of televisions, market share of computers, and market share of desktop printers and faxes for the program year. All of those market shares are added together to form the manufacturer’s program-year-market-share of covered electronic devices.

New Definitions - Collection Plan

In addition to the above definitions relating to the calculation of a manufacturer’s market-share-in-weight, the Department is proposing other new definitions at N.J.A.C. 7:26J-1.3, which are related to collection plans. The proposed term “collection plan” or, more simply, “plan,” means a plan for collecting, transporting, and recycling covered electronic devices prepared pursuant to the Act, at N.J.S.A. 13:1E-99.103, and this chapter. The plan, and the specifics of what must be part of the plan, is discussed further below.

A proposed collection plan may include premium services. The Department proposes to define “premium service” as a collection service provided to a consumer pursuant to an approved collection plan for the pickup of a covered electronic device at a location other than a collection site. Both new terms are used at proposed N.J.A.C. 7:26J-3.2, Required contents of a collection plan; confidentiality, wherein a manufacturer is required to identify in a collection plan the persons involved in the collection, transportation, and recycling of covered electronic devices, and if requested, the need for a premium service and the proposed fee.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Also included at N.J.A.C. 7:26J-1.3, Definitions, is a proposed definition for a collection event. A “collection event,” means an opportunity offered to the consumer to drop off covered electronic devices at a specified time and location in the State. In its collection plan, a manufacturer must provide, among other things, the details on any collection event that is included in the plan, as noted at both N.J.A.C. 7:26J-3.2, Required contents of a collection plan; confidentiality, and 3.3, Review of collection plans.

The Department uses the new term “bulky covered electronic device” at proposed N.J.A.C. 7:26J-3.2, Required contents of a collection plan; confidentiality, as well. The proposed definition of a bulky covered electronic device is a covered electronic device that weighs 50 pounds or more, has a viewing screen measuring 40 inches or more diagonally, or any covered electronic device that cannot be readily transported by a consumer to a collection site because of its length, width, weight, or height, for example, a projection television. A manufacturer is required to include in its collection plan descriptions of the methods to be used for the collection of such devices and the means used to publicize the available collection options.

New Definitions - Semiannual Report

Manufacturers, authorized recyclers, and operators of collections sites are required to submit semiannual reports to the Department on February 1 and August 1 of each year, as provided at proposed new N.J.A.C. 7:26J-4.1, Semiannual reports, discussed further below. Authorized recyclers are required to provide information on persons known as “end-users” in each semiannual report, and to keep a record of involvement with each end-user. The term “end-user” means any person that receives processed or unprocessed covered electronic devices and uses the material as a finished product or as a raw material for a manufacturing process.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Another new term proposed for use in semiannual reports is “residue.” The Department proposes to define “residue” as meaning any solid waste generated as a result of the recycling of covered electronic devices by an authorized recycler, which shall be disposed of as solid waste in accordance with the waste plan of the district in which the recycling center is located, or, if classified as a hazardous waste pursuant to the Hazardous Waste rules, N.J.A.C. 7:26G, then disposed of in accordance with the applicable hazardous waste regulations set forth at N.J.A.C. 7:26G. Authorized recyclers are required to provide residue information in each semiannual report, and to keep a record of each load of residue that is transported for disposal.

Amended Definitions

The Department proposes to amend several definitions found at existing N.J.A.C. 7:26A-13.2, and include them at new N.J.A.C. 7:26J-1.3. The Department proposes to amend the definition of “brand,” removing verbiage to make the regulatory definition identical to the statutory definition of the same term. The proposed definition of “brand” is a symbol, word, or mark that identifies a covered electronic device, rather than any of its components. The Department also proposes to amend “brand list” to mean, for a manufacturer of covered electronic devices, a list of every brand of a covered electronic device sold by a manufacturer, regardless of whether the manufacturer owns or licenses the brand.

The Department proposes modifying the existing definition of “cathode ray tube” to mean a vacuum tube or picture tube used to convert an electronic signal into a visual image, including any cathode ray tube that is broken, damaged, or separated from its host television or other device. This wording mirrors the statutory definition of cathode ray tube, as revised by the 2016 Amendment.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes the new definition of “collection site” to replace the existing definition of “collector” found at N.J.A.C. 7:26A-13.2. Both terms mean a facility specified in a manufacturer's approved collection plan, that receives and accumulates covered electronic devices prior to their transportation to an authorized recycler. As compared to the existing definition of a collector, which is defined as “a facility,” the proposed definition of a collection site is more narrowly tailored as “a secure and adequately staffed permanent facility located in the State.”

Similar to the change in the definition of the term “brand,” the Department proposes to amend the existing definition of “consumer” to include a State entity, school district, or local government unit. The addition of these parties in the proposed definition of “consumer” at N.J.A.C. 7:26J-1.3, as purchasers of a covered electronic device in a retail sale matches the revised definition of “consumer” found in the 2016 Amendment.

The Department proposes to amend the existing definition of “covered electronic device” or “CED” to include desktop printers and desktop fax machines and exclude handheld devices used to access mobile data or commercial mobile radio service, such as cell phones. These proposed amendments make the regulatory definition comport with the statutory definition of “covered electronic device,” as it was revised in 2016. The Department proposes to amend the existing definition of “portable computer” to delete the reference to the size of the video display because “video display” is defined. The Department is also adding a reference to tablets to make clear that a tablet could be a portable computer.

Registration and Submission of Documents

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Subchapter 2 explains the chapter requirements for manufacturers and authorized recyclers to register and submit documents to the Department.

Proposed N.J.A.C. 7:26J-2.1 sets forth the registration requirements for manufacturers of covered electronic devices. See proposed N.J.A.C. 7:26J-2.1(a). Consistent with the Act at N.J.S.A. 13:1E-99.102b, registration is required only for those manufacturers who manufacture covered electronic devices for sale and delivery in New Jersey. Proposed N.J.A.C. 7:26J-2.1(b) codifies the requirement in the Act, at N.J.S.A. 13:1E-99.102b, that a regulated manufacturer of covered electronic devices register with the Department by January 1 of each year and pay an initial \$5,000 registration fee and thereafter, an annual \$5,000 registration renewal fee. A manufacturer receiving a program-year-market-share of .01 percent or less in a previous program year is not required to pay a registration fee or a registration renewal fee in the following program year. See proposed N.J.A.C. 7:26J-2.1(c). Proposed N.J.A.C. 7:26J-2.1(d) provides that any manufacturer that is not required to register by January 1 of any year pursuant to N.J.A.C. 7:26J-2.1(b) and receives an estimated-market-share-in-weight notice from the Department shall register with the Department within 30 days of its receipt of the notice. This proposed requirement is consistent with the Act, which provides, at N.J.S.A. 13:1E-99.102b, that any manufacturer who is subsequently notified by the Department of a market share must register within 30 days of receipt of that notification.

Proposed N.J.A.C. 7:26J-2.1(e) requires each registered manufacturer to renew its registration by January 1 of the calendar year immediately following the calendar year of its initial registration, and by January 1 of each calendar year thereafter, by submitting a registration package to the Department. The registration package submission requirements are set forth at

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

proposed N.J.A.C. 7:26J-2.1(f)1, 2, 3, and 4, and include a form, fee, covered electronic device information, and a certification. As noted at proposed N.J.A.C. 7:26J-2.1(g), registered manufacturers must renew their registrations with the Department online. Pursuant to proposed N.J.A.C. 7:26J-2.1(h), a registered manufacturer intending to cease selling covered electronic devices in the State must provide written notice to the Department of the date on which the registered manufacturer will cease selling the covered electronic devices. Such notice is required pursuant to the Act, which provides, at N.J.S.A. 13:1E-99.103n, that a manufacturer “inform the department, in writing as soon as it becomes aware that it will cease selling covered electronic devices in the State.” To provide certainty to registrants and the Department as to the time frame for the notice, the proposed rule continues the existing requirement that the notice be provided to the Department at least 30 days prior to the intended discontinuance of sale in the State.

Proposed N.J.A.C. 7:26J-2.2, Registration requirements for authorized recyclers, sets forth the requirements for authorized recyclers that accept covered electronic devices from consumers. Consistent with N.J.S.A. 13:1E-99.105b, proposed N.J.A.C. 7:26J-2.2(a) requires an authorized recycler, other than one that has been granted a general approval as a Class D recycling center and is in full compliance with that approval, to register with the Department by January 1 of each year and pay a registration fee of \$15,000. Proposed N.J.A.C. 7:26J-2.2(b) requires an authorized recycler to renew its registration by January 1 of the calendar year immediately following the year of its initial registration by submitting a registration package. The registration package submission requirements are set forth at proposed N.J.A.C. 7:26J-2.2(c)1, 2, 3, and 4, which include a form, fee, and certifications. Similar to manufacturers,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

registered authorized recyclers must renew their registration with the Department online, as noted at proposed N.J.A.C. 7:26J-2.2(d).

Collection Plans

Subchapter 3 describes the elements of collection plans and the Department's review of them. A collection plan includes information about a manufacturer's collection, transport, and recycling of all types and brands of covered electronic devices, including orphan devices, which are covered electronic devices with no labels, unknown manufacturers, or products of defunct manufacturers. See proposed N.J.A.C. 7:26J-3.1(c). Pursuant to proposed N.J.A.C. 7:26J-3.1(a), within 60 days of receiving an estimated-market-share-in-weight notice from the Department, a manufacturer, individually, or as part of a group of manufacturers, is required to submit a collection plan to the Department. This differs from the June 1 submission deadline at existing N.J.A.C. 7:26A-13.4(a) because pursuant to prior practice, the Department provided a manufacturer with its collection obligation by May 1 of each calendar year, essentially giving a manufacturer 30 days to submit its collection plan. That is no longer the case, as the Department does not provide a collection obligation by a specific date. Instead, a manufacturer's collection obligation – now termed “estimated-market-share-in-weight” – is typically provided in April in the estimated-market-share-in-weight notice.

As discussed above, consistent with the Act, at N.J.S.A. 13:1E-99.103, the collection plan requirement is not applicable to a manufacturer receiving a program-year market share of .01 or less. A manufacturer failing to submit a collection plan within the 60-day timeframe may be subject to a penalty pursuant to the chapter and the Act. As directed at proposed N.J.A.C. 7:26J-3.1(b) and at N.J.S.A. 13:1E-99.103.c, the collection plan must provide for the collection,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

transportation, and recycling of covered electronic devices on a scale sufficient to meet the manufacturer's or group of manufacturers' estimated-market-share-in-weight.

Proposed N.J.A.C. 7:26J-3.1(d) requires a manufacturer intending to participate in a group collection plan to participate in the preparation and submission of a Group Designation Form. The requirements are similar to those at existing N.J.A.C. 7:26A-13.4(d), except that the Department is proposing that the Group Designation Form be submitted at least 20 days prior to the submission of the group collection plan, instead of 30 days, as required at existing N.J.A.C. 7:26A-13.4(d). The Department's proposed 20-day time frame will provide those manufacturers wishing to join a group with 10 additional days to find a group plan administrator, while still providing the Department with sufficient time to administratively connect the manufacturers to their group. The Department proposes these timeframes to enhance the review of collection plans and ensure that all counties are adequately covered by the plans.

The Group Designation Form must include the information set forth at proposed N.J.A.C. 7:26J-3.1(e), including group plan administrator and manufacturer contact information, written certifications, and the combined estimated-market-share-in-weight for the participating manufacturers. The Department's determination and notification of a manufacturer's estimated-market-share-in-weight is addressed at proposed N.J.A.C. 7:26J-8.1, which is discussed in more detail in the "Actual-Market-Share-In-Weight, Credits, and Collection Shortfalls" section of the Summary below.

The requirements at proposed N.J.A.C. 7:26J-3.1(e) are similar to the requirements at N.J.A.C. 7:26A-13.4(e), with a few modifications. Pursuant to N.J.A.C. 7:26A-13.4(e)2, the Group Designation Form is to include group contact information for the purpose of providing

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

communications regarding the submission of the group's collection plan and annual report.

Proposed N.J.A.C. 7:26J-3.1(e)2 modifies the requirements at N.J.A.C. 7:26A-13.4(e) in that it requires that the contact information is supplied for the purpose of communicating with the group plan administrator on issues involving the registration and registration renewal of the group's members and semiannual reports filed by the group plan administrator. Manufacturers and groups of manufacturers now file semiannual reports with the Department, rather than annual reports. The requirements for semiannual reporting are found at proposed N.J.A.C.

7:26J-4.1. Proposed N.J.A.C. 7:26J-3.1(e) differs somewhat from N.J.A.C. 7:26A-13.4(e) in that it contains a new requirement at N.J.A.C. 7:26J-3.1(e)3 that requires a group plan designation form to include the total combined estimated-market-shares-in-weight for all participating manufacturers. Pursuant to proposed N.J.A.C. 7:26J-3.1(f), each manufacturer or group of manufacturers must implement its approved collection plan beginning on January 1 of each calendar year. Proposed N.J.A.C. 7:26J-3.1(f) also authorizes a group plan administrator to purchase weight from, and sell weight to, authorized recyclers, other group plan administrators, and manufacturers outside of its group, when implementing a collection plan on behalf of its members.

Proposed N.J.A.C. 7:26J-3.1(g) requires the manufacturer or group of manufacturers to continue to collect, transport, and recycle covered electronic devices during the entire program year, even if it collects its estimated-market-share-in-weight before the end of the year. The requirements at N.J.A.C. 7:26J-3.1(f) and (g) help ensure that the goals of the Act are achieved in the most efficient manner by making sure that convenient locations and resources for collection, transport, and recycling remain available throughout the year.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

As indicated above, and discussed further below, the proposed rules provide manufacturers or groups of manufacturers that end up collecting more than their actual-market-share-in-weight with a credit for any excess weight, which may be used to satisfy up to 25 percent of a subsequent year's requirements or sold to manufacturers that do not meet their estimated-market-share-in-weight, so that no manufacturer is required to collect more than its fair share in total.

Pursuant to N.J.A.C. 7:26J-3.1(h), which is a collection plan requirement not found at N.J.A.C. 7:26A-13.4, a manufacturer proposing to add or delete a collection site or an authorized recycler to an approved collection plan, or a group plan administrator proposing to delete or add a collection site or an authorized recycler to a group collection plan, must amend its collection plan and submit the amended plan to the Department for approval no later than October 1. Further, the Department will not consider a proposed amended plan submitted after October 1, unless: (1) the proposed amendment is required to enhance the convenient and efficient collection of covered electronic devices; and (2) the information in the plan is sufficient for the Department to review and approve in time for the amended plan to be fully implemented before the end of the program year. The Department proposes October 1 as the cut-off date for submission of a proposed amended collection plan to give the Department a sufficient amount of time for plan review and approval, so that the plan may then be implemented by the end of the program year on December 31.

Proposed N.J.A.C. 7:26J-3.1(i), which also is a new requirement, provides that a manufacturer or group of manufacturers notified by an operator of a collection site of the impending closure of a collection site included in a collection plan shall notify the Department

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

within 30 days of receiving notice of the impending closure. If the closure would significantly impact a manufacturer's or group of manufacturers' ability to meet its estimated-market-share-in-weight, the manufacturer or group plan administrator must submit an amended plan to the Department.

Pursuant to proposed N.J.A.C. 7:26J-3.1(j), which is also new, a manufacturer or group plan administrator proposing to revise a collection plan submitted to the Department, but not yet approved, or proposing to amend an approved plan shall highlight the proposed revisions or amendments in its submission. Finally, another new collection plan requirement is proposed at N.J.A.C. 7:26J-3.1(k), which directs that, if a manufacturer fails to timely submit a collection plan or, where applicable, a group designation form, then that manufacturer may be subject to a penalty pursuant to the Act and this chapter, with each day the collection plan or form is late being an additional, separate, and distinct violation for which the Department may assess an additional penalty. The proposed penalties for failure to timely submit a collection plan or the failure to submit a group designation form are set forth in the table at proposed N.J.A.C. 7:26J-9.4(f).

The Department is also proposing to detail the requirements of a collection plan, and its confidentiality, at N.J.A.C. 7:26J-3.2, Required contents of a collection plan; confidentiality. The contents of this section are substantially the same as that at existing N.J.A.C. 7:26A-13.6, Required contents of a collection plan; confidentiality. As set forth at proposed N.J.A.C. 7:26J-3.2(a), a collection plan must include: the methods and services that would be used to collect covered electronic devices; the processes and methods that would be used to recycle covered electronic devices; a description of the means that would be used to publicize the collection

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

services; a detailed explanation of how the manufacturer intends to meet its estimated market-share-in weight; and written certifications to be signed by a manufacturer's representative meeting the requirements specified at proposed N.J.A.C. 7:26J-1.4(b). Proposed N.J.A.C. 7:26J-3.2(b) states that a manufacturer or group of manufacturers may not include in its collection plan a fee to the consumer for the collection, transportation, or recycling of covered electronic devices, except for a nominal fee offered in connection with a financial incentive and a fee for a premium service, as authorized at proposed N.J.A.C. 7:26J-3.2(c) and (d).

Moreover, as in the existing electronic waste management rules at N.J.A.C. 7:26A-13.6(b), proposed N.J.A.C. 7:26J-3.2(f) directs that the Department will hold confidential any information contained within a collection plan if the Department determines, based upon a showing by the manufacturer, that the information, if made public, will divulge competitive business information, methods, or trade secrets. Also, as at existing N.J.A.C. 7:26A-13.6(c), proposed N.J.A.C. 7:26J-3.2(g) requires a manufacturer asserting a claim of confidentiality to submit to the Department two certified copies of the collection plan – one complete copy, and one copy with the asserted confidential information redacted.

Proposed N.J.A.C. 7:26J-3.3, Review of collection plans, resembles the existing section of the same name at N.J.A.C. 7:26A-13.10, the principal difference being the addition of criteria at proposed N.J.A.C. 7:26J-3.3(b)1 detailing how the Department will determine whether a collection opportunity in a collection plan is convenient to consumers in a particular county in the State. Pursuant to proposed N.J.A.C. 7:26J-3.3(a), the Department will review each collection plan or amended collection plan to ensure that the plan includes all required information and that the plan will enable a manufacturer or group of manufacturers to meet its

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

estimated-market-share-in-weight. The Department will ensure that, in the aggregate, collection plans or amended collection plans include at least one convenient collection opportunity for consumers in each county of the State, as noted at proposed N.J.A.C. 7:26J-3.3(b). Then, employing the criteria listed at proposed N.J.A.C. 7:26J-3.3(b)1, the Department will determine if a collection opportunity is convenient to a consumer in each county in the State.

As the initial step in its review of a new or amended collection plan, the Department will review each collection plan or amended collection plan to determine if the plan is administratively and technically complete, as noted at proposed N.J.A.C. 7:26J-3.3(c). Should the Department determine that a collection plan or amended collection plan is deficient in any way, it may issue a Notice of Deficiency to the manufacturer or group plan administrator. The manufacturer or group plan administrator will then have 30 calendar days to cure the deficiencies. Proposed N.J.A.C. 7:26J-3.3(d) directs that a manufacturer or group plan administrator's failure to submit a revised plan or amended plan, or to fully cure the noted deficiencies will constitute a failure to submit a collection plan in violation of the Act and this chapter. Pursuant to proposed N.J.A.C. 7:26J-3.3(e), the Department may reject a collection plan or amended collection plan, in whole or in part, and may impose additional requirements as a condition of approval with both alternatives intended to ensure that all approved plans establish a framework that is anticipated to result in the goals of the Act and this chapter being satisfied.

Semiannual Reports

Subchapter 4 addresses semiannual reports, which are submitted to the Department by manufacturers, group plan administrators, collection site operators, and authorized recyclers. As originally enacted, the Act required television manufacturers to submit an annual report to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department. More specifically, the Act originally established a Statewide television electronic waste management program to be operated by the Department, but gave television manufacturers or groups of television manufacturers the option of running their own program, in which case they were required to submit an annual report to the Department that included the total weight of televisions collected from consumers in the previous program year. When the Act was amended in 2008, the Act no longer required television manufacturers to so report, which resulted in a data gap. That led the Department to adopt a rule, in 2012, requiring all manufacturers of covered electronic devices and groups of manufacturers to submit an annual report by February 1, which included the total weight of televisions and covered electronic devices collected in the previous program year. The 2016 Amendment eliminated any distinction between television manufacturers and other manufacturers of covered electronic devices and modified and expanded the reporting requirements. The Act, at N.J.S.A. 13:1E-105c, now requires manufacturers, operators of collection sites, including local government units collecting covered electronic devices, and authorized recyclers to file semiannual reports with the Department. Accordingly, the Department is proposing new N.J.A.C. 7:26J-4, Semiannual reports, to codify the reporting requirements.

Proposed N.J.A.C. 7:26J-4.1(a) and (h) require every manufacturer or group plan administrator, operator of a collection site, including a local government unit that operates a collection site, and authorized recycler to electronically submit a semiannual report to the Department on February 1 and August 1 of each year; the first half of a program year – January to June – to be covered by the August 1 report, and the second half of a program year – July to December – to be covered by the February 1 report. The February 1 report is submitted in the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

calendar year immediately following a program year. Pursuant to proposed N.J.A.C. 7:26J-4.1(b), every manufacturer is required to include, in each semiannual report, the total weight of covered electronic devices collected in the applicable six-month period. As indicated at N.J.A.C. 7:26J-4.1(g), every semiannual report submitted to the Department must include a written certification attesting to the truth of the information submitted in the report.

Proposed N.J.A.C. 7:26J-4.1(c) requires every group plan administrator to submit a semiannual report to the Department for each participating group manufacturer detailing, among other things, manufacturer and authorized recycler contact information and the total weight of covered electronic devices collected for each manufacturer in the applicable six-month period. Pursuant to proposed N.J.A.C. 7:26J-4.1(d), every group plan administrator is also required to submit a semiannual report detailing the weight of covered electronic devices purchased and sold by the group plan administrator during the applicable six-month period. The report must include the identity of each authorized recycler, group plan administrator, or manufacturer outside its group from whom it purchased, or to whom it sold, weight during the applicable six-month period, the total weight purchased from, or sold to, those entities, the date of each transaction and the weight involved in the transaction. Pursuant to proposed N.J.A.C. 7:26J-4.1(e), every operator of a collection site, including a local government unit collecting covered electronic devices, whether identified in a manufacturer's collection plan or not, must include in its semiannual report the total weight of covered electronic devices collected at the site during the applicable six-month period, as well as identifying information about the person transporting the covered electronic devices to an authorized recycler, including the weight of the covered electronic devices provided to the transporter.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Each authorized recycler identified in a manufacturer's collection plan is required to include in each of its reports the items listed at proposed N.J.A.C. 7:26J-4.1(f). The informational items required for authorized recycler submission include: identifying information about manufacturers, collection sites, and transporters, including the weight of covered electronic devices delivered to the authorized recycler or collected from a collection site by the authorized recycler; transaction information for sales between the authorized recycler and another recycler or group plan administrator; information about the disposition of covered electronic devices to end-users or other recipients; and information about the disposal of any residue that resulted from the recycling of covered electronic devices.

Sale and Disposition of Covered Electronic Devices

Subchapter 5 addresses the prohibitions on the sale of covered electronic devices and educational requirements for retailers. The Act, at N.J.S.A. 13:1E-99.99.a, provides that only a manufacturer who is compliant with all financial and other requirements of the Act can sell, or offer for sale, a covered electronic device in New Jersey. The Department proposes to codify this requirement at proposed N.J.A.C. 7:26J-5.1, Prohibitions on the sale and disposition of covered electronic devices. Proposed N.J.A.C. 7:26J-5.1(a) expressly requires the manufacturer to comply with the terms of an approved collection plan or a collection plan for which Department approval is pending. Thus, a manufacturer's failure to register or pay a registration fee will be grounds for the Department to bar the sale of a covered electronic device until such time as the manufacturer comes into compliance with the applicable requirements of the Act and this chapter, including all financial requirements.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department also proposes to codify restrictions on the sale of covered electronic devices pursuant to the Act, at N.J.S.A. 13:1E-99.100, which requires covered electronic devices to be visibly and permanently labeled. Proposed N.J.A.C. 7:26J-5.1(c) prohibits a person from selling any new covered electronic device in the State unless it is labeled with the manufacturer's brand. Further, the Act, at N.J.S.A. 13:1E-99.99.b and 104.b, prohibits the sale of a new covered electronic device produced by a manufacturer that has not fully complied with the statutory requirements of the Act. The Department proposes to codify that prohibition at proposed N.J.A.C. 7:26J-5.1(c), which prohibits the sale or offer for sale in the State of such a device where the Department has not approved the manufacturer's collection plan, or the plan is not pending the Department's approval, or the manufacturer has otherwise failed to comply with the Electronic Waste Management rules, N.J.A.C. 7:26J.

Proposed N.J.A.C. 7:26J-5.1(d) codifies the statutory prohibition against the sale of new covered electronic devices containing heavy metals exceeding European Union standards. Proposed subsection (d) also codifies the statutory exception at N.J.S.A. 13:1E-99.111.a(2)(a), which allows the sale of a product that exceeds the heavy metal standard where it includes a substance needed to meet certain consumer, health, or safety requirements of Underwriters Laboratories, or Federal or State law.

Pursuant to proposed N.J.A.C. 7:26J-5.1(e), the seller of a new covered electronic device is required to consult a compliance list that the Department maintains on its website before selling the covered electronic device. The Department maintains the website and the compliance list to ensure that retailers can readily determine the compliance status of all manufacturers when

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

they are ready to place their orders with a manufacturer or supplier. A seller may consult the list to ensure manufacturer compliance with both the Act and N.J.A.C. 7:26J.

Additionally, the Department proposes to codify, at N.J.A.C. 7:26J-5.1(f), the statutory prohibition set forth in the Act at N.J.S.A. 13:1E-99.103.e, which prohibits recovered covered electronic devices to be sent to prisons for recycling, either directly or through intermediaries. The Department also proposes to codify, at N.J.A.C. 7:26J-5.1(b), the statutory requirement that all covered electronic devices collected in this State be recycled in compliance with all applicable Federal, State, and local laws, regulations, and ordinances. See N.J.S.A. 13:1E-99.108.a.

Further, pursuant to proposed N.J.A.C. 7:26J-5.1(g), a used covered electronic device or any of its components or subassemblies shall not be disposed of as solid waste. The Department is also proposing to define “solid waste” as defined at N.J.A.C. 7:26-1.6.

The Department believes that the success of New Jersey’s electronic waste recycling program is rooted in consumer education. Indeed, the Act, at N.J.S.A. 13:1E-99.104.a, requires that a retailer provide educational information to the public. Proposed N.J.A.C. 7:26J-5.2, Educational requirements for retailers of covered electronic devices, requires a retailer to provide that material to the consumer by way of a toll-free number and website, or an information insert with the packaging or sales receipt for the covered electronic device.

Estimated-Market-Share-In-Weight

Subchapter 6 explains how the Department determines the estimated-market-share-in-weight for a manufacturer. Proposed N.J.A.C. 7:26J-6.1, Determination of estimated-market-share-in-weight, provides the details of the three steps that the Department will implement.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Pursuant to step one, at proposed N.J.A.C. 7:26J-6.1(a)1, the Department will obtain national market share sales data for the most recent, available 12-month period from an entity that has expertise in gathering market share sales data for the electronics sector. That data will include the total nationwide sales in weight of each of the categories of covered electronic devices (televisions, computers and computer monitors, and desktop printers/faxes) sold during the 12-month period, expressed as a percentage of the weight of all covered electronics sold during that period, and each manufacturer's national market share of those devices during that period.

As pertaining to the second step, at proposed N.J.A.C. 7:26J-6.1(a)2i, the Department will multiply the total national sales in weight of televisions, computers and computer monitors, and desktop printers and desktop faxes for the 12-month period (each expressed as a percentage of the weight of all covered electronic devices sold during that period) by each manufacturer's national market share of each of the devices. The resulting sums will be divided by 100 to determine each manufacturer's individual market shares of televisions, computers and computer monitors, and desktop printers and desktop faxes for the program year. Pursuant to proposed N.J.A.C. 7:26J-6.1(a)2ii, the Department will add together each manufacturer's program-year-market-shares of televisions, computers and computer monitors, and desktop printers/faxes to form the manufacturer's overall program-year market share of all covered electronic devices.

Pursuant to step three, at proposed N.J.A.C. 7:26J-6.1(a)3, explains that the Department will multiply the total weight of covered electronic devices estimated to be available for collection during the program year by a manufacturer's program-year-market-share of all covered electronic devices to determine the manufacturer's estimated market-share-in-weight for

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

the program year. The total weight estimated to be available for a program year will be the total weight of covered electronic devices, including the weight of orphan devices and weight that was not program-eligible, collected during the previous program year, adjusted, if necessary, by the amount of weight projected to be collected in the next program year. Pursuant to proposed N.J.A.C. 7:26J-6.1(b), within 60 days from its receipt of the semiannual report due on February 1, the Department will send each manufacturer an estimated-market-share-in-weight notice.

The following is a hypothetical example demonstrating how a manufacturer's estimated-market-share-in-weight is calculated pursuant to proposed N.J.A.C. 7:26J-6.1:

- Manufacturer ABC has five percent of the total national sales of computers in weight. Computers represent 40 percent of the total national sales of covered electronic devices. To determine Manufacturer ABC's program-year-market-share for computers, multiply five times 40 and divide by 100 to get two percent, which is Manufacturer ABC's program-year-market-share for computers.
- Manufacturer ABC has 30 percent of the total national sales of televisions in weight. Televisions represent 50 percent of the total national sales of covered electronic devices. To determine Manufacturer ABC's program-year-market-share for televisions, multiply 30 times 50 and divide by 100 to get 15 percent, which is Manufacturer ABC's program-year-market share for televisions.
- Manufacturer ABC has one percent of the total national sales of desktop printers and faxes in weight. Desktop printers and faxes represent 10 percent of the total national sales of covered electronic devices. To determine Manufacturer ABC's program-year-market-share for desktop printers and faxes, multiply one times 10 and divide by 100 to get 0.1

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

percent, which is Manufacturer ABC's program-year-market-share for desktop printers and faxes.

- To determine Manufacturer ABC's program-year-market-share of all covered electronic devices, add the three covered electronic device categories together (two plus 15, plus 0.1), which equals 17.1 percent.
- To determine Manufacturer ABC's estimated-market-share-in-weight, expressed as pounds, which must be collected during the program year, multiply 17.1 percent by the total weight of covered electronic devices to be collected during the program year of 50,000,000 pounds (estimated by the Department) for a result of 8,550,000 pounds.

A manufacturer is required to collect covered electronic devices throughout the program year even if it collects its estimated-market-share-in-weight before the end of the program year on December 31. Pursuant to proposed N.J.A.C. 7:26J-6.1(c), a manufacturer receiving an estimated-market-share-in-weight notice from the Department may comment on its program-year-market-share or its estimated-market-share-in-weight. The manufacturer must do so within 10 days of its receipt of the estimated-market-share-in-weight notice. As noted at proposed N.J.A.C. 7:26J-6.1(d), a commenting manufacturer may propose a different program-year-market-share or an estimated-market-share-in-weight, which will be considered by the Department. In accordance with proposed N.J.A.C. 7:27J-1.6(e), the Department will review all manufacturer comments and proposals received, and if the manufacturer supports the proposed program-year-market-share, estimated-market-share-in-weight, or where applicable, both, with verifiable sales data, the Department will revise the share, the weight, or both, and provide the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

manufacturer with a revised estimated-market-share-in-weight notice, which will include a summary of the comments and the Department's responses thereto.

Requirements for Operators of Collection Sites, Authorized Recyclers, and Group Plan

Administrators

Subchapter 7 describes performance and recordkeeping requirements and responsibilities for collection site operators, authorized recyclers, and group plan administrators. The Act, at N.J.S.A. 13:1E-99.108, requires the Department to set performance requirements for collectors (pursuant to the proposed rules, "operators of collection sites"), transporters, and authorized recyclers. Proposed N.J.A.C. 7:26J-7.1, Performance requirements for operators of collection sites and authorized recyclers, establishes those requirements, which differ in some respects from those at existing N.J.A.C. 7:26A-13.11.

Proposed N.J.A.C. 7:26J-7.1(a) requires an authorized recycler participating in a manufacturer's or group of manufacturers' approved collection plan to be certified by the Sustainable Electronics Recycling International's (SERI's) Responsible Recycling Standard for Electronics Recyclers (R2) (<https://sustainableelectronics.org/>) or the e-Stewards-Standard for Responsible Recycling and Reuse of Electronics Equipment (e-Stewards) (<https://e-stewards.org/>), or another potentially accredited standard if approved by the Department. The R2 and e-Stewards standards are currently the only two accredited certification standards for electronics recyclers in North America. The R2 standard was developed by SERI pursuant to the United States Environmental Protection Agency-sponsored multi-stakeholder initiative – "Responsible Recycling Practices for Use in Accredited Certification Programs for Electronics Recyclers." The e-Stewards standard was developed by several recyclers in conjunction with the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Basel Action Network, a nonprofit organization dedicated to reducing the disposal of toxic wastes in developing countries. Authorized recyclers that meet either of these standards have demonstrated that they can safely manage covered electronic devices. This requirement is similar to the performance requirement at existing N.J.A.C. 7:26A-13.11, Performance requirements for collectors, transporters, and authorized recyclers, which requires authorized recyclers to comply with the United States Environmental Protection Agency's Responsible Recycling Practices for Use in Accredited Certification Programs for Electronics Recyclers, under which the R2 standards were developed. As many authorized recyclers are located out-of-State, the proposed rule language requiring the authorized recyclers to be certified ensures that authorized recycler services continually comply with the Act. Moreover, an authorized recycler is required to prevent significant risk to public health and the environment when exporting covered electronic devices.

Pursuant to proposed N.J.A.C. 7:26J-7.1(b), an operator of a collection site is prohibited from placing unreasonable limits on the number of covered electronic devices that may be dropped off by consumers, and is required to adequately staff and secure the collection site. Such operators must also train staff to securely handle any personal information contained on hard drives or similar data storage and, when intending to close a collection site included in an approved collection plan, inform the manufacturer or group plan administrator of its intent to close the site no later than 30 days prior to closing the collection site. The 30-day notice will give a manufacturer or group plan administrator time to find an additional collection site, should one be needed for compliance with the Act.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

New to the electronic waste regulatory paradigm is proposed N.J.A.C. 7:26J-7.2, Responsibilities of a group plan administrator. Pursuant to proposed N.J.A.C. 7:26J-7.2(a), a group plan administrator, for each of its participating manufacturers, is required to comply with all applicable requirements of the chapter regarding general provisions, registration and submission of documents, collection plans, semiannual reports, and actual-market-share-in-weight, credits, and collection shortfalls. The Department is proposing this express requirement because group plan administrators serve an integral role in the regulation of electronic waste in the State and, along with their participating manufacturers, are responsible for satisfying the Act requirements.

Proposed N.J.A.C. 7:26J-7.3, Recordkeeping requirements for authorized recyclers and operators of collection sites, is also new to the electronic waste management rules. Pursuant to proposed N.J.A.C. 7:26J-7.3(a)1, an authorized recycler is required to maintain a Covered Electronic Device Receipt Form. Items reported on the form will include the weight, type, and place of origin of the covered electronic devices delivered to the authorized recycler. As required at proposed N.J.A.C. 7:26J-7.3(a)2, an authorized recycler shall maintain a record of each end-user or other recipient of end-products recovered from the recycling process, including a copy of any end-user contracts or agreements or letters of interest evidencing the recycler's ability to sell the end-products. An authorized recycler must perform and retain on an annual basis, a written analysis of the stability of each end-user and recipients of end-products. The analysis shall consider the length of time the end-user/recipient has been in business, the length of time the end-user/recipient has been using recycled products, and the number of end-users in the national and international marketplace. Additionally, an authorized recycler is required to

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

maintain a record of each load of residue transported for disposal, as directed at proposed

N.J.A.C. 7:26J-7.3(a)3. The foregoing information will enable the Department to better understand market dynamics for the recycling of covered electronic devices and, through this understanding, increase the efficiency of its electronic waste program.

Recordkeeping requirements for operators of collection sites are explained at proposed N.J.A.C. 7:26J-7.3(b). An operator of a collection site is required to maintain a record of the place of origin of all covered electronic devices delivered to the collection site and a record of all covered electronic devices transported from the site that includes, among other things, the name, address, email address, and telephone number of the transporter, the weight of covered electronic devices delivered to the transporter, and the name, address, email address, and telephone number of the receiving authorized recycler, collection site, or other location.

Applicable to both authorized recyclers and operators of collection sites are additional recordkeeping obligations, noted at proposed N.J.A.C. 7:26J-7.3. As provided at proposed N.J.A.C. 7:26J-7.3(c) and (d), respectively, both entities must retain the required records and information indicated in the proposed section for three calendar years following the submission of their February 1 semiannual reports, and provide the information required by this section to the Department immediately upon request.

Actual-Market-Share-In-Weight, Credits, and Collection Shortfalls

Subchapter 8 sets forth the requirements for credit accumulation and trading. The Department is proposing a new section establishing a credit trading program, N.J.A.C. 7:26J-8.1, Requirements for credit accumulation and trading, for registrants. As defined at proposed N.J.A.C. 7:26J-1.3, Definitions, a registrant is a manufacturer of covered electronic devices that

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

is in compliance with the requirements of the Act and this chapter. Pursuant to proposed N.J.A.C. 7:26J-8.1(a), the Department first determines a registrant's actual-market-share-in-weight for a program year as follows. Following receipt of the semiannual report on February 1 of the next program year, the Department calculates the total weight of covered electronic devices actually collected in New Jersey in the prior program year, which ends on December 31. After the total weight is calculated, the Department multiplies the total weight by each registrant's program-year-market-share for the prior year to determine each registrant's actual-market-share-in-weight for the prior program year. Then, pursuant to proposed N.J.A.C. 7:26J-8.1(b), the Department notifies a registrant of its actual-market-share-in-weight for a prior program year in the registrant's estimated-market-share-in-weight notice for the next program year. A registrant's actual-market-share-in-weight for the prior program year may be less than, equal to, or greater than its estimated-market-share for that year. As noted at proposed N.J.A.C. 7:26J-8.1(c), after the Department determines the actual-market-share-in-weight for each registrant, it will then notify each registrant of the beginning and the end of the credit trading period.

The following demonstrates how a registrant's actual-market-share-in weight is calculated pursuant to proposed N.J.A.C. 7:26J-8.1(a), using program year 2024 for demonstrative purposes. When the 2024 program year is completed, the Department will compare the total weight of covered electronic devices actually collected in program year 2024 and multiply that by the registrant's program-year-market-share for 2024 to determine the registrant's actual-market-share-in-weight for program year 2024. That will occur in the spring of calendar year 2025. The Department then compares the registrant's actual-market-share-in-

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

weight for program year 2024 to the registrant's estimated-market-share-in-weight for program year 2024 and determine whether the registrant's actual-market-share-in-weight for program year 2024 was equal to, less than, or greater than the registrant's estimated-market-share-in-weight for program year 2024 and, provided that the registrant collected its estimated-market-share-in-weight for program year 2024, whether the registrant met, under-collected or over-collected its collection obligation for program year 2024. Pursuant to proposed N.J.A.C. 7:26J-8.1(b)1, a registrant notified that its actual-market-share-in-weight for the prior program year is greater than its estimated-market-share-in-weight for that same year will have a shortfall in weight, which will have to be cured during the credit trading period through the acquisition of program-eligible-weight. The registrant may obtain that weight from any source during the credit trading period, including from other registrants with available credits.

Proposed N.J.A.C. 7:26J-8.1(b)2 directs that a registrant notified that its actual-market-share-in-weight for the prior program year is less than its estimated-market-share-in-weight for that same year who has met its estimated-market-share-in-weight, will receive a single credit for each pound of weight collected in excess of its actual-market-share-in weight. A registrant may transfer those credits to a registrant with a shortfall for the program year in which the credits were earned or apply up to 25 percent of the credits towards the registrant's estimated-market-share-in-weight for the following program year, with any remaining credits being available for transfer to another registrant with an actual-market-share-in-weight shortfall. A registrant shall not transfer or apply credits for any program year other than to the program year in which the credits are earned, except to the extent that a registrant may opt to use such credits to satisfy up to 25 percent of its estimated-market-share-in-weight for the following program year. A

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

registrant shall not transfer credits to a group plan administrator, as credits are used to satisfy the market-share-in-weight collection obligation of a registrant. A group plan administrator, by itself, has no such obligation. A group plan administrator may transfer or apply credits to one or more of its registrant-group-members, but only under the circumstances explained immediately below.

In accordance with proposed N.J.A.C. 7:26J-8.1(b)3, a group plan administrator may transfer or apply credits earned by one or more of its registrant-group-members to other registrant-group-members, but only if the group plan administrator's contract with its registrant-group-members authorizes it to do so, and the group plan administrator collects, transports, and recycles covered electronic devices in excess of the combined actual-market-shares-in-weight of its registrant-group-members. If a group plan administrator meets that criteria, pursuant to proposed N.J.A.C. 7:26J-8.1(b)4, the group plan administrator may transfer credits to one or more registrant-group-members with a shortfall in an amount not to exceed the registrant-group-member's actual shortfall, apply credits to one or more registrant-group-members with an actual-market-share-in-weight surplus to satisfy up to 25 percent of the registrant-group-member's estimated-market-share-in-weight for the following program year, or both, if sufficient credits remain available. Additionally, a group plan administrator may transfer credits to a registrant outside of its group with a shortfall in an amount not to exceed the registrant's actual shortfall, provided all of the registrant-groupmembers have met their actual-market-share-in-weight before the close of the credit trading period.

A registrant notified of a shortfall in its actual-market-share in-weight must cure that shortfall during the credit trading period by acquiring program-eligible-weight from any source,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

including other registrants with available credits, as required at proposed N.J.A.C. 7:26J-8.1(d).

Pursuant to proposed N.J.A.C. 7:26J-8.1(e), a registrant or group plan administrator transferring or applying credits must do so before the expiration of the credit trading period, as all credits remaining will expire upon closure of that credit trading period.

Proposed N.J.A.C. 7:26J-8.1(f) requires certain registrants to submit credit trading reports to the Department. Within five business days of the close of the credit trading period, a registrant awarded credits pursuant to N.J.A.C. 7:26J-8.1(b)2, including a registrant whose credits are transferred or applied by a group plan administrator, shall submit a report that includes, among other things, the number of credits applied to satisfy up to 25 percent of the registrant's estimated-market-share-in-weight for the following program year; the number of credits transferred to other registrants and the identity of those registrants; and the number of credits remaining at the conclusion of the credit trading period.

A group plan administrator transferring or applying credits to registrant-group-members during the credit trading period is also required to maintain records about the credit trading. Pursuant to proposed N.J.A.C. 7:26J-8.1(g), a group plan administrator must maintain credit trading records for three years after the conclusion of the trading period and make those records available to the Department upon request. Proposed N.J.A.C. 7:26J-8.1(g)1 through 6 lists the information that is required to be recorded, including the total number of credits the group plan administrator transferred or applied to registrant-group-members, the identities of each registrant-group-member to whom credits were transferred or applied, and the number of credits remaining after the conclusion of the trading period.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Act provides that a “manufacturer that fails to collect, transport, or recycle its required market share in weight obligation shall be assessed a fee equivalent to \$0.50 per pound times its market share in weight obligation.” N.J.S.A. 13:1E-99.105d. The Department proposes to provide a manufacturer with an opportunity to cure a shortfall in weight for a program year after being notified of its actual-market-share-in-weight for that year. If a manufacturer fails to cure any shortfall, as provided at proposed N.J.A.C. 7:26J-8.1(h), the Department proposes to allow the manufacturer to submit information explaining the reasons why the manufacturer had the shortfall and why the manufacturer failed to cure it. Within 10 business days following the close of the credit trading period, a manufacturer may submit the information listed at proposed N.J.A.C. 7:26J-8.1(h)1 through 5, in writing, for the Department’s consideration: the amount of the shortfall; whether the manufacturer collected its estimated-market-share-in-weight for the completed program year; if the manufacturer did not collect its estimated-market-share-in-weight, the reasons for that failure and the efforts taken to remedy the situation before the end of the program year; the manufacturer’s efforts to cure the shortfall after being notified of the shortfall; and the steps taken to prevent a recurrence in the next program year. The Department will consider the collective weight of the information the manufacturer submits in determining whether there were extenuating circumstances for the manufacturer’s failure to cure the shortfall and whether to assess a noncompliance fee against the manufacturer.

Civil Administrative Penalties and Noncompliance Fees

Subchapter 9 explains the procedures for the assessment and payment of civil administrative penalties and noncompliance fees in accordance with the Act.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Proposed N.J.A.C. 7:26J-9.1 sets forth the scope and purpose of the proposed penalty and noncompliance fee assessment rules. As noted at proposed N.J.A.C. 7:26J-9.1(a), the subchapter specifically applies to violations of the Act.

Proposed N.J.A.C. 7:26J-9.1(b) authorizes the Department to assess a civil administrative penalty of not less than \$500.00, nor more than \$1,000, for each violation of any provision of the Act, including any violation of any rule promulgated, and any administrative order issued, pursuant to the Act. Proposed N.J.A.C. 7:26J-9.1(c) will allow the Department to assess a civil administrative penalty of not more than \$25,000 for each violation of N.J.A.C. 7:26J-2.1(b), (d), (e); 3.1; 3.2; 5.1(a) through (e) and (g); 5.2; 7.1(a)2; and 8.1(d), or any administrative order issued, pursuant to those rules and regulations. Proposed N.J.A.C. 7:26J-9.1(d) directs that each day a violation continues shall constitute a separate and distinct violation, and, as noted at proposed N.J.A.C. 7:26J-9.1(e), where any requirement of the Act, or any rule promulgated, or any administrative order issued, pursuant to the Act, applies to more than one act, each additional act shall constitute a separate and distinct violation of the applicable rule.

Consistent with the Act at N.J.S.A. 13:1E-105d, proposed N.J.A.C. 7:26J-9.1(f) authorizes the Department to assess a noncompliance fee against a manufacturer for the failure to collect, transport, and recycle its actual-market-share-in weight for a program year. The proposed subsection incorporates the \$0.50 per pound fee specified in the Act. The Department may also assess a civil administrative penalty in addition to a noncompliance fee. As stated at proposed N.J.A.C. 7:26J-9.1(g) and (h), the assessment of a civil administrative penalty or a noncompliance fee will not limit the Department's remedies otherwise available pursuant to the Act or any other statute.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Proposed N.J.A.C. 7:26J-9.2, Procedures for assessment and payment of civil administrative penalties and noncompliance fees, explains the procedures for the Department to assess a civil administrative penalty for violations of the Act and to assess a noncompliance fee against a manufacturer for its failure to meet its actual-market-share-in-weight for a program year. Pursuant to proposed N.J.A.C. 7:26J-9.2(a), the Department will assess a civil administrative penalty through a notice of civil administrative penalty assessment served upon the alleged violator by certified mail or by personal service. Such notice will identify the provision of the rules or Act violated, concisely state the facts of the violation, order the violator to cease or correct the violation, specify the amount of the penalty, and advise the alleged violator of the right to request an adjudicatory hearing. Department assessment of a noncompliance fee is set forth at N.J.A.C. 7:26J-9.2(b). For noncompliance fees, the Department issues an administrative order directing payment of the fee, with the order informing the manufacturer of the provision of the Act or rule violated, the facts that led to the assessment of the fee, the amount of the fee, and the right to request an adjudicatory hearing.

Pursuant to proposed N.J.A.C. 7:26J-9.2(c), payment of the civil administrative penalty, noncompliance fee, or, where applicable, both, is due upon receipt of a final order in a contested case or when the applicable notice of civil administrative penalty or administrative order assessing a noncompliance fee becomes a final order.

Proposed N.J.A.C. 7:26J-9.3, Adjudicatory hearing, sets forth the procedures to request an adjudicatory hearing to contest an administrative order or a notice of civil administrative penalty assessment, and for the conduct of an adjudicatory hearing. The proposed rule requires the Department to conduct all adjudicatory hearings in accordance with the Administrative

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. To request a hearing, within 35 days or receipt of an administrative order or notice of civil penalty assessment, an alleged violator must submit to the Department a copy of the administrative order or notice of civil penalty assessment, a completed Adjudicatory Hearing Request Checklist and Tracking Form, and other information including the alleged violator's defenses to the Department's findings, an admission or denial of each of the Department's findings, an estimate of the time required for the hearing, and, if necessary, a request for a barrier-free hearing location. See proposed N.J.A.C. 7:26J-9.3(a). As stated at proposed N.J.A.C. 7:26J-9.3(c), if the Department does not receive the hearing request within 35 days after receipt of an administrative order or notice of civil penalty assessment, the Department will deny the request. The Department will also deny the hearing request if the alleged violator fails to include all of the required information listed at N.J.A.C. 7:26J-9.3(a).

Proposed N.J.A.C. 7:26J-9.4, Civil administrative penalties, sets forth the procedures by which the Department determines and assesses a civil administrative penalty for violation of the promulgated rules and newly establishes minimum or "base penalty" for certain violations. As indicated at proposed N.J.A.C. 7:26J-9.4(a), (b), (c), and (d), the amount of each base penalty reflects the Act's bifurcated penalty scheme where violations of eight specifically enumerated sections/subsections of the Act and the implementing rules are subject to a maximum penalty of \$25,000, with all other violations being subject to a minimum penalty of \$500.00 and a maximum penalty of \$1,000. Infractions subject to the maximum \$25,000 penalty will have a higher base penalty than violations of provisions subject to a maximum penalty of \$1,000. When establishing the base penalty, the Department has assumed that the violation occurred in the least

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

aggravating of circumstances and that the violator has been fully cooperative, has promptly implemented all appropriate mitigation or prevention measures, and has an otherwise satisfactory compliance or operating history. The Department establishes base penalties at a level determined to be minimally necessary to deter future violations, and they are imposed on the assumption that the violation was neither intentional nor negligent, except as may otherwise be implicit in the particular infraction. The base penalties must be of such an amount to ensure that it is more cost-effective to comply with the rules than to pay penalties for violations. The Department's creation of base penalties for violations ensures that all violators of the same rule are treated equally, eliminating any competitive advantage or disadvantage.

To the extent that the same violations are known to have occurred previously, however, the Department will increase the base penalty by the severity factors identified at proposed N.J.A.C. 7:26J-9.4(e). Pursuant to proposed N.J.A.C. 7:26J-9.4(e), where any requirement of any rule listed at N.J.A.C. 7:26J-9.4(f) pertains to more than one act, condition, occurrence, item, or unit, the failure to comply with such requirement as it pertains to each such act, condition, occurrence, item, or unit will constitute an additional, separate, and distinct violation.

As explained above, the Act authorizes the Department to assess a maximum civil administrative penalty of \$25,000 for certain violations, and a minimum and maximum civil administrative penalty of \$500.00 and \$1,000 for all other violations. See N.J.S.A. 13:1E-99.110.g. For clarity, the Department proposes to include two separate penalty tables at proposed N.J.A.C. 7:26J-9.4(f) for violations of the Act and this chapter. The first table identifies the rules that if violated, are subject to a penalty of between \$500.00 and \$1,000. These rules are N.J.A.C. 7:26J-2.2(a) and (b), 3.1(d) and (e), 3.2(c), 4.1, 7.1(a) and (b), and 7.3(a) and (b). The second

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

table includes the rules the violation of which are subject to a maximum \$25,000 penalty, as explained above. Proposed N.J.A.C. 7:26J-9.4(f) also provides that a civil administrative penalty for a violation of a rule at N.J.A.C. 7:26J-1, 2, 3, 4, and 8 may be assessed against the group plan administrator in the same amount and manner as if the violator were committed by a participating manufacturer. Consistent with the Act, N.J.S.A. 13:1E-99.103.m, the manufacturer may also be subject to an enforcement action if the group plan administrator fails to fulfill the manufacturer's responsibilities on its behalf. See also proposed N.J.A.C. 7:26J-7.2.

Both tables set forth the rule citation, a summary describing the violation, the corresponding base penalty, and the "Type of Violation," including one of two different designations, depending on whether the violation is minor (M) or non-minor (NM). In applying the criteria at P.L.1995, c. 296 (N.J.S.A. 13:1D-125 through 133), commonly known as the Grace Period Law, the Department designates as minor those violations that pose minimal risk to public health and safety and the environment, that do not undermine or impair the goals of the program, and that can be corrected within a designated grace period. A designation as minor in the rules is not absolute. The additional statutory criteria regarding the intent of the violator, the duration of the violation, and whether the violation is a repeat offense are fact-specific for each violation, and the Department must consider each on a case-by-case basis. Thus, each violation listed in the table at N.J.A.C. 7:26J-9.4(f)1 that is identified as minor will be eligible for a grace period only if it meets these additional criteria. The length of the grace period, if any, is indicated in the column with the heading "Grace Period." The number in this column indicates the period of time, if any, the Department will allow a regulated entity to correct the violation.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

The Department proposes to assess the penalties at N.J.A.C. 7:26J-9.5, Alternate civil administrative penalty determination, when the penalty for a violation listed at N.J.A.C. 7:26J-9.4(f) will not provide a sufficient deterrent because of the specific circumstances of the violation. For instance, the Department would assess such an alternate civil penalty if there are aggravating conduct factors, such as poor compliance or operating history, if the violation was clearly foreseeable and could have been avoided, or if the violation is not listed at N.J.A.C. 7:26J-9.4. As at proposed N.J.A.C. 7:26J-9.4(b), (c), and (d), proposed N.J.A.C. 7:26J-9.5(b), (c), and (d) indicate that each legal requirement, each violation, and each day during which the violation continues, constitutes an additional, separate, and distinct violation. Pursuant to proposed N.J.A.C. 7:26J-9.5(e), an alleged violator has 30 days to cure a minor violation. If the violator fails to cure the violation within 30 days, the violator will be subject to a penalty of \$1,000. The Department considers a violation to be minor if it meets the criteria at N.J.A.C. 7:26J-9.8(c)1 through 7, discussed further below.

Proposed N.J.A.C. 7:26J-9.5(f) sets forth a penalty matrix for violations that are non-minor and subject to a \$25,000 maximum penalty pursuant to the sections of the Act identified at proposed N.J.A.C. 7:26J-9.1(c). The matrix does not include violations subject to the \$500.00 minimum penalty, \$1,000 maximum penalty because that penalty range is limited and does not allow for any meaningful adjustment pursuant to proposed N.J.A.C. 7:26J-9.5(i), which includes Department consideration of the compliance history of the violator, mitigation and prevention measures of the violator, and environmental impacts of the violation. The Department believes that violations subject to the \$500.00 to \$1,000 range of penalties are satisfactorily addressed in the penalty table at proposed N.J.A.C. 7:26J-9.4(f). The proposed penalty matrix allows the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department to assess a penalty on the basis of both the seriousness of the violation (proposed N.J.A.C. 7:26J-9.5(g)) and the nature of the conduct of the alleged violator (proposed N.J.A.C. 7:26J-9.5(h)).

Pursuant to proposed N.J.A.C. 7:26J-9.5(g)1, the Department ascribes major seriousness to a violation that has caused, or has the potential to cause, serious harm to human health or the environment or that is in complete contravention of a requirement. The Department ascribes moderate seriousness pursuant to proposed N.J.A.C. 7:26J-9.5(g)2 to a violation that has caused, or has the potential to cause, substantial harm to human health or the environment or that is in substantial contravention of a requirement. Minor violations are those that are not major or moderate in nature or which are procedural in nature. As to the nature of the conduct of the alleged violator, proposed N.J.A.C. 7:26J-9.5(h) states that major conduct includes any deliberate, purposeful, or willful act, while moderate conduct includes an unintentional act or omission that the violator knew or should have known would violate the Act or this chapter. Minor conduct includes any act or omission that is not included in the major or moderate categories. Proposed N.J.A.C. 7:26J-9.5(i) authorizes the Department to adjust the penalty calculated using the penalty matrix set forth at proposed N.J.A.C. 7:26J-9.5(f) to an amount no greater than the maximum, nor less than the minimum, using the factors listed at proposed N.J.A.C. 7:26J-9.5(i)1 through 5. See proposed N.J.A.C. 7:26J-9.4(f)3.

Proposed N.J.A.C. 7:26J-9.6, Civil administrative penalty for submitting inaccurate or false information, establishes the civil administrative penalties for submitting to the Department inaccurate or false information in any application, registration, record, collection plan, semiannual report, or other document that is required to be maintained or submitted pursuant the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Act or this chapter. See proposed N.J.A.C. 7:26J-9.6(a). Similar to the penalties at proposed administrative penalty sections N.J.A.C. 7:26J-9.4 and 9.5 discussed above, proposed N.J.A.C. 7:26J-9.6(b) indicates that each day is an additional, separate, and distinct violation, from the day that the violator knew, or had reason to know, that it submitted inaccurate or false information to the Department until the day the Department receives a written correction by the violator.

Pursuant to proposed N.J.A.C. 7:26J-9.6(c), the Department will assess a civil administrative penalty for violations involving a collection plan – which are subject, pursuant to the Act, to a maximum \$25,000 penalty – at the midpoint of specific monetary ranges, subject to adjustment in accordance with N.J.A.C. 7:26J-9.6(e). For each intentional, deliberate purposeful, knowing, or willful act or omission, the civil administrative penalty will be not more than \$15,000, nor less than \$5,000 per act or omission. For all other conduct, the penalty will be not more than \$5,000, nor less than \$1,000 per act or omission. As specified at proposed N.J.A.C. 7:26J-9.6(d), the Department will assess a civil administrative penalty of \$1,000 for each intentional, deliberate, purposeful, knowing, or willful act of omission involving documents other than a collection plan, and for all other conduct, the penalty is \$500.00 per act or omission. Pursuant to proposed N.J.A.C. 7:26J-9.6(f), the Department considers a violation of proposed N.J.A.C. 7:26J-9.6 as non-minor and not subject to a grace period.

Proposed N.J.A.C. 7:26J-9.7, Civil administrative penalty for failure to allow lawful entry and inspection, establishes civil administrative penalties for each day that a violator refuses, inhibits, or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building, or facility that the Department may enter and inspect pursuant to law. See proposed N.J.A.C. 7:26J-9.7(a). As at proposed administrative penalty

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

sections N.J.A.C. 7:26J-9.4, 9.5, and 9.6 discussed above, the Department considers each day that a violation continues as an additional, separate, and distinct violation. Pursuant to proposed N.J.A.C. 7:26J-9.7(c), the Department will assess a civil administrative penalty of \$1,000 for refusing, inhibiting, or prohibiting immediate lawful entry and inspection of any premises, building, or facility for which an administrative order exists pursuant to the Act, and \$500.00 for any other refusal, inhibition, or prohibition of immediate lawful entry and inspection. A violation of proposed N.J.A.C. 7:26J-9.7 is non-minor and is not subject to a grace period, as noted at proposed N.J.A.C. 7:26J-9.7(d).

Proposed N.J.A.C. 7:26J-9.8, Grace period; procedure, provides that each violation identified as minor in the penalty table at proposed N.J.A.C. 7:26J-9.4(f), and for each violation that is determined to be minor at N.J.A.C. 7:26J-9.5 for which the conditions listed at proposed N.J.A.C. 7:26J-9.8(c) are satisfied, may be cured without penalty during the grace period specified in that penalty table. See proposed N.J.A.C. 7:26J-9.8(a). Violations in that penalty table designated as non-minor are not subject to a grace period, as noted at proposed N.J.A.C. 7:26J-9.8(b).

Proposed N.J.A.C. 7:26J-9.8(c) codifies the criteria to be met for the Department to consider a violation as minor. The criteria are consistent with the Grace Period Law at N.J.S.A. 13:1D-129. The seven criteria are: (1) the violation must not be the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation; (2) the violation poses minimal risk to the public health, safety, and natural resources; (3) the violation does not materially and substantially undermine or impair the goals of the electronic waste management program; (4) the activity or condition constituting the violation has existed

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

for less than 12 months prior to the date of discovery by the Department or a local government agency; (5) the person responsible for the violation has not been notified in a previous enforcement action by the Department or a local government agency as being responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; (6) the person responsible for the violation has not been identified by the Department or a local government agency as being responsible for the same or substantially similar violation at any time that reasonably indicates a pattern of illegal conduct and not an isolated incident; and (7) the activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

The Department will issue a notice of violation to the person responsible for a minor violation, as stated at N.J.A.C. 7:26J-9.8(d)1. The notice identifies the violation, the statutory or other provision violated, and the length of the grace period. Pursuant to proposed N.J.A.C. 7:26J-9.8(d)2, the Department will not assess a penalty for a minor violation, provided that the person responsible for the violation demonstrates that the violation was corrected within the grace period. Moreover, the Department will not consider that violation in the calculation of the “severity component” imposed pursuant to proposed N.J.A.C. 7:26J-9.4(e)3, which increases a penalty based upon the number of previous offenses the responsible person has committed. Proposed N.J.A.C. 7:26J-9.8(d)3 ensures that the person responsible for a minor violation takes the appropriate measures to achieve compliance within the grace period. The responsible person must submit, in writing, and certified in accordance with N.J.A.C. 7:26J-1.4, Signatures and certifications, information detailing the corrective action taken or compliance achieved. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Department may perform an investigation to determine that the information submitted is accurate and to confirm that compliance has been achieved.

Pursuant to proposed N.J.A.C. 7:26J-9.8(d)4, a person responsible for a minor violation may request from the Department an extension of time of up to 90 days to cure the violation. In order to obtain an extension, the person responsible for the violation must submit a written request to the Department, no later than one week prior to the expiration of the initial grace period, explaining why additional time is needed. The request must be certified in accordance with N.J.A.C. 7:26J-1.4, Signatures and certifications. The Department may grant no more than 90 additional days, in accordance with the Grace Period Law at N.J.S.A. 13:1D-127(b).

As set forth at proposed N.J.A.C. 7:26J-9.8(d)4, in exercising its discretion to approve a request for an extension, the Department may consider whether the violator has taken reasonable measures to achieve compliance in a timely manner, whether the delay has been caused by circumstances beyond the control of the violator, whether the delay will pose a risk to the public health, safety, and natural resources, and whether the delay will materially or substantially undermine or impair the goals of the regulatory program. Pursuant to proposed N.J.A.C. 7:26J-9.8(d)6, a person responsible for a violation may not make more than one request for an extension of time. Further, as explained at proposed N.J.A.C. 7:26J-9.8(d)5, if the person responsible for the violation fails to demonstrate to the Department that compliance has been achieved within the initial or extended grace period, the Department may impose a penalty retroactive to the date on which the notice of violation was first issued.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Social Impact

The Department anticipates that the proposed repeals, new rules, and amendments will have a positive social impact. The proposed Electronic Waste Management rules, N.J.A.C. 7:26J, which are the standards for the collection, transportation, and recycling of covered electronic devices throughout the State, will have positive social benefits to the citizens of the State. The proposed rules will provide predictable, consistent, and flexible collection and recycling goals to manufacturers of covered electronic devices, operators of collection sites, and authorized recyclers, as well as conveniently located recycling locations throughout the State that are free to consumers. The recycling program governed by the proposed rules will benefit the social welfare by reducing the need for the raw materials required for the manufacture of new covered electronic devices and by reducing the chances of the improper disposal of covered electronic devices and the discharge of the hazardous substances contained therein.

Economic Impact

The Department anticipates that the proposed repeals, new rules, and amendments will have a positive Statewide economic impact. As described below, the public is expected to benefit from reduced exposure to hazardous substances and the negative health and financial outcomes often associated with exposure to these substances.

The Department acknowledges that manufacturers will likely incur some new recordkeeping expenses associated with the submission of reports, including semiannual reports. Operators of collection sites, including some local government units and authorized recyclers, will also have additional recordkeeping and reporting expenses. Some manufacturers may experience additional increases in operating expenses pursuant to the proposed rules, specifically

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

the cost to collect, transport, and recycle their actual-market-share-in-weight of covered electronic devices. However, it is important to note that pursuant to the existing rules, these firms are likely collecting, transporting, and recycling less than their correct share of electronic waste in New Jersey. Therefore, ensuring the accuracy of recycling requirements will prevent some firms from collecting more than their share, potentially reducing the expense of participating in the electronic waste recycling program for those firms. In addition, manufacturers that fail to collect their actual-market-share-in-weight for a program year may be assessed a statutory noncompliance fee of \$0.50 per pound times their actual-market-share-in-weight.

Pursuant to the proposed rules, an authorized recycler that does not operate under a Class D recycling approval will be required to pay an annual registration fee of \$15,000, which may represent an additional business expenditure for those authorized recyclers. This annual registration fee came into being in 2017 with the 2016 Amendment to the Act. It is expected that this new requirement will impact fewer than 15 recyclers, the majority of which operate out-of-State.

The Department uses the annual registration fees to fund costs the Department incurs in administering the electronic waste recycling program. This would include the Department's determination of a manufacturer's market-share-in-weight collection obligation, the review of collection plans and semiannual reports, outreach and education programs, compliance and enforcement efforts, and staff salaries. The Department does not expect that the changes associated with this rulemaking will result in the need for additional staff or otherwise increase the Department's operating expenses.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Environmental Impact

The Department anticipates that the proposed repeals, new rules, and amendments will have a positive environmental impact. The proposed rules would improve the existing regulatory scheme for the collection, transportation, and recycling of covered electronic devices, thereby reducing the discharge of hazardous substances such as lead, mercury, and cadmium caused by the landfilling or incineration of such devices. The recycling of covered electronic devices also would result in the recovery of raw materials that can be reused in new or remanufactured devices, thus conserving natural resources.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed repeals, new rules, and amendments are not promulgated pursuant to the authority of or in order to implement, comply with, or participate in any program established pursuant to Federal law, or pursuant to a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require a Federal standards analysis.

Jobs Impact

The Department anticipates that the proposed repeals, new rules, and amendments will not have a major impact on job retention and creation in the State. The proposed rules may result in a modest increase in the demand for administrative personnel in the electronics recycling sector, as the proposed rules sets forth new recordkeeping requirements for operators of

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

collection sites and authorized recyclers, as well as new semiannual reporting requirements for manufacturers of covered electronic devices, operators of collection sites, and authorized recyclers.

Agricultural Industry Impact

The proposed repeals, new rules, and amendments govern the collection, transportation, and recycling of covered electronic devices throughout the State. The Department does not anticipate that these rules will have an impact on the State's agricultural industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 through 21, small businesses are defined as those that are independently owned and operated, not dominant in their field, and employ fewer than 100 full-time employees. To the extent that a manufacturer, operator of a collection site, or authorized recycler is a "small business" as defined by the Regulatory Flexibility Act, the various compliance requirements, associated costs, and other impacts are discussed in the Summary and the Economic Impact above. Additionally, a "small business enterprise," which is defined as "any business which has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees" that purchases covered electronic devices in a retail transaction is a "consumer" pursuant to the Act. As such, a small business enterprise acting as a consumer would reap the benefits of the Act, as all State consumers, it would be afforded an opportunity to recycle used covered electronic devices through a manufacturer's approved collection plan.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Housing Affordability Impact Analysis

Pursuant to the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated this rulemaking to determine the impact, if any, on the affordability of housing. The proposed repeals, new rules, and amendments govern the collection, transportation, and recycling of covered electronic devices throughout the State. Accordingly, the Department has determined that the proposed rules are extremely unlikely to evoke a change in the average costs associated with housing or with the affordability of housing in the State.

Smart Growth Development Impact

In accordance with the New Jersey Administrative Procedure Act at N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed repeals, new rules, and amendments to determine the impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. The Department has determined that proposed new N.J.A.C. 7:26J, Electronic Waste Management, and the amendments to the Solid Waste rules, N.J.A.C. 7:26, and Recycling Rules, N.J.A.C. 7:26A, will have an insignificant impact because it is extremely unlikely that the rules will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers. The rules do not regulate the production of housing.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:26A-13.

Full text of the proposed new rules and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 26

SOLID WASTE

SUBCHAPTER 2. DISPOSAL

7:26-2.8 Registration and general prohibitions

(a)-(r) (No change.)

(s) No person shall knowingly dispose of a used covered electronic device, as defined at N.J.A.C. [7:26A-13.2] **7:26J-1.3**, or any of its components or subassemblies, as solid waste. A used covered electronic device shall be recycled in accordance with N.J.A.C. [7:26A] **7:26J**.

CHAPTER 26A

RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

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

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

program rules regarding the recycling of a used covered electronic device, pursuant to the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq.]

(b)-(e) (No change.)

7:26A-1.3 Definitions

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

...

CHAPTER 26J

ELECTRONIC WASTE MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:26J-1.1 Scope and authority

(a) **This chapter implements the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq., to establish a recycling system for the safe and environmentally sound management of covered electronic devices and components. This chapter applies to manufacturers, retailers, and consumers of covered electronic devices, as well as to**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

collectors, transporters, and authorized recyclers whose services are engaged under the manufacturers' collection plans.

(b) A waiver from strict compliance with any portion of this chapter may be requested pursuant to N.J.A.C. 7:1B, Waiver of Department Rules.

7:26J-1.2 Construction and severability

(a) This chapter shall be liberally construed to permit the Department to effectuate the purposes of the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq.

(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:26J-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means the Electronic Waste Management Act, N.J.S.A. 13:1E-99.94 et seq.

“Actual-market-share-in-weight” means the weight of covered electronic devices that an individual manufacturer is responsible to collect, transport, and recycle in a program

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

year, calculated by multiplying the total weight of covered electronic devices collected in the State during the program year by the manufacturer's program-year-market-share.

"Authorized recycler" means a person, other than one committed to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, who:

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

"Brand" means a symbol, word, or mark that identifies a covered electronic device, rather than any of its components.

"Brand list" means, for a manufacturer of covered electronic devices, a list of every brand of a covered electronic device sold by a manufacturer, regardless of whether the manufacturer owns or licenses the brand.

"Bulky covered electronic device" means a covered electronic device that weighs 50 pounds or more, has a viewing screen measuring 40 inches or more diagonally, or any covered electronic device that cannot be readily transported by a consumer to a collection site because of its length, width, weight, or height, for example, a projection television.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

“Business concern” means any corporation, association, firm, partnership, sole proprietorship, trust, or other form of commercial organization. Business concern does not include a small business enterprise.

“Cathode ray tube” means a vacuum tube or picture tube used to convert an electronic signal into a visual image, including any cathode ray tube that is broken, damaged, or separated from its host television or other device.

“Certified recycling professional” means a person who has been certified as a certified recycling professional upon completing the two-tiered certification program offered by Rutgers University.

“Collection event” means an opportunity offered to the consumer to drop off covered electronic devices at a specified time and location in the State, which is identified in a manufacturer’s approved collection plan.

“Collection plan” or “plan” means a plan for collecting, transporting, and recycling covered electronic devices prepared pursuant to N.J.S.A. 13:1E-99.103 and this chapter.

“Collection site” means a secure and adequately staffed permanent facility located in the State, specified in a manufacturer’s approved collection plan, that receives and accumulates covered electronic devices prior to their transportation to an authorized recycler. A collection site includes a solid waste transfer station or materials recovery facility, a solid waste sanitary landfill, a universal waste handler, a Class D recycling center, a retailer, or any other location specified in a manufacturer’s approved collection plan.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

“Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that is designed to perform a logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor.

Computer includes a portable computer. Computer does not include an automated typewriter or typesetter, a portable handheld calculator, a portable digital assistant, or other similar device.

“Consumer” means a person, State entity, school district, or local government unit that purchases a covered electronic device in a retail sale. Consumer does not include any business purchasing covered electronic devices.

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

- 1. An electronic device that is a part of a motor vehicle or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including a replacement part for use in a motor vehicle;**
- 2. An electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, or medical setting, including diagnostic, monitoring, or control equipment;**
- 3. An electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. A handheld device used to access commercial mobile data service or commercial mobile radio service, as such services are defined at 47 CFR 20.3.

“Credit” means the unit representing each pound of program-eligible-weight collected by a registrant in excess of the registrant’s actual-market-share in-weight for a program year, which a registrant may apply to satisfy up to 25 percent of its estimated-market-share-in-weight for the next program year, transfer to another registrant with a shortfall in its actual-market-share in-weight, or both, where a single pound of excess weight is equal to a single credit.

“End-user” means any person that receives processed or unprocessed covered electronic devices and uses the material as a finished product or as a raw material for a manufacturing process.

“Estimated-market-share-in-weight” means the market-share-in-weight assigned to a manufacturer for collection in a program year, which is provided to the manufacturer in its estimated-market-share in-weight notice.

“Estimated-market-share-in-weight notice” means the notice the Department provides to each manufacturer setting forth the manufacturer’s program-year-market-share and its estimated-market-share-in-weight for a program year.

“Group plan administrator” means any person who contracts with one or more manufacturers to collect, transport, and recycle the total of those manufacturers’ estimated-market-shares-in-weight pursuant to the Act.

“Local government unit” means any county or municipality, or any agency, instrumentality, authority, or corporation of any county or municipality, including, but not

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

limited to, sewerage, utilities, and improvement authorities, or any other political subdivision of the State.

“Manufacturer” means any person:

1. Who manufactures or manufactured covered electronic devices under a brand that it owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

2. Who sells or sold covered electronic devices manufactured by others under a brand that the seller owns or owned or is or was licensed to use, other than a license to manufacture covered electronic devices for delivery exclusively to or at the order of the licensor;

3. Who manufactures or manufactured covered electronic devices without affixing a brand;

4. Who manufactures or manufactured covered electronic devices to which the person affixes or affixed a brand that the person neither owns or owned, nor is or was licensed to use;

5. For whose account covered electronic devices manufactured outside the United States are or were imported into the United States; provided, however, if, at the time of importation, another person has registered as the manufacturer of the brand of the covered electronic devices pursuant to N.J.S.A. 13:1E-99.102, then this paragraph shall not apply;
or

6. Who assumes the obligations and responsibilities for a manufacturer pursuant to paragraphs 1 through 5 of this definition.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

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

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

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

“Person” means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government department, partnership, limited liability company, or association.

“Portable computer” means a computer with a video display that can be carried as one unit by an individual, such as a laptop computer or a tablet.

“Premium service” means a collection service provided to a consumer under an approved collection plan for the pick up of a covered electronic device at a location other than a collection site.

“Program-eligible-weight” means the weight of covered electronic devices collected from State consumers, whether collected through a collection plan or not, that is recycled in compliance with the Act by an authorized recycler certified by the Sustainable Electronics Recycling International’s Responsible Recycling Standard for Electronics

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Recyclers, the e-Stewards Standard for Responsible Recycling and Reuse of Electronics Equipment, or other accredited standard approved by the Department, and who is otherwise in compliance with the performance requirements of this chapter. Program-eligible-weight does not include the weight of covered electronic devices that are exported for disposal in a manner that poses a significant risk to the public health or the environment.

“Program year” means a full calendar year, running from January 1 through December 31.

“Program-year-market-share” means a manufacturer’s market-share-in-weight of covered electronic devices for a program year, expressed as a percentage, which is based upon the best available national sales data for the most recent 12-month period. For each program year, the total national sales in weight of each of the following categories of covered electronic devices: televisions; computers and computer monitors; and desktop printers and faxes for the 12-month period, expressed as a percentage of the weight of all covered electronic devices sold during that period, are multiplied by each manufacturer’s national market share of that category of devices. That resulting number is divided by 100 to determine each manufacturer’s market share of televisions, market share of computers and computer monitors, and market share of desktop printers and faxes for the program year. All of those market shares are added together to form the manufacturer’s program-year-market-share of covered electronic devices.

“Recycling” means any process by which materials that would otherwise become solid waste are collected, separated, or processed, and returned to the economic mainstream in

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

the form of raw materials or products. Recycling does not include energy recovery or energy generation by means of incinerating electronic waste, whether apart from or in combination with other wastes.

“Registrant” means a manufacturer of covered electronic devices that is in full compliance with the requirements of the Act and this chapter.

“Residue” means any solid waste generated as a result of the recycling of covered electronic devices by an authorized recycler, which shall be disposed of as solid waste in accordance with the waste plan of the district in which the recycling center is located, or, if classified as a hazardous waste pursuant to N.J.A.C. 7:26G, then disposed of in accordance with the applicable hazardous waste regulations set forth at N.J.A.C. 7:26G.

“Retail sale” means the sale of a covered electronic device through sales outlets, by the Internet, mail order, or other means, whether or not the retailer has a physical presence in this State.

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

“Sale” or “sell” means any transfer for consideration of title, including, but not limited to, transactions conducted through sales outlets, catalogs, or the Internet, or any other similar electronic means, and excluding leases.

“Small business enterprise” means any business that has its principal place of business in this State, is independently owned and operated, and employs the equivalent of fewer than 50 full-time employees.

“Solid waste” means that which is defined as solid waste at N.J.A.C. 7:26-1.6.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

“State” means the State of New Jersey.

“Television” means a stand-alone display system containing a cathode ray tube or any other type of display that:

- 1. Is primarily intended to receive video programming by broadcast;**
- 2. Has a viewable area greater than four inches measured diagonally; and**
- 3. Can display standard consumer video formats, receive and display different broadcast channels, and support sound capability.**

“Transporter” means a person collecting covered electronic devices at, or transporting or moving covered electronic devices from, a collection site, by any means, including by air, rail, highway, or water.

“Vendor-to-business purchaser recycling arrangement” means an arrangement between a business concern that purchases or leases a covered electronic device and the manufacturer of the device, whereby the manufacturer, for an additional fee or otherwise, commits to accept for recycling the purchased or leased covered electronic device when the business concern determines that it no longer has use for the device.

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

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

video display typically uses a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology.

7:26J-1.4 Signatures and certifications

(a) A manufacturer, group plan administrator, authorized recycler, or an operator of a collection site, as applicable, shall sign, date, and certify all forms and documents submitted to the Department in accordance with this chapter and the certification instructions on the applicable form.

(b) The following individuals, on behalf of a manufacturer, group plan administrator, authorized recycler, or an operator of a collection site, as applicable, shall sign and certify each document or form submitted to the Department pursuant to this chapter:

1. For a corporation, a responsible corporate official. For purposes of this section, a responsible corporate official means a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. For a limited liability company, a responsible company official. For purposes of this section, a responsible company official means an individual who has the authority to bind the limited liability company to the provisions of this chapter, including, without limitation, an officer, member, or manager of the limited liability company;

3. For a partnership, a general partner;

4. For a sole proprietorship, the proprietor; or

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

5. For a local government unit, a duly authorized certified recycling professional or other duly authorized representative of a local government unit if the authorization is made, in writing, in accordance with the procedures of the governing body, and the written authorization is submitted to the Department.

(c) A manufacturer, group plan administrator, authorized recycler, or an operator of a collection site shall sign and submit the following written certification to the Department pursuant to N.J.A.C. 7:26J-2.2(c)4, 2.3(i), 3.1(e)5, 4.1(g), 7.3(a)1vi, 8.1(h)6, and 9.8(d)3, as applicable:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for willfully submitting false information, including the possibility of fines and imprisonment.”

7:26J-1.5 Right to inspect

The Department may enter and inspect any property, facility, building, premises, site, or place for the purpose of ascertaining compliance or noncompliance with the requirements of the Act and this chapter.

SUBCHAPTER 2. REGISTRATION AND SUBMISSION OF DOCUMENTS

7:26J-2.1 Registration requirements for manufacturers of covered electronic devices

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(a) This section applies to all manufacturers of covered electronic devices who sell covered electronic devices for delivery in the State.

(b) On or before January 1 of each calendar year, each manufacturer of covered electronic devices offered for delivery in the State on or after December 1 of the previous year shall register with the Department by submitting a registration package in accordance with (f) and (g) below and pay a registration fee of \$5,000.

(c) If the Department determines that a manufacturer's program-year-market-share in the previous program year is .01 or less, the manufacturer is not required to pay a registration fee or registration renewal fee, as applicable, in the following program year.

(d) Any manufacturer to whom the registration requirements at (b) above did not apply on January 1 of any year shall register with the Department by submitting a registration package in accordance with (f) and (g) below within 30 days of receiving from the Department an estimated-market-share-in-weight notice pursuant to N.J.A.C. 7:26J-6.1(b).

(e) Each registered manufacturer shall renew its registration by January 1 of the calendar year immediately following the calendar year of its initial registration, and by January 1 of each calendar year thereafter, by submitting a registration package in accordance with (f) and (g) below.

(f) To register or renew its registration, a manufacturer shall submit to the Department:

1. A registration form, available on the Department website at <http://www.nj.gov/dep/dshw/recycling/ewaste/manufacturers.htm>;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

2. A registration or registration renewal fee of \$5,000;

3. A brand list identifying each brand name and type of each CED to be sold in the State; and

4. The following written certification, which shall be signed by the authorized recycler's responsible corporate official in conformity with N.J.A.C. 7:26J-1.4:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for willfully submitting false information, including the possibility of fines and imprisonment. I certify further that no covered electronic device manufactured under the above-listed brands that are offered for sale in the State are prohibited from being sold or offered for sale in the European Union on or after its date of manufacture due to the concentration of one or more heavy metals in the covered electronic device exceeding its maximum concentration value, as specified in the Commission of European Communities' Decision of August 18, 2005, amending Directive 2002-95-EC (European Union document 2005/618/EC), or as specified in a subsequent amendment to the Directive, except as otherwise provided at N.J.A.C. 7:26J-5.1(d)."

(g) A manufacturer shall submit its initial registration by certified or registered mail.

A registered manufacturer shall renew its registration online at <https://www.nj.gov/> or

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

<http://njdeponline.com> by January 1 of the calendar year immediately following the calendar year of its initial registration, and by January 1 of each calendar year thereafter.

The \$5,000 registration or renewal fee shall be paid by check or money order payable to “Treasurer, State of New Jersey” after receipt of an invoice from the Department.

(h) A registered manufacturer who intends to cease selling covered electronic devices in the State shall, at least 30 days before doing so, inform the Department, in writing, of the date on which it will cease selling covered electronic devices in the State.

7:26J-2.2 Registration requirements for authorized recyclers

(a) On or before January 1 of each calendar year, each authorized recycler that accepts covered electronic devices from consumers, other than one that has been granted a general approval as a Class D recycling center and is in compliance with the approval, including the payment of all required fees, shall register with the Department and pay a registration fee of \$15,000.

(b) Each registered authorized recycler shall renew its registration by January 1 of the calendar year immediately following the year of its initial registration, and by January 1 of each calendar year thereafter, by submitting a registration package in accordance with (c) and (d) below.

(c) To register or renew its registration, an authorized recycler shall submit a registration package that includes:

1. A completed initial registration form for authorized recyclers, available on the Department website at

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

<https://www.state.nj.us/dep/dshw/ewaste/authrecyclerform.pdf>;

2. A registration or registration renewal fee of \$15,000;

3. A copy of its R2 certification, eSteward certification, or equivalent, required pursuant to N.J.A.C. 7:26J-7.1(a); and

4. A written certification pursuant to N.J.A.C. 7:26J-1.4(c), which shall be signed by the authorized recycler's responsible corporate official in conformity with N.J.A.C. 7:26J-1.4.

(d) An authorized recycler shall submit its registration by registered or certified mail by January 1 of the calendar year. A registered authorized recycler shall renew its registration by registered or certified mail, or if instructed by the Department, though electronic means, by January 1 of the calendar year immediately following the calendar year of its initial registration, and by January 1 of each calendar year thereafter. The \$15,000 registration or renewal fee shall be paid by check or money order payable to "Treasurer, State of New Jersey" after receipt of an invoice from the Department.

SUBCHAPTER 3. COLLECTION PLAN

7:26J-3.1 Collection plan

(a) Within 60 days of receiving an estimated-market-share-in-weight notice, a manufacturer, either individually, or as part of a group of manufacturers, shall submit a collection plan to the Department at <https://www.nj.gov/> or <http://njdeponline.com>. A

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

manufacturer receiving a program-year-market-share of .01 percent or less in the previous program year is not required to submit a collection plan in the following program year.

(b) In addition to meeting the requirements set forth at N.J.A.C. 7:26J-3.2, a collection plan must provide for the collection, transportation, and recycling of covered electronic devices on a scale sufficient to meet a manufacturer's or a group of manufacturers' estimated-market-share-in-weight.

(c) A manufacturer shall collect, transport, and recycle all types and brands of covered electronic devices, including orphan devices.

(d) A manufacturer intending to participate in a group collection plan shall, at least 20 days prior to the submittal of the group collection plan, participate in the preparation and submission to the Department at ecycle@dep.nj.gov of a Group Designation Form, which is available on the Department's website at

<http://www.nj.gov/dep/dshw/ewaste/manufacturers.html>.

(e) Each Group Designation Form submitted pursuant to (d) above shall include the following information:

1. The name of the group plan administrator;
2. The name, title, telephone number, email address, and mailing address of the group plan administrator's authorized agent to whom the Department should address all communication regarding the submission of the collection plan, registration and registration renewal, and the semiannual reports required pursuant to N.J.A.C. 7:26J-4.1;
3. The total combined estimated-market-shares-in-weight for all the participating manufacturers;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. For each manufacturer participating in the group, the name of the manufacturer, its estimated-market-share-in-weight, the program interest number assigned to the manufacturer when it initially registered with the Department pursuant to N.J.A.C. 7:26J-2.1, and the name of the manufacturer's authorized agent; and

5. A written certification pursuant to N.J.A.C. 7:26J-1.4(c), which shall be signed by each manufacturer's responsible corporate official and the group plan administrator's authorized representative in conformity with N.J.A.C. 7:26J-1.4.

(f) Each manufacturer or group of manufacturers acting through a group plan administrator shall implement, at its own expense, its plan for the collection, transportation, and recycling of covered electronic devices starting on January 1 of each calendar year for which it has received an estimated-market-share-in-weight notice. A group plan administrator implementing an approved collection plan on behalf of its registrant-members during a program year may purchase weight from, and sell weight to, authorized recyclers, other group plan administrators, and manufacturers outside of its group.

(g) A manufacturer or group of manufacturers acting through a group plan administrator shall implement its approved collection plan for the entire program year, even if the manufacturer or group of manufacturers collects its estimated-market-share-in-weight before the end of the program year.

(h) A manufacturer proposing to add or delete a collection site or an authorized recycler to an approved collection plan, or a group plan administrator proposing to delete or add a collection site or an authorized recycler to a group collection plan, shall amend the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

plan to include the information required at N.J.A.C. 7:26J-3.2 and submit the amended plan to the Department for approval no later than October 1. A proposed amended collection plan submitted after October 1 will not be considered by the Department unless the proposed amendment would enhance the convenient and efficient collection of covered electronic devices in each county, and the manufacturer or group plan administrator provides sufficient information to allow the Department to review and approve the proposed amendment in time for the plan to be fully implemented prior to the end of the program year.

(i) A manufacturer or group plan administrator receiving notice from an operator of a collection site pursuant to N.J.A.C. 7:26J-7.1(b)4 that the operator intends to close a site included in an approved collection plan shall submit an amended plan to the Department no more than 30 calendar days from receiving the notice from the operator, or if the manufacturer or the group plan administrator believes that the closure of the site would not significantly impact the manufacturer's or group of manufacturers' ability to collect its estimated-market-share-in-weight under its existing collection plan, the manufacturer or the group plan administrator shall submit a written explanation to the Department setting forth the reasons for its belief.

(j) A manufacturer or group plan administrator proposing to revise a collection plan submitted to the Department, but not yet approved, or proposing to amend an approved plan shall highlight the proposed revisions or amendments in a manner that allows for the Department to readily distinguish the text of the proposed changes from the original text.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(k) A manufacturer that fails to submit a collection plan within the time frame set forth at subsection (a) above, or a manufacturer intending to participate in a group collection plan that fails to submit a group designation form within the time frame set forth at (d) above may be subject to a penalty pursuant to the Act and N.J.A.C. 7:26J-9. Each day a collection plan or group designation plan is late shall constitute an additional, separate, and distinct violation for which the Department may assess an additional penalty.

(l) A manufacturer or group of manufacturers filing a claim of confidentiality regarding its collection plan shall submit that collection plan in accordance with N.J.A.C. 7:26J-3.2(g).

7:26J-3.2 Required contents of a collection plan; confidentiality

(a) A collection plan submitted in accordance with N.J.A.C. 7:26J-3.1 shall include the following:

1. The methods and services that will be used to collect covered electronic devices in the State, including, but not limited to:

i. The locations, including street addresses, of the collection sites that will be used. The collection plan shall include at least one conveniently located collection site in each county in the State that accepts all types of covered electronic devices and is accessible to all residents of the county, unless a county is already included within the collection plan of another manufacturer, group of manufacturers or other entity and is adequately covered by the other manufacturer's, group of manufacturers', or entity's collection plan. A manufacturer or group of manufacturers excluding a county from its collection plan on a

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

claim that the county is adequately covered by the collection plan of another manufacturer, group of manufacturers, or other entity, shall include documentation with its plan in support of that claim;

ii. If the collection plan includes a special collection event, the following additional information shall be included in the plan:

(1) How the special collection event will be publicly noticed;

(2) Where and when the special collection event will take place, if known. If not known, a manufacturer or group of manufacturers shall so indicate. When known, the manufacturer or group of manufacturers shall immediately provide notice of the location and date of the special collection event to the public. The manufacturer or group of manufacturers shall provide evidence of public notice of the event to the Department no later than 30 days prior to the occurrence of the event;

(3) The types of covered electronic devices that will be collected during the special collection event;

(4) How the weight of covered electronic devices collected at the special collection event will be calculated;

(5) The process that will be used to ensure that the covered electronic devices collected at the special collection event are collected solely from consumers within the State; and

(6) The name and address of the authorized recycler receiving the covered electronic devices, and the name, telephone number, and email address of the contact person for the authorized recycler;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

- iii. The hours of operation for each proposed collection site;**
 - iv. A description of how each collection site will be staffed and secured;**
 - v. A listing of any limitations that will be imposed on the quantity and type of material to be accepted, and whether the proposed collection sites will accept additional electronic equipment not required to be collected pursuant to the Act;**
 - vi. A description of the methods that will be used to provide for the convenient collection of covered electronic devices, especially used televisions, for residents in densely populated areas and underserved communities that will be covered in the collection plan;**
 - vii. A description of the collection methods that may be used by consumers who are not physically able to travel to a collection site without assistance;**
 - viii. A description of the collection methods to be employed for bulky covered electronic devices;**
 - ix. A description of how the collected covered electronic devices will be stored prior to transport to an authorized recycler;**
 - x. An explanation of the extent to which there will be coordination with county and municipal government recycling programs, if any; and**
 - xi. A description of the methods to be used to ensure that personal information contained on hard drives or similar data storage devices is not disclosed to the general public or to any unauthorized persons or employees;**
- 2. The processes and methods that will be used to recycle collected covered electronic devices, including, but not limited to:**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. The name and street address of each authorized recycler to whom covered electronic devices would be transported; the name, mailing address, email address, and telephone number of the contact person for the authorized recycler; and the name and street address of each person involved with the collection and transport of covered electronic devices to an authorized recycler, including, without limitation, transporters. For an authorized recycler located outside the State, the collection plan must also include:

(1) A copy of the operating permit or approval issued by the state where the authorized recycler is located;

(2) Documentation that the facility is operating in accordance with all applicable rules and regulations; and

(3) The following written certification, which shall be signed by the out-of-State authorized recycler's responsible corporate official in conformity with N.J.A.C.

7:26J-1.4:

"I certify that [company name] is in compliance with all federal, state and local requirements applicable to the company's recycling operations in the [name of state or commonwealth] and that the company is compliant, and in good standing, with its R2 or eSteward certification, as applicable."

ii. A description of the recycling processes that will be used by each authorized recycler identified at (a)2i above; and

iii. The processes and methods that will be used to recycle collected covered electronic devices that are the subject of any vendor-to-business purchaser recycling arrangements into which the manufacturer has entered, if any.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

3. A description of the means that will be used to publicize the collection services, including:

i. A website, toll-free telephone number, or an email address that provides information about the manufacturer's recycling program in sufficient detail to inform a consumer how to return covered electronic devices for recycling; and a reference link to the Department's list of collection site locations found at

<https://www.state.nj.us/dep/dshw/ewaste/collectionsites.pdf>; and

ii. A reference link on the manufacturer's webpage that is entitled "How to Recycle Electronic Devices in New Jersey," which shall include, but not be limited to, the following information:

(1) A statement that the Act requires that costs to recycle a covered electronic device shall not be passed on to the consumer;

(2) The definitions of "covered electronic device" and "consumer" set forth at N.J.A.C. 7:26J-1.3;

(3) An up-to-date and accurate description of the collection sites and recycling events sponsored by the manufacturer, including any limitations placed by collectors on the number of covered electronic devices permitted for drop off by consumers;

(4) The services available for the collection, transportation, and recycling of bulky covered electronic devices; and

(5) The services available for the collection, transportation and recycling of covered electronic devices from consumers physically unable to visit a collection site;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. A detailed explanation of how the manufacturer intends to collect its estimated-market-share-in-weight through its own operations - either individually or with other registrants, or by contract with for-profit or not-for-profit corporations, or local government units — including a commitment to provide for the collection of all types and all brands of covered electronic devices, including orphan devices. That explanation shall include, at a minimum, the weight of covered electronic devices anticipated to be collected from each collection site;

5. The following written certifications, which shall be signed in conformity with N.J.A.C. 7:26J-1.4:

i. “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for willfully submitting false information, including the possibility of fines and imprisonment”;

ii. “I certify that none of the new covered electronic devices, manufactured by the company or the companies participating in this collection plan that are sold or offered for sale in New Jersey are prohibited from being sold or offered for sale in the European Union on or after its date of manufacture because it contains one or more heavy metals in a concentration that exceeds the maximum concentration value specified in the Annex to the European Union Directive 2002/95/EC, as supplemented or amended”;

iii. “I certify:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(1) Except for a fee for a premium service approved by the Department in this collection plan, no fee shall be charged to a consumer, including a consumer who is unable to travel to a collection site without assistance, or to a municipality or county that collects covered electronic devices from consumers, for the collection, transportation or recycling of any covered electronic device, including a ‘bulky covered electronic device’ as defined in the Electronic Waste Management Rules at N.J.A.C. 7:26J-1.3, dropped off at any of the collection sites listed in this collection plan; and

(2) Except for a fee for a premium service approved by the Department in this collection plan, all agreements between the undersigned company and any party participating in this collection plan, including without limitation, the operator of a collection site, a transporter, an authorized recycler and a group plan administrator, all agreements between any of the foregoing parties and a subcontractor, and all third-party agreements, expressly prohibit charging a fee to a consumer, including a consumer who is unable to travel to a collection site without assistance, or to a municipality or county that collects covered electronic devices from consumers, for the cost of collecting, transporting or recycling a covered electronic device, including a ‘bulky covered electronic device’ as defined in the Electronic Waste Management Rules at N.J.A.C. 7:26J-1.3”;

iv. “I certify that I have exercised due diligence, and to the best of my knowledge, the parties providing collection and recycling services under this collection plan, including without limitation, transporters, operators of collection sites and recyclers, are compliant with the performance standards set forth at N.J.A.C. 7:26J-7.1”;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

v. **“I certify that no covered electronic devices collected under this plan shall be exported for disposal in a manner that poses a significant threat to the public health or the environment and that no covered electronic devices shall be handled in a manner that would violate N.J.A.C. 7:26J-5.1”; and**

vi. **“I certify that to the best of my knowledge, all collection sites identified in this collection plan are adequately staffed and secured, that all collected electronic devices will be adequately stored prior to transport to an authorized recycler, and that all personal information contained on hard drives or similar data storage devices will be secured from access by the general public and any unauthorized persons or employees.”**

(b) Except as provided at (c) and (d) below, a manufacturer or group of manufacturers acting through a group plan administrator shall not include in its collection plan any fees to a consumer for the collection, transportation, or recycling of covered electronic devices.

(c) A manufacturer or group of manufacturers may include in its proposed collection plan a nominal fee to a consumer if a financial incentive, such as a coupon, of equal or greater value is provided to the consumer.

(d) A manufacturer or group of manufacturers may include in its proposed collection plan a fee to a consumer — other than one that is elderly or physically or mentally disabled — for a premium service.

(e) If a manufacturer or group plan administrator proposes to assess the fees set forth at (c) or (d) above, the collection plan shall include a detailed description of the service to be provided and the amount of the proposed fee.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(f) The Department will hold confidential any information obtained in connection with a collection plan submitted pursuant to (a) above if the manufacturer asserts a claim of confidentiality and the Department determines, based upon a showing by the manufacturer, that the information, if made public, would divulge competitive business information, methods, or processes entitled to protection as trade secrets of the registered manufacturer. A manufacturer asserting confidentiality shall submit its claim by following the procedures at N.J.A.C. 7:26-17.3.

1. This provision is in addition to, and shall not be deemed to limit, any claims of confidentiality pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., or common law.

(g) If a manufacturer asserts a claim of confidentiality pursuant to N.J.A.C. 7:26-17.3 for any part of a collection plan, it must submit two copies of its collection plan - one with the information required for the collection plan, except the information for which a claim of confidentiality is being made, and a second that includes the required information, including the information for which a claim of confidentiality is being made. The manufacturer shall include the certification found at (a)5i above on both copies.

7:26J-3.3 Review of collection plans

(a) The Department will review each collection plan and each amended collection plan to ensure the plan includes all the information required at N.J.A.C. 7:26J-3.2, and that when the plan is implemented, the manufacturer or group of manufacturers can be expected to meet its estimated-market-share-in-weight.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) In reviewing each collection plan or amended collection plan, the Department will ensure that at least one electronics collection opportunity is available in each county throughout the State and in such a manner as to be convenient, to the maximum extent practicable and feasible, to all consumers in each county. If the Department determines that the collection plans on the aggregate fail to provide at least one convenient collection opportunity per county, the Department will work with the manufacturers to assign additional collection opportunities based on the estimated-market-share-in-weight assigned to each manufacturer and the relative burden such an additional collection opportunity would place on the manufacturer.

1. To determine whether a collection opportunity is convenient to consumers in a particular county, the Department will consider the collective weight of the following criteria, with no single criterion being determinative:

- i. Number of municipalities in the county;**
- ii. Population of each municipality in the county;**
- iii. Size of the county;**
- iv. Population density of the county;**
- v. Type of collection opportunity; for example, a collection site or collection event;**
- vi. Location of the collection opportunity; for example, a local government unit, private property, or retailer;**
- vii. Limitations of the collection opportunity; and**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

viii. Feedback from municipal and county recycling coordinators or other municipal and county officials.

(c) In reviewing a collection plan submitted pursuant to N.J.A.C. 7:26J-3.1(a) or an amended collection plan submitted to the Department pursuant to N.J.A.C. 7:26J-3.1(g), the Department will determine whether the plan contains the information required at N.J.A.C. 7:26J-3.2(a) and, thus, is administratively complete. The Department will also determine if the plan or amended plan fulfills the technical requirements of the Act and this chapter, and thus, is technically complete. If the Department determines that a collection plan or amended plan is deficient in any manner, the Department may issue a Notice of Deficiency to the manufacturer or group plan administrator, as applicable. If the Department does so, the manufacturer shall have 30 calendar days to correct the noted deficiencies and to submit a revised plan or revised amended plan to the Department. The Department will review the revised plan or revised amended plan to determine if the deficiencies have been cured.

(d) A manufacturer's or group plan administrator's failure to submit a revised collection plan or revised amended collection plan within 30 days of receiving a Notice of Deficiency issued pursuant to (c) above or to fully cure the noted deficiencies within that period shall constitute a failure to provide a collection plan in violation of this chapter and the Act, which may subject the manufacturer or group of manufacturers to enforcement action pursuant to N.J.A.C. 7:26J-9.

(e) The Department may reject the collection plan or amended collection plan, in whole or in part, and may impose additional requirements as a condition of approval to ensure

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

that the manufacturer collects its estimated-market-share-in-weight. A collection plan that the Department deems to be administratively complete will be considered as “pending approval” for the purposes of compliance with N.J.A.C. 7:26J-5.1.

SUBCHAPTER 4. SEMIANNUAL REPORTS

7:26J-4.1 Semiannual reports

(a) By February 1 and August 1 of each year, each manufacturer or group plan administrator acting on behalf of a group of manufacturers, operator of a collection site, and authorized recycler, as applicable, shall submit to the Department the reports required at (b) through (f) below on forms prescribed by the Department. The August 1 report shall cover January to June of the program year, and the February 1 report shall cover July to December of the program year.

(b) Each manufacturer shall report on its progress in achieving the manufacturer’s estimated-market-share-in-weight on forms prescribed by the Department. The semiannual report shall include the total weight of covered electronic devices collected in the applicable six-month period, expressed in pounds.

(c) Each group plan administrator shall include the following information in the semiannual report for each of its participating manufacturers:

1. The total weight of covered electronic devices collected for the manufacturer in the applicable six-month period, expressed in pounds; and
2. For each purchase of weight from an authorized recycler, the:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. Name and street address of the authorized recycler and the name, mailing address, email address, and telephone number of the authorized recycler's contact person;

ii. Name and street address of the manufacturer for whom the weight was purchased, and the name, mailing address, email address, and telephone number of the manufacturer's contact person; and

iii. Amount of the weight purchased, expressed in pounds, for that manufacturer.

(d) Each group plan administrator shall include the following information in a semiannual report:

1. The name and street address of each authorized recycler, group plan administrator, or manufacturer outside its group from whom weight of covered electronic devices was purchased, or to whom weight was sold, during the applicable six-month period, and the name, mailing address, and telephone number of the authorized recycler's, group plan administrator's, or manufacturer's contact person;

2. The total weight purchased from, or sold to, each authorized recycler, group plan administrator, or manufacturer during the applicable six-month period, expressed in pounds; and

3. The date of each purchase or sale transaction and the amount of weight that was purchased or sold in each transaction, expressed in pounds.

(e) Each operator of a collection site, including a local government unit, whether identified in a manufacturer's collection plan or not, shall include the following information in its reports:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

1. The total weight of covered electronic devices collected in the applicable six-month period at each collection site, expressed in pounds; and

2. The weight of covered electronic devices transported from the collection site, the date and time of the pickup, the name and street address of the transporter delivering the covered electronic devices to an authorized recycler, and the name, mailing address, email address, and telephone number of the transporter's contact person.

(f) Each authorized recycler identified in a manufacturer's collection plan or a group of manufacturer's joint collection plan shall include the following information in the authorized recycler's semiannual report:

1. The name and street address of each collection site from which covered electronic devices were delivered to the authorized recycler;

2. The name and address of each transporter and the name, mailing address, email address, and telephone number of the transporter's contact person;

3. The total weight of covered electronic devices delivered or collected from each collection site, expressed in pounds;

4. The weight of each type of covered electronic device delivered or collected from each collection site, expressed in pounds;

5. The name and street address of the manufacturer responsible for the weight collected from each collection site and the name, mailing address, email address, and telephone number of manufacturer's contact person;

6. For each sale transaction between an authorized recycler or a group plan administrator, the name and street address of the purchasing authorized recycler or group

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

plan administrator, the name, mailing address, email address, and telephone number of the authorized recycler's or group plan administrator's contact person, and the amount of the weight sold, expressed in pounds;

7. Supporting documentation at (f)3 and 4 above, including without limitation, recycling certificates;

8. For each end-user or other recipient of a recycled covered electronic device or any component recovered from a recycled covered electronic device, the name and street address of the end-user or recipient, the name, mailing address, email address, and telephone number of the end-user's or recipient's contact person, and the weight, expressed in pounds, sold to the end-user or recipient; and

9. For residue, the name and street address of the disposal facility, the name, mailing address, email address, and telephone number of the facility's contact person, and the weight of the residue disposed of at the facility, expressed as pounds.

(g) Each manufacturer, group plan administrator acting on behalf of a group of manufacturers, operator of a collection site, and authorized recycler shall include a written certification pursuant to N.J.A.C. 7:26J-1.4(c) in each semiannual report submitted to the Department, which shall be signed by the manufacturer's responsible corporate official in conformity with N.J.A.C. 7:26J-1.4.

(h) A manufacturer, group plan administrator, authorized recycler and operator of a collection site, as the case may be, shall submit each semiannual report electronically at ecycle@dep.nj.gov, or through other electronic means as instructed by the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 5. SALE AND DISPOSITION OF COVERED ELECTRONIC DEVICES

7:26J-5.1 Prohibitions on the sale and disposition of covered electronic devices

(a) No manufacturer shall sell or offer for sale a covered electronic device in the State, unless the manufacturer complies with all financial and other requirements of this chapter, including all conditions and terms of an approved collection plan or a collection plan for which approval is pending pursuant to N.J.A.C. 7:26J-3.2(b), and the Act.

(b) All covered electronic devices shall be recycled in compliance with all applicable Federal, State, and local laws, regulations, and ordinances.

(c) No manufacturer or retailer of a covered electronic device shall sell or offer for sale a covered electronic device in the State unless:

1. The covered electronic device is labeled with the manufacturer's brand; and
2. The label is permanently affixed to the device in such a way as to ensure that the brand is readily visible without removing or disassembling any portion of the device.

(d) No person shall sell or offer for sale in the State a new covered electronic device from a manufacturer that is not in full compliance with the requirements of the Act. The prohibition of the sale or offer for sale of its covered electronic devices does not apply to the covered electronic devices of a manufacturer who has not yet obtained the Department's approval of its collection plan, so long as the manufacturer is otherwise in compliance with the requirements of the Act and this chapter, and the collection plan is pending approval by the Department as provided at N.J.A.C. 7:26J-3.3(e).

(e) No person shall sell or offer for sale in the State a new covered electronic device that is prohibited from being sold or offered for sale in the European Union on or after its date

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

of manufacture because it contains one or more heavy metals in a concentration that exceeds the maximum concentration value specified in the Annex to the European Union Directive 2002/95/EC, as supplemented or amended, and incorporated by reference in this chapter, and available at [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0095:20080524:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0095:20080524:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0095:20080524:EN:PDF),

unless the exceedance of the heavy metal maximum concentration value results from the inclusion of a substance in order to comply with the consumer, health, or safety requirements of the Underwriters Laboratories, or with Federal or State law.

(f) A seller of new covered electronic devices shall ensure compliance with (c) and (d) above by consulting the compliance list established by the Department and posted at <https://www.state.nj.us/dep/dshw/ewaste/compliancelist.pdf>. A seller has complied with (c) and (d) above if, on the date that the covered electronic device was ordered from the manufacturer or its agent, the manufacturer was listed as being in compliance on the Department's website or the website indicates that Department approval is pending for that manufacturer.

(g) No person shall, pursuant to any collection plan, send a collected covered electronic device to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense, for the purpose of recycling, including manual or mechanical separation to recover components and commodities contained therein for re-use or recycling, either directly or through intermediaries, and nothing in this chapter shall be construed to allow for the recycling of covered electronic devices by prisoners.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(h) No person shall knowingly dispose of a used covered electronic device, any of its components or subassemblies as solid waste.

7:26J-5.2 Educational requirements for retailers of covered electronic devices

(a) Every retailer shall obtain from the Department, information that describes where and how a consumer can recycle the covered electronic device sold by the retailer, and where and how a consumer can drop off the covered electronic device for collection or return, and shall provide that information to the public, using one or more of the following methods:

- 1. A toll-free telephone number and website;**
- 2. A written document that is included in the packaging for the covered electronic device; or**
- 3. A written document that is provided to the purchaser of the covered electronic device at point of sale.**

SUBCHAPTER 6. ESTIMATED-MARKET-SHARE-IN-WEIGHT

7:26J-6.1 Determination of estimated-market-share-in-weight

(a) The Department will determine a manufacturer's estimated-market-share-in-weight, using the following data and steps:

- 1. The Department will acquire public national market share sales data for the most recent 12-month period available, which will include:**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. The total nationwide sales in weight for each of the following categories of covered electronic devices: televisions; computers and computer monitors; and desktop printers and desktop faxes, expressed as a percentage of the total sales in weight of all covered electronic devices; and

ii. Each manufacturer's national market share for each category of device.

2. The Department will use the data referenced at (a)1 above to determine a manufacturer's program-year-market-share as follows:

i. First, the Department will calculate separate program-year-market-shares for televisions, computers and computer monitors, and desktop printers/faxes, as follows:

$$S = a \times b \div 100$$

Where:

S = the manufacturer's program-year-market-share for televisions, computers and computer monitors and desktop printers/faxes, expressed as a percentage;

a = the total national sales of televisions, computers and computer monitors, and desktop printers/faxes sold during the 12-month period referenced at (a)1 above, expressed as a percentage of the national sales of all covered electronic devices sold during that 12-month period; and

b = the manufacturer's national market share for televisions, computers and computer monitors, and desktop printers/faxes sold during the 12-month period referenced at (a)1 above, expressed as a percentage; and

ii. Second, the Department will add together each manufacturer's program-year-market-share of televisions, computers and computer monitors, and desktop

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

printers/faxes calculated pursuant to (a)2i above to form the manufacturer's program-year-market-share of all covered electronic devices.

3. The Department will use the program-year-market-share calculated pursuant to (a)2 above to determine the estimated-market-share-in-weight for each manufacturer for a program year, which will be calculated as follows:

$$\text{EMSW} = S \times \text{TW}$$

Where:

EMSW = the estimated-market-share-in-weight, expressed in pounds;

S = the program-year-market-share calculated at (a)2 above, expressed as a percentage; and

TW = the total weight of covered electronic devices, including the weight of orphan devices and weight that was not program-eligible, collected from consumers in the State during the previous program year, adjusted, if necessary, by the amount of weight projected to be collected in the next program year.

(b) Within 60 days of receiving the semiannual reports due on February 1 pursuant to N.J.A.C. 7:26J-4.1, the Department will provide to each manufacturer of covered electronic devices an estimated-market-share-in-weight notice for the following program year.

(c) A manufacturer receiving an estimated-market-share-in-weight notice may comment on the program-year-market-share, supporting data, or its estimated-market-share-in-weight by submitting comments to the Department within 10 business days of its receipt of the estimated-market-share-in-weight notice. The comments shall be sent to the following address and email address:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

New Jersey Department of Environmental Protection

Mail Code: 401-02C

PO Box 420

401 East State Street

Trenton, NJ 08625-0420

Attention: E-waste Unit; and

ecycle@dep.nj.gov

(d) A manufacturer commenting pursuant to (c) above may propose a different program-year-market-share, or estimated-market-share-in-weight. In doing so, the manufacturer shall include in its proposal:

- 1. A detailed explanation of the grounds for the different program-year-market-share or estimated-market-share-in-weight;**
- 2. A calculation of the proposed program-year-market-share or estimated-market-share-in-weight;**
- 3. The basis for the calculation. If the different program-year-market-share is not based on the national market share sales data identified at (a)1 above, the manufacturer shall identify the sales data used and provide the rationale for using that data;**
- 4. Documentation supporting its proposed program-year-market-share or estimated market-share-in weight; and**
- 5. Complete contact information, should the Department need to request additional information.**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(e) The Department will review all comments received pursuant to (c) above and any proposed program-year-market-share or estimated-market-share-in-weight received pursuant to (d) above. If the manufacturer supports its proposed program-year-market-share, estimated-market-share-in-weight, or where applicable, both, with verifiable sales data, the Department will revise each manufacturer's program-year-market-share, estimated market-share-in weight, or where applicable, both, and provide each manufacturer with a revised estimated-market-share in-weight notice that will include a summary of all comments received and the Department's response to the comments.

SUBCHAPTER 7. REQUIREMENTS FOR OPERATORS OF COLLECTION SITES, AUTHORIZED RECYCLERS, AND GROUP PLAN ADMINISTRATORS

7:26J-7.1 Performance requirements for operators of collection sites and authorized recyclers

(a) An authorized recycler of covered electronic devices participating in a manufacturer's or group of manufacturers' approved collection plan:

1. Shall be certified by the Sustainable Electronics Recycling International's Responsible Recycling Standard for Electronics Recyclers (R2) or the e-Stewards Standard for Responsible Recycling and Reuse of Electronics Equipment (e-Stewards), or another accredited standard approved by the Department;

2. If exporting a covered electronic device, shall export that device in a manner that does not pose a significant risk to public health or the environment; and

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

3. If located outside of New Jersey, shall comply with the receiving state's statutes and rules governing recycling, including any requirements for the maintenance of any permit or approval.

(b) An operator of a collection site participating in a manufacturer's or group of manufacturers' approved collection plan shall:

1. Place only reasonable limits on the number of covered electronic devices that may be dropped off by consumers;

2. Adequately staff and secure the collection site so that all collected covered electronic devices will be safely stored prior to transport to an authorized recycler;

3. Train staff to securely handle any personal information contained on hard drives or similar data storage devices to ensure that such information is secure from public access or other unauthorized access; and

4. When intending to close a collection site included in an approved collection plan, inform the manufacturer or group plan administrator of its intent to close the collection site at least 30 calendar days prior to closing the collection site.

7:26J-7.2 Responsibilities of a group plan administrator

(a) A group plan administrator shall comply with the following subchapters for each of its participating manufacturers:

1. N.J.A.C. 7:26J-1, General Provisions;

2. N.J.A.C. 7:26J-2, Registration and Submission of Documents;

3. N.J.A.C. 7:26J-3, Collection Plan;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. N.J.A.C. 7:26J-4, Semiannual Reports; and

5. N.J.A.C. 7:26J-8, Actual-Market-Share-In-Weight, Credits, and Collection

Shortfalls.

(b) A manufacturer may be subject to enforcement action as set forth at N.J.A.C.

7:26J-9 if a group plan administrator fails to fulfill a manufacturer's responsibilities on its behalf.

7:26J-7.3 Recordkeeping requirements for authorized recyclers and operators of collection sites

(a) An authorized recycler shall maintain the following records:

1. A Covered Electronic Device Receipt Form for each load of covered electronic devices delivered to the authorized recycler that includes the following:

i. The weight of covered electronic devices delivered to the authorized recycler, expressed in pounds;

ii. A breakdown of the type of covered electronic devices delivered to the authorized recycler, for example, computers, printers, and monitors;

iii. The place of origin of the covered electronic devices delivered to the authorized recycler;

iv. The name of the person delivering covered electronic devices to the authorized recycler;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

v. The vehicle license plate number, Department registration number if a Department-registered vehicle is used, or an EPA ID number if an EPA-registered vehicle is used to transport the covered electronic device; and

vi. A written certification pursuant to N.J.A.C. 7:26J-1.4(c).

2. A record of each end-user or other recipient of recycled covered electronic devices or components recovered from recycled covered electronic devices, including the name and street address of the end-user or recipient, the name, mailing address, email address, and telephone number of the end-user or recipient's designated contact person, the type and weight, expressed in pounds, of the covered electronic devices or components shipped to the end-user or recipient, the date of the shipment, and a copy of all invoices or other documentation concerning the shipment.

i. An authorized recycler shall retain end-user contracts or agreements, or where contracts or agreements are not available, letters of interest, as evidence of the authorized recycler's ability to sell the products resulting from the recycling of covered electronic devices. Letters of interest may be based on information provided by the authorized recycler to prospective end-users, such as a description of the equipment to be used by the authorized recycler and the specifications of the products resulting from the recycling of covered electronic devices.

ii. The authorized recycler shall perform and retain a written analysis of the stability of each end-user, on an annual basis, which analysis shall consider the following:

(1) The length of time the end-user has been in business;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(2) The length of time the end-user has been accepting products resulting from the recycling of covered electronic devices and using those as a raw material in a manufacturing process; and

(3) The number of end-users in the State, nationally, and internationally that have accepted covered electronic devices or products resulting from the recycling of covered electronic devices by the authorized recycler in the past year; and

3. A record of each load of residue transported for disposal, including the name, street address, and telephone number of the disposal facility, the name and Department solid waste registration number of the solid waste collector/hauler the name, mailing address, email address, and telephone number of the contact person for the disposal facility and solid waste collector/hauler, the weight of the residue, expressed in pounds, transported to the disposal facility, the date of the shipment, and a copy of all invoices, manifests, or other documentation concerning the shipment.

(b) An operator of a collection site shall maintain the following records:

1. A record of the place of origin of all covered electronic devices delivered to the collection site; and

2. A record of all covered electronic devices transported from the site, including:

i. The name and street address of the transporter and the name, mailing address, email address, and telephone number of its contact person;

ii. The weight of covered electronic devices, expressed in pounds, delivered to the person transporting the covered electronic devices;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

iii. The name and street address of the authorized recycler, collection site, or other location to which the covered electronic devices were transported and the name, mailing address, email address, and telephone number of the respective contact persons; and

iv. A copy of all documentation concerning the transport of the covered electronic waste from the collection site.

(c) An authorized recycler and operator of a collection site shall retain the records and information required pursuant to (a) and (b) above for three calendar years following the submission of the February 1 semiannual report for the program year for which the records are generated.

(d) An authorized recycler or operator of a collection site shall provide the records and information set forth at (a) and (b) above to the Department immediately upon request.

SUBCHAPTER 8. ACTUAL-MARKET-SHARE-IN-WEIGHT, CREDITS, AND COLLECTION SHORTFALLS

7:26J-8.1 Requirements for credit accumulation and trading

(a) Following the Department's receipt of all final semiannual reports for a completed program year, which, in accordance with N.J.A.C. 7:26J-4.1, are to be submitted by every manufacturer or group plan administrator acting on behalf of a group of manufacturers, operator of a collection site, and authorized recycler no later than February 1 of the next program year, the Department will calculate the total weight of covered electronic devices collected during the completed program year. The Department will multiply that total

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

weight by each registrant's program-year-market-share to determine each registrant's actual-market-share-in-weight for the completed program year.

(b) The Department will notify a registrant of its actual-market-share-in-weight for a completed program year and any increase or decrease in the registrant's estimated-market-share-in-weight for that program year in the registrant's estimated-market-share-in-weight notice for the next program year, which is provided to the registrant pursuant to N.J.A.C. 7:26J-6.1(b).

1. A registrant notified that its actual-market-share in-weight for a completed program year is greater than its estimated-market-share-in-weight for that year, shall obtain additional program-eligible-weight from appropriate sources, which may include the purchase of credits available to other registrants pursuant to (b)2 below.

2. A registrant notified that its actual-market-share-in-weight for a completed program year is less than its estimated-market-share-in-weight for that year, who has met its estimated-market-share-in-weight, shall receive a single credit for each pound of weight collected in excess of its actual-market-share-in weight. That registrant may transfer credits to a registrant with an actual-market-share in-weight shortfall for the completed program year in which the credits were earned or apply credits to satisfy up to 25 percent of its estimated-market-share-in-weight for the following program year, with any remaining credits being available for transfer to a registrant with an actual-market-share-in-weight shortfall. A registrant shall not transfer credits to a group plan administrator. Credits shall not be transferred or applied for any program year other than the one in which the credits are earned, except to the extent that a registrant opts to use credits to

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

satisfy up to 25 percent of its estimated-market-share-in-weight for the following program year.

3. A group plan administrator may transfer or apply credits earned by one or more of its registrant-group members to other registrant-group members if:

i. The group plan administrator's contract with its registrant-group members authorizes the group plan administrator to transfer or apply credits earned by one or more registrant-group members to other registrant-group members; and

ii. The group plan administrator has collected, transported, and recycled covered electronic devices in excess of the combined actual-market-shares-in-weight of its registrant-group members.

4. If a group plan administrator meets the criteria at (b)3 above, the group plan administrator may:

i. Transfer credits to one or more registrant-group members with a shortfall in actual-market-share-in-weight for a completed program year in an amount not to exceed each registrant-group member's actual shortfall;

ii. Apply credits to satisfy up to 25 percent of one or more registrant-group member's estimated-market-share-in-weight for a following program year, provided that the registrant-group member collected its actual-market-share-in-weight for the preceding program year;

iii. Both transfer and apply credits pursuant to (b)4i and 4ii above if sufficient credits are available; or

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

iv. If all of its registrant-group members have met their actual-market-shares-in-weight before the close of the credit-trading period, and credits remain available, the group plan administrator may transfer credits to a registrant outside of its group with a shortfall in an amount not to exceed that registrant's actual shortfall.

(c) The Department will notify each registrant of the commencement and conclusion of the trading period during which credits may be transferred, acquired, or applied pursuant to (b)1 through 4 above.

(d) A registrant notified of a shortfall in its actual-market-share in-weight pursuant to (b)1 above shall cure that shortfall by acquiring program-eligible-weight from any source, including other registrants with available credits, during the trading period established by the Department pursuant to (c) above.

(e) A registrant transferring or applying credits pursuant to (b)2 above, or a group plan administrator transferring credits to, or applying credits for the benefit of, a registrant-group-member pursuant to (b)3 and 4 above, shall transfer or apply those credits before the close of the trading period established pursuant to (c) above. Any credits remaining after the close of the credit trading period shall expire.

(f) Within five business days from the close of the trading period established by the Department pursuant to (c) above, a registrant awarded credits pursuant to (b)2 above, including a registrant whose credits were transferred or applied by a group plan administrator pursuant to (b)3 and 4 above, shall submit a report on a form prescribed by the Department that includes the following information:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

1. The number of credits applied by the registrant or a group plan administrator to satisfy up to 25 percent of the registrant's estimated-market-share-in-weight for the following program year, if any;

2. The number of credits transferred to other registrants, if any, the identity of those registrants, and the date of the transfer; and

3. The number of credits remaining after the close of the trading period, if any.

(g) A group plan administrator transferring to, or applying credits for the benefit of, a registrant-group member pursuant to (b)3 and 4 above during the trading period established by the Department pursuant to (c) above shall maintain the following records, which shall be made available to the Department upon request, for three years after the conclusion of the trading period established by the Department pursuant to (c) above:

1. The total number of the credits the administrator transferred to, or applied for the benefit of, registrant-group members;

2. The identity of each registrant-group-member whose credits were transferred or applied to another registrant-group member;

3. The identity of each registrant-group member to whom credits were transferred to satisfy the registrant-group member's actual-market-share-in-weight shortfall and the number of credits transferred;

4. The identity of each registrant-group member for whom credits were applied to satisfy up to 25 percent of the registrant-group member's estimated-market-share-in-weight for the following program year and the number of credits applied;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

5. The date of each transaction on which credits were transferred to a registrant-group member to satisfy an actual-market-share-in-weight shortfall or applied towards a registrant-group member's estimated-market-share-in-weight for the following program year; and

6. The number of credits remaining after the conclusion of the trading period, if any.

(h) A manufacturer that fails to cure a shortfall in weight after being notified by the Department pursuant to (b)1 above that its actual-market-share-in-weight for a completed program year was greater than its estimated-market-share-in-weight for that year may submit the following information, supported by documentation attached to the submission, no later than 10 business days following the close of the credit trading period established by the Department pursuant to (c) above:

1. The amount of the shortfall, expressed in pounds and as a percentage of the manufacturer's actual-market-share in-weight;

2. Whether the manufacturer, individually, or as a member of a group, collected its estimated-market-share-in-weight for the program year;

3. If the manufacturer, individually, or as a member of a group, did not meet its estimated-market-share-in-weight for the program year:

i. Indicate when the group plan administrator or the manufacturer, as applicable, first knew it would not meet a collection target or targets;

ii. Provide the specific reason(s) why the manufacturer, individually, or as a member of a group, failed to meet its collection target or targets;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

iii. Identify the steps taken by the group plan administrator or manufacturer during the program year to meet its collection target(s), for example, identify collection sites, collection events, or other collection arrangements added to the collection plan, or if weight was purchased from other group plan administrators or manufacturers, provide the names of the group plan administrators or manufacturers from whom the weight was purchased, the amount of weight purchased, expressed in pounds, and the date of the purchase; and

iv. For a group plan administrator, whether the group plan administrator collected its members' combined estimated-market-share-in-weight for the program year before selling weight to other group plan administrators or manufacturers;

4. The group plan administrator's or manufacturer's efforts to cure the shortfall in weight after the manufacturer was notified of its actual-market-share in-weight:

i. If the manufacturer, individually, or as a member of a group, claims that it was unable to cure its actual-market-share in-weight shortfall due to the lack of sufficient program-eligible-weight in the marketplace, identify the names of the group plan administrators or manufacturers it contacted to purchase the weight, and the dates and times of the inquiries; or

ii. If the manufacturer, individually, or as a member of a group, claims that it was unable to cure its shortfall because the price of available program-eligible-weight far exceeded reasonable market prices, identify the names of the group plan administrators or manufacturers it contacted to purchase the weight, the price asked for the weight, and

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

provide data as to reasonable market prices from an entity with expertise in the electronic waste recycling market;

5. The steps taken by the group plan administrator or manufacturer, as applicable, to prevent a collection shortfall for the current program year;

6. All documents submitted to the Department pursuant to this section shall contain a written certification pursuant to N.J.A.C. 7:26J-1.4(c), which shall be signed by the manufacturer's responsible corporate official in conformity with N.J.A.C. 7:26J-1.4; and

7. The Department will consider the collective weight of all information submitted pursuant to (h)1 through 5 above to determine whether to assess a noncompliance fee against the manufacturer.

SUBCHAPTER 9. CIVIL ADMINISTRATIVE PENALTIES AND NONCOMPLIANCE FEES

7:26J-9.1 Scope and purpose; civil administrative penalties and noncompliance fees

(a) This subchapter shall govern the Department's assessment of civil administrative penalties and noncompliance fees for violations of the Act, including violations of any rule promulgated, and any administrative order issued, pursuant to the Act. Violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 through 91, as amended by the Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 through 99.43, and their implementing rules, N.J.A.C. 7:26 and 7:26A, respectively, are governed by those statutes and rules. This chapter shall also govern the procedures for requesting adjudicatory hearings on a notice of civil administrative penalty assessment or an administrative order.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) Except as provided at (c) below, the Department may assess a civil administrative penalty of not less than \$500.00, nor more than \$1,000, for each violation of any provision of the Act, including each violation of any rule promulgated, and any administrative order issued, pursuant to the Act.

(c) The Department may assess a civil administrative penalty of not more than \$25,000 for each violation of the following rules: N.J.A.C. 7:26J-2.1(b), (d), (e), and (h); 3.1(a), (b), (c), (f), and (g); 3.2; 5.1(a), (b), (c), (d), (e), (g), and (h); 5.2; 7.1(a)2; and 8.1(d).

(d) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

(e) Where any requirement of the Act, or any rule promulgated, or any administrative order issued, pursuant to the Act, applies to more than one act, each additional act shall constitute a separate and distinct violation.

(f) The Department may assess, against a manufacturer, a noncompliance fee equivalent to \$0.50 per pound times its actual-market-share-in-weight, should the manufacturer fail to collect, transport, or recycle its actual-market-share-in-weight. In determining whether to assess a noncompliance fee against a manufacturer, the Department will review all information submitted to the Department pursuant to N.J.A.C. 7:26J-8.1(h). The assessment of a noncompliance fee will be in addition to any other enforcement action that may be taken by the Department for violation of the Act or this chapter.

(g) Neither the assessment of a civil administrative penalty for a violation of the Act or the assessment of a noncompliance fee, nor the payment of any such civil administrative

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

penalty or noncompliance fee shall be deemed to affect the availability of any other enforcement provision authorized by the Act or any other statute, in connection with the violation for which the assessment is levied.

(h) Nothing in this chapter is intended to affect the Department's authority to revoke or suspend any permit, license, or other operating authority issued pursuant to the SWMA.

7:26J-9.2 Procedures for assessment and payment of civil administrative penalties and noncompliance fees

(a) In order to assess a civil administrative penalty for violations of the Act, the Department will, by means of a notice of civil administrative penalty assessment, notify the violator by certified mail (return receipt requested) or by personal service. The Department may assess a civil administrative penalty for more than one offense in a single notice of civil administrative penalty assessment or in multiple notices of civil administrative penalty assessments. In each notice of civil administrative penalty assessment, the Department will:

- 1. Identify the provision of the Act or this chapter that is violated;**
- 2. Concisely state the facts that constitute the violation;**
- 3. Order such violation to cease or be corrected;**
- 4. Specify the amount of the civil administrative penalty being assessed pursuant to N.J.A.C. 7:26J-9.4 or 9.5; and**
- 5. Inform the violator of the right to request an adjudicatory hearing pursuant to the procedure at N.J.A.C. 7:26J-9.3.**

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(b) In order to assess a noncompliance fee against a manufacturer for its failure to meet its actual-market-share in-weight for a program year, the Department will, by means of an administrative order, notify the manufacturer by certified mail (return receipt requested) or by personal service. In each administrative order the Department will:

- 1. Identify the provision of the Act or this chapter that is violated;**
- 2. Cite the facts that led to the assessment of the noncompliance fee;**
- 3. Specify the amount of the noncompliance fee and order the payment of the fee;**

and

4. Inform the manufacturer of the right to request an adjudicatory hearing pursuant to the procedure at N.J.A.C. 7:26J-9.3.

(c) Payment of the civil administrative penalty, noncompliance fee, or, where applicable, both, is due upon receipt of the Department's final order in a contested case or when a notice of civil administrative penalty or an administrative order becomes a final order, as follows:

1. If no hearing is requested pursuant to the procedures at N.J.A.C. 7:26J-9.3, a notice of civil administrative penalty assessment or an administrative order becomes a final order of the Department on the 36th calendar day following receipt of the respective notice;

2. If the Department denies the hearing request pursuant to the standards in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., a notice of civil administrative penalty assessment or an administrative order becomes a final order upon receipt of such denial; or

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

3. If an adjudicatory hearing is conducted, a notice of civil administrative penalty assessment or an administrative order becomes a final order upon receipt of a final order in a contested case.

7:26J-9.3 Procedures to request an adjudicatory hearing to contest an administrative order or a notice of civil administrative penalty assessment, and procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order or a notice of civil administrative penalty assessment issued pursuant to the Act, the violator shall submit a completed Adjudicatory Hearing Request Checklist and Tracking Form, including the following information, in writing, to the New Jersey Department of Environmental Protection, Office of Administrative Hearings and Dispute Resolution, ATTENTION: Adjudicatory Hearing Requests, 401 E. State Street, Mail Code 401-07A, PO Box 402, Trenton, New Jersey 08625:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses, to each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the Department's findings of fact in the findings section of the administrative order or notice of civil administrative penalty assessment. If the violator is without knowledge or information sufficient to form a belief as to the truth

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends, in good faith, to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding that the violator denies, the violator shall allege the fact or facts as the violator believes such fact or facts to be;

4. Information supporting the request and specific reference to or copies of all written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours);

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons; and

7. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of the hearing request to the Office of Administrative Law.

(b) A copy of the hearing request shall be sent to:

1. New Jersey Department of Environmental Protection, Office of Administrative Hearings and Dispute Resolution, ATTENTION: Adjudicatory Hearing Requests, 401 E. State Street, Mail Code 401-07A, PO Box 402, Trenton, NJ 08625; and

2. New Jersey Department of Environmental Protection, Mail Code: 401-02C, PO Box 420, 401 East State Street, Trenton, NJ 08625-0420, Attention: E-waste Unit.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(c) If the Department does not receive the written request for a hearing within 35 days after receipt by the violator of the notice of a civil administrative penalty assessment or an administrative order being challenged, the Department will deny the hearing request.

(d) If the violator fails to include all the information required at (a) above, the Department may deny the hearing request.

(e) All adjudicatory hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:26J-9.4 Civil administrative penalties

(a) The Department may assess a civil administrative penalty of not less than \$500.00, nor more than \$1,000, for violations of each requirement listed at (f) below, except for violations of the following rules: N.J.A.C. 7:26J-2.1(b), (d), (e), and (h); 3.1(a), (b), (c), (f), and (g); 3.2; 5.1(a), (b), (c), (d), (e), (g), and (h); 5.2; 7.1(a)2; and 8.1(d), which may be assessed at not more than \$25,000.

(b) Each violation of a rule listed at (f) below shall constitute an additional, separate, and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

(d) Where any requirement at (f) below may pertain to more than one act, condition, occurrence, item, or unit, the failure to comply with such requirement as it pertains to each

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

such act, condition, occurrence, item, or unit shall constitute an additional, separate, and distinct violation.

(e) The Department shall determine the amount of a civil administrative penalty for each violation at (f) below according to the procedure at (f)1 through 5 below. For a violation of a requirement or condition of an administrative order, the Department may, in its sole discretion, identify the corresponding requirement of any rule listed in the table at (f) below and, using the procedure at (f)1 through 5 below, determine the amount of the civil administrative penalty based on the rule provision violated:

1. Identify the rule as listed at (f) below;
2. Identify the corresponding base penalty dollar amount for the rule violation as listed at (f) below;
3. Multiply the base penalty dollar amount times the following multipliers for each factor to obtain the severity penalty component, as applicable:

<u>Severity Factor</u>	<u>Multiplier</u>
i. Violator had violated the same rule less than 12 months prior to the violation;	1.00
ii. Violator had violated a different rule less than 12 months prior to the violation;	0.50
iii. Violator had violated the same rule during the period which began 24 months prior to the violation and	0.50

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

ended 12 months prior to the violation;

iv. Violator had violated a different 0.25

rule during the period which began 24

months prior to the violation and

ended 12 months prior to the violation;

4. To obtain the civil administrative penalty, add the severity penalty components calculated pursuant to (f)3 above to the base penalty. If the sum exceeds \$1,000, or, where applicable, \$25,000, the civil administrative penalty shall be \$1,000 or \$25,000; and

Example:

Base penalty for violation of rule listed in

table set forth at N.J.A.C. 7:26J-9.4(f)2	=	\$5,000
---	---	---------

Subparagraph (e)3iii applies: $0.50 \times \$5,000$	=	\$2,500
---	---	---------

Subparagraph (e)3iv applies: $0.25 \times \$5,000$	=	<u>\$1,250</u>
--	---	----------------

Civil administrative penalty		\$8,750
------------------------------	--	---------

5. For the purpose of this section, violation of the “same rule” means violation of the same specific requirement of a rule. Where a rule has a list of specific requirements, the same item on the list must be violated to be considered violation of the “same rule.”

(f) The Rule Summary column in the penalty tables below, which summarizes certain rules in this chapter, is provided for informational purposes only. In the event there is a conflict between the description in the Rule Summary column in the penalty tables below and the rule text in this chapter, the rule text shall prevail.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

1. The violations this chapter, whether the violation is minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation subject to a penalty between \$500.00 and \$1,000 are set forth in the following table:

<u>Rule Citation</u>	<u>Rule Summary</u>	<u>Base Penalty Between \$500.00-\$1,000</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26J-2.2(a)	Failure of an authorized recycler initially required to register with the Department to timely register and pay a registration fee.	\$1,000	M	30
7:26J-2.2(b)	Failure of a registered authorized recycler to timely reregister and pay the registration renewal fee.	\$500.00	M	30
7:26J-3.1(d)	Failure of a manufacturer to timely submit a group designation form.	\$500.00	M	30
7:26J-3.1(e)	Failure of a manufacturer to provide the information on the group designation form required at N.J.A.C. 7:26J-3.1(e).	\$500.00	M	30
7:26J-3.2(c)	Charging a fee to a consumer other than a fee for a premium service approved by the Department.	\$500.00	M	30
7:26J-4.1	Failure of a manufacturer to submit a complete, accurate, and timely semiannual report.	\$1,000	NM	

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

7:26J-4.1	Failure of a group plan administrator to submit a complete, accurate, and timely semiannual report.	\$1,000	NM	
7:26J-4.1	Failure of an operator of a collection site to submit a complete, accurate, and timely semiannual report.	\$1,000	NM	
7:26J-4.1	Failure of an authorized recycler to submit a complete, accurate, and timely semiannual report.	\$1,000	NM	
7:26J-7.1(a)	Failure of an authorized recycler to comply with the performance requirements established at N.J.A.C. 7:26J-7.1(a).	\$1,000	M	30
7:26J-7.1(b)	Failure of an operator of a collection site to comply with any of the performance requirements established at N.J.A.C. 7:26J-7.1(b).	\$1,000	M	30
7:26J-7.3(a)	Failure of an authorized recycler to maintain, or when requested submit, the records required to be maintained pursuant to N.J.A.C. 7:26J-7.3.	\$500.00	M	30
7:26J-7.3(b)	Failure of an operator of a collection site to maintain or when requested, submit, the records required to be maintained pursuant to N.J.A.C. 7:26J-7.3.	\$500.00	M	30

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

2. The violations of this chapter, whether the violation is minor (M) or non-minor (NM), the applicable grace period if the violation is minor, and the civil administrative base penalty for each violation subject a civil administrative penalty of not more than \$25,000 are set forth in the following table:

<u>Rule Citation</u>	<u>Rule Summary</u>	<u>Base Penalty Maximum \$25,000</u>	<u>Type of Violation</u>	<u>Grace Period (days)</u>
7:26J-2.1(b), (d)	Failure of a manufacturer to initially register and pay the registration fee within 30 days of receiving a notice of an estimated market-share-in-weight notice from the Department.	\$5,000	NM	
7:26J-2.1(e)	Failure of a manufacturer to timely renew its registration.	\$5,000	NM	
7:26J-2.1(h)	Failure of a registered manufacturer to provide written notice to the Department that it will cease selling covered electronic devices in the State.	\$5,000	NM	
7:26J-3.1(a)	Failure of a manufacturer to timely submit a collection plan.	\$5,000	NM	
7:26J-3.1(a)	Failure of a manufacturer to include in a collection plan all the information required at N.J.A.C. 7:26J-3.1(a) or to completely certify the information as required at N.J.A.C. 7:26J-3.1(a)5.	\$5,000	NM	
7:26J-3.1(c)	Failure of a manufacturer to collect, transport, and	\$5,000	NM	

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

	recycle all types and brands of covered electronic devices, including orphan devices.			
7:26J-3.1(f)	Failure of a manufacturer to implement an approved collection plan.	\$5,000	NM	
7:26J-3.1(g)	Failure of a manufacturer to implement a collection plan for the entire program year.	\$7,500	NM	
7:26J-3.1(g)	Implementation of an amended plan prior to the Department's approval of the amended plan.	\$1,000	NM	
7:26J-3.2(d)	Failure of a manufacturer to timely submit a revised collection plan subsequently upon receipt of a notice of deficiency.	\$5,000	NM	
7:26J-5.1(b)	Failure to recycle covered electronic devices in compliance with all applicable Federal, State, and local laws, regulation, and ordinances.	\$5,000	NM	
7:26J-5.1(c)	Sale by a manufacturer or retailer of a mis-labeled covered electronic device.	\$1,000	NM	
7:26J-5.1(d)	Sale of a covered electronic device not in compliance with the EWMA.	\$5,000	NM	
7:26J-5.1(e)	Sale of a covered electronic device with a concentration of heavy metal that exceeds the maximum concentration value specified in the Annex to the European Union Directive.	\$5,000	NM	

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

	2002/95/EC or as specified in a subsequent amendment to the Directive.			
7:26J-5.1(g)	Conveyance of a covered electronic device to a jail, prison, or other institution for the detention of persons charged with or convicted of an offense for recycling by prisoners.	\$5,000	NM	
7:26J-5.1(h)	Disposal of a covered electronic device, its components or subassemblies or recyclable materials as solid waste.	\$1,000	NM	
7:26J-5.2	Failure of a retailer to provide information to a consumer that describes where and how the consumer can recycle covered electronic devices.	\$1,000	NM	
7:26J-7.1(a)2	Export of a covered electronic device for disposal in a manner that poses a significant risk to the public health or the environment.	\$5,000	NM	
7:26J-8.1(d)	Failure of a manufacturer to meet its actual-market-share-in-weight for a program year.	\$5,000	NM	

3. With respect to N.J.A.C. 7:26J-7.2, Responsibilities of a group plan administrator, a civil administrative penalty for a violation of any rule at N.J.A.C. 7:26J-1, 2, 3, 4, and 8 that is committed by a group plan administrator in furtherance of its obligations to a manufacturer in its group may be assessed against the group plan

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

administrator under the tables set forth at (f)1 and 2 above in the same amount and in the same manner as if the violation were committed by a participating manufacturer. The Department may also take enforcement action against the manufacturer if a group plan administrator fails to fulfill a manufacturer's responsibilities on its behalf.

7:26J-9.5 Alternate civil administrative penalty determination

(a) The Department shall assess penalties pursuant to this section, and not pursuant to N.J.A.C. 7:26J-9.4, for violations of the following rules: N.J.A.C. 7:26J-2.1(b), (d), (e), and (h); 3.1(a), (b), (c), (f), and (g); 3.2; 5.1(a), (b), (c), (d), (e), (g), and (h); 5.2; 7.1(a)2; and 8.1(d), when:

1. The violation concerns a section of the rules listed at N.J.A.C. 7:26J-9.4(f), and the Department determines that under the specific circumstances of the violation, the penalty amount at N.J.A.C. 7:26J-9.4(f) would be too low to provide the deterrent intended by the Act; or

2. The violation is not listed at N.J.A.C. 7:26J-9.4(f).

(b) Each violation of the Act, any rule promulgated, or any administrative order issued, pursuant to the Act, shall constitute an additional, separate, and distinct violation.

(c) Each day during which a violation continues shall constitute an additional, separate, and distinct violation.

(d) Where any requirement of the Act, or any rule promulgated, or any administrative order issued pursuant to the Act, applies to more than one act, condition, occurrence, item,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

or unit, each additional act, condition, occurrence, item, or unit shall constitute a separate and distinct violation of the applicable rule.

(e) The Department shall assess a civil administrative penalty pursuant to this section for a minor violation, as follows:

1. A violation is minor if it meets the criteria at N.J.A.C. 7:26J-9.8(c)1 through 7;
2. A violation meeting the criteria at (e)1 above shall be subject to a grace period of 30 days;
3. If the violator fails to cure the minor violation within the 30-day grace period set forth at (e)2 above, the violator shall be subject to a \$1,000 penalty to be assessed in accordance with the procedure set forth at N.J.A.C. 7:26J-9.8.

(f) A violation that does not meet the criteria at N.J.A.C. 7:26J-9.8(c)1 through 7 is non-minor, and the penalty shall be assessed at the midpoint of the following ranges, unless adjusted pursuant to (i) below:

		<u>SERIOUSNESS</u>		
		Major	Moderate	Minor
<u>CONDUCT</u>	Major	\$20,000 - \$25,000	\$15,000 - \$20,000	\$7,500 - \$12,500
	Moderate	\$15,000 - \$20,000	\$5,000 - \$10,000	\$1,500 - \$3,000
	Minor	\$7,500 - \$12,500	\$1,500 - \$3,000	N/A

*N/A means not applicable

(g) The seriousness of the violation shall be determined as major, moderate, or minor, as follows:

1. Major seriousness shall apply to any violation that:

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

i. Has caused or has the potential to cause serious harm to human health or the environment; or

ii. Seriously deviates from the requirements of the Act, or any rule promulgated, or any administrative order issued pursuant to the Act. Serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirement, or if some of the requirement is met, severely impair or undermine the operation or intent of the requirement;

2. Moderate seriousness shall apply to any violation that:

i. Has caused, or has the potential to cause, substantial harm to human health or the environment; or

ii. Substantially deviates from the requirements of the Act, or any rule promulgated, or any administrative order issued, pursuant to the Act; substantial deviation shall include, but not be limited to, violations that are in substantial contravention of the requirements or that substantially impair or undermine the operation or intent of the requirement; and

3. Minor seriousness shall apply to any violation not included at (g)1 or 2 above.

(h) The conduct of the violator shall be determined as major, moderate, or minor, as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator;

2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

3. Minor conduct shall include any other conduct not included at (g)1 or 2 above.

(i) The Department may adjust the amount determined pursuant to (f), (g), and (h) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described at (f) above, on the basis of one or more of the following factors:

1. The compliance history of the violator;

2. The nature, timing, and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed.

i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;

3. The nature, timing, and effectiveness of any measures taken by the violator to prevent future similar violations.

i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range;

4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; or

5. Other specific circumstances of the violator or the violation.

7:26J-9.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, registration, record, collection plan,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

semiannual report, or other document required to be submitted or maintained pursuant to the Act or any rule promulgated, or any administrative order issued pursuant to the Act.

(b) Each day, from the day that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator, shall be an additional, separate, and distinct violation.

(c) The Department will assess a civil administrative penalty for violations described in this section involving a collection plan at the mid-point of the following ranges, except as adjusted pursuant to (e) below:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the violator, the civil administrative penalty per act or omission shall be not more than \$15,000, nor less than \$5,000 per act or omission; and

2. For all other conduct, the civil administrative penalty per act or omission shall be not more than \$5,000, nor less than \$1,000.

(d) The Department will assess a civil administrative penalty for violations described in this section involving documents other than a collection plan as follows:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the violator, the civil administrative penalty shall be in the amount of \$1,000 per act or omission; and

2. For all other conduct, the civil administrative penalty per act or omission shall be in the amount of \$500.00 per violation.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(e) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described at (c) above, on the basis of one or more of the following factors:

- 1. The compliance history of the violator;**
- 2. The nature, timing, and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed.**
 - i. Immediate implementation of measures to effectively mitigate the effects of the violation will result in a reduction to the bottom of the range;**
- 3. The nature, timing, and effectiveness of any measures taken by the violator to prevent future similar violations.**
 - i. Implementation of measures that can reasonably be expected to prevent a recurrence of the same type of violation will result in a reduction equal to the bottom of the range;**
- 4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; or**
- 5. Other specific circumstances of the violator or the violation.**

(f) A violation described in this section is non-minor and, therefore, not subject to a grace period.

7:26J-9.7 Civil administrative penalty for failure to allow lawful entry and inspection

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

(a) The Department may assess a civil administrative penalty pursuant to this section against any violator who refuses, inhibits, or prohibits immediate lawful entry and inspection by any authorized Department representative of any premises, building, or facility that the Department may enter and inspect under law.

(b) Each day that a violator refuses, inhibits, or prohibits immediate lawful entry and inspection by an authorized Department representative of any premises, building, or facility that the Department may enter and inspect under law, shall be an additional, separate, and distinct violation.

(c) The Department will assess a civil administrative penalty for violations described in this section, as follows:

1. For refusing, inhibiting, or prohibiting immediate lawful entry and inspection of any premises, building, or facility for which an administrative order exists pursuant to the Act, the civil administrative penalty shall be \$1,000 per violation; and

2. For any other refusal, inhibition, or prohibition of immediate lawful entry and inspection the civil administrative penalty shall be \$500.00 per violation.

(d) A violation described in this section is non-minor and, therefore, not subject to a grace period.

7:26J-9.8 Grace period; procedure

(a) Each violation identified in the penalty tables at N.J.A.C. 7:26J-9.4(f) by an “M” in the Type of Violation column and each violation that is determined to be minor pursuant to N.J.A.C. 7:26J-9.5, for which the conditions at (c) below are satisfied, is a minor violation,

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

and is subject to a grace period, the length of which (in days) is indicated in the column with the heading “Grace Period.”

(b) Each violation identified in the penalty tables at N.J.A.C. 7:26J-9.4(f) by an “NM” in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department or local government agency will provide a grace period for any violation identified as minor pursuant to this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation;

2. The violation poses minimal risk to the public health, safety, and natural resources;

3. The violation does not materially and substantially undermine or impair the goals of the electronic waste management program;

4. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or a local government agency;

5. The person responsible for the violation has not been notified in a previous enforcement action by the Department or a local government agency as being responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period;

6. The person responsible for the violation has not been identified by the Department or a local government agency as being responsible for the same or

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

substantially similar violations at any time that reasonably indicates a pattern of illegal conduct and not isolated incidents on the part of the person responsible; and

7. The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department.

(d) For a violation determined to be minor pursuant to (c) above, the following provisions apply:

1. The Department will issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision, or another requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected, and compliance is achieved within the specified grace period;

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department will not impose a penalty for the violation, and, in addition, shall not consider the minor violation for purposes of calculating the “severity penalty component” pursuant to N.J.A.C. 7:26J-9.4;

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, a written report detailing the corrective action taken or compliance achieved, which shall contain a written certification pursuant to N.J.A.C. 7:26J-1.4(c), which shall be signed in accordance with N.J.A.C. 7:26J-1.4;

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request, from the Department, an extension of the specified grace period. The request shall be made in writing no later than one week before the end of the specified grace period and include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance, and the request shall be signed and certified in accordance with (d)3 above. The Department may, at its discretion, approve, in writing, an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

- i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;**
- ii. Whether the delay has been caused by circumstances beyond the control of the violator;**
- iii. Whether the delay will pose a risk to the public health, safety, and natural resources; and**
- iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program;**

5. If the person responsible for the minor violation fails to demonstrate to the Department that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department may, in

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE MAY 6, 2024, NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation at (d)1 above was issued; and

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.