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## **TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 140 - WASTE & MATERIALS MANAGEMENT**

#### **SUBCHAPTER 20 - RECYCLING & SPECIAL WASTE**

PART 4 - Regulations Governing the Administration and Enforcement of the Electronic Waste Prevention, Reuse and Recycling Act

#### **4.1 Purpose**

In accordance with the Electronic Waste Prevention, Reuse and Recycling Act, R.I. Gen. Laws Chapter 23-24.10, the purpose of these regulations is to establish a manufacturer financed system for the collection, recycling, and reuse of covered electronic products in Rhode Island; develop a comprehensive strategy for prevention and reduction of electronic waste; promote the development of state infrastructure for the reuse and recycling of used electronics; promote the handling, recycling and disposal of covered electronic products in a sound and responsible manner; and encourage the design of covered electronic products that are less toxic, more durable and more recyclable.

#### **4.2 Authority**

These rules and regulations are promulgated pursuant to the Electronic Waste Prevention, Reuse and Recycling Act R.I. Gen. Laws Chapter 23-24.10, the Refuse Disposal Act, R.I. Gen. Laws Chapter 23-18.9, the Hazardous Waste Management Act R.I., Gen. Laws Chapter 23-19.1, the Department of Environmental Management, R.I. Gen. Laws Chapter 42-17.1, and in accordance with R.I. Gen. Laws Chapter 42-35, Administrative Procedures.

#### **4.3 Application**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

#### **4.4 Definitions**

A. For the purposes of these regulations, the following terms shall have the following meanings:

1. "Basic service" means collection services provided for free by the State Program or a manufacturer within the scope of its approved independent or group collection plan that includes:

- a. permanent drop off locations easily accessible by the public;
  - b. mail-back opportunities;
  - c. in-store retail collection opportunities; or
  - d. scheduled collection events.
2. "Cathode ray tube" or "CRT" means an electron tube or evacuated glass container, having a cathode or negative electrode at one end, and a device typically called an electron gun that projects a beam of electrons against a luminescent screen at the opposite end of the tube. Cathode ray tubes, or CRTs, are used as picture tubes in television receivers, visual display screens in radar receiving equipment, computer installations, and oscilloscopes.
  3. "Collector" means a public or private entity that receives covered electronic products or electronic devices banned from disposal and arranges for the delivery of the products or devices to a recycler.
  4. "Computer" or "personal computer" or "PC" means a desktop or notebook computer as further defined below, but does not mean an automated typewriter, electronic printer, mobile telephone, portable hand-held calculator, portable digital assistant (PDA), MP3 player, or other similar device. Computer does not include computer peripherals, commonly known as cables, mouse, or keyboard; computer servers marketed to professional users; or retail store terminals or cash registers, used at customer checkout in the retail industry. For purposes of participation in an independent or group-run manufacturer collection program, computer is further defined to include desktop computers, notebook computers (which includes tablets), monitors (as is used with a computer) and any other covered electronic product with the exception of televisions.
  5. "Corporation" means the Rhode Island Resource Recovery Corporation created and established pursuant to R.I. Gen. Laws Chapter 23-19.
  6. "Covered electronic products" means:
    - a. Computers (including central processing unit or CPU) as defined herein;
    - b. Computer monitors, including CRT monitors and flat panel monitors;
    - c. Combination units (CPUs with monitors);
    - d. Televisions including CRT-based and non-CRT-based televisions, plasma, LED and LCD, or any similar video display device with a

screen greater than nine (9) inches diagonally and that contains a circuit board; and

- e. "Covered electronic products" does not mean a computer, television or video display device that is:
  - (1) 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 replacement parts for use in a motor vehicle; or
  - (2) functionally or physically a part of, connected to or integrated within a larger piece of equipment designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, (including diagnostic, monitoring, or other medical products as that term is defined under the Federal Food, Drug, and Cosmetic Act) or equipment used for security, sensing, monitoring, or anti-terrorism purposes; or
  - (3) contained within a home appliance, clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or
  - (4) a handheld device used to access commercial mobile radio service, as such service is defined in 47 C.F.R. § 20.3, or
  - (5) a printer.
- 7. "Department" means the R.I. Department of Environmental Management.
- 8. "Desktop computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions for general purpose needs which are met through interaction with a number of software programs contained therein, and which is not designed to exclusively perform a specific type of logical, arithmetic or storage function or other limited or specialized application. Human interface with a desktop computer is achieved through a standalone keyboard, standalone monitor or other display unit, and a standalone mouse or other pointing device, and is designed for a single user. A desktop computer has a main unit that is intended to be persistently located in a single location, often on a desk or on the floor. A desktop computer is not designed for portability and generally utilizes an external monitor, keyboard, and mouse with an external or internal power supply for a power source. Desktop computer does not include an automated typewriter or typesetter.

9. "Director" means the Director of the R.I. Department of Environmental Management, or his or her designee.
10. "Environmentally sound management" means practices for the collection, storage, transportation, reuse, recycling and disposal of discarded covered electronic products or electronic devices banned from disposal to be implemented by the State Program or an approved manufacturers' collection program, or such organization's contracted partners, to ensure compliance with all applicable federal, state and local laws, regulations and ordinances and the protection of human health and the environment. Environmentally sound management practices shall include, but are not limited to, record keeping, on-site environmental/health and safety practices, tracking throughout, data destruction, storage, transportation and financial responsibility.
11. "Household" means a person, or group of people, living in a single detached dwelling, a residential condominium or a single unit of a multiple unit dwelling.
12. "Manufacturer program" means a statewide program for collecting, transporting, and recycling covered electronic products that is provided by the manufacturer pursuant to an approved collection plan.
13. "Manufacturer" means a person or entity who:
  - a. Manufactures or manufactured a covered electronic product under a brand it owns; or is or was licensed to use;
  - b. Sells or sold under a brand or label it owns or is or was licensed to use a covered electronic product produced by other suppliers; or
  - c. Assumes the financial responsibility of manufacturer collection, transportation or recycling as further defined herein; or
  - d. Imports or imported a covered electronic product into the United States that is manufactured by a person without a presence in the United States; or
  - e. Sells at retail a covered electronic product acquired from an importer that is the manufacturer and elects to register in lieu of the importer.
14. "Market share" means a television manufacturers' national sales of televisions expressed as a percentage of the total of all television manufacturers' national sales based on the best available public data.
15. "Monitor" means a video display device without a tuner that can display pictures and sound and is used with a computer.

16. "Notebook computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions for general purpose needs which are met through interaction with a number of software programs contained therein, and which is not designed to exclusively perform a specific type of logical, arithmetic or storage function or other limited or specialized application. Human interface with a notebook computer is achieved through a keyboard, video display greater than nine inches (9) in size, and mouse or other pointing device, all of which are contained within the construction of the unit which comprises the notebook computer; supplemental standalone interface devices typically can also be attached to the notebook computer. Notebook computers can use external, internal, or batteries for a power source. Notebook computer does not include a portable handheld calculator, or smart phone or similar specialized device. A notebook computer has an incorporated video display greater than nine inches (9) in size and can be carried as one unit by an individual. A notebook computer is sometimes referred to as a laptop computer. It shall also include tablets, e-readers, and similar computers with touch user screen interfaces greater than nine inches (9) in size.
17. "Orphan waste" means a covered electronic product, except a television, for which no manufacturer can be identified or the manufacturer is no longer in business and no successor business can be identified.
18. "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, the federal government or any agency or subdivision thereof, a state, municipality, commission, political subdivision of a state, or any interstate body.
19. "Premium service" means services including, but not limited to, scheduled at-home pickup services or curbside pickup services provided by a manufacturer outside the scope of its approved independent or group collection plan. It shall also include advanced data destruction services provided at the request of the household or school. Premium services are provided on a fee-for-service basis and provide more convenient collection opportunities or data security services beyond what it required by the State Program or an approved manufacturer independent or group collection plan.
20. "Printer" means desktop printers, multifunction printer copiers, and printer/fax combinations taken out of service that are designed to reside on a work surface, and include various print technologies, including without limitation laser and LED (electrographic), ink jet, dot matrix, thermal, and digital sublimation, and multi-function or all-in-one devices that perform different tasks, including without limitation copying, scanning, faxing, and printing. Printers do not include floor-standing printers, printers with optional floor stand, point of sale (POS) receipt printers, household

printers such as a calculator with printing capabilities or label makers, or non-standalone printers that are embedded into products that are not covered electronic products.

21. "Program year" means January 1st through December 31st, also referred to as calendar year.
22. "R2 practices" means the environmentally sound management practices as set forth in the R2 2013 Responsible Recycling (R2) Standard for Electronics Recyclers (commonly referred to as the R2:2013 Standard).
23. "Recycler" means a public or private individual or entity who accepts covered electronic products directly from the public or from collectors for the purpose of recycling. A manufacturer who takes products solely for refurbishment or repair is not a recycler. A recycler may also be a collector if it meets the definition of a collector.
24. "Retailer" means a person or entity who sells a covered electronic product in the state to a consumer. Retailer includes, but is not limited to, a manufacturer of a covered electronic product who sells directly to a consumer through any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, or any similar electronic means, but not including leasing, commercial financing or wholesale transactions with a distributor or other retailer.
25. "Return share" means the minimum percentage of covered electronic products, except televisions, that an individual manufacturer is responsible for collecting, transporting and recycling.
26. "Return share by weight" means the minimum total weight of covered electronic products, except televisions, that an individual manufacturer is responsible for collecting, transporting and recycling.
27. "School" means any residential or non-residential school, public, private or charter, of any city or town or community educational system regulated, directly or secondarily, by the Board of Regents for Elementary and Secondary Education or the Department of Elementary and Secondary Education or any other state education board or local city or town school board or school committee or other legal educational subdivision acting under it. It does not include institutions of higher education or child-care facilities as regulated by the Department of Children, Youth and Families.
28. "State program" means a statewide program for collecting, transporting and recycling covered electronic products that is provided by the R.I. Resource Recovery Corporation on behalf of manufacturers who pay a recycling fee to the Corporation.

29. "Television" means any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.
30. "Universal waste" means any of the hazardous wastes that are subject to the universal waste requirements of 40 C.F.R. § 273 and that are subject to § 4.13 of this Part. Department's Hazardous Waste Regulations adopted pursuant to R.I. Gen. Laws Chapter 23-19.1.
31. "Video display device" means and includes units capable of presenting images electronically on a screen, with a viewable area greater than nine inches (9) when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed.

#### **4.5 Disposal Ban**

- A. No person shall dispose of any of the covered electronic products in a manner other than by recycling or disposal as hazardous waste or universal waste.
- B. This ban on disposal shall apply to whole units of covered electronic products, as well as to the constituent subunits and materials from which the units are made.
- C. No sanitary landfill or transfer station regulated pursuant to R.I. Gen. Laws Chapter 23-18.9 shall accept any covered electronic products for the purposes of disposal. All sanitary landfills and transfer stations regulated pursuant to R.I. Gen. Laws Chapter 23-18.9 shall establish procedures to promote segregation of covered electronic products from the waste stream, shall document those procedures in the facility operating plan, and shall implement those procedures as part of the operation of the facility.

#### **4.6 Sales & Labor Prohibitions**

- A. A manufacturer not in compliance with all financial and other requirements of R.I. Gen. Laws Chapter 23-24.10 is prohibited from offering a covered electronic product for sale in this state.
- B. No retailer and/or manufacturer shall offer for sale in this state a new covered electronic product from a manufacturer that is not in full compliance with the requirements of R.I. Gen. Laws Chapter 23-24.10.
- C. Facilities that recycle covered electronic products, including all downstream recycling operations, shall not use prison labor to recycle covered electronic products.

## 4.7 Labeling & Registration Requirements

- A. Labeling. A manufacturer or retailer may not sell or offer for sale a covered electronic product in the state unless it is labeled with the manufacturer's brand, and the label is permanently affixed and readily visible.
- B. Registration. In accordance with R.I. Gen. Laws § 23-24.10-8, a manufacturer of covered electronic products sold or offered for sale in this state shall register with the Department by December 15th of each year for a period to cover the upcoming calendar year, on a form provided by the Department. The registration shall include:
1. A list of all brands, by type of covered electronic product, manufactured, sold or imported by the manufacturer, being offered for sale in this state;
  2. A statement of whether the manufacturer will be implementing a manufacturer program or utilizing the State Program for recycling covered electronic products;
  3. A copy of the manufacturer's proposed collection and recycling plan if said manufacturer is choosing to implement its own collection program, either individually or in conjunction with other manufacturers as permitted in accordance with R.I. Gen. Laws § 23-24.10-9.
  4. All appropriate contact information for the manufacturer, including an administrative contact and a billing contact.
  5. An annual registration fee of five thousand dollars (\$5,000) payable to the Department. All registration fees shall be deposited into the Department's Environmental Response Fund.
- C. Registration at Time of First Sale of Brand in the State. If a manufacturer has not previously filed a registration, the manufacturer shall file a registration in accordance with § 4.7(B) of this Part with the Department prior to any offer for sale for delivery in this state of the manufacturer's new covered electronic products and shall pay to the Department a registration fee of five thousand dollars (\$5,000).
- D. Registration at Time of Notification by Department or Corporation of Assessed Return Share or Market Share. Any manufacturer to whom the Department or Corporation provides notification of a return share, return share in weight or market share pursuant to § 4.8(D) of this Part or § 4.9(D) of this Part and who has not previously filed a registration shall, within thirty (30) days of receiving such notification, file a registration with the Department and shall pay to the Department a registration fee of five thousand dollars (\$5,000).
- E. All annual registration fees of five thousand dollars (\$5,000) are due to the Department by December 15th prior to the start of each program year.



- F. The registration and each annual renewal shall be effective upon receipt by the Department.
- G. All registration fees collected by the Department shall be deposited in the Environmental Response Fund established pursuant to R.I. Gen. Laws § 23-19.1-23.

#### **4.8 Manufacturer Collection Programs for Televisions**

- A. Designation of Participation: At the time of registration, the manufacturer of televisions must designate whether it will participate in the State Program or implement a manufacturer program, either individually or in cooperation with other manufacturers. Manufacturers who do not indicate a choice between the State Program or a manufacturer program must participate in the State Program for the following year.
- B. Manufacturer Program Plan: Each year, a television manufacturer choosing to implement a manufacturer program shall submit an implementation plan in writing to the Department no later than December 15th of the year preceding the calendar year covered under the proposed plan. A group of television manufacturers may choose to implement a manufacturer program as one entity, if in doing so the manufacturers meet the sum of their individual market shares. The manufacturer's plan must include:
  - 1. The names of the participating television manufacturers and the appropriate contact information for all individuals designated with responsibility for developing the plan and implementing the program.
  - 2. An explanation of how the television manufacturer(s) will provide convenient collection service statewide for all brands of covered electronic products from households and public and private elementary and secondary schools in this state, including:
    - a. The staffing and operating hours the collection sites will be open to the public and an explanation on how that provides a frequency adequate to meet the needs of the area being served.
    - b. Any collection service(s) operated jointly with another program(s), potentially including, but not be limited to, mail back programs and collection events.
    - c. All collectors and recyclers to be utilized in the course of the implementation of the plan, and procedures to ensure that all collectors and recyclers are properly registered with the Department in accordance with § 4.10 of this Part.

3. An explanation of how the television manufacturer(s) will finance a statewide program to collect covered electronic products from households and public and private elementary and secondary schools in this state;
  - a. The television manufacturer (s) must provide for basic service collection, transportation and recycling of covered electronic products from households and public and private elementary and secondary schools free-of-charge; and
  - b. The television manufacturer(s) may provide additional premium service and may charge for the additional cost of that premium service.
4. An explanation of how the television manufacturer(s) will provide for advertising and promotion of collection opportunities statewide and on a regular basis from households and public and private elementary and secondary schools in this state;
5. An explanation of how the television manufacturer(s) will provide for environmentally sound management practices of covered electronic products collected, transported and recycled from households and public and private elementary and secondary schools in this state in accordance with § 4.13 of this Part.
6. Proposed methodology and procedures to conduct statistically significant sampling or an actual count of the covered electronic products collected and recycled by the television manufacturer each calendar year;
7. Each television manufacturer included in the plan must include a statement disclosing whether:
  - a. Any video display devices sold in Rhode Island exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated diphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs) under the RoHS (restricting the use of certain hazardous substances in electrical and electronic equipment) directive 2002/95/EC of the European parliament and council and any amendments there to enacted as of the date; or
  - b. The manufacturer has received an exemption from one or more of those maximum concentration values under the RoHS directive that has been approved and published by the European commission.
8. Television manufacturers who indicate their intent to participate in a manufacturer's program but do not submit a plan by December 15th must participate in the State Program for the following year.

C. Review, Decisions and Implementation of the Plan:

1. The Department may approve the plan, approve the plan with conditions and/or amendments, identify deficiencies and provide the manufacturer(s) with a specific time period to correct such issues, or deny the plan.
2. Any television manufacturer proposing a manufacturer program shall implement the plan submitted pursuant to § 4.8(B) of this Part beginning January 1st unless the television manufacturer has received, in writing, a determination from the Department that the plan is not acceptable.
3. If the Department approves the plan with conditions and/or amendments, the television manufacturer(s) shall implement the plan as directed or appeal the conditions and/or amendments.
4. If the Department identifies deficiencies and provides the manufacturer(s) with a specific time period to correct such issues, the television manufacturer(s) shall address those deficiencies and submit an amended plan in accordance with the specific schedule.
5. If the Department determines that the plan is unacceptable and denies the plan in writing, the television manufacturer(s) covered under that plan shall participate in the State Program under R.I. Gen. Laws § 23-24.10-11.

D. Market Shares:

1. The Corporation shall propose a market share for each television manufacturer in accordance with R.I. Gen. Laws § 23-24.10-3(7). The Corporation shall submit the proposed market shares for each television manufacturer to the Department, along with the basis for such determination, in writing for review and approval on an annual basis no later than October 15th of each year.
2. After review and approval of the proposal submitted by the Corporation, the Department shall designate the market share for each television manufacturer for the following year pursuant to R.I. Gen. Laws § 23-24.10-11. By January 1st of each year, the Department shall notify each television manufacturer that had a market share greater than zero of that market share for the following year.
3. A television manufacturer shall remain responsible for brands annually registered pursuant to § 4.7 of this Part and corresponding market shares assigned pursuant to this section for the full calendar year.

E. System Performance:

1. Television manufacturer(s) shall design and implement the collection program with the goal of collecting its assigned market share by weight for the calendar year.
  2. If a group of television manufacturers choose to implement a manufacturer group program as one entity, the manufacturers must design that group program to meet the sum of their individual market shares.
  3. Any television manufacturer that does not meet its assigned market share by weight for the previous calendar year, either through an individual or group collection program, may purchase credit for excess material collected either in other television manufacturer programs or the State Program. Any rate or price for such transaction shall be negotiated between the parties. All purchases and transactions for credit shall only be for excess covered material collected in and originating from Rhode Island and shall be properly reported in the annual report due to the Department (and by the Corporation if the purchase included material from the State Program).
  4. Any television manufacturer that does not meet its assigned market share by weight for the previous calendar year, either through an individual or group collection program, shall pay the R.I. Resource Recovery Corporation an amount equivalent to the amount the television manufacturer would have paid if a participant in the State Program plus ten percent (10%). This amount shall be the per pound fee for the prior year, as approved by the Department, multiplied by the television manufacturer's market share as established for the prior program year. Payment must be submitted to the R.I. Resource Recovery Corporation by February 1st.
- F. Reporting: Each television manufacturer must provide a report to the Department no later than February 1st of each year that details how the plan required under this section was implemented during the previous calendar year. Television manufacturers implementing a group collection program may provide one annual report to the Department addressing items §§ 4.8(F)(1)(a) through (k) of this Part for the entire group program.
1. The annual report must include:
    - a. A description of the statewide collection service statewide for households and public and private elementary and secondary schools.
    - b. The number of days and operating hours that the collection sites were open to the public.
    - c. A listing of all collectors and recyclers utilized in the course of the implementation of the plan.

- d. The degree to which the public utilized any premium services.
  - e. A listing of the advertising and promotion activities conducted over the calendar year.
  - f. A report on compliance with environmentally sound management practices as required by § 4.13 of this Part;
  - g. The methodology, procedures, and results of the statistically significant sampling or actual count of the covered electronic products collected and recycled by the manufacturer during the calendar year. The actual amount of material collected must be clearly presented in the report.
  - h. The portion of the amount of total material collected that was collected from public and private elementary and secondary schools.
  - i. A comparison of the amount of material collected with the market share assigned to the manufacturer(s) covered by the plan.
  - j. The amount, if any, of purchased credit for excess material collected either in other television manufacturer programs or the State Program.
  - k. The amount, if any, of the payment submitted to the R.I. Resource Recovery Corporation as a result of the television manufacturer(s) not meeting the assigned market share(s) by weight for the previous calendar year.
- G. In the event a manufacturer can be classified as both a television manufacturer and a computer manufacturer, said manufacturer shall be allowed to provide a single collection program for both types of covered products with approval of the Department.

#### **4.9 Manufacturer Collection Programs for Computer Manufacturers**

- A. Designation of Participation:
- 1. At the time of registration, the manufacturer of computers must designate whether it will participate in the State Program or implement a manufacturer program, either individually or in cooperation with other manufacturers. Manufacturers who do not indicate a choice between the State Program or a manufacturer program must participate in the State Program for the following year.

2. A computer manufacturer with less than a five-percent (5%) return share is not allowed to implement a manufacturer program and is required to participate in the State Program.

B. **Manufacturer Program Plan:** Each year, a computer manufacturer choosing to implement a manufacturer program shall submit an implementation plan in writing to the Department no later than December 15th of the year preceding the calendar year covered under the proposed plan. A group of computer manufacturers may choose to implement a manufacturer program as one entity. The manufacturer's plan must include:

1. The names of the participating computer manufacturers and the appropriate contact information for all individuals designated with responsibility for developing the plan and implementing the program.
2. An explanation of how the computer manufacturer(s) will provide convenient collection service statewide for all brands of covered electronic products from households and public and private elementary and secondary schools in this state, including:
  - a. The staffing and operating hours the collection sites will be open to the public and an explanation on how that provides a frequency adequate to meet the needs of the area being served.
  - b. Any collection service(s) operated jointly with another program(s), potentially including, but not be limited to, mail back programs and collection events.
  - c. All collectors and recyclers to be utilized in the course of the implementation of the plan, and procedures to ensure that all collectors and recyclers are properly registered with the Department in accordance with § 4.12 of this Part of these regulations.
3. An explanation of how the computer manufacturer(s) will finance a statewide program to collect covered electronic products from households and public and private elementary and secondary schools in this state;
  - a. The computer manufacturer(s) must provide for basic service collection, transportation and recycling of from households and public and private elementary and secondary schools free-of-charge; and
  - b. The computer manufacturer(s) may provide additional premium service and may charge for the additional cost of that premium service.

4. An explanation of how the computer manufacturer(s) will provide for advertising and promotion of collection opportunities statewide and on a regular basis from households and public and private elementary and secondary schools in this state;
  5. An explanation of how the computer manufacturer(s) will provide for environmentally sound management practices of covered electronic products collected, transported and recycled from households and public and private elementary and secondary schools in this state in accordance with § 4.13 of this Part;
  6. Proposed methodology and procedures to conduct statistically significant sampling or an actual count of the covered electronic products collected and recycled by the computer manufacturer each calendar year. For all computer manufacturers, the report must include:
    - a. A list of all brands identified during the sampling or count by the manufacturer;
    - b. The weight of covered electronic products identified for each brand during the sampling or count; and
    - c. The total weight of covered electronic products, including orphan waste if applicable, collected from households and public and private elementary and secondary schools in the state by the manufacturer during the previous calendar year.
  7. Each computer manufacturer included in the plan must include a statement disclosing whether:
    - a. Any video display devices sold in Rhode Island exceed the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated diphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs) under the RoHS (restricting the use of certain hazardous substances in electrical and electronic equipment) directive 2002/95/EC of the European parliament and council and any amendments there to enacted as of the date; or
    - b. The manufacturer has received an exemption from one or more of those maximum concentration values under the RoHS directive that has been approved and published by the European commission.
  8. Computer manufacturers who indicate their intent to participate in a manufacturers program but do not submit a plan by December 15th must participate in the State Program for the following year.
- C. Review, Decisions and Implementation of the Plan:

1. The Department may approve the plan, approve the plan with conditions and/or amendments, identify deficiencies and provide the manufacturer(s) with a specific time period to correct such issues, or deny the plan.
2. Any computer manufacturer proposing a manufacturer program shall implement the plan submitted pursuant to § 4.9(B) of this Part beginning January 1st unless the manufacturer has received, in writing, a determination from the Department that the plan is not acceptable.
3. If the Department approves the plan with conditions and/or amendments, the computer manufacturer(s) shall implement the plan as directed or appeal the conditions and/or amendments.
4. If the Department identifies deficiencies and provides the manufacturer(s) with a specific time period to correct such issues, the computer manufacturer(s) shall address those deficiencies and submit an amended plan in accordance with the specific schedule.
5. If the Department determines that the plan is unacceptable and denies the plan in writing, the computer manufacturer(s) covered under that plan shall participate in the State Program under R.I. Gen. Laws § 23-24.10-11.

D. Market Shares:

1. The Corporation shall propose a return share and corresponding return share by weight for each computer manufacturer in accordance with R.I. Gen. Laws §§ 23-24.10-3(13) and 23-24.10-3(14). This return share and return share by weight shall include the manufacturer's responsibility for brands of orphan waste as allocated across all computer manufacturers. The Corporation shall submit the proposed return share and return share by weight for each computer manufacturer to the Department, along with the basis for such determination, in writing for review and approval on an annual basis no later than October 15th of each year.
2. After review and approval of the proposal submitted by the Corporation, the Department shall designate the return share and return share by weight for each computer manufacturer for the following year pursuant to R.I. Gen. Laws § 23-24.10-11. By January 1st of each year, the Department shall notify each computer manufacturer that had a market share greater than zero of that market share for the following year.
3. A computer manufacturer shall remain responsible for brands annually registered pursuant to § 4.7 of this Part and corresponding return shares assigned pursuant to this section for the full calendar year.

E. System Performance:



1. Computer manufacturer(s) shall design and implement the collection program with the goal of collecting its assigned return share by weight for the calendar year. Only computer manufacturers that meet the qualifications outlined in § 4.9(A) of this Part are permitted to implement a group manufacturer program for computers.
  2. If a group of computer manufacturers chooses to implement a manufacturer group program as one entity, the manufacturers must design that group program to meet the sum of their individual return shares.
  3. Any computer manufacturer that does not meet its assigned return share and return share by weight for the previous calendar year, either through an individual or group collection program, may purchase credit for excess material collected either in other computer manufacturer programs or the State Program. Any rate or price for such transaction shall be negotiated between the parties. All purchases and transactions for credit shall only be for excess covered material collected in and originating from Rhode Island and shall be properly reported in the annual report due to the Department (and by the Corporation if the purchase included material from the State Program).
  4. Any computer manufacturer that does not meet its assigned return share by weight for the previous calendar year, either through an individual or group collection program, shall pay the R.I. Resource Recovery Corporation an amount equivalent to the amount the manufacturer would have paid if a participant in the State Program plus ten percent (10%). This amount shall be the per pound fee for the prior year, as approved by the Department, multiplied by the manufacturer's return share as established for the prior program year. Payment must be submitted to the R.I. Resource Recovery Corporation by February 1st.
- F. Reporting: Each computer manufacturer must provide a report to the Department no later than February 1st of each year that details how the plan required under this section was implemented during the previous calendar year. Computer manufacturers authorized to implement a group collection program may provide one annual report to the Department addressing items §§ 4.9(F)(1)(a) through (k) of this Part for the entire group program.
1. The annual report must include:
    - a. A description of the statewide collection service statewide for households and public and private elementary and secondary schools.
    - b. The number of days and operating hours that the collection sites were open to the public.

- c. A listing of all collectors and recyclers utilized in the course of the implementation of the plan.
- d. The degree to which the public utilized any premium services.
- e. A listing of the advertising and promotion activities conducted over the calendar year.
- f. A report on compliance with environmentally sound management practices as required by § 4.13 of this Part;
- g. The methodology, procedures, and results of the statistically significant sampling or actual count of the covered electronic products collected and recycled by the manufacturer during the calendar year. It shall also include:
  - (1) A list of all brands identified during the sampling or count by the manufacturer;
  - (2) The weight of covered electronic products identified for each brand during the sampling or count; and
  - (3) The total weight of covered electronic products, including orphan waste if applicable, collected from households and public and private elementary and secondary schools in the state by the manufacturer during the previous calendar year.
- h. The portion of the amount of total material collected that was collected from public and private elementary and secondary schools.
- i. A comparison of the amount of material collected with the return share assigned to the manufacturer(s) covered by the plan.
- j. The amount, if any, of purchased credit for excess material collected either in other computer manufacturer programs or the State Program.
- k. The amount, if any, of the payment submitted to the R.I. Resource Recovery Corporation as a result of the manufacturer(s) not meeting the assigned return share(s) by weight for the previous calendar year.

G. In the event a manufacturer can be classified as a manufacturer of both televisions and computer covered electronic products, said manufacturer shall be allowed to provide a single collection program for both types of covered products with the approval of the Department.

#### **4.10 Administration of the State Program**

- A. The Corporation and Department shall establish and administer a State Program for the collection, transportation and recycling of covered electronic products from households and public and private elementary and secondary schools in this state. Manufacturers opting to participate in the State Program as indicated on their annual registration submitted to the Department in accordance with § 4.7(B) of this Part shall be considered participants in the State Program.
- B. By October 15th of each year, the Corporation shall submit a State Program Plan to the Department for review and approval that:
  - 1. Complies with environmentally sound management practices as defined in § 4.13 of this Part to collect, transport and recycle covered electronic products;
  - 2. Provides, either directly or through the use of an approved contractor, convenient basic services and collection sites for all covered electronic products;
  - 3. Promotes collection opportunities statewide and on a regular basis;
  - 4. Proposes a return share and return share by weight for each calendar year for each computer manufacturer;
    - a. The return share proposed to the Department shall be determined by dividing the total weight of covered electronic products of that manufacturer's brands by the total weight of covered electronic products for all manufacturers' brands.
    - b. The return share by weight proposed to the Department shall be determined by multiplying the return share for each such manufacturer by the total weight in pounds of covered electronic products, including orphan waste.
    - c. The return share of covered electronic products for each manufacturer shall be based on the most recent annual sampling or count of covered electronic products.
  - 5. Proposes a market share for each television manufacturer;
  - 6. Proposes a recycling fee to be paid by each manufacturer that participates in the State Program. The Corporation shall establish the deadline by which all applicable recycling fees shall be paid to the Corporation. The recycling fee will be determined as follows:
    - a. For each computer manufacturer, the Corporation shall determine the recycling fee based on the manufacturer's annual return share

and return share by weight. The fee shall be calculated on a per pound basis and shall not exceed fifty cents (\$.50) per pound.

- b. For each television manufacturer, the Corporation shall determine the recycling fee based on a television manufacturer's market share. The fee shall be calculated on a per pound basis and shall not exceed fifty cents (\$.50) per pound.
  7. Proposes a cost per pound for collection, transportation, and recycling of covered electronic products in order to reasonably approximate market costs for these services.
  8. Explains how any deficits generated by the State Program shall be applied to the recycling fee calculation for and in the second program year following the audited program year and show any year to year adjustment.
  9. Proposes a methodology, to be approved by the Department, to estimate the return share by weight for computer related products using either: i) a statistically significant sampling of the covered electronic products collected and recycled by the State Program during each calendar year; or ii) an actual count of the covered electronic products collected and recycled by the State Program during each calendar year.
  10. Maintains on its website information on collection opportunities for covered electronic products.
- C. The Corporation shall implement the State Program Plan as approved. The Department shall issue its determination, in writing, whether to approve the State Program Plan as submitted or approve the plan with conditions.
- D. By November 1st of each year, the Department shall provide notification to all registered manufacturers of the revised cost per pound identified in § 4.10(B) of this Part for the following calendar year.
- E. By November 1st of each year, the Department and/or Corporation shall notify: i) each computer manufacturer that had a return share of its return share and its return share by weight for the following year; and ii) each television manufacturer that had a market share of its market share for the following year. A manufacturer shall remain responsible for brands annually registered pursuant to § 4.7 of this Part and corresponding market shares and/or return shares assigned pursuant to this Part for the full calendar year.
- F. The Corporation shall prepare a report to the Department no later than March 1st of the following calendar year that includes a detailed description of how the program was implemented during the previous calendar year, including:
1. A list of all brands identified during the sampling or count;

2. The weight of covered electronic products identified for each brand during the sampling or count;
  3. The total weights for both televisions and computer related covered electronic products collected by the State Program during the previous calendar year.
  4. The total amount paid to the Corporation pursuant to §§ 4.8(E) and 4.9(E) of this Part by manufacturers that did not meet their assigned return share by weight or assigned market share.
  5. A list of any manufacturers determined to be out of compliance with requirements of the State Program, including lack of payments of recycling fees to the Corporation for the previous calendar year.
- G. On April 1, July 1 and October 1 of each year, the Corporation shall notify the Department in writing of all manufacturers which have not submitted the required recycling fees and are deemed out of compliance with the State Program.

#### **4.11 Retailer Responsibility**

- A. A retailer may not sell or offer for sale any covered electronic product in or for delivery into this state unless:
1. The covered electronic product is labeled with a brand and the label is permanently affixed and readily visible;
  2. The brand is included on the list posted by the Department pursuant to § 4.6(B) of this Part; and
  3. The list posted by the Department specifies that the manufacturer is in compliance with the requirements of R.I. Gen. Laws Chapter 23-24.10 and these regulations. All manufacturers will be considered in compliance with the requirements of R.I. Gen. Laws Chapter 23-24.10 and these regulations for the purposes of this section until the Department publishes the first listing.
- B. Information Provided by Retailer at Time of Sale. A retailer shall provide the consumer at the time of the sale of the covered electronic product information that provides details about where and how a consumer can recycle covered electronic products in Rhode Island. Information shall also be made available in printable form for Internet sales.
- C. A retailer who sells or offers for sale a new covered electronic product must, before the initial offer for sale, review the Department's website to determine that all new covered electronic products that the retailer is offering for sale are labeled with the manufacturer's brands that are registered with the Department.

- D. A retailer is not responsible for an unlawful sale under this subdivision if the manufacturer's registration expired or was revoked and the retailer took possession of the covered electronic product prior to the expiration or revocation of the manufacturer's registration and the unlawful sale occurred within three (3) months after the expiration or revocation.

#### **4.12 Registration Requirements for Collectors and Recyclers**

A. Collector's Registration

1. In accordance with R.I. Gen. Laws § 23-24.10-10.1, no person or entity may operate as a collector of any covered electronic products or electronic devices banned from disposal unless that person or entity has submitted a registration with the Department on a form prescribed by the Director.
2. Registration information must include the name, address, telephone number, and location(s) of the business, and a certification that the collector has complied and will continue to comply with the requirements of R.I. Gen. Laws Chapter 23-24.10 and all regulations promulgated by the Department and/or the Corporation.
3. A registration is effective upon receipt by the Department and is valid until December 31st of each year. Collectors must register annually with the Department.

B. Recycler's Registration

1. No person or entity may recycle covered electronic products or electronic devices banned from disposal unless that person or entity has submitted a registration with the Department on a form prescribed by the Director.
2. Registration information must include the name, address, telephone number, and location of all recycling facilities under the direct control of the recycler that may receive covered electronic products, and a certification that the recycler has complied and will continue to comply with the requirements of R.I. Gen. Laws Chapter 23-24.10 and all regulations promulgated by the Department and/or the Corporation.
3. A registration is effective upon receipt by the Department and is valid until December 31st of each year. Recyclers must register annually with the Department.
4. Any person, corporation or entity that acts as a recycler or collector of covered electronic products in Rhode Island, regardless of whether they act as a contractor for the State Program or an approved manufacturer program, shall comply with the requirement to register with the Department.

5. Nothing in this section shall be deemed to circumvent the Department's existing authority under R.I. Gen. Laws Chapter 23-19.1 or regulations promulgated thereto.

#### **4.13 Environmentally Sound Management of Covered Products**

- A. In accordance with R.I. Gen. Laws § 23-24.10-12, manufacturers' approved collection programs and the State Program as administered by the Corporation shall, at a minimum, meet the environmentally sound management practices as defined in § 4.4 of this Part and as set forth in the R2 2013 Responsible Recycling (R2) Standard for Electronics Recyclers (commonly referred to as the R2:2013 Standard and defined in § 4.4 of this Part).
- B. It shall be the responsibility of the manufacturers administering approved collection programs and the State Program to ensure that all parties, including contracted partners, participating in the recycling of covered electronic products meet and adhere to said R2:2013 Standard.
- C. Nothing herein shall prohibit any recycler operating as part of either a manufacturers' collection program or the State Program as administered by the Corporation from meeting more stringent standards or practices governing the collection, recycling and disposal of covered electronic products.

#### **4.14 Enforcement/Penalties**

- A. The Director shall assess all penalties for violation of these regulations in accordance with the provisions of R.I. Gen. Laws § 23-24.10-16 (The Electronic Waste Prevention, Reuse and Recycling Act), R.I. Gen. Laws Chapter 42-17.1 (The Department of Environmental Management), R.I. Gen. Laws Chapter 42-17.6 (Administrative Penalties for Environmental Violations) and the "Rules and Regulations for Assessment of Administrative Penalties".
- B. A violation of any of the provisions of R.I. Gen. Laws Chapter 23-24.10 or any rule or regulation promulgated pursuant thereto, shall be punishable, in the case of a first violation, by a civil penalty not to exceed one thousand dollars (\$1,000).
- C. In the case of a second and any further violations, the liability shall be for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

#### **4.15 Appeals**

- A. Unless otherwise delineated in separate regulations governing the appeals process adopted by Department after the effective date of these regulations, any person affected by a decision of the Director pursuant to these regulations may, in accordance with Administrative Rules of Practice and Procedure for the Department of Environmental Management, 250-RICR-20-00-1, and § 20-00-1 of this Title, file a claim for an adjudicatory hearing to review the decision.

- B. The party contesting a Department decision bears the burden of proof that their application(s) or action(s) comply with all requirements of the rules and regulations herein. All requests for a hearing regarding a decision of the Director must be in writing and filed with the clerk of the Department's Administrative Adjudication Division (AAD) within thirty (30) days of receipt of the Director's decision.
- C. All requests for a hearing regarding an enforcement action issued by the Department must be in writing and filed with the clerk of the Department's Administrative Adjudication Division (AAD) within twenty (20) days of receipt of the enforcement action.

#### **4.16 Severability**

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.