WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF

Chapter 173-900 WAC, *Electronic Products Recycling Program*
Chapter 173-303 WAC*, Dangerous Waste Regulations*

10/05/07
Publication: 07-07-038

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CHAPTER 173-900 WAC, *Electronic Products Recycling Program*

Chapter 173-303 WAC, *Dangerous Waste Regulations*

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CONCISE EXPLANATORY STATEMENT

I. Introduction

Ecology is adopting these rules under the authority granted in RCW 70.95N Electronic Product Recycling passed by the State Legislature during the 2006 session and RCW 70.105 Hazardous Waste Management. These rules are necessary in order to fulfill the requirements set in these statutes and successfully implement the new law.

Requirements of the rule

The rule adopts several provisions including:

- Electronic Product Recycling Plan content and submission requirements.
- Performance standards for electronic product processors used directly by plan operators, collectors, and transporters.
- Recycling service-level standards.
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors, and transporters.
- Registration process and requirements for processors;
- Collector standards.
- Process for establishing return share and equivalent share of responsibility for manufacturers.
- A sampling methodology to be used by all plan operators to provide Ecology data to establish return shares.
- Requirements for the Materials Management and Finance Authority.
- Handing requirements for cathode ray tubes generated by regulated hazardous waste generators.
- Housekeeping changes to previously adopted sections of Chapter 173-900 WAC including the repeal of WAC 173-900-040 and WAC 173-900-050.
- Warnings, penalties, and violations associated with these requirements.
- Other requirements necessary to implement Chapter 70.95N RCW.

Adoption Date: October 5, 2007
Effective Date: November 5, 2007

II. Differences Between Proposed and Final Rules

Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):

The Administrative Procedure Act (chapter 34.05 RCW) requires Ecology to provide reasons for changing language in the rule between the proposed rule and the adopted rule. This chapter provides this description. Deletions will appear as green strikethrough text and additions will appear as red underlined text.

Ecology made some changes simply to clarify sentences or make technical corrections. Other changes are denoted by text boxes extending from the changed rule language, which contain the reasons for changing the language.

The primary changes in Chapter 173-900 WAC are related to:

- **Performance standards for processors**

  Ecology was required to establish performance standards for electronic product processors directly used by plans. Changes between the draft and final rules language include clarifying language and a correction to comply with the law that the authority or authorized parties operating plans are responsible to assure compliance with the standards. Ecology is required to enforce on plan operators that use processors that are not in compliance with the standards rather that enforcing directly on processors.

  Also within the standards, references to “reuse” as a waste management priority were removed in that there is no basis in RCW 70.95N or RCW 70.95 – Solid Waste Management Recovery and Recycling, to “reuse” as a waste management priority.

- **Collectors and Reuse**

  It was clarified that collectors can only sell for reuse whole functioning units or components. Only processors can sell parts for reuse. The definition of reuse in the law is “any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.” References to “refurbishment” have been eliminated because the concept does not exist in the law.

Changes made to Chapter 173-303 WAC were only to clarify references within the rule and to capitalize titles.

Chapter 173-900 WAC:
Explanation of changes between the rule proposal and the adopted rule.

PART I
GENERAL REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

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

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

(2) The authority or authorized party for a covered electronic product (CEP) recycling plan.

(3) Any person who collects ((~~or transports~~)) covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

((~~(3)~~)) (4) Any person who transports covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

(5) Any person who directly processes covered electronic products (CEPs) for a CEP recycling plan approved under this chapter.

(6) Any retailer that offers for sale or sells electronic products and covered electronic products (CEPs) in or into Washington state.

(7) Any local government ~~where covered electronic product (CEP) recycling services are provided~~in Washington state.

(8) Any nonprofit charitable organization that collects covered electronic products (CEPs) in Washington state.

(9) Any household, charity, school district, small business, or small government (covered entities) in Washington state that wants to recycle unwanted covered electronic products (CEPs).

Comment [Ecology1]: Clarifying edit based on comments received.

Comment [Ecology2]: Clarifying edit based on comments received.

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-020, filed 11/7/06, effective 12/8/06.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

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

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

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

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

"Brand label" typically includes but is not limited to name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way,

differentiate electronic products by their manufacturers and brand owners.

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

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

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

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

"Collector" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets ((~~minimum standards that may be developed by ecology~~)) the registration and collector performance standard~~s~~ requirements in Part IV, WAC 173-900- 400 through 173-900-490 of this chapter.

"Component" includes but is not limited to televisions, computers, laptops, portables computers, monitors, keyboards, mice, and external harddrives.

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

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

(b) Computer servers marketed to professional users; or

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

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

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

Comment [Ecology3]: Clarifying edit based on comments received.

Comment [Ecology4]: Clarifying edit.

Comment [Ecology5]: Comments received indicated that there was confusion relating to dismantling. This definition was added to clarify.

point of purchase:

(a) Any monitor having a viewable area greater than four inches when measured diagonally;

(b) A desktop computer;

(c) A laptop or a portable computer; or

(d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

(a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;

(b) Monitoring and control instruments or systems;

(c) Medical devices;

(d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;

(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

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

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

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

"Desktop" is a computer designed for nonportable use.

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

"Ecology" means the department of ecology.

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

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

Comment [Ecology6]: Clarifying edit.

"Existing manufacturers" are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, as of ((~~the effective date of this chapter~~)) December 8, 2006.

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

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

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

"Laptop" is a computer.

"Manufacturer" means the person who:

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

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

~~(c)~~)) Imports~~, or sells at retail~~ an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America((~~.~~)); or

((~~(d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.~~)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.

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

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

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

Comment [Ecology7]: Deleted because retail sellers are covered in (c) of this definition.

Comment [Ecology8]: Clarifying edit.

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

"**Materials of Concern**" are any of the following:

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

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

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

"New entrant" means:

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

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

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

"New manufacturers to Washington state" are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after ((~~the effective date of this chapter~~)) December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

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

"Offering for sale" means providing electronic products for purchase, in or into Washington state, regardless of sales method.

"Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

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

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

"Plan" means a CEP recycling plan.

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

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

"Portable computer" is a computer.

"Preferred status" means that a direct processor is

Comment [Ecology9]: Comments received indicated that there was confusion relating to dismantling. This definition was added to clarify.

Comment [Ecology10]: Comments received indicated that there was confusion relating to dismantling. This definition was added to clarify.

Comment [Ecology11]: Comments received indicated that there was confusion relating to dismantling. This definition was added to clarify.

Comment [Ecology12]: Comments received indicated that there was confusion relating to dismantling. This definition was added to clarify.

conforming with the performance standards for electronic product recycling as described in Ecology's voluntary program in publication "Environmentally Sound Management and Performance Standards for Direct Processors."

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

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

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

"Processor" means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing~~e~~ those materials for reclaiming ((~~or~~)),))or reuse~~, or refurbishment~~ in new products in accordance with processing standards established by this chapter ((~~and ecology. A processor may also~~));

~~(b) That pPrepares materials originating from CEPs for market as a commodity;~~ and

(~~c~~b) That m~~M~~ay salvage ((~~parts~~)) CEPs, components and parts to be used in new ~~or refurbished~~ products.

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

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

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

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

~~**"Refurbish"** means to repair a used CEP in order to restore or improve it so that it may be used for the same purpose for which it was originally designed.~~

Comment [Ecology13]: Clarifying edit.

Comment [Ecology14]: Clarifying that *in this definition* "CEP owner" is the same as covered entity.

Comment [Ecology15]: Ecology is clarifying this definition because the term when used in this rule is typically used with the term "providing".

Comment [Ecology16]: Clarifying edit.

Comment [Ecology17]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology18]: Clarifying edit.

Comment [Ecology19]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology20]: Language was deleted because it is redundant with language in(a).

Comment [Ecology21]: Clarifying edit.

Comment [Ecology22]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology23]: All references to refurbishment were removed from the rule because the law is silent on this topic.

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

~~**"Residual"** means leftover materials from processing CEPs that are sent by a processor to a disposal facility.~~

Comment [Ecology24]: Definition clarified based on comments received.

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

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

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

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

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

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

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

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

"Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

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

"White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

"Video display devices" include units capable of presenting

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

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-030, filed 11/7/06, effective 12/8/06.]

PART II
MANUFACTURER REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-200 Manufacturers ((~~registration~~)) who must register and participate in a CEP recycling plan. ((~~**Registration:**~~

~~(1) A manufacturer is registered under this chapter when:~~

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

~~(b) The manufacturer has paid their required administrative fee.~~

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

~~(3) **The following manufacturers must register with ecology:**~~

~~**Type of Manufacturer**~~		~~**Initial Registration Due Date**~~
~~**Existing manufacturers**~~	~~Those entities whose CEPs are offered for sale or sold in or into Washington state, as of the effective date of this chapter.~~	~~On or before January 1, 2007.~~
~~**New manufacturers to Washington state**~~	~~Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after the effective date of this chapter.~~	~~Prior to the offering for sale of their CEPs for sale in/into WA.~~

~~**Manufacturers who have never sold CEPs**~~	~~Those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose brand names of covered electronic products are represented in the Washington state return share.~~	~~Within sixty days of ecology sending notice that their brand names were found in the return share.~~
~~**Manufacturers who previously manufactured**~~	~~Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are represented in the Washington state return share.~~	~~Within sixty days of ecology sending notice that their brand names were found in the return share.~~

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

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

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

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

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

~~(iii) All brand names the manufacturer manufactures but does not have legal ownership of the brand;~~

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

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

~~(e) The method or methods of sale used in or into Washington state;~~

~~(f) Recycling plan participation information; and~~

~~(g) Signature of the responsible individual. The registration form must be signed by the individual responsible~~

~~for implementing the manufacturer's requirements under this chapter. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.~~

~~(5) **Submitting the registration form:** The manufacturer must either submit the:~~

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

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

~~For U.S. Postal Service:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~P.O. Box 47600~~
~~Olympia, WA 98504-7600~~
~~Or~~
~~For Courier:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~300 Desmond Drive~~
~~Lacey, WA 98503~~

~~(6) **Administrative fee:**~~

~~(a) All manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-210 Administrative fee).~~

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

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

~~(7) **Submitting the administrative fee:**~~

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

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

~~Department of Ecology~~
~~Electronic Product Recycling Program~~
~~P.O. Box 5128~~
~~Lacey, WA 98509-5128~~

~~(8) **Registration review and status:** Within five business days of receiving a manufacturer registration form and the required administrative fee, ecology will post the~~

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

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

~~(i) If the form is complete and accurate, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(ii) If the form is not complete and accurate, ecology will send notice, via certified mail, to the manufacturer identifying what corrections and additional information is needed, and requesting a revised form. The manufacturer will have thirty days from receipt of the notice to submit to ecology a revised registration form. If the form is corrected and the required additional information is submitted, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(iii) If the form is not corrected, or the required additional information is not submitted, within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology has reviewed the manufacturer registration form and determined the form is complete and accurate and the manufacturer has paid the required administrative fee. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state.~~

~~(c) **In violation** means the manufacturer is in violation of this chapter.~~

~~(9) **Annual registration:** Manufacturers must submit their annual registration renewal form and required administrative fee to ecology no later than January 1 of each calendar year.~~

~~(10) **Registration updates:** A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(11) **Registration violation:** As of January 1, 2007, it is a manufacturer violation if either a manufacturer or retailer offers for sale or sells the manufacturer's CEPs in or into Washington state and the manufacturer is not registered as required above. When a manufacturer registration violation occurs:~~

~~(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer Registration List for the Electronic Product Recycling Program";~~

~~(b) The manufacturer's CEPs cannot be sold or offered for sale in Washington state; and~~

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

~~(12) **Corrective actions:**~~

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

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

~~(i) Submit their registration form and ecology must determine the form is complete and accurate;~~

~~(ii) Pay their appropriate administrative fee;~~

~~(iii) Correct any other violations; and~~

~~(iv) Pay or settle any penalties due to ecology (WAC 173-900-600).~~

~~(13) **Notification to retailers:** A manufacturer may notify retailers, in writing, if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~)) (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:

Table 200

Type of Manufacturer

Comment [Ecology25]: Title added.

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

Comment [Ecology26]: Redundant language so deleted.

Manufacturers who previously manufactured	Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are identified in the Washington state return share list or their CEPs are returned for recycling by a covered entity.	Within sixty days of receiving notice from ecology that the manufacturer must register.	Within thirty days of ecology approving registration.

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

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

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

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

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

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

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-200, filed 11/7/06, effective 12/8/06.]

NEW SECTION

WAC 173-900-205 Manufacturer's brands of CEPs that can be offered for sale or sold in or into Washington state. (1) In order for a manufacturer's brands of CEPs to be offered for sale or sold in or into Washington state, the manufacturer's name and brand names must be listed on the "manufacturer registration list" as "in compliance" or "pending" status.

(2) To be in "in compliance" status a manufacturer must:

(a) **As of January 1, 2007:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the manufacturer's CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information.

(b) **As of February 1, 2008:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information; and

(iv) Participate in a CEP recycling plan approved, or

submitted for approval, by ecology.

Table 205
Manufacturer Status

Comment [Ecology27]: Title added.

Manufacturer Status	Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state?	Explanation
Pending	Yes	"Pending" means ecology has received the manufacturer's registration form and administrative fee and ecology is reviewing the form.
In compliance	Yes	"In compliance" means ecology has approved the manufacturer's registration, the manufacturer is participating in a plan, and is complying with the requirements in this chapter.
In violation	No	"In violation" means the manufacturer is in violation of the requirements in this chapter.
Manufacturer's **brand name** is not on the "manufacturer registration list"	No	If a manufacturer's brand name is not on the "manufacturer registration list," that brand must not be offered for sale or sold in or into Washington state.

Manufacturer's name is not on the "manufacturer registration list"	No	If a manufacturer's name is not on the "manufacturer registration list," none of the manufacturer's brands of CEPs can be offered for sale or sold in or into Washington.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-210 ((~~Administrative fee.~~)) Required brand labeling for manufacturers. (1) ((~~**Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.~~

~~(2) **Data.**~~

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

~~(i) Generally available market research data;~~

~~(ii) CEP unit data supplied by manufacturers about brands they manufacture or sell; or~~

~~(iii) CEP unit data supplied by retailers about brands they sell.~~

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

~~(3) **Distribution:**~~

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

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

~~(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-200).~~

~~**Tiers**~~	~~**Manufacturer's Market Share**~~

~~Tier 1~~	~~5% or greater~~
~~Tier 2~~	~~1% to < 5%~~
~~Tier 3~~	~~0.1% to < 1%~~
~~Tier 4~~	~~0.03% to < 0.1%~~
~~Tier 5~~	~~0.01% to < 0.03%~~
~~Tier 6~~	~~0% but < 0.01%~~
~~Tier 7~~	~~Manufacturers who previously manufactured~~

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

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

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

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

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

~~(5) **Tier placement:**~~

~~(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received by ecology. If ecology has no data, ecology will place the manufacturer in Tier 4.~~

~~(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless ecology has CEP unit data.~~

~~(c) **Manufacturers who have never sold CEPs:** Ecology will assign these manufacturers to Tier 6.~~

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

~~(6) **Publication of tier assignment:**~~

~~(a) **Tiers for fees due January 1, 2007:** Ecology will~~

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

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

~~(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.~~

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

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

~~(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)~~

~~(ii) **Final tier schedule:** Ecology will publish the agency's final decision on the final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.~~

~~(7) **Tier reassignment requests:**~~

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

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

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

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

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

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

~~(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the~~

~~manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.~~

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

~~(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.~~

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

~~(iii) **Manufacturers who have never sold CEPs** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.~~

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

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

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

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

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

~~(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.~~)) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in or into Washington state unless the electronic product is labeled with the manufacturer's brand.

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

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

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-

07), § 173-900-210, filed 11/7/06, effective 12/8/06.]

NEW SECTION

WAC 173-900-215 Initial CEP manufacturer registration.

Step 1: Complete the manufacturer registration form.

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

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

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

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

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

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

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

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

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

Comment [Ecology28]: Clarifying edit.

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

(g) CEP recycling plan participation information.

Step 2: Submit the manufacturer registration form.

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

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

(a) The on-line registration form;

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

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

(c) The original paper version through a courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

Step 3: Pay the administrative fee.

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

(a) Existing manufacturers;

(b) New manufacturers.

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

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

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

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

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling Program
P.O. Box 5128
Lacey, WA 98509-5128

For Courier to:

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

NEW SECTION

WAC 173-900-220 How manufacturers know if they are registered.

Step 1: Ecology review of the manufacturer registration form.

(1) Within five business days of ecology receiving a manufacturer registration form and the required administrative fee (see WAC 173-900-280), ecology will:

(a) Place the manufacturer in "pending" status on the "manufacturer registration list"; and

(b) Place the manufacturer's "currently owned and manufactured" brand names included on the form on the "manufacturer registration list."

(2) The manufacturer's brands of CEPs included on the "manufacturer registration list" can be sold or offered for sale in or into Washington state.

(3) Ecology will review the form to ~~decide~~ determine if the form is complete and accurate.

Comment [Ecology29]: Clarifying edit.

(4) If the form is not complete and accurate, or the manufacturer has not paid the required administrative fee, ecology will contact the manufacturer to request one or both of the following:

(a) A revised form that contains the complete and missing information;

(b) The unpaid administrative fee.

(5) The manufacturer must submit the administrative fee and all requested information within thirty days from the day ecology contacted the manufacturer.

Step 2: Approval or denial of manufacturer registration.

(6) **Approval.**

(a) Approval means that ecology has received the manufacturer's administrative fee and has ~~decided~~ determined the registration form is complete and accurate.

Comment [Ecology30]: Clarifying edit.

(b) If ecology approves the manufacturer's registration:

(i) Ecology will change the manufacturer's status from "pending" to "in compliance" on the "manufacturer registration list"; and

(ii) The manufacturer's registered brands of CEPs can continue to be offered for sale or sold in or into Washington state.

Comment [Ecology31]: Clarifying edit.

(7) **Denial.**

(a) Denial means that ecology either did not receive the administrative fee or ~~ecology has decided~~ecology has determined the form is not complete and accurate and the manufacturer has

Comment [Ecology32]: Clarifying edit.

not submitted the revised information as requested.

(b) If ecology denies a manufacturer's registration:

(i~~i~~) Ecology will either change the manufacturer's status from "pending" to "in violation" on the "manufacturer registration list" or remove the manufacturer's name from the list;

(ii) Ecology will notify the ~~transporter~~ manufacturer of the denial; and

(iii) The manufacturer's brands of CEPs are not allowed to be offered for sale or sold in or into Washington state.

(c) For initial manufacturer registration, if ecology denies a registration the manufacturer may resubmit an initial registration form.

Comment [Ecology33]: Corrected typo.

Comment [Ecology34]: Clarifying edit.

NEW SECTION

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

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

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

(a) Submit the manufacturer's on-line registration form;

(b) Submitting a paper version through:

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

(5) For annual registrations, if ecology denies the manufacturers registration form, the manufacturer will be

removed from the “manufacturer registration list”.

Comment [Ecology35]: Clarifying edit.

NEW SECTION

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

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

(a) Updating the manufacturer's registration information using the on-line form;

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

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

NEW SECTION

WAC 173-900-250 Ecology determination of manufacturer compliance. (1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in Part II, WAC 13-900-255, 173-900-260 and 173-900-270 (for manufacturers) and Part VII, WAC 173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

Comment [Ecology36]: Clarifying edit.

Comment [Ecology37]: Clarifying edits.

(2) Beginning January 1, 2007, ecology may check any

retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-210 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedure in Part II , WAC 13-900-255, 173-900-260 and 173-900-270 (for manufacturers) and Part VII, WAC 173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

Comment [Ecology38]: Clarifying edit.

Comment [Ecology39]: Clarifying edit.

NEW SECTION

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

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

Manufacturer registration violations:

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

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

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

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

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

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

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

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

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

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

Manufacturer labeling violation:

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

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

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

Comment [Ecology40]: Clarifying edit based on comments.

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

Manufacturer plan violation:

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

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

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

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

Return share violation:

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

Comment [Ecology41]: Clarification based on comments received.

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

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

NEW SECTION

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

Table 260
Manufacturer Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties

Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Labeling Violation	Warning Letter	Up to $1,000	Up to $2,000
Plan Violation	Warning Letter	Up to $10,000	Up to $10,000
Return Share Violation	Warning Letter	Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan.	Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan.

Warning letter:

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

Penalties:

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 260 above and do one of the following:

(a) Change the manufacturer's status to "in violation";

(b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."

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

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

Appeals:

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

NEW SECTION

WAC 173-900-270 Corrective actions for manufacturer violations. (1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

Corrective actions for manufacturer registration

violations:

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

Corrective actions for manufacturer labeling violations:

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

Corrective actions for plan violations:

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

Comment [Ecology42]: Corrected typo.

Corrective actions for return share violations:

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

NEW SECTION

WAC 173-900-280 Administrative fee. (1) **Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.
(2) **Data.**
(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer unit sales. Ecology will use market share and/or CEP unit sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:
(i) Generally available market research data;
(ii) CEP unit sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) CEP unit sales data supplied by retailers for brands they sell.

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

(3) **Distribution:**

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

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

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

Table 280
Market Share Tiers

Comment [Ecology43]: Title added.

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

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

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

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

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure

authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

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

(5) **Tier placement:**

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

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. ~~Ecology will assign these manufacturers to Tier 4 for the second and future program years unless CEP unit sales data indicates another tier is appropriate.~~After the initial program year, Ecology will treat these manufacturers as an existing manufacturer (see (a) of this subsection).

Comment [Ecology44]: Clarifying edit based on comments.

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

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

(6) **Publication of tier assignment:**

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

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

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

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

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

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) **Final tier schedule:** Ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) **Tier reassignment requests:**

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

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

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

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

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

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

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

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

(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

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

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

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

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

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

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

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

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

Comment [Ecology45]: Deleted redundant word.

Comment [Ecology46]: Clarifying edit.

Comment [Ecology47]: Clarifying edit.

NEW SECTION

WAC 173-900-290 Successor duties. Any person acquiring a manufacturer, or brand, or who has acquired a manufacturer, or brand, shall have all responsibility for the acquired company's CEPs, including CEPs manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides ecology with a letter from the other entity accepting responsibility for the CEPs. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify ecology of the results of their negotiations.

PART III
((~~TRANSPORTERS AND COLLECTORS~~)) THE AUTHORITY, AUTHORIZED PARTIES, AND COVERED ELECTRONIC PRODUCT (CEP) RECYCLING PLANS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-300 ((~~Transporter and/or collector registration.~~)) Covered electronic product (CEP) recycling plans. ((~~(1) As of September 1, 2007, all transporters and collectors must be registered with ecology in order to transport or collect CEPs.~~

~~(2) To confirm the registration status of a transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.~~

~~(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.~~

~~(4) **Transporter and/or collector registration:** Each transporter and/or collector must submit an annual registration form to ecology.~~

~~(a) **Existing transporters and/or collectors:** Transporters and/or collectors who transport or collect CEPs in Washington state on the effective date of this chapter and who plan to continue doing so, must register with ecology no later than September 1, 2007.~~

~~(b) **New transporter and/or collector registration:** Transporters and/or collectors who begin to transport or collect CEPs in Washington state after September 1, 2007, may submit their registration form to ecology at any time prior to beginning to transport or collect CEPs.~~

~~(5) **Transporter and/or collector annual registration:** Transporters and/or collectors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year.~~

~~(6) **Registration updates:** A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(7) **Transporter and/or collector registration form:** Each transporter and/or collector must use the registration form provided by ecology and must include all of the following:~~

~~(a) Contact and location information;~~

~~(b) Business license information;~~

~~(c) Permit information;~~

~~(d) Description of services provided;~~

~~(e) Geographic areas where services are provided; and~~

~~(f) Signature of responsible individual.~~

~~The registration form must be signed by the individual responsible for implementing the requirements under this chapter for the transporter and/or collector. Signing the form means the company has provided accurate and complete information on the form.~~

~~(8) **Submitting the transporter and/or collector registration form:** The transporter and/or collector must either submit the:~~

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

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

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

~~Solid Waste and Financial Assistance Program~~
~~P.O. Box 47600~~
~~Olympia, WA 98504-7600~~
~~Or~~
~~For Courier:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~300 Desmond Drive~~
~~Lacey, WA 98503~~

~~(9) **Registration review and status:** After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:~~

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

~~(i) If ecology determines the registration form is complete and accurate, ecology will change the transporter's/collector's status from "pending" to "in compliance."~~

~~(ii) If ecology determines the form is not complete or accurate or additional information is needed, ecology will send notice, via certified mail, to the transporter and/or collector identifying what corrections and additional information is needed, and request a revised form. The transporter and/or collector will have thirty days from receipt of the notice to submit to ecology a revised registration form.~~

~~(iii) If the corrections are not made, or additional information is not provided within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology determined the registration form was complete and accurate. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "in compliance" status.~~

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

~~(10) **Registration violation:** If a transporter and/or collector does not submit their registration form as required above:~~

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

~~(b) A transporter must not transport CEPs in Washington state;~~

~~(c) A collector must not collect CEPs in Washington state;~~

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

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

~~(11) **Corrective action:** In order for ecology to change a transporter and/or collector from the "in violation" status to "in compliance" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:~~

~~(a) Submit their registration form and ecology must determine the form is complete and accurate; and~~

~~(b) Pay or settle any penalties to ecology.~~)) (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs from covered entities in Washington state.

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

(~~2~~3) The authority or authorized party of a plan must:

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

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

(~~3~~4) Collection, transportation, processing, and recycling systems and services for a plan:

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

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

(i) Meets the requirements of this chapter; and

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

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

Comment [Ecology48]: This language is repeated here for clarity. In the proposal and the final rule it also appears in section 325.

Comment [Ecology49]: All references to refurbishment were removed from the rule because the law is silent on this topic.

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

Comment [Ecology50]: Corrected typo.

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-300, filed 11/7/06, effective 12/8/06.]

NEW SECTION

WAC 173-900-305 The standard plan. A manufacturer must participate in the standard plan administered by the authority unless the manufacturer has approval to participate in an ecology approved independent plan.

(1) The authority is responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the standard plan.

(2) The "authority" is the Washington materials management and financing authority and is authorized to submit the standard plan for the participating manufacturers.

NEW SECTION

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

(a) The manufacturers participating in the proposed plan represent at least five percent return share of CEPs; and

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

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

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

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

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

(6) Prior to beginning implementation of an independent

plan, the authorized party for that plan must receive plan approval from ecology.

NEW SECTION

WAC 173-900-320 CEP recycling plan content. (1) All plans must contain all of the following sections and required information:

(a) Binding agreement;

(b) Standard plan participant assessment of charges or apportionment of costs (standard plan only);

(c) Letter of certification (independent plan only);

(d) Use of Washington businesses;

(e) Collection services;

(f) Collectors;

(g) Transporters;

(h) Direct processors;

(i) Direct processor audit reports;

(j) Design for recycling;

(k) Direct processor contract face sheet;

(l) Recordkeeping;

(m) Implementation timeline;

(n) Public outreach and marketing requirements; and

(o) Fair compensation.

(2) **A binding agreement:** Each plan must include a written statement binding the authority or authorized party to the use of the plan.

(a) The binding agreement must be signed by:

(i) The person(s) designated by the board of the standard plan to sign such agreements on behalf of the authority; or

(ii) The person(s) designated by the authorized party for independent plans to sign such agreements on behalf of the authorized party.

(b) The binding agreement must include:

(i) Contact information for the authority or authorized party, including name, address, and phone number;

(ii) A list of all manufacturers participating in the plan, manufacturer electronic product registration (EPR) numbers issued by ecology, and their contact information of the responsible official, including their location address, mailing address (if different), phone number and e-mail address;

(iii) A statement that the plan members will comply with the terms and conditions of their ecology approved plan; and

(iv) A statement that in the event the plan fails to meet the manufacturers' obligations under this chapter, the manufacturers retain responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of their equivalent share of CEPs as described in this chapter.

(3) **Standard plan participant assessment of charges or apportionment of costs:** For the standard plan only, the plan must include a ~~plan~~ the proposal for assessing charges and apportioning costs for manufacturers participating in the standard plan. This must include a description of what information or data the authority used to determine the charge or cost. This section of the plan may be submitted separate from the rest of the plan (see WAC 173-900-325).

Comment [Ecology51]: Clarifying edit.

(4) **Letter of certification:** For independent plans only, the plan must include a sworn letter from each of the manufacturers participating in the independent plan designating the authorized party.

(5) **Use of Washington state businesses:** A description of how the authority or authorized party has sought the use of businesses within the state, including retailers, charities, processors, and collection and transportation services.

(6) **Collection services:** A description of how the plan will meet the collection service requirements in WAC 173-900-355. At a minimum the authority or authorized party for each plan must work with the local government entities responsible for preparing local solid waste management plans.

(7) **Collectors:** Information about collectors providing collection services in subsection (6) of this section must include:

(a) Collector names and collector electronic product registration (EPR) numbers issued by ecology;

(b) Collection sites: Location and contact number for collection sites;

(c) Days and hours of operation for each site; and

(d) Types of CEPs collected.

(8) **Transporters:** Information about transporters providing transportation services for CEPs and ~~their~~ components for the plan including:

Comment [Ecology52]: Clarifying edit.

(a) Transporter names and transporter electronic product registration (EPR) numbers issued by ecology;

(b) Counties and cities where the transporter provides service for the plan; and

(c) Types of CEPs transported.

(9) **Direct processors:** Information about direct processors of CEPs participating in the plan including:

(a) Direct processor names;

(b) Physical location of processing facilities;

(c) Contact information and mailing addresses for the processing facilities;

(d) Types of CEPs processed at each facility;

(e) A description of the processes and methods that each processor will use to recycle CEPs; and

(f) A written statement from the direct processor ensuring that the direct processor will comply with the performance

standards for direct processors in WAC 173-900-650.

(10) **Direct processor compliance audit reports:** For each direct processor used by the plan include a compliance audit report that meets the requirements in WAC 173-900-365.

(11) **Design for recycling:** A description of how ~~manufacturers participating in~~ the plan participants will communicate and work with processors ~~utilized~~ used by the~~at~~ plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(12) **Direct processor contract face sheet:**

(a) Copies of the contract face sheet and signature sheet for each direct processor used by the plan; and

(b) If not included on the face sheet and signature sheet, the date of the start of the contract and the date of the conclusion of the contract.

(13) **Recordkeeping:** Procedures for how the authority or authorized party will collect and maintain records to meet and demonstrate compliance with the requirements of this chapter. Recordkeeping must include a description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(14) **Implementation timeline:** A timeline describing start-up, implementation, and progress toward milestones with anticipated results.

(15) **Public outreach and marketing requirements:** A description of how the plan will meet the public outreach requirements in WAC 173-900-980.

(16) **Fair compensation:** Substantiate that fair compensation is paid to ~~service providers~~collectors, transporters and direct processors for all services provided to a plan and that payments to service providers will be made within thirty days net from date of shipment or other time frame defined in contractual arrangements.

Comment [Ecology53]: Clarifying edit.

Comment [Ecology54]: Ecology is clarifying that this applies to all services, for example processing, sampling, collection or transportation.

NEW SECTION

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

Step 1: Format of the CEP recycling plan.

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

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

Step 2: Submit the CEP recycling plan.

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

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

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

For U.S. Postal Service:

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

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

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

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

Step 3: Approval process.

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

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

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via

Comment [Ecology55]: Corrected typo.

Comment [Ecology56]: Ecology determined that only one paper copy is necessary for agency records.

Comment [Ecology57]: Ecology determined only one paper copy is necessary for agency records.

Comment [Ecology58]: Corrected typo.

certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

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

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

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

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

(a) The plan submittal dates were met;

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

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

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

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

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

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

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

NEW SECTION

WAC 173-900-330 Implementation of the CEP recycling plan. (1) The authority or authorized party of each plan~~Plans~~ approved for program year 2009 must ~~be implemented~~implement the plan no later than January 1, 2009.

Comment [Ecology59]: Clarifying edits.

(2) All manufacturers registered as of January 1, 2009, must be participating in a fully operational, ecology approved, plan as of January 1, 2009.

(3) The authority or authorized party must notify ecology if any of the manufacturers listed as a participant in the plan are not meeting the requirements described in the ecology approved plan (see WAC 173-900-350).

(4) If the authority or authorized party of a~~the~~ plan, through implementation of the plan, fails to provide service in each county in Washington state or meet other plan requirements, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

Comment [Ecology60]: Clarifying edits.

NEW SECTION

WAC 173-900-335 Updates and revisions to CEP recycling plans. (1) The authority or authorized party must update or revise the plan in the following situations:

(a) For five-year renewal;

(b) The plan has failed to provide services; and

(c) Plan updates or revisions are required.

(2) **Five-year renewal:** The authority or authorized party must:

(a) Review and update their plan every five years;

(b) Submit the plan to ecology at least one hundred twenty days prior to the expiration date on the plan approval letter.

(3) **Failure to provide service:**

(a) Failure to provide service means implementation of the plan fails to do any of the following:

(i) Provide service in each county in the state;

(ii) Provide service in each city or town with a population of ten thousand or greater; or

(iii) Meet other plan requirements.

(b) If the authority or authorized party of a plan, through implementation of the~~a~~ plan fails to provide services, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

(i) The updated plan must address how the program will be adjusted to meet the program geographic coverage and collection service requirements established in WAC 173-900-355.

(ii) When determining if the authority or authorized party~~a plan~~ fails to provide service, ecology will consider the collection services requirements in WAC 173-900-355 and the local government and community satisfaction reports if submitted under Part VIII, WAC 173-900-810~~ of this chapter~~.

(4) **Revisions or updates to the plan:** The authority or authorized party must submit a plan revision, including nonsignificant and significant plan revisions, to ecology within ~~fourteen~~ sixty days of any changes to the plan or receiving notice from ecology that an update is required.

(a) When submitting a plan revision, the authority or authorized party may submit only the sections or chapters related to the revision.

(b) **Nonsignificant revisions submitted but ecology approval is not required~~not needing ecology approval~~:** Nonsignificant revisions to CEP recycling plans are identified in Table 335 below. Ecology does not need to approve the nonsignificant revision prior to implementation.

(c) **Significant revisions submitted and ecology approval is ~~needing~~ required~~ecology approval~~:** Significant revisions to CEP recycling plans are identified in Table 335 below. Ecology must approve the significant revisions prior to implementation.

Comment [Ecology61]: Clarifying edits.

Comment [Ecology62]: Clarifying edits.

Comment [Ecology63]: Clarifying edit.

Comment [Ecology64]: Clarifying edits.

Comment [Ecology65]: Changed to match the timeframe in RCW 70.95N.070(b).

Comment [Ecology66]: Clarifying edits.

Comment [Ecology67]: Clarifying edits.

Table 335
CEP Recycling Plan Revisions

Plan Content	Nonsignificant Revisions ~~Means~~ ~~n~~Submitted but no~~o~~ approval required to implement	Significant Revisions Submitted and~~Means~~ approval is required to implement
Binding agreement	Changes to manufacturers participating in the plan or changes to contact information for manufacturers already included in the plan.	No revisions requiring approval.
Standard plan participant assessment of charges or apportionment of costs	No nonsignificant revisions.	Any changes to the assessment of charges or apportionment of costs.
Letter of certification	Changes to the contact information included for manufacturers already participating in the plan.	Addition or withdrawal of manufacturers participating in an independent plan.
Use of Washington businesses	Any changes to the use of Washington state businesses.	No changes requiring approval.
Collection services	Addition of collection site(s) or services without eliminating or changing existing services.	Changes to the level of services provided by the plan other than additional services.
Collectors	Any addition or change to registered collectors used by the plan.	No changes requiring approval.

Comment [Ecology68]: Clarifying edits.

Comment [Ecology69]: Clarifying edits.

Transporters	Adding, changing or removing registered transporters used by the plan.	No revisions requiring approval.
Direct processors	Any additions or changes to direct processors already used by ~~the~~ an approved plan.	~~No revisions requiring approval.~~Use of a direct processor not already registered under this chapter.
Direct processor compliance audit report	Submission of copies of audit reports for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
Design for recycling	Any changes to the description of design for recycling included in the plan.	No revisions requiring approval.
Direct processor contract face sheet	Submission of copies of the contract face sheet as required in WAC 173-900-320(12) for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
Recordkeeping	Any changes to recordkeeping.	No revisions requiring approval.
Implementation timeline	No nonsignificant revisions.	Any changes to the implementation timeline.
Public outreach and marketing requirements	Additional public outreach and marketing efforts.	Any changes to the public outreach plan, other than additional public outreach and marketing.

Comment [Ecology70]: Clarifying edits.

Comment [Ecology71]: Ecology requires that all new processors are registered and receive Ecology approval. Based on comments received it became clear Ecology needed to clarify that this approval is also necessary when submitting a plan update.

Fair compensation	Any changes to fair compensation.	No changes requiring approval.

(5) **Approval process:** Within sixty days after receipt of a plan revision or update requiring approval, ecology will determine whether the plan complies with this chapter. Ecology will determine if the revision or update is:

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

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

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

(ii) Ecology then has an additional sixty days to review the revised revision or plan update.

(6) **Approval criteria:** Ecology will consider the following when reviewing a plan revision or update for approval:

(a) The updated plan submittal dates were met;

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

Comment [Ecology72]: Clarifying edit.

(c) The updated plan contains all of the information required in WAC 173-900-320 and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) The updated plan, when implemented, would meet or exceed required service levels; and

(e) Additional information or clarification needed by ecology during the review of a revised or updated plan to determine if the plan is compliant with these rules and chapter 70.95N RCW.

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

Comment [Ecology73]: Clarifying edit.

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

NEW SECTION

WAC 173-900-340 CEP recycling plan review fee. (1) Ecology shall review and approve plans. The authority or authorized party will pay ecology's plan review and approval costs.

(2) Plan review and approval includes ecology's costs for:

(a) Review;

(b) Approval; and

(c) Update and plan revision review and approval.

(3) Ecology shall base the plan review fee on actual costs as follows:

Plan Review Fee = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff hourly time and other costs related to accomplishing the activities identified in subsection (2) of this section for each plan. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working on the plan including, for example, costs of: Travel related to plan review, printing and publishing of documents about the plan, and other work, contracted or otherwise, associated with plan review and approval, as necessary.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Plan review fee invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. Ecology will grant final approval of plans and post approved plans on ecology's web site, when all outstanding invoices have been paid by the authority or authorized party for the activities delineated in subsection (2) of this section.

NEW SECTION

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

Comment [Ecology74]: Changed to match the requirement in RCW 70.05N.040.

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

The following is the process for changing plan participation:

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

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

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

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

(a) The manufacturer requesting the change; and

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

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

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

Comment [Ecology75]: Clarifying edit.

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

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

NEW SECTION

WAC 173-900-350 CEP recycling plan compliance. (1) **Financial obligations of manufacturers:**

(a) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology within sixty days that the manufacturer is no longer participating in the standard plan.

(b) Manufacturers who do not meet their financial obligations in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260. ~~and will be placed in "in violation" status (see WAC 173-900-255).~~

Comment [Ecology76]: Clarifying edit.

(2) **Noncompliance with plan responsibilities:**

(a) It is the responsibility of the authority or the authorized party to notify ecology within sixty days if a manufacturer, who is participating in their plan, is not complying with the manufacturer's responsibilities as described in the ecology approved plan.

(b) Manufacturers who do not comply with the responsibilities identified and agreed to in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260.

~~and will be placed in "in violation" status (see WAC 173-900-255).~~

~~(3) **Noncompliance with laws and regulations:** The authority or authorized party must notify ecology within thirty days if a direct processor used by the plan has notified the plan of any penalties, violations, or regulatory orders related to processing activities that the direct processor received from national, state or local government agencies.~~

~~(a) Within five days of receipt, ecology will send the direct processor a warning letter and follow warning and penalty procedures in WAC 173-900-680.~~

~~(b) Within sixty days of providing notice to ecology, the authority or authorized party:~~

~~(i) May continue using the direct processor if they are listed as "in compliance" on the "processor registration list"; or~~

~~(ii) Must submit a plan update removing that direct processor from plan and making necessary changes if another direct processor must be added.~~

~~(iii) If the plan continues to use a direct processor in "in violation" status, it is a "plan violation." Ecology will follow the violation, warning, and penalty procedures in Part III, WAC 173-900-370, 380, and 390 of this chapter.~~

(~~4~~3) **Notifications to ecology:**

(a) The notification to ecology about manufacturers in the plan must include:

(i) Name of manufacturer and EPR number issued by ecology;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

(b) The notification to ecology about direct processors in the plan must include:

(i) Name of direct processor and facility address;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

NEW SECTION

WAC 173-900-355 Collection services. (1) Each plan must include a description of the method(s) for the reasonably convenient collection of all ~~types of~~ CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.

(2) **County:** The plan must provide collection services of CEPs in each county of the state.

(3) **Urban, city or towns with a population greater than ten thousand:** The plan must provide at least:

(a) ~~-~~one collection site; or

(b) ~~alternate~~ Alternative collection service; or

(c) a combination of sites and ~~alternate~~ alternative service(s).

Comment [Ecology77]: Clarifying edit.

Comment [Ecology78]: Ecology changed the requirement so that processors now directly notify the agency rather than sending the notice to a plan. Ultimately this requirement was included to provide Ecology with up-to-date notice about a direct processor's environmental compliance. Ecology believes this will offer more immediate notice to achieve the same goal.

Comment [Ecology79]: Edits in this section were made for clarification based on comments that this language was confusing.

Comment [Ecology80]: Clarifying edit.

Comment [Ecology81]: To provide consistent terminology the word "alternative" is used throughout this section.

Together, these sites and/or alternative services must ~~that together~~ provide at least one collection opportunity for all ~~product types~~CEPs for every city or town in the state with a population of greater than ten thousand. A county's collection site ~~for a county~~ may be the same as a collection site for a city or town in the county.

(4) **Rural areas:** For rural areas without commercial centers, or areas with widely dispersed population, a plan may provide collection at:

(a) T~~t~~he nearest commercial centers or solid waste sites,

(b) ~~collection~~ Collection events,

(c) M~~m~~ail-back systems, or

(d) ~~a~~ A combination of these options.

(5) **Collectors:** The plan must use only registered collectors that are listed as being in "in compliance" status on the "collector registration list"~~ as in "in compliance" status~~.

(6) **Standard plan:** The standard plan must accept CEPs from any collector that is listed on the "collector registration list" as in "in compliance" status.

(7) **Limiting CEPs collected:** A plan may limit the number of CEPs that will be accepted.

(a) CEPs may be limited by:

(i) Number of a product type accepted per a covered entity per day or

(ii) Number of product type accepted per delivery at a collection site or

(iii) Number of a product type accepted by an alternative collection service.

(b) All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the approved plans.

(~~7~~8) **Large quantities:** If a plan provides specific collection services or has restrictions for large quantities of CEPs, the plan must include a definition of "large quantity."

~~(8) **Limiting CEPs collected:** A plan may limit the number of CEPs or CEPs by product type accepted per customer covered entitiy per day or per delivery at a collection site or by an alternative collection service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the approved plans.~~

(9) **Providing joint services:** A plan may provide collection sites and services jointly with another plan or plans.

(10) **Collection sites:**

(a) Collection sites must be:

(i) Staffed during operating hours;

(ii) Open to the public at a frequency adequate to meet the needs of the area being served; and

(iii) Open regularly scheduled hours and on an on-going

Comment [Ecology82]: To provide consistent terminology the word "alternative" is used throughout this section.

Comment [Ecology83]: Clarifying edit.

Comment [Ecology84]: Clarifying edit.

Comment [Ecology85]: Clarifying edit.

Comment [Ecology86]: Clarifying edits.

Comment [Ecology87]: Moved here from subsection (8).

Comment [Ecology88]: Moved here from subsection (8) and edits made to clarify.

Comment [Ecology89]: Clarifying edits.

Comment [Ecology90]: Moved to subsection (8).

basis.

(b) Collection sites may include:

(i) ~~electronics~~ Electronics recyclers and repair shops,

(ii) ~~recyclers~~ Recyclers of other commodities,

(iii) ~~reuse~~ Reuse organizations,

(iv) ~~charities~~Charities,

(v) ~~retailers~~Retailers,

(vi) ~~government~~ Government recycling sites, or

(vii) ~~other~~ Other suitable locations.

(11) **Alternatives to collection sites:**

(a) A plan may provide alternative collection services to covered entities ~~in forms different than collection sites~~ if those alternative collection services provide:

(i) Equal or better convenience than a collection site; and

(ii) Equal or increased ~~recovery~~ collection of unwanted CEPs than would be achieved through a collection site.

(b) If a plan provides alternative services at a cost, the plan must also provide free collection service to covered entities in that county and for cities or towns with a population greater than ten thousand.

(c) These alternatives must be included in the plan as required under Part III, WAC 173-900-320 of this chapter.

(d) To use an alternative collection service ~~in lieu~~instead of a collection site, a plan must provide ecology documentation that demonstrates the alternative service meets (a)(i) and (ii) of this subsection.

(e) Alternative services may include curbside collection services and premium services:

(i) Curbside collection services may be used to collect CEPs from households and other covered entities in small quantities. Those providing curbside collection services may charge an additional fee to the covered entity ~~that uses~~using the service. The fee will ~~to~~ cover the costs not paid by the standard or independent plans.

(ii) Premium services are services that are ~~adjunct~~ in addition to simple collection and are provided on-site.

(A) Examples are:

- ~~such as at~~At-location system upgrade or replacement services provided to covered entities or
- ~~at~~At-home pickup services offered to households.

(B) Those providing premium services may charge an additional fee to the ~~householder~~ covered entity to cover the costs not paid by the standard or independent plans.

(12) **Alternatives for collecting large quantities of CEPs:**

(a) A ~~program~~ plan may provide ~~alternate~~ alternative collection services to small businesses, small governments, charities, and school districts that may have large quantities

Comment [Ecology91]: Language added to match language in the RCW 70.95N.090.

Comment [Ecology92]: Put into a bulleted list for ease of use.

Comment [Ecology93]: Clarifying edit based on comments.

Comment [Ecology94]: Clarifying edit.

Comment [Ecology95]: Clarifying edit.

Comment [Ecology96]: Clarifying edit.

Comment [Ecology97]: Clarifying edit.

Comment [Ecology98]: Clarifying edit.

Comment [Ecology99]: Put into a bulleted list for ease of use.

Comment [Ecology100]: Clarifying edit.

Comment [Ecology101]: Clarifying edit.

of CEPs that cannot be handled at collection sites or through curbside services.

(b) The plan must include a description of a~~A~~lternative collection services for large quantities of CEPs~~ must be described in the plan~~.

(13) **Approval criteria for collection services:** Ecology will determine approval of a plan's collection services based on ~~use~~ the following criteria ~~to approve a plan's collection services.~~ Collection services are:

(a) Reasonably convenient;

(b) Available to all citizens of Washington state;

(c) Provided in both rural and urban areas;

(d) Provided in every county of the state; and

(e) Provided for each city or town with a population of greater than ten thousand.

NEW SECTION

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

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

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

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

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

NEW SECTION

WAC 173-900-365 Annual compliance audit reports for direct processors. (1) For each direct processor used by the plan, the authority or authorized party must provide an annual compliance audit report to ecology. These reports must demonstrate and certify that the direct processors meet either the minimum performance standards in WAC 173-900-650 or are in conformance with ecology's "*Environmentally Sound Management and Performance Standards for ~~Electronic Product Recycling~~Direct Processors*."

Comment [Ecology102]: Clarifying edit.

Comment [Ecology103]: Clarifying edit.

Comment [Ecology104]: Clarifying edit.

Comment [Ecology105]: Clarifying edit.

Comment [Ecology106]: Edits made to match the title of the publication.

(2) The authority or authorized party must submit the compliance audit report with their plan submittal (WAC 173-900-320), plan updates or revisions when there are additions or changes to direct processors used by the plan (WAC 173-900-335), and as part of the annual report (WAC 173-900-800).

Comment [Ecology107]: Clarifying edit.

Minimum performance standards.

(3) For demonstration of compliance with the minimum standards in WAC 173-900-650, the compliance audit must be conducted by an auditor not employed by the processor.

(4) Each annual compliance audit report submitted to ecology to demonstrate compliance with the minimum standards must include:

(a) A list of all the minimum performance standards;

(b) ~~Confirmation~~ Documentation that the direct processor meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities;

Comment [Ecology108]: Edit made to match the language in Chapter 70.95N RCW.

(c) Documentation of ~~conflict~~non-compliance with a performance standard: A direct processor may not comply with a specific minimum performance standard in WAC 173-900-650 when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists the audit report must include:

(i) Identification of which performance standard(s) is in conflict.

(ii) Document ~~When a conflict with the minimum direct processor performance standards occurs, documentation of the conflict and of~~ the conflict and the processor's compliance with the corresponding national, state, or local laws or rules that apply at that location;

Comment [Ecology109]: Clarified based on comments that the previous language was confusing.

Comment [Ecology110]: Language clarified to match the requirement in section 650.

(d) Documentation of the auditor's qualifications as described in subsection (5) of this section for the auditor signing the report;

(e) Certification from the auditor certifying whether or not the processor meets the standards in this section;

(f) Signature of the auditor certifying the accuracy of the report.

(5) This annual compliance audit must be completed by an auditor who through professional training, work experience and certification has appropriate knowledge to evaluate the environmental compliance of the processing facility.

Voluntary **Preferred performance standards.**

Comment [Ecology111]: Clarifies that the program for "preferred performance standards is voluntary"

Comment [Ecology112]: Clarifies that the program for "preferred performance standards is voluntary"

(6) For demonstration of voluntary conformity with the "*Environmentally Sound Management and Performance Standards for* ~~*Electronic Product Recycling*~~*Direct Processors*," the annual

Comment [Ecology113]: Edits made to match the title of the publication.

compliance audit report must meet the requirements in the environmentally sound management and performance standards document. The audit report required for the voluntary program for preferred performance standards may substitute for the audit report required in this section.

(7) Ecology will not list a direct processor in "preferred status" if:

(a) Ecology does not receive an audit report as required in "*Environmentally Sound Management and Performance Standards for Direct Processors*," or;

(b) The direct processor is not meeting all of the voluntary preferred performance standards.

(8)If a direct processor loses preferred status, and still is providing services to a CEP recycling plan, the direct processor must still be in compliance with the minimum performance standards in WAC 173-900-650. If the direct processor is not meeting the minimum standards, ecology will follow the warning, penalty, and violations procedures in WAC 173-900-370, 380 and 173-900-390.

Comment [Ecology114]: Clarifies that the program for "preferred performance standards is voluntary"

Comment [Ecology115]: Language was added to clarify how this rule works with the voluntary performance standards program.

Proprietary information.

(~~7~~9) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

WAC 173-900-370 Authority or authorized party violations. (1) The authority or authorized party is in violation of this chapter when there is:

(a) A plan violation; or

(b) An annual report violation; or

(c) A performance standards violation.

Comment [Ecology116]: Clarifying edit.

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

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

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

Comment [Ecology117]: Clarifying edit.

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

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

Comment [Ecology118]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

(3) **Annual report violation.**

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

(4) **Performance Standards violation.**

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

Comment [Ecology119]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

NEW SECTION

WAC 173-900-380 Authority and authorized party violation notice and penalties.

Table 380
Authority and Authorized Party Penalties

Type of Violation	Written Notice	First Penalty	Second and Subsequent Penalties
Plan Violation	Penalty Notice	Up to $5,000	Up to $10,000
Annual Report Violation	Warning Letter	Up to $1,000	Up to $2,000
Performance Standards Violation	Warning Letter	Up to $1000	Up to $2000

Comment [Ecology120]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

Penalty notice for plan violations.

(1) When ecology issues a penalty notice for a "plan violation," ecology will send the penalty notice to the authority or authorized party by certified mail, with a copy to each manufacturer listed as a plan participant. The penalty notice will include:

(a) A first penalty assessment as defined in Table 380;

(b) The requirements that need to be corrected; and

(c) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the notice or the plan ~~will~~ may no longer be approved.

Comment [Ecology121]: Clarifying edit.

(2) If after thirty days, the authority or authorized party fails to make the required corrections and implement the plan or submit a plan update as described in WAC 173-900-335, ecology:

(a) Must then assess a second penalty as defined in Table 380; and

(b) May inform the authority or authorized party that the plan is no longer approved; and

(c) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(3) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

Warning letter for annual report violations.

(4) When ecology issues a warning letter for an "annual report violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The requirements that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(5) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(6) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

Warning letter for performance standards violations.

(7) When ecology issues a warning letter for a "performance standards violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The violations that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(8) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(9) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

(~~7~~10) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

Comment [Ecology122]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

Appeals.

(~~8~~11) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B

RCW.

NEW SECTION

WAC 173-900-390 Corrective actions for authority or authorized party.

Corrective actions for plan violations.

(1) The authority or authorized party must:
(a) Meet the plan requirements in Part III of this chapter;
(b) Ensure that all direct processors used by the plan are registered and have updated their registration as required in this chapter;
(c) Correct any other violations; and
(~~c~~d) Pay or settle any penalties due to ecology.

Comment [Ecology123]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

Corrective actions for annual report violations.

(2) The authority or authorized party must:
(a) Submit their annual report to ecology or correct any deficiencies in the report and submit to ecology;
(b) Correct any other violations; and
(c) Pay or settle any penalties due to ecology.

Corrective actions for performance standards violations.

(2) The authority or authorized party must:
(a) Update information in the plan about direct processors by either:
(i) Discontinuing use of the direct processor and submitting a plan update. The plan update must remove the direct processor from the plan and explain how the plan will replace the processing services previously provided by that direct processor; or
(ii) Submitting a plan update including a new audit report for the direct processor documenting how the direct processor now meets all of the minimum performance standards in WAC 173-900-650.
(b) Correct any other violations; and
(c) Pay or settle any penalties due to ecology.

Comment [Ecology124]: Clarification made to be incompliance with the intent of Chapter 70.95N RCW.

PART IV
((~~WARNING, VIOLATIONS, AND PENALTIES~~)) COLLECTORS FOR CEP RECYCLING PLANS

NEW SECTION

WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan. (1) To collect CEPs for a plan under this chapter the collector must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the collector performance standards; and

(e) Be in "in compliance" status on the "collector registration list" on ecology's web site.

Table 400
Collector Status

Comment [Ecology125]: Title added.

Collector's Status	Can a collector collect CEPs for a plan?	Definition
In compliance	Yes	**"In compliance"** means the collector is registered and meets the collector performance standards in this chapter.
In violation	No	**"In violation"** means the collector is in violation of the requirements in this chapter.
Collector's name is not on the "collector registration list"	No	Collectors who collect CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. -If a collector is not registered, the collector must not receive payment for CEPs from a plan.

(2) **Collection services:**

(a) Plans are not required to compensate collectors for any products other than ~~The only CEPs a collector can collect and submit to a plan are those~~ CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

Comment [Ecology126]: Clarified based on comments.

(b) Plans are not required to compensate collectors for CEPs collected prior to January 1, 2009.

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

(4) The authority of the standard plan must accept CEPs from registered collectors in "in compliance" status.

(5) The authority must compensate registered collectors, in "in compliance" status for the reasonable costs associated with collection of CEPs submitted by a collector to the plan.

(6) The standard plan will not pay for additional costs associated with premium or curbside services, unless a prior written agreement has been made between the authority and the service provider.

NEW SECTION

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

Step 1: Complete the collector registration form.

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

(a) Name of individual responsible for implementing the collector requirements;

(b) Contact and location information;

(c) Business license information;

(d) Permit information, when applicable;

(e) Description of services provided; and

(f) Geographic areas where services are provided.

Step 2: Submit the collector registration form.

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

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

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

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-900-420 How collectors know if their registration is approved.

Step 1: Ecology review of collector registration forms.

(1) After receiving a form, ecology will review the form to ~~decide~~ determined if the form is complete and accurate.

Comment [Ecology127]: Clarifying edit.

(2) If the form is not complete and accurate, ecology will contact the collector to:
(a) Tell the collector what information is missing or inaccurate; and
(b) Request a revised form.
(3) The collector must submit a revised form within thirty days from the day ecology contacted the collector.

Step 2: Approval or denial of collector registration forms.

(4) **Approval.**
(a) Approval means that ~~ecology has decided~~ecology has determined the form is complete and accurate.

Comment [Ecology128]: Clarifying edit.

(b) If ecology approves the collector's registration, ecology will post the collector's name on the "collector registration list" and place the collector in "in compliance" status. The collector is allowed to collect CEPs for a plan.
(5) **Denial.**
(a) Denial means that ~~ecology has decided~~ecology has determined the form is not complete and accurate and the

Comment [Ecology129]: Clarifying edit.

collector did not revise information as requested.

(b) If ecology denies a collector's registration, ecology will remove the collector's name from the "collector registration list" if listed, and will notify the collector of the denial.

(c) The collector must not collect CEPs for a plan.

(d) For initial collector registration, if ecology denies a registration the collector may resubmit an initial registration form.

Comment [Ecology130]: Clarifying edit.

NEW SECTION

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

Comment [Ecology131]: Clarifying edit.

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

Comment [Ecology132]: Clarifying edit.

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

(a) Submit the on-line registration form;

(b) Submit a paper version of a form through:

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

from ecology.

Comment [Ecology133]: Clarifying edit.

NEW SECTION

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

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

(a) Updating the collector's registration information using the on-line form;

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

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

NEW SECTION

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

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

Comment [Ecology134]: Language added to be consistent with (b) of this subsection.

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

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

(2) ~~A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products.~~

Comment [Ecology135]: Based on comments received this language is deleted.

~~(3)~~ A registered collector must not ~~dismantle~~ process CEPs, or components, for purposes of recycling ~~components or materials~~or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(~~4~~3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(~~5~~4) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

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

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

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

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

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

(~~6~~5) A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(~~7~~6) A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

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

(8) A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if the collector's days/hours of operations change or the collector changes the CEPs collected.

NEW SECTION

WAC 173-900-460 Ecology determination of collector compliance. (1) Beginning January 1, 2009, ecology may inspect any collector used by a plan for compliance with this chapter.

Comment [Ecology136]: Clarifying edits.

Comment [Ecology137]: Clarifying edit.

Comment [Ecology138]: This language was deleted to be inclusive of all collection methods, as intended.

Comment [Ecology139]: Clarifying edit.

Comment [Ecology140]: Language added based on comments received.

Comment [Ecology141]: Language added based on comments received. This clarifies that only registered collectors can claim to collect for a plan and assures that collected CEPs are submitted to plans.

Comment [Ecology142]: Collectors were already required to give notice to Ecology yet it is the plans that are held responsible for providing services. Therefore the plans also need to be kept updated.

(2) If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-470, 173-900-480, and 173-900-490 of this chapter.

Comment [Ecology143]: Clarifying edit.

NEW SECTION

WAC 173-900-470 Collector violations. Collector violations are described in Table 470.

Table 470
Collector Violations

Starting	If	Then	and Ecology Will
September 1, 2007	A collector has collected CEPs for a plan and is not registered under this chapter.	It is a collector registration violation.	~~List the collector's name on the "collector registration list" and place the collector in "in violation" status.~~Follow the warning violation and penalities procedures in Part IV, WAC 173-900-480, and 173-900-490.
Effective date of this chapter	A collector does not update its registration information within fourteen days of a change.	It is a **collector registration violation.**	Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490. ~~List the collector's name on the "collector registration list" and place the collector in "in violation" status.~~
January 1, 2009	A collector collecting CEPs for a plan is out of compliance with the collector standards in WAC 173-900-450.	It is a **collector standards violation.**	Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490. ~~List the collector's name on the "collector registration list" and place the collector in "in violation" status.~~

Comment [Ecology144]: Clarifying edits.

Comment [Ecology145]: Clarifying edits.

Comment [Ecology146]: Clarifying edits.

NEW SECTION

WAC 173-900-480 Warnings and penalties for collector violations.

Table 480
Collector Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Collector Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Collector Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

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

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

Penalties:

(3) **First penalties:** If the collector does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 480 above and ecology will:

(a) Either change the collector's status to "in violation" or add the collector to the "collector registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the collector (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 480 no more often than every thirty days for the same violation.

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

Appeals:

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

NEW SECTION

WAC 173-900-490 Corrective action for collector violations. For ecology to change a collector from the "in violation" status to "in compliance" status on the "collector registration list," the collector must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

PART V

TRANSPORTERS FOR CEP RECYCLING PLANS

NEW SECTION

WAC 173-900-500 What transporters need to know to collect CEPs for a CEP recycling plan. (1) To transport CEPs for a plan under this chapter a transporter must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the transporter performance standards in WAC 173-900-550; and

(e) Be in "in compliance" status on the "transporter registration list" on ecology's web site.

Table 500
Transporter Status

Comment [Ecology147]: Title added.

Transporter's Status	Can a transporter transport CEPs for a plan?	Definition
In compliance	Yes	"**In compliance**" means the transporter is registered and meets the transporter performance standards in this chapter.
In violation	No	"**In violation**" means the transporter is in violation of the requirements in this chapter.

Transporter's name is not on the "transporter registration list"	No	Transporters who transport CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. -If a transporter is not registered, the transporter must not receive payment for CEPs from a plan.

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

NEW SECTION

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

Step 1: Complete the transporter registration form.

(1) Each transporter must use the form provided by ecology and must include all of the following:
(a) Contact and location information;
(b) Business license information;
(c) Permit information;
(d) Description of services provided; and
(e) Geographic areas where services are provided.

Step 2: Submit the registration form.

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.
(3) The transporter must submit the form using one of the options below:
(a) On-line registration;
(b) The original paper version through:

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-900-520 How transporters know if their registration is approved.

Step 1: Ecology review of transporter registration form.

(1) After receiving a form, ecology will review the form to ~~decide~~ determined if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the transporters to:

(a) Tell the transporter what information is missing or inaccurate; and

(b) Request a revised form.

(3) The transporter must submit a revised form within thirty days from the day ecology contacted the transporter.

Step 2: Approval or denial of transporter registration forms.

(4) **Approval.**

(a) Approval means that ~~ecology has decided~~ecology has determined the form is complete and accurate.

(b) If ecology approves the transporter's registration, ecology will post the transporter's name on ~~a list called~~the "transporter registration list" and place the transporter in "in compliance" status. The transporter is allowed to transport CEPs for a plan.

(5) **Denial.**

(a) Denial means that ~~ecology has decided~~ecology has determined the form is not complete and accurate and the transporter did not revise information as requested.

(b) If ecology denies a transporter's registration, ecology will remove the transporter's name from the "transporter

Comment [Ecology148]: Clarifying edit.

Comment [Ecology149]: Clarifying edit.

Comment [Ecology150]: Clarifying edit.

Comment [Ecology151]: Clarifying edit.

registration list" if listed, and will notify the transporter of the denial.

(c) The transporter must not transport CEPs for a plan.

(d) For initial transporter registration, if ecology denies a registration the transporter may resubmit an initial registration form.

Comment [Ecology152]: Clarifying edit.

NEW SECTION

WAC 173-900-530 Annual renewal of transporter registration. (1) A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

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

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

(a) Submit the on-line registration form;

(b) Submit a paper version through:

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

Comment [Ecology153]: Clarifying edit.

NEW SECTION

WAC 173-900-540 Updates to transporter registration. (1)

A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

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

(a) Updating the transporter's registration information using the on-line form;

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

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

NEW SECTION

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

Comment [Ecology154]: Transporters are required to apply with all existing laws. This is a clarifying edt.

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

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

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

Comment [Ecology155]: Clarification based on comments.

NEW SECTION

WAC 173-900-560 Ecology determination of transporter compliance. (1) Beginning January 1, 2009, ecology may inspect any transporter used by a plan for compliance with this chapter.

(2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation,

and penalties procedures in Part V, WAC 173-900-570, 173-900-580, and 173-900-590 of this chapter.

Comment [Ecology156]: Clarifying edit.

NEW SECTION

WAC 173-900-570 Transporter violations. Transporter violations are described in Table 570.

Table 570
Transporter Violations

Starting	If	Then	and Ecology Will
September 1, 2007	A transporter has transported CEPs for a plan and is not registered under this chapter.	It is a **transporter registration violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. ~~List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.~~
Effective date of this chapter	A transporter does not update its registration information within fourteen days of a change.	It is a **transporter registration violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. ~~List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.~~
January 1, 2009	A transporter transporting CEPs for a plan is out of compliance with the transporter standards in WAC 173-900-550.	It is a **transporter standards violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590. ~~List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status.~~

Comment [Ecology157]: Clarifying edit.

Comment [Ecology158]: Clarifying edit.

Comment [Ecology159]: Clarifying edit.

NEW SECTION

WAC 173-900-580 Warnings and penalties for transporters.

Table 580
Transporter Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties

Transporter Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Transporter Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

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

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

Penalties:

(3) **First penalties:** If the transporter does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 580 above and ecology will:

(a) Either change the transporter's status to "in violation" or add the transporter to the "transporter registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the transporter (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 580 no more often than every thirty days for the same violation.

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

Appeals:

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

NEW SECTION

WAC 173-900-590 Corrective actions for transporter violations. For ecology to change a transporter from the "in violation" status to "in compliance" status on the "transporter registration list," the transporter must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

PART VI
DIRECT PROCESSOR REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-600 ((~~Manufacturer--Warning, violations, and~~

~~**penalties.**~~)) **What direct processors need to know to process CEPs for a CEP recycling plan.** ((~~(1) As of January 1, 2007, all manufacturers of CEPs must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.~~

~~(2) Ecology will place a manufacturer in "in violation" status if a violation, as described in this chapter, is committed by the manufacturer.~~

~~(3) **Types of violations:**~~

~~(a) **Registration violation:** As of January 1, 2007:~~

~~(i) It is a manufacturer violation if a manufacturer offers for sale or sells CEPs in or into Washington state and is not registered under this chapter.~~

~~(ii) It is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status and the retailer offers for sale or sells those CEPs.~~

~~**Notification to retailers:** A manufacturer may notify, in writing, retailers if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~

~~(iii) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the manufacturer.~~

~~(b) **Unlabeled electronic products violations:** As of January 1, 2007, it is a manufacturer violation if a manufacturer, or a retailer, offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name. Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the manufacturer.~~

~~(4) **Warnings and penalties:**~~

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

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

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

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) To be a direct processor and process CEPs for a plan under this chapter the direct processor must:

(a) Submit an initial registration form;

(b) Update registration information if it changes;

(c) Renew registration annually;

(d) Be identified as a direct processor in an ecology approved plan;

(e) Be in "in compliance" status on the "direct processor registration list" on ecology's web site; and

(f) Meet the minimum or preferred performance standards, throughout the program year, assigned to the direct processor on the "direct processor registration list."

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

Comment [Ecology160]: Ecology agrees with comments that thirty days notice is appropriate.

Table 600
Direct Processor Status

Comment [Ecology161]: Title added.

Direct Processor's Status	**Can a direct processor process CEPs for a plan?**	**Definition**
In compliance	Yes	**"In compliance"** means the direct processor is registered and complies with the requirements in WAC 173-900-650.
In violation	No	**"In violation"** means the direct processor is in violation of the requirements in this chapter and the plan cannot use the services of the direct processor until compliance is achieved.

Processor's name is not on the "processor registration list"	No	If the direct processor's name is not on the "direct processor registration list," that processor must not provide processing services to a plan or receive compensation from a plan for processing services.

(3) The authority shall contract with any processor that meets the direct processor performance standards in this chapter and meets any requirements described in the authority's operating plan or through contractual arrangements with the authority.

(a) Processors used by the standard plan shall:

(i) Provide documentation to the authority at least annually regarding how they are meeting the performance standards in WAC 173-900-650, including enough detail to allow the standard plan to meet the plan's annual reporting requirements (see annual reporting in WAC 173-900-800); and

(ii) Submit to annual compliance audits meeting the audit requirements in WAC 173-900-365 conducted by or for the authority.

(b) The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products.

(c) Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters and provide other documentation, as may be required by the authority.

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

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-600, filed 11/7/06, effective 12/8/06.]

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-610 ((~~Retailer--Warning, violations, and penalties.~~)) ~~How to~~Initial registration for ~~register as a~~ direct processors. ((~~(1) Types of violations:~~

~~(a) Registration violation: As of January 1, 2007, it is a~~

Comment [Ecology162]: Clarifying edit.

~~retailer violation if a retailer "offers for sale" or "sells" CEPs if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status.~~

~~(i) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, or a manufacturer in "in violation" status, each unit offered for sale or sold is a separate violation for the retailer.~~

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

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

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

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

~~(2) **Warning and penalties:**~~

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

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

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

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

Table 610

Direct Processor Registration Types

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

Comment [Ecology163]: Title added and clarifying edits.

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

Comment [Ecology164]: Clarifying edit. Repeats content in section 600.

Step 1: Complete a direct processor registration form.

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

(a) Contact and location information;

(b) Business license information;

(c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;

(d) Description of services provided;

(e) Geographic areas from which electronic products are accepted; and

(f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

Step 2: Submit the direct processor registration form.

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

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

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-610, filed 11/7/06, effective 12/8/06.]

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-620 ((~~Collector--Warning, violations, and penalties.~~)) How direct processors know if their registration is approved. (((~~(1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Collection of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for collectors to collect CEPs in Washington state if the collector is not registered with ecology.~~

~~(3) **Collector warning and penalties:**~~

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

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every~~

~~thirty days for each violation.~~

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

Step 1: Ecology review of direct processor registration forms.

(1) After receiving a registration form, ecology will review the form to ~~decide~~ determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the direct processor to:

(a) Tell the direct processor what information is missing or inaccurate; and

(b) Request a revised form.

(3) The direct processor must submit the revised form within thirty days from the day ecology contacted the direct processor.

Step 2: Approval or denial of direct processor registration.

(3) **Approval.**

(a) Approval means that ~~ecology has decided~~ecology has determined the form is complete and accurate.

(b) If ecology approves the direct processor's registration, ecology will:

(i) Place the direct processor's name on the "direct processor registration list"; and

(ii) Place the direct processor in "in compliance" status.

(c) The direct processor may process CEPs for a plan.

(4) **Denial.**

(a) Denial means that ~~ecology has decided~~ecology has determined the form is not complete and accurate and the direct processor did not revise information as requested.

(b) If ecology denies a direct processor's registration, ecology will notify the direct processor of the denial and either:

(i) Remove the direct processor's name from the "direct processor registration list"; or

(ii) For renewals and updates, change the direct processor's status to "in violation" on the "direct processor registration list."

(iii)For initial direct processor registration, if ecology denies a registration the direct processor may resubmit an initial registration form.

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-620, filed 11/7/06, effective 12/8/06.]

Comment [Ecology165]: Clarifying edit.

Comment [Ecology166]: Clarifying edit.

Comment [Ecology167]: Clarifying edit.

Comment [Ecology168]: Clarifying edit.

Comment [Ecology169]: Clarifying edit.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

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

~~For a transporter, "in violation" status means the transporter must not transport CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Transportation of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for transporters to transport CEPs in Washington state if the transporter is not registered with ecology.~~

~~(3) **Transporter warning and penalties:**~~

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

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

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

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) Direct processors must submit their annual renewal registration form to ecology between ~~July~~ June 1 and September 1 of each calendar year for the next program year.

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

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

U.S. Postal Service:

Department of Ecology

Comment [Ecology170]: Clarifying edit, the intent was to allow registration between June and September of each year.

Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

Comment [Ecology171]: Clarifying edit.

[Statutory Authority: Chapter 70.95N RCW. 06-23-040 (Order 06-07), § 173-900-630, filed 11/7/06, effective 12/8/06.]

NEW SECTION

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

Comment [Ecology172]: Edits made based on comments received. Thirty days is enough time to review a direct processor's registration form.

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

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive

Lacey, WA 98503

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

NEW SECTION

WAC 173-900-650 Performance standards for direct processors. (1) This section includes performance standards for environmentally sound handling and management of CEPs by direct processors to protect human health and the environment. There are two levels of performance standards:

(a) Minimum standards (required);

(b) Preferred standards (voluntary program).

(2) Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets.

(3) Each registered direct processor used by a plan must meet the minimum performance levels in this section to provide processing services for a plan.

Minimum performance standards for direct processors.

(4) Minimum performance standards for direct processors include the following requirements:

~~Prioritized hierarchy of responsible~~Responsible management ~~strategies~~priorities.

Legal requirements.

Environmental, health, and safety, management systems (EHSMS).

Recordkeeping.

On-site requirements.

~~Materials recovery recycling and materials disposal.~~

~~Materials that are not reused or recycled.~~

Materials of Concern

Recycling, reuse, and disposal

Transport.

Prison labor.

Facility access.

Notification of penalties and violations.

~~Conflict~~ Non-compliance with minimum performance standards.

(5) **~~Prioritized hierarchy of~~ R~~r~~esponsible management Priorities~~strategies~~.**

~~(a) A direct processor should adhere to a hierarchy of responsible management strategies for end-of-life CEPs and CEP components which calls for, in order of preference:~~

~~(i) **Reuse** - Directing CEPs and CEP components to reuse, and refurbishment as appropriate to enable shipment for reuse.~~

Comment [Ecology173]: Ecology made these edits to clarify that the performance standards for "Preferred Status" are part of a voluntary program that is not part of this rule.

Comment [Ecology174]: Renamed this subsection to eliminate confusion.

Comment [Ecology175]: Clarifying edit.

Comment [Ecology176]: These subsections were reorganized into other subsections in this section.

Comment [Ecology177]: Moved to own subsection to eliminate confusion

Comment [Ecology178]: Renamed to eliminate confusion.

Comment [Ecology179]: Renamed to eliminate confusion.

~~(ii) **Recycling -**~~

~~(A) Direct processors must take all practicable steps to manually and/or mechanically dismantle, separate, and when appropriate process CEPs and CEP components to enable materials recovery.~~

~~(B) Direct processors must dismantle and separate CEPs and CEP components into separate "streams" based on the risks they may pose and how they can most effectively be managed in conformity with subsection (10)(a) of this section. This includes, including removing and, as appropriate, placing in separate streams components or materials that may pose risks to worker safety, public health, or the environment in conformity with subsection (9)(d) of this section; and then~~

~~(iii) **Disposal** - Direct processors must manage any residual that cannot safely or technically be recycled in accordance with (a)(ii) of this subsection, by:~~

~~(A) If necessary, further dismantling and separating of CEPs and their components into separate streams based on the risks they may pose and how they can most effectively be managed in conformity with subsection (10)(a) of this section.~~

~~(B) When residual materials cannot be recycled, they must be disposed of in conformance with applicable laws and regulations.~~

~~(b)~~ A direct processor must periodically evaluate its management strategies to assure it takes advantage of new, more effective technologies and is otherwise continuously improving its practices and processes.

(6) **Legal requirements.**

(a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries~~,~~ that are applicable to the operations and transactions in which it engages related to the processing of CEPs, components, parts, and materials and disposal of residuals. These include but are not limited to applicable legal requirements relating to:

(i) Waste and recyclables~~ing~~ processing, storage, handling, and shipping; and

(ii) Air emissions and waste water discharge, including storm water discharges; and

(iii) Worker health and safety; and

(iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse~~, refurbishment,~~ recycling, or disposal.

(b) Upon request by a ~~customer~~covered entity, a direct processor must make available information to that covered entity about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information

Comment [Ecology180]: This language is deleted because it is redundant with other performance standards in this section.

Comment [Ecology181]: Clarifying edit.

Comment [Ecology182]: Clarifying edit.

Comment [Ecology183]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology184]: Clarified that "customer" was "covered entity.

available within sixty days after any subsequent penalties or regulatory orders are issued.

(7) **Environmental, health, and safety management systems (EHSMS).**

(a) A direct processor must develop, document, fully implement, and update at least annually a written EHSMS that includes all of the following:

(i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.

(ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

(A) **Plan**

(I) Identification of environmental impacts, and legal and regulatory requirements;

(II) Establishment of environmental goals, objectives and targets;

(III) Plan actions that work toward achieving identified goals;

(IV) Plan for emergency preparedness and response; and

(V) Commitment of management support.

(B) **Do**

(I) Establish roles and responsibilities for the ~~EMS~~EHSMS and provide adequate resources;

Comment [Ecology185]: Clarifying edit.

(II) Assure that staff are trained and capable of carrying out responsibilities; and

(III) Establish a process for communicating about the ~~EMS~~EHSMS within the business.

Comment [Ecology186]: Clarifying edit.

(C) **Check**

(I) Monitor key activities and track performance;

(II) Identify and correct problems and prevent recurrence; and

(III) Provide a measurement system that quantifies the application of the model.

(D) **Act**

(I) Conduct annual progress reviews;

(II) Act to make necessary changes to the ~~EMS~~EHSMS; and

Comment [Ecology187]: Clarifying edit.

(III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Z10 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor

must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) A plan i~~I~~s conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAER's") standard, or other standards designed at a level appropriate for ~~the~~ processing ~~of CEPs~~ at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the ~~EMS~~EHSMS relevant to the activities they perform.

(8) **Recordkeeping.**

(a) A direct processor must maintain documentation such as commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of ~~equipment~~CEPs, components, parts, ~~and~~ materials, and residual into and out of its facilities.

(b) A direct processor must retain the documents required in this subsection (8) for at least three years.

(9) **On-site requirements.**

(a) **General**

(i) Direct processors must take all practicable steps to maximize recycling.

(ii) A direct processor must have the expertise and technical capability to process each type of CEP and ~~CEP~~ component it accepts in a manner protective of worker safety, public health, and the environment.

(iii) A direct processor must use materials handling, storage and management practices, that assure that~~including keeping~~ all work and storage areas are kept clean and orderly.

(iv~~ii~~) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating ~~electronic equipment~~CEPs, components,parts, ~~or~~ materials, or residual derived therefrom for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating CEPs, components,parts, materials, or residual ~~electronic equipment or materials~~ derived therefrom for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent.

(~~i~~v) A direct processor must use a certified scale to weigh CEPs and ~~their~~ components counted towards a plan's equivalent share.

~~(b) **Disposal and Recycling**~~

~~(i) These practices relate to CEPs that are generated, transported, collected, accumulated, stored, and physically dismantled (demanufactured) for recovery and recycling of useable materials.~~

Comment [Ecology188]: Clarifying edit.

Comment [Ecology189]: Clarifying edit.

Comment [Ecology190]: Clarifying edit.

Comment [Ecology191]: This language was moved here for clarify from subsection (5) of the proposal that is not removed.

Comment [Ecology192]: Clarifying edit.

Comment [Ecology193]: Clarifying edit.

Comment [Ecology194]: Clarifying edit.

~~(ii) Electronic equipment that is intended to be disposed of (rather than recycled) at any point in the process and residues from these activities must be properly designated and managed under applicable laws.~~

~~(c) **Use constituting disposal**~~

~~(i) Material that is used in a manner constituting disposal must comply with the applicable solid or hazardous waste requirements where disposal occurs.~~

~~(ii) Use constituting disposal means the use of material derived from electronic equipment in a manner that renders the material incapable of performing the function for which it was originally created.~~

~~(d) **Materials separation and processing**~~

~~(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.~~

~~(ii) "Materials of concern" include each of the following:~~

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

~~(B) Batteries;~~

~~(C) CRTs and leaded glass; and~~

~~(D) Whole or shredded circuit boards.~~

~~(iii) A direct processor must remove materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained in them, in a secured, sheltered enclosure with an appropriate catchment system. To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.~~

(~~e~~b) **Storage**

A direct processor must store materials of concern removed from CEPs, components, parts, materials, or residuals ~~equipment and components~~ in accordance with ~~(b)~~subsection (11) of this ~~sub~~section in a manner that:

(i) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(ii) Is secure from unauthorized entrance; and

(iii) Is in clearly labeled containers and/or storage areas.

(~~f~~c) **Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EHSMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

(10) **Materials of Concern**

Materials of concern must be handled according to the

Comment [Ecology195]: This was moved to subsection (10) as part of the language on disposal. Ecology believes this move will make the rule easier to use.

Shredded was removed from the definition of Materials of Concern due to conflicts with other requirements in this section.

Comment [Ecology196]: This language was deleted. Agreed with comments that this is covered in other hazardous waste regulations.

Comment [Ecology197]: Clarifying edits.

Comment [Ecology198]: Clarifying edit.

standards in this section. "Materials of concern" are any of the following:

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

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

(11) **~~Materials recovery~~Rrecycling, reuse, and ~~materials~~ disposal.**

~~(a) A direct processor should use the hierarchy of management strategies in subsection (5) of this section for each type of equipment, component, and material that is not directed to reuse.~~

~~(b) Types of equipment, components, and materials are placed in separate streams as necessary to assure the risks posed by each stream are adequately addressed.~~

~~(c) A direct processor must direct streams, that are not directed to reuse, to materials recoveryrecycling unless doing so poses unacceptable risk or is not technically feasible.~~

~~(ed) A direct processor must send each stream destined for disposal to a facility designed to safely handle all the contents of the stream.~~

(a) **Recycling**

(i) A direct processor must remove from CEPs and components destined for recycling any parts that contain materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) A direct processor must remove any parts that contain materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained therein. Circuit boards and materials derived therefrom will be allowed to be shredded prior to separating.

(b) Reuse

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

(ii) For a CEP, component or part to be put to reuse it must be fully functioning.

(iii) CEPs, components and parts gleaned for reuse shall not be included in the weight totals submitted to a plan for compensation.

(c) Disposal of residuals

(i) "Residuals" are leftover materials from processing CEPs, components, parts and materials. Residuals can not be used for their original function or can not be recycled and are sent by a processor to a disposal facility.

(ii) Residuals must be properly designated and managed

Comment [Ecology199]: Created a new subsection and removed from previous place in this section to eliminate confusion.

Comment [Ecology200]: Clarified to match definitions in this chapter.

Comment [Ecology201]: Deleted because Ecology agreed with comments that language was ambiguous.

Comment [Ecology202]: This subsection was reorganized to clarify language.

Comment [Ecology203]: Agreed with comments that this is covered in other hazardous waste regulations.

Comment [Ecology204]: This is the definition of reuse included here for clarity. The additional reuse language is added to clarify how reuse works under this rule.

Comment [Ecology205]: This is moved here from subsection (9) for ease of use.

under applicable solid waste and hazardous waste laws at the location where disposal occurs.

(iii) A direct processor must not send residuals containing materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.

(vii) Residuals from processing of materials of concern must not be mixed with other residuals for the purpose of disposal.

~~(11) **Materials that cannot beare not reused or recovered.**~~

~~(a) A direct processor must identify and utilize effective and safepermitted energy recovery or disposal strategies facilities for all equipment, components, and materials that are not technically or economically feasible to recoverrecycle.~~

~~(b) A direct processor must separate equipment, components, and materials destined for energy recovery or disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.~~

~~(c) A direct processor may direct streams with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternative management strategies.~~

~~(d) A direct processor must not send materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.~~

(12) **Transport.**

A direct processor must ensure that all CEPs, ~~and~~ CEP components and materials to be transported are packaged in compliance with all applicable transport laws and rules.

(13) **Prison labor.**

Direct processors may not use federal or state prison labor for processing.

(14) **Facility access.**

Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

(a) Ecology and ecology's designee(s);

(b) Third-party observers for the purposes of sampling;

(c) For processors used by the standard plan:

(i) The authority;

(ii) The authority's designee(s);

(d) For processors used by an independent plan~~s~~:

(i) Tha~~t~~e plan's authorized party;

(ii) The authorized party's designee(s) for that plan.

(15) **Notification of penalties and violations.**

Comment [Ecology206]: Some requirements in this subsection were moved to other subsections in this section.

Comment [Ecology207]: Deleted because covered by other requirements in this section.

Comment [Ecology208]: Language was deleted because it was duplicative of (11)(a).

Comment [Ecology209]: Clarifying edit to remain consistent with other language in this section.

Comment [Ecology210]: Clarifying edit.

Comment [Ecology211]: Clarifying edit.

Comment [Ecology212]: Clarifications made based on comments received.

Each direct processor must notify ~~the authority or authorized party of the plan(s) for which the direct processor provides services~~ ecology within thirty days if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

(16) ~~**Conflict**~~ **Non-compliance with minimum performance standards.**

A direct processor may not comply with a specific minimum performance standard in this section when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists, the processor's audit report must document the conflict and processor's compliance with the corresponding laws or rules (see WAC 173-900-365.

~~To the extent that the minimum processor performance standards in this section conflict with laws applicable to a processor in another state or country, the processor may comply with the applicable national, state, or local laws and rules if the following is included in the annual compliance audit report (see WAC 173-900-365(4)):~~

~~(a) Documentation of the conflict; and~~

~~(b) Documentation of compliance with the national, state, or local laws or rules applicable to the processor.~~

Voluntary **Preferred performance standards.**

(17) In addition to meeting the minimum performance standards in this section, a processor may receive preferred status from ecology if the processor conforms with the voluntary performance standards in ecology's "*Environmentally Sound Management and Performance Standards for* ~~*Electronic Product Recycling*~~*Direct Processors*."

~~NEW SECTION~~

~~**WAC 173-900-660 Ecology determination of direct processor violations.** (1) Beginning January 1, 2009, ecology may:~~

~~(a) Inspect any direct processor used by a plan to determine the status of the direct processor.~~

~~(b) Use a processor annual compliance audit report submitted to ecology by the plan to confirm a direct processor is meeting the performance standards in this chapter.~~

~~(2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in this chapter.~~

~~(3) Ecology will use the annual compliance audit report for a direct processor to determine if the direct processor is listed as meeting the minimum standards in this chapter or as~~

Comment [Ecology213]: Ecology changed the requirement so that processors now directly notify the agency rather than sending the notice to a plan. Ultimately this requirement was included to provide Ecology with up-to-date notice about a direct processors environmental compliance. Ecology believes this will offer more immediate notice to achieve the same goal. The thirty day notice is the same notice previously in the authority or authorized party requirement.

Comment [Ecology214]: Clarify language based on comments that this language was confusing.

Comment [Ecology215]: Clarification that the program for "preferred performance standards is "voluntary".

Comment [Ecology216]: Clarification that the program for "preferred performance standards is "voluntary".

Comment [Ecology217]: Language changed to match the title of the publication.

conforming with ecology's "*Environmentally Sound Management and Performance Standards for Electronic Product Recycling*Direct *Processors*." If a compliance audit report reflects a change in status, ecology will update the "processor registration list."

[]
NEW SECTION

WAC 173-900-670 Direct processor violations.

Table 670
Direct Processor Violations

Starting	**If**	**Then**	**and Ecology Will**
January 1, 2009	A direct processor provides processing services to a plan and is not registered under this chapter.	It is a **direct processor registration violation.**	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.
January 1, 2009	A direct processor does not update its registration information within fourteen days of a change.	It is a **direct processor registration violation.**	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.

Comment [Ecology218]: Based on the intent of Chapter 70.95N RCW, the rule no longer contains violations for direct processors. Please see edits to Authority or Authorized party violations and penalties.

January 1, 2009	A direct processor is providing processing services to a plan and is out of compliance with the direct processor performance standards in WAC 173-900-650.	It is a **direct processor standards violation.**	List the direct processor's name on the "direct processor registration list" and place the direct processor in "in violation" status.

NEW SECTION

WAC 173-900-680 Warning and penalties for direct processor violations.

Comment [Ecology219]: Based on the intent of Chapter 70.95N RCW, the rule no longer contains violations for direct processors. Please see edits to Authority or Authorized party violations and penalties.

Table 680
Direct Processor Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Direct Processor Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Direct Processor Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

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

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

Penalties:

(3) **First penalties:** If the direct processor does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 680 above and ecology will:

(a) Either change the direct processor's status to "in violation" or add the direct processor to the "direct processor registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the

~~authority and authorized party of each plan that uses the direct processor (see WAC 173-900-380).~~

~~(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 680 no more often than every thirty days for the same violation.~~

~~(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.~~

~~**Appeals:**~~

~~(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.~~

~~[]~~

~~NEW SECTION~~

~~**WAC 173-900-690 Corrective action for direct processor.** For ecology to change a direct processor from "in violation" status to "in compliance" status on the "direct processor registration list," the processor must:~~

~~(1) Provide evidence that the violation has been corrected; and~~

~~(2) Pay or settle any penalties to ecology.~~

Comment [Ecology220]: Based on the intent of Chapter 70.95N RCW, the rule no longer contains violations for direct processors. Please see edits to Authority or Authorized party violations and penalties.

Comment [Ecology221]: Based on the intent of Chapter 70.95N RCW, the rule no longer contains violations for direct processors. Please see edits to Authority or Authorized party violations and penalties.

PART VII
RETAILER REQUIREMENTS

NEW SECTION

WAC 173-900-700 Retailer--Offering for sale or selling CEPs in or into Washington state. In order for a retailer to offer for sale or sell a CEP in or into Washington state, on the date the product was ordered:

(1) The brand name on the CEP must be on the "manufacturer registration list" posted on ecology's web site; and

(2) The manufacturer must be in "pending" or "in compliance" status.

NEW SECTION

WAC 173-900-710 CEP required brand labeling. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

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

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

NEW SECTION

WAC 173-900-720 Ecology determination of compliance for retailers. Retailers:

(1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740, and 173-900-750.

Comment [Ecology222]: Clarifying edits.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-710 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740, and 173-900-750.

Comment [Ecology223]: Clarifying edits.

NEW SECTION

WAC 173-900-730 Retailer violations. (1) A retailer is "in violation" of this chapter when one or more of the following retailer violations occurs:

(a) Offering for sale or selling violation;

(b) Labeling violation; or

(c) Public outreach violation.

(2) **Retailer offering for sale or selling violation.**

A retailer is in "offering for sale or selling violation" of this chapter when a retailer offers for sale or sells CEPs and:

(a) On the date the electronic products are ordered from the manufacturer or their agent, the manufacturer's name or brand name does not appear on ecology's "manufacturer registration list."

(i) This means that brand of the manufacturer's electronic products must not be sold in or into Washington state.

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

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

(b) On the date the electronic products were ordered from the manufacturer or their agent, the manufacturer was in "in violation" status on ecology's "manufacturer registration list."

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

(ii) If the retailer can prove that the products were

ordered from the manufacturer or their agent when the brand and manufacturer name was on ecology's "manufacturer registration list" and was in "in compliance" or "pending" status, the offering for sale, or selling, of those products is not a violation.

(3) **Retailer labeling violations.**

(a) It is a retailer "labeling violation" when a retailer offers for sale or sells an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

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

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

(4) **Retailer public outreach violation.**

It is a retailer violation if the retailer does not meet the public outreach requirements in WAC 173-900-980.

NEW SECTION

WAC 173-900-740 Warning, penalties, and corrective action for all retailer violations.

Table 740
Retailer Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Offering for Sale or Selling Violation	Warning Letter	Up to $1,000	Up to $2,000
Labeling Violation	Warning Letter	Up to $1,000	Up to $2,000
Public Outreach Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

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

Penalties:

(2) **First penalties:** If the retailer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty,

as defined in Table 740 above.

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 740 no more often than every thirty days for the same violation.

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

Appeals:

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

NEW SECTION

WAC 173-900-750 Corrective action for all retailer violations. (1) For offering for sale and selling violations, the retailer must stop offering for sale or selling CEPs until the manufacturer is listed as "pending" or "in compliance" status on ecology's "manufacturer registration list."

(2) For a labeling violation, the retailer must meet the requirements in WAC 173-900-710;

(3) For a public outreach violation, the retailer must meet the requirements in WAC 173-900-980; and

(4) The retailer must pay or settle any penalties.

PART VIII
REPORTING REQUIREMENTS

NEW SECTION

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

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

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

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

(ii) CEPs recycled;

(iii) Nonrecycled residual from CEPs; and

(iv) Final destination for the processing of CEPs and ~~their~~

Comment [Ecology224]: Clarifying edit.

Comment [Ecology225]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology226]: Clarifying edit.

components and final destination for disposal of residuals.

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

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

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

(e) Processor information:

(i) A list of all direct processors used;

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

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

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

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

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

(h) The results of sampling as required in WAC 173-900-900;

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

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

(k) Signature of the authority or the authorized party; ~~and~~

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

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

Comment [Ecology227]: Clarifying edits.

(3) **Submittal:** The authority or authorized party must submit:

(a) One electronic copy in a format usable by ecology that allows electronic editing and commenting; and

(b) Two paper copies to one of the following addresses:

For U.S. Postal Service:

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

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(c) Faxes are not accepted.

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

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

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

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent via certified mail.

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

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

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

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

[]
NEW SECTION

WAC 173-900-810 Local government and community satisfaction repo Starting January 1, 2010, local governments and local communities are en submit an annual satisfaction report to ecology by March 1 of each calendar

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

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

Comment [Ecology228]: Clarifying edit.

(a) Accessibility and convenience of services;

(b) How services are working in their community;

(c) What services are not working and why;

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

(e) Description of public outreach and education; and

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

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

Comment [Ecology229]: Clarifying edit.

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

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

For U.S. Postal Service:

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

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

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

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

Comment [Ecology230]: Clarifying edit.

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

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

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

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

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

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

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

NEW SECTION

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

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

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

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

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

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling

Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

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

(b) If ecology determines no additional information is needed, ecology will send ~~a~~ written notice of ~~approval will be sent via certified mail~~to the nonprofit charitable organization.

Comment [Ecology231]: Clarifying edit.

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

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

Comment [Ecology232]: Clarifying edit.

PART IX
SAMPLING, RETURN SHARE, AND EQUIVALENT SHARE

NEW SECTION

WAC 173-900-900 Return share sampling. (1) Each plan must implement and finance an auditable, statistically significant sampling of CEPs entering its program every program year using the method described in this section.

(2) CEPs reclaimed for reuse or use in new products shall not be included in the sampling data collected under this section.

(3) Sampling data collected must include:

(a) The data as required by the return share sampling program for each CEP unit;

(b) A list of the brand names of CEPs by product type (computer,

Comment [Ecology233]: Based on comments received Ecology is adding this clarifying language here. This issue was already addressed in other sections of the rule.

laptop or portable computer, monitor, or television);
(c) The number of CEPs by product type;
(d) The weight of CEPs that are identified for each brand name;
(e) The weight of CEPs that lack a manufacturer's brand; and
(f) The total weight of the sample by product type.

(~~2~~4) **Third-party observer.**

(a) The sampling must be conducted in the presence of a third-party observer approved by ecology. Ecology will create a list of approved third-parties that a plan must use when conducting sampling to meet the requirements in this section. Ecology will post a list of approved third-party observers on the agency web site.

(b) The third-party observer will:

(i) Receive the sampling instructions from ecology;

(ii) Keep a sampling log for each day the third-party observed sampling;

(iii) Notify the direct processor twenty-four hours, not including Saturdays, Sundays or holidays, prior to the day when sampling will occur at the processor's facility;

(iv) Verify that the sampling method in this section and the sampling instructions provided by ecology are followed during the sampling event;

(v) Certify the sampling data collected; and

(vi) Submit the data and sampling log to ecology.

(c) If the third-party observer notices that sampling is not conducted in accordance with the methods in this section or the sampling instructions provided by ecology, the third-party observer must following the procedures in subsection (6)(a) of this section. ~~stop sampling for that day and notify ecology.~~

(d) The third-party observer must not share the sampling instructions with the direct processor or the plan prior to the sampling day.

(e) The third-party observer must make a sampling log for each day the third-party observes sampling. The sampling log must include:

(i) Date and time of sampling;

(ii) Location of sampling;

(iii) Name of the manager operating the facility on that day;

(iv) Names of the members of the sampling team and role of each team member in the sampling process;

(v) A general timeline of activities throughout the day including start time for CEP sampling process, breaks taken, changes in sampling team personnel or roles, unusual events, and time when sampling process ended;

(vi) Any deviation from the sampling method in this section or sampling instructions provided by ecology including but not limited to the functioning of sampling equipment and return share sampling program;

Comment [Ecology234]: This language appeared lower in this section, but was moved here for clarity.

Comment [Ecology235]: Edit made based on comments received.

Comment [Ecology236]: Clarifying edit.

Comment [Ecology237]: Clarifying edit.

(vii) An approximate percentage of the types of CEPs present in deliveries coming from different collectors;

(viii) Changes in rate and volume of CEPs coming into the facility;

(ix) ~~Observations about the equipment and programs;~~

(~~x)~~ Observations or concerns about the procedures used by the sampling team and the CEPs sampled;

(x~~i~~) When sampling is stopped, a description of why and what steps were taken to try and fix the problem;

(xi~~i~~) Suggestions for improving future sampling events.

(f) If a third party fails to meet these protocols, ecology may remove the third party from the list of approved observers.

(g) A plan cannot end a contract with a third-party observer for reporting errors, concerns or discrepancies with sampling to ecology.

(~~3~~5) **Observation of sampling by ecology.** Ecology may, at its discretion, observe sampling and audit the method and the results in addition to the third-party observer.

(~~4~~6) **Incorrect sampling.**

(a) If the third-party observer sees that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, the third-party observer must note which samples were taken incorrectly in the sampling log and work with the sampling team to correct the problem for future samples. If the problem cannot be corrected for the next sampled unit, the third-party observer must:

(i) Stop the sampling for that day;

(ii) Notify ecology of the problem; and

(iii) Notify the authority or authorized party.

(b) If ecology observes, or is notified by a third-party observer, that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, ecology may:

(i) Notify the plan of the problem;

(ii) Stop sampling for that day; or

(iii) Eliminate the ~~sample set~~data about the CEPs sampled for that entire sampling day.

(c) Ecology may also use data analysis, inspections, sworn reports or complaints from individuals to determine incorrect sampling.

(d) If any plan has data from more than one ~~sample set~~sampling day eliminated for any reason, ecology may estimate that plan's equivalent share based on samples collected by other plans in order to ensure that bias in that plan's sample does not reduce its own return share. This adjustment may be used for three years (see subsection (~~5~~7) of this section).

(e) If ecology or the third-party observer stops sampling, no alternative sampling date will be assigned to the plan.

Comment [Ecology238]: Ecology agreed with comments that this is ambiguous.

Comment [Ecology239]: Clarifying edit.

Comment [Ecology240]: Due to confusion about the term "sample set" this clarification was added.

Comment [Ecology241]: Clarifying edit.

Comment [Ecology242]: Clarifying edit.

(~~5~~7) **Three year rolling average to be used to construct the statistics needed for the return share.**

(a) Ecology will construct the final average results for each plan using the most recent three years of sample data.

(b) For the first two years of sampling only the years available will be used.

(~~6~~8) **Review of the sampling method.**

(a) After the fifth program year, ecology may reassess the sampling methods required in this section. Ecology may adjust:

(i) Who will do the sampling;

(ii) The sample size;

(iii) The frequency of sampling;

(iv) The distribution of the sampling places;

(v) Information collected during sampling; and

(vi) The method for collecting the sample.

(b) Prior to making any changes, ecology must notify the public and provide a public comment period.

(~~7~~9) **Method for sampling.**

Steps in the sampling method	
Step 1:	Ecology creates a third-party observer list.
Step 2:	Selection and payment of third party by the plans.
Step 3:	Ecology determines the sample size for a program year.
Step 4:	Ecology assigns a sample allocation to each plan.
Step 5:	Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.
Step 6:	The plan conducts and records the sampling.
Step 7:	Reporting the sample.
Step 8:	Ecology must adjust for over sampling or under sampling.
Step 9:	Ecology tabulates sampling results quarterly.
Step 10:	Ecology uses sampling results to calculate return share.

Step 1: Ecology creates a third-party observer list.

(a) Ecology will list approved third-party observers on the agency web site.

(b) By December 1 of every other year ecology will announce:

(i) ~~The hourly rate, per diem, and mileage reimbursement the plan must pay to each third party used by the plan;~~

Comment [Ecology243]: Ecology's agrees with comments received that the market dictate fees.

(ii) The third-party qualifications; and

(iii) The process for a third party to seek approval to be listed as a third-party observer.

(c) A third party may submit a request to be listed at any time during the year.

Step 2: Selection and payment of a third party by a plan.

(d) Each plan must select a third party from ecology's list to observe sampling conducted for the plan and notify ecology of the third-party observer with which they have contracted.

(e) The plans must cover the costs, including travel, of any third-party observer used by the plan to observe its sampling activities.

(f) The authority or authorized party must remit payment to the third-party observer ~~at the rates announced by ecology~~. ~~Payment must be made both~~ for sampling in and outside of Washington state.

Comment [Ecology244]: Language changed based on comments received.

Step 3: Ecology determines the sample size for a program year.

(g) **Sample size.**

(i) The sample size will be statistically determined by applying the formula below:

Where

$\hat{p}$ =	Maximum brand return share in the population, in the form of a fraction. For the first year this number is estimated from data collected by the National Center for Electronics Recycling from other jurisdictions where brand returns were tallied
z =	Standardized statistical critical value associated with the confidence level of ninety-five percent is 1.96
d =	The maximum margin of error which is .005 at the ninety-five percent confidence level

m = Sample size increase due to unidentifiable brands. In consideration of the fact that the brand names of some units are not identifiable (e.g., white box units with no brand, or returned units where the brand is no longer legible), the sample sizes taken must be larger than those determined purely by statistical techniques. Across all product categories the incident rate for nonidentifiable samples is equal to the orphan share of CEPs sampled.

(ii) Sample size is expressed as a number of individual units of CEPs, and each unit to be sampled will be individually weighed.

Step 4: Ecology assigns a sample allocation to each plan.

(h) Ecology will assign the minimum sample size annually on the basis of each plan's return share.

(i) Starting in 2008, ecology will announce the total sample size and the proportionate plan share for sampling for each plan by December 1st of each year.

Step 5: Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.

(j) Ecology will provide the contracted third-party observers with quarterly sampling instructions. Quarters begin in January, April, July, and October.

(k) The sampling instructions will include the dates for sampling, the processing facility(ies) where sampling will take place, instructions for random selection of units for sampling, and the hours of sampling.

(l) Each plan must conduct sampling for each date listed in the third-party observer's sampling instructions provided by ecology.

Step 6: The plan conducts and records the sampling.

(m) **Field sampling.**

(i) Once the third-party observer arrives at the processing facility, the plan or direct processor must introduce the observer to the members of the sampling team that will be conducting sampling for that day and let the third-party observer know the role of each member of the sampling team.

(ii) The third-party observer must inform the sampling team how to select CEP units based on the sampling instructions provided by ecology for that sampling day.

(iii) The sampling team must place a unique bar code sticker on every CEP entering the processing facility during the

assigned sampling period, whether by truckload, walk-in, or other method. Prior to placing the bar code on the CEP, no sorting of CEPs ~~by type must~~can occur at the processing facility.

(iv) Before any CEP is sent for processing the sampling team must use a hand held bar code reader to scan the bar code sticker placed on that unit by the sampling team.

(v) The return share sampling computer program provided by ecology will identify whether a particular unit should be sampled.

(vi) Units identified as requiring sampling must be set aside for sampling, and units identified as not requiring sampling would be available for processing immediately.

(vii) Units identified as requiring sampling become part of the sample for that day and the sampling team must record the required data for each of those units even if it takes more than one day.

(viii) The sampling team must record all the data for the sample using the return share sampling computer program provided by ecology.

(n) If a brand name is not listed in the computer program, the sampling team must record a minimum of three digital images. The images must be of sufficient clarity that ecology can identify any printed information on the CEP.

(i) The first image will be of the entire front of the CEP.

(ii) The second image will be focused on the brand identification logo (if available).

(iii) The third image will be of the label on the back or bottom of the CEP (if available).

(iv) The photographs must be attached to the appropriate electronic record in the return share sampling computer program in a jpeg format.

Step 7: Reporting the sample.

(o) At the end of the sampling day the plan must provide the results to the third-party observer. The results must include all of the data required in subsection (3) of this section.~~following:~~

~~(i) The data as required by the sampling program for each CEP unit;~~

~~(ii) A list of the brand names of CEPs by product type (computer, laptop or portable computer, monitor, or television);~~

~~(iii) The number of CEPs by product type;~~

~~(iv) The weight of CEPs that are identified for each brand name;~~

~~(v) The weight of CEPs that lack a manufacturer's brand; and~~

~~(vi) The total weight of the sample by product type.~~

Comment [Ecology245]: Clarifying edit.

Comment [Ecology246]: Clarifying edit.

Comment [Ecology247]: Moved to subsection (2) of this section for clarity.

(p) The third-party observer will certify the results and submit one paper and one electronic copy of the results to ecology and the authority or authorized party.

Step 8: Ecology must adjust for over sampling or under sampling.

(q) If ecology determines that over or under sampling has occurred, ecology must adjust such over or under sampling as follows:

Vi = Si x Sample size assigned/Sample size taken

Pi = Wi x Sample size assigned/Sample size taken

Where:
Si is the total number of units weighed for brand i
Wi is the total weight of units for brand i.

(r) Ecology may adjust the extrapolation of under sampling data to account for outliers that may over estimate small manufacturer returns.

Step 9: Ecology tabulates sampling results quarterly.

(s) Quarterly, ecology will combine the sampling results required in Step 7 from all plans. If ecology observes discrepancies, ecology will follow the method in subsection (4) of this section.

Step 10: Ecology uses sampling results to calculate return share.

(t) Ecology will combine the sampling results from each quarter and use this data when calculating return share as described in WAC 173-900-910.

NEW SECTION

WAC 173-900-910 Calculating return share. (1) In order for a CEP to be counted in a plan's return share, the CEP or ~~CEP~~ components must go to a direct processor that meets the requirements in Part VI of this chapter.

Comment [Ecology248]: Clarifying edits.

(2) **Return shares issued in 2007 through 2009:**

(a) Ecology must determine return shares for all manufacturers in the standard plan or an independent plan by using all reasonable means and base those determinations on the best available information regarding return share data from

other states and other pertinent data.

(b) If ecology does not have any return data on a particular manufacturer, ecology will assign that manufacturer to the lowest represented percentage of return share on the preliminary return list.

(c) Ecology will use the first return share to:

(i) Appoint five board members for the first term of appointments to the materials management and financing authority board of directors from the top ten manufacturers holding the highest return share; and

Comment [Ecology249]: Clarifying edits.

(ii) Establish the first program year return share for manufacturers in a plan.

(3) **Return shares issued 2010 and later:** For the second and all subsequent program years, ecology will determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of CEPs identified for each manufacturer through the sampling methodology and protocol in WAC 173-900-900 by the total sampled weight of CEPs identified for all manufacturers in the plans. That quotient will then be multiplied by one hundred to establish a percentage share for each manufacturer.

NEW SECTION

WAC 173-900-920 Use and publication of CEP return shares. Return shares for program year 2009:

(1) Ecology will announce the preliminary return share for each manufacturer and each plan by June 1 of each year.

(2) Ecology will publish the preliminary return shares on the agency web site.

(3) Ecology will notify each registered manufacturer by June 1 of each year.

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

(5) The petition must contain:

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

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

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

(6) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(7) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(8) By August 1, 2007, ecology shall publish the final return shares for the first program year.

Return shares announced for program year 2010 and thereafter:

(9) Ecology will announce the preliminary return share and notify each registered manufacturer by June 1 of each year.

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

(11) The petition must contain:

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

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

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

(12) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(13) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(14) By August 1 of each program year, ecology shall publish the final return shares for use in the coming program year.

(15) Ecology will publish the final return shares on the agency web site.

NEW SECTION

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

Step 1: Calculating individual manufacturer equivalent share.

(1) Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total

weight in pounds of CEPs collected, not including any CEPs, components or parts gleaned for reuse ~~or refurbishment~~, for that program year and any additional credited pounds under WAC 173-900-940.

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

Comment [Ecology250]: Clarifying edit.

Comment [Ecology251]: All references to refurbishment were removed from the rule because the law is silent on this topic.

Comment [Ecology252]: Clarification is added since several comments asked how equivalent share is divided among licensees.

Step 2: Calculating a plan's equivalent share.

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

NEW SECTION

WAC 173-900-940 Equivalent share credits. Plans that use the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. Ecology may adjust the percentage of credit annually.

NEW SECTION

WAC 173-900-950 Notification of equivalent share. By June 1 of each program year starting in 2010, ecology will notify each:

(1) Manufacturer of the manufacturer's equivalent share of CEPs to be applied to the previous program year;

(2) Plan of the plan's equivalent share of CEPs to be applied to the previous program year;

(3) Manufacturer and plan of how its equivalent share was determined.

NEW SECTION

WAC 173-900-960 Share payments. (1) For a CEP recycling plan, if the total weight in pounds of CEPs collected by the plan and processed by a processor during a program year is less than the plan's equivalent share of CEPs for that year, then the authority or authorized party must submit to ecology a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs and an administrative fee.

(2) Moneys collected by ecology must be deposited in the

electronic products recycling account created under RCW 70.95N.130.

(3) For a plan, if the total weight in pounds of CEPs collected during a program year is more than the plan's equivalent share of CEPs for that year, then ecology shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs.

(4) For purposes of this section, the initial reasonable collection, transportation, processing, and recycling cost for CEPs is forty-five cents per pound and the administrative fee is five cents per pound.

(5) Ecology may annually adjust the reasonable collection, transportation, processing, and recycling cost for CEPs and the administrative fee described in this section. Prior to making any changes ecology will:

(a) Post the proposed new amounts on the agency web site;

(b) Send notice to all registered manufacturers;

(c) Provide a thirty-day comment period;

(d) Evaluate comments and make revisions to the amounts if appropriate; and

(e) Post the new amounts on the agency web site.

(6) Ecology will notify all registered manufacturers of any changes to the reasonable collection, transportation, processing, and recycling cost or the administrative fee by January 1 of the program year in which the change is to take place.

NEW SECTION

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

Billing share payments.

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

Ecology payment of share payments.

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

PART X
PUBLIC OUTREACH

NEW SECTION

WAC 173-900-980 Public outreach.

Independent and standard plans:

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

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

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

(~~b~~c) Ensure outreach throughout the state.

Comment [Ecology253]: RCW 70.95N.120(1) requires this and it was mistakenly left out of the proposal. It is added here to clarify the requirements.

Ecology:

(2) Ecology will promote CEP recycling by:

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

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

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

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

Local governments:

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

Retailers:

(5) A retailer who sells new CEPs must provide information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

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

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

(c) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging;

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

Collaboration:

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

PART XI
THE MATERIALS MANAGEMENT AND FINANCE AUTHORITY (THE AUTHORITY)

NEW SECTION

WAC 173-900-990 Ecology's relationship to the authority. (1) The director of the department of ecology, or the director's designee, will serve as an ex officio member of the materials management and finance authority board of directors.

(a) Ex officio designations must be made in writing and communicated to the authority director.

(b) The function of ecology's membership is advisory only and carries no voting privileges on matters brought before the board.

(2) Ecology must provide staff to assist in the creation of the authority.

(a) If requested by the authority, ecology will also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority.

(b) Staff expenses incurred by ecology must be paid back to ecology through funds collected by the authority and must be reimbursed to ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

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

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

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

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

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

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

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

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

(i) Five from the top ten brand owners by return share of CEPs willing to participate on the board;

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

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

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

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

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

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

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

NEW SECTION

WAC 173-900-995 Board reimbursement for use of ecology support staff. (1) The costs collected under this section are only for support provided during the start-up and the first twelve months of operation for the board.

(2) The board must reimburse all costs to ecology within twenty-four months of beginning operation.

(3) Ecology will calculate reimbursements based on actual costs:

Reimbursement Amount = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff time and other costs related to accomplishing the activities identified in subsection (1) of this section. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working with

the board including, for example, costs of: Travel, printing and publishing of documents, and other work, contracted or otherwise, associated with the board.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Cost reimbursement invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. If the board uses ecology support staff, the authority must reimburse ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

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

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

(a) Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.

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

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

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

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

product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

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

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

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

Comment [Ecology254]: Clarifying edit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

person.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-900-040	Required brand labeling.
WAC 173-900-050	Offering for sale or selling covered electronic products (CEPs) in or into Washington.

Chapter 173-303 WAC: Explanation of changes between the rule proposal and the adopted rule.

All changes made to Chapter 173-303 WAC were clarifying edits. Please see text below for specific changes.

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

WAC 173-303-040 Definitions. When used in this chapter, the following terms have the meanings given below.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - the terms acute and acutely are used interchangeably.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an

intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis.

In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

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

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any

contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means the requirements placed upon all TSD facilities to ensure that all such facilities are closed in an acceptable manner (see also "post-closure").

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act as amended in 1980 and 1983, and chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous

waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

✐ Receiving broken or intact CRTs; and

✐ Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

✐ Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 CFR Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been

treated to the standards provided by 40 CFR 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means a dangerous waste treatment, storage, or disposal facility that has received a permit (or interim status) in accordance with the requirements of this chapter, has received a permit (or interim status) from another state authorized in accordance with 40 CFR Part 271, has received a permit (or interim status) from EPA in accordance with 40 CFR Part 270, has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and that has been designated on the manifest pursuant to WAC 173-303-180(1). If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste. The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080

through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other substances.

"*Dioxins and furans (D/F)*" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or his designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass

through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 CFR 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, ground water monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(d), 173-303-645 (1)(e), or 173-303-620 (8)(d) or, as incorporated by reference at WAC 173-303-400, 40 CFR 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but

are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or ground water.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each generator, transporter, and TSD facility.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 CFR Part 261, or

August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be ((~~cancelled~~)) canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment

or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

✐ All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment,

storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility" or "waste management facility" are used interchangeably.

✐ For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020(4).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (Pimephales promelas), and other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110

(3)(b)(i), coho salmon (Oncorhynchus kisutch), rainbow trout (Oncorhynchus mykiss), or brook trout (Salvelinus fontinalis) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Ground water" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 CFR Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for Designating Dangerous Waste*,

Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 CFR Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"Inactive range" means a military range that is not

currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste which is unsuitable for placement in a particular device or facility because it may corrode or decay the containment materials, or is unsuitable for mixing with another waste or material because the mixture might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns;

phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)(c), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste

(batteries, thermostats, mercury-containing equipment, and lamps calculated collectively) and/or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (i.e., passes paint filter test) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural

materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document, prepared in accordance with the requirements of WAC 173-303-180, which is used to identify the quantity, composition, origin, routing, and destination of a dangerous waste while it is being transported to a point of transfer, disposal, treatment, or storage.

"Manufacturing process unit" means a unit which is an integral and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Mercury-containing equipment" means a device or part of a device (excluding batteries, thermostats, and lamps) that

contains elemental mercury necessary for its operation. Examples of mercury-containing equipment include thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly

inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradioactive hazardous component and, as defined by 10 CFR 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank

system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 CFR 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be

visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within 14 days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management

unit, while other units of the same facility continue to operate.

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 CFR Part 270; or

Another state authorized by EPA, pursuant to 40 CFR Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days) in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of

agriculture may declare to be a pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

"Pile" means any noncontainerized accumulation of solid, nonflowing dangerous waste that is used for treatment or storage.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo [(a,e), (a,h), (a,i), and (a,1)]

pyrenes, and dibenzo(a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate

degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields to make sound professional judgments regarding ground water monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 CFR Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 CFR Part 261; or

The date six months after a waste is newly identified by amendments to 40 CFR Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020(20).

"Remediation waste" means all solid and dangerous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure

plan or EPA or state approved corrective action.

"Representative sample" means a sample which can be expected to exhibit the average properties of the sample source.

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"Runoff" means any rainwater, leachate, or other liquid which drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid which drains over land onto any part of a facility.

"Satellite accumulation area" means a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of

interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps, calculated collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include

any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 CFR Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing,

remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 CFR Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is

designed to hold an accumulation of liquid dangerous wastes or dangerous wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"*TEQ*" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or

(20)(b)(ii).

"TLm_{96}" means the same as "Aquatic LC_{50}."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, buildings, piers, and other similar areas where shipments of dangerous waste are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous

waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground tank" means a device meeting the definition of

"tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Thermostats as described in WAC 173-303-573(3);

Lamps as described in WAC 173-303-573(5); and

Mercury-containing equipment as described in WAC 173-303-573(4).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a

destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding ground water to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer

that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to ground water or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in

Title 40 CFR Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the singular include the plural, and words in the plural include the singular.

[Statutory Authority: Chapters 70.105, 70.105D, and 15.54 RCW and RCW 70.105.007. 04-24-065 (Order 03-10), § 173-303-040, filed 11/30/04, effective 1/1/05; 00-11-040 (Order 99-01), § 173-303-040, filed 5/10/00, effective 6/10/00. Statutory Authority: Chapters 70.105 and 70.105D RCW. 98-03-018 (Order 97-03), § 173-303-040, filed 1/12/98, effective 2/12/98; 95-22-008 (Order 94-30), § 173-303-040, filed 10/19/95, effective 11/19/95; 94-01-060 (Order 92-33), § 173-303-040, filed 12/8/93, effective 1/8/94. Statutory Authority: Chapters 70.105 and 70.105D RCW, 40 CFR Part 271.3 and RCRA § 3006 (42 U.S.C. 3251). 91-07-005 (Order 90-42), § 173-303-040, filed 3/7/91, effective 4/7/91. Statutory Authority: Chapter 70.105 RCW. 89-02-059 (Order 88-24), § 173-303-040, filed 1/4/89; 87-14-029 (Order DE-87-4), § 173-303-040, filed 6/26/87; 86-12-057 (Order DE-85-10), § 173-303-040, filed 6/3/86; 84-09-088 (Order DE 83-36), § 173-303-040, filed 4/18/84. Statutory Authority: RCW 70.95.260 and chapter 70.105 RCW. 82-05-023 (Order DE 81-33), § 173-303-040, filed 2/10/82. Formerly WAC 173-302-040.]

NOTES:

Reviser's Note: The brackets and enclosed material in the text of the

above section occurred in the copy filed by the agency.

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

WAC 173-303-071 Excluded categories of waste. (1) Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as hazardous waste under 40 CFR Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 CFR Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial

wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood product must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling standards, or chapter 173-351 WAC, criteria for municipal solid

waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 CFR Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of

this section, and 40 CFR Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other

applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains

in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (NAICS codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel,

or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and

shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 CFR Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify

the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include

information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other

"as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous

waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected

to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any treatability studies at the site.

(xii) The date the sample was received, or if the treat-

ability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion

process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time

notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment

may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in nonoxidizing environments.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D

units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
(2)Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for
F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the

following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another

petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 486210, 487110, 488210, 488999, 722310, 424710, 454311, 454312, 424720, 425110, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit

the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted

into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the

following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic or criteria of dangerous waste nor is derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is

one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 CFR 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the

structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011 (3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

(oo) ((~~Reserve.~~)) Cathode ray tubes (CRTs) and glass removed from CRTs:

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation

as defined in WAC 173-303-016(5)(d). If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

Comment [Ecology1]: Clarifying edit to a reference.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

✐ Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.

✐ The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

✐ The estimated total quantity of CRTs specified in kilograms.

✐ All points of entry to and departure from each foreign country through which the CRTs will pass.

✐ A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

✐ The name and address of the recycler and any alternate recycler.

✐ A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

✐ The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines

satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an "A~~a~~cknowledgment of ~~consent~~ Consent" to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

Comment [Ecology2]: Title capitalized.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from EPA a copy of the ~~acknowledgment~~ "Acknowledgment of C~~c~~onsent" to export CRTs reflecting the receiving country's consent to the changes.

Comment [Ecology3]: Title Capitalized.

(VII) A copy of the ~~acknowledgment~~ "Acknowledgment of ~~consent~~ Consent" to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the ~~acknowledgment~~Acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another ~~acknowledgment~~ "Acknowledgment of ~~consent~~ Consent" to export CRTs.

(IX) Exporters must keep copies of notifications and ~~acknowledgments~~ "Acknowledgments of C~~c~~onsent" to export CRTs for a period of five years following receipt of the "A~~a~~cknowledgment".

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

Comment [Ecology4]: Titles capitalized.

Comment [Ecology5]: Title capitalized.

Comment [Ecology6]: Titles capitalized.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016 (5)(d).

Comment [Ecology7]: Clarifying edit to a reference.

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

(A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.

(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.

(pp) Zinc fertilizers made from hazardous wastes provided that:

(i) The fertilizers meet the following contaminant limits:
(A) For metal contaminants:

	Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3

Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking

the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 CFR section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

[Statutory Authority: Chapters 70.105, 70.105D, and 15.54 RCW and RCW 70.105.007. 04-24-065 (Order 03-10), § 173-303-071, filed 11/30/04, effective 1/1/05. Statutory Authority:

Chapters 70.105 and 70.105D RCW. 03-07-049 (Order 02-03), § 173-303-071, filed 3/13/03, effective 4/13/03. Statutory Authority: Chapters 70.105, 70.105D, 15.54 RCW and RCW 70.105.007. 00-11-040 (Order 99-01), § 173-303-071, filed 5/10/00, effective 6/10/00. Statutory Authority: Chapters 70.105 and 70.105D RCW. 98-03-018, (Order 97-03), § 173-303-071, filed 1/12/98, effective 2/12/98; 95-22-008 (Order 94-30), § 173-303-071, filed 10/19/95, effective 11/19/95; 94-12-018 (Order 93-34), § 173-303-071, filed 5/23/94, effective 6/23/94; 94-01-060 (Order 92-33), § 173-303-071, filed 12/8/93, effective 1/8/94. Statutory Authority: Chapters 70.105 and 70.105D RCW, 40 CFR Part 271.3 and RCRA § 3006 (42 U.S.C. 3251). 91-07-005 (Order 90-42), § 173-303-071, filed 3/7/91, effective 4/7/91. Statutory Authority: Chapter 70.105 RCW. 89-02-059 (Order 88-24), § 173-303-071, filed 1/4/89; 87-14-029 (Order DE-87-4), § 173-303-071, filed 6/26/87; 86-12-057 (Order DE-85-10), § 173-303-071, filed 6/3/86; 85-09-042 (Order DE-85-02), § 173-303-071, filed 4/15/85; 84-09-088 (Order DE 83-36), § 173-303-071, filed 4/18/84. Statutory Authority: RCW 70.95.260 and chapter 70.105 RCW. 82-05-023 (Order DE 81-33), § 173-303-071, filed 2/10/82.]

III. Response to Comments

This section of the Concise Explanatory Statement contains Ecology's responses to comments received. This section contains the content of the comments submitted to the agency. The actual comment letters, emails, online comments, and oral testimony transcripts are in the official agency rule file for this rule making.

The table below lists the names of everyone who submitted a comment on the proposed rule amendments for Chapter 173-900 WAC and Chapter 173-303 WAC. Next to the commenter name is the list of comment numbers, and page numbers, for that person's comments and responses.

Comment Numbers by Commenter				
Comment #	First Name	Last Name	Organization Name	Page #s
Written Comments				
1 - 100	Suellen	Mele	Washington Citizens for Resource Conservation	208
101 - 111	Sarah	Westervelt	Basal Action Network	240
112 - 147	Sego	Jackson	Snohomish County, Public Works	245
148 - 156	Nancy	Atwood	AeA	259
157 - 179	C.	Lorch	Total Reclaim	261
180 - 195	Parker E.	Brugge	Consumer Electronics Association (CEA)	267
196 - 205	**The following signed a joint letter of comments**			**273**
	Suellen	Mele	Washington Citizens for Resource Conservation	
	Mo	McBroom	Washington Environmental Council	
	Sarah	Westervelt	Basel Action Network	
	Pamela	Tazioli	Breast Cancer Fund	
	Karen	Ahern	Coalition for Environmentally Safe Schools	
	LeeAnne	Beres	Earth Ministry	
	Bill	LaBorde	Environment Washington	
	Elise	Miller, M Ed.	Institute for Children's Environmental Health	
	Steven G.	Gilbert, PhD DABT	Institute of Neurotoxicology & Neurological Disorders	
	Steve	Anthes	Kettle Range Conservation Group	
	Elizabeth	Davis	League of Women Voters of Washington	
	Reverend Paul	Benz	Lutheran Public Policy Office of Washington State	
	Heather	Trim	People for Puget Sound	
	Robyn	DuPre	Re Sources for Sustainable Communities	
	Christine	Hanna	Sightline	
	Mike	Petersen	The Lands Council	
	Richard	Grady, MD	Co Chair, Environment & Human Health Committee, Washington Physicians for Social Responsibility	
	Karen	Bowman	Washington State Nurses Association and Washington State Association of Occupational Health Nurses	
	Gregg	Small	Washington Toxics Coalition	
	Amy	Peterson	WashPIRG	
Online comments				
206 - 209	Mark	Dabek	RE-PC	277
210	John	Keithly	InterConnection	279
211	Anthony	Miskho	Fluor Hanford	279
212	Ed	Siegel	IMS Electronics Recycling	280
213 - 214	Suzanne	Tresko	Spokane Regional Solid Waste System	280
215 - 224	John	Swiderski	Washington Materials Management And Financing Authority	281

Comment Numbers by Commenter				
Comment #	First Name	Last Name	Organization Name	Page #s
225-229	Ecology received 458 comment emails with identical content. To see a list of the people who submitted this comment please see Appendix A.			285
For comments 230 - 273 and 479 - 483 portions of the emails were identical to the email comment in #224- #228. Please see the response above. For the portions of these emails where the comments also included some additional feedback the comment and Ecology's response is presented below following the commenter name.				
230	Kathy	Wilmering		286
231	Bonnie	Bledsoe		286
232	Kristen	Leathers		287
233	Joan	Harris		287
234 - 235	Sara	Cate		287
236	Rob	Bowman		287
237	Liz	Illg		288
238	Karin	Link		288
239	Peter and Mary Alice	Belov		288
240	Mary	Ferm		288
241	Becky	Kelley		289
242	Helen	Venada		289
243	Joel and Lucinda	Wingard		289
244	Cindy	Black		289
245	Judith	Kensinger		290
246	Sara	Wu		290
247	Todd	Carey		290
248	Tami	Schendel		290
249	Angela	Foster		291
250	Gina	Hicks		291
251	Margaret	Schield		292
252	Gordon	Adams		292
253	Steve	Scott		292
254	Peter	Rimbos		293
255	Judy	Blevens		293
256	Jo Ann	Showalter		294
257	Sara	Bhakti		294
258	Den Mark	Wichar		295
259	Francy	Bose		295
260	Carolee	Colter		295
261	Martha	Atkinson		296
262	Robert and Alicelia	Warren		296
263	Thomas	Angell		296
264	Tim	Gould		297
265	Roger Harrison and	Ms. Margaret Harris		297
266	Susan	Cantrell		297
267 - 269	Ellen	Bynum		297
270	Kate	Pflaumer		298
271	Ellen	AAgaard		298
272	Laurel	Powell		299
273	Pradyumna	Misra		299

Comment Numbers by Commenter				
Comment #	First Name	Last Name	Organization Name	Page #s
274	Georgina	Cavendish		300
275	David	Gladstone		300
276 - 277	Elizabeth	Davis	League of Women Voters of Washington	301
278 - 292	Rob	VanOrsow	City of Federal Way	302
293 - 313	Larry	Blanchart	City of Kent	309
314 - 317	Walter J.	Johnson		317
318	Glen H.	Schailey		318
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326 - 328	Barbara	Rider		321
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330 - 372	Lisa	Sepanski	King County	323
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380	Charles	Brennick	InterConnection Computer Reuse and Learning Center	351
381 - 416	Larry	King	Hewlett-Packard Company	354
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473 - 475	Margaret	Shield	Toxic Free Legacy Coalition of Washington State	420
476 - 477	Heather	Trim	People for Puget Sound	422
478	Scott	Ballantine	Microsoft	423

For comments 230 - 273 and 479 - 483 portions of the emails were identical to the email comment in #224- #228. Please see the response above.

For the portions of these emails where the comments also included some additional feedback the comment and Ecology’s response is presented below following the commenter name.

479	Sue	Danver		424
480-481	James	Boone		424
482-483	Annalee F.	Cobbett, J.D.		425

Type: Written

Commenter: Suellen Mele, Washington Citizens for Resource Conservation

Comment #1

Dear Mr. Shepard,

Thank you for this opportunity to comment on the proposed rules regarding the Electronic Product Recycling Program WAC 173-900, as well as the Small Business Economic Impact Statement for Amendments to Chapter 173-900 WAC.

Residents and other covered entities want their discarded computers, monitors and TVs to be responsibly recycled in ways that protect human and environmental health. They need adequate information to make choices about which options will provide the most environmentally sound recycling, and have the right to know that toxic materials from their discarded products are being handled safely throughout the entire recycling and disposal chain. In addition, business and government large quantity generators retain legal liability for toxic materials, and will need assurances that those toxic materials are handled properly throughout final disposition to avoid liability.

The following are Washington Citizens for Resource Conservation's (WCRC) comments. I've divided these comments into essential and substantive requests (immediately below) followed by more technical clarifications (in a separate section).

ESSENTIAL AND SUBSTANTIVE REQUESTS

WAC 173-900-030 Definitions

Manufacturer (page 4): In the definition of "manufacturer," it is very important that the phrase "or sells at retail" be deleted from part (b). The way this definition is written in the proposed rules, if a manufacturer does not have a physical presence in the U.S., both the importer and retailer would be defined as the manufacturer and equally take on the responsibility for the CEPs. This conflicts with the law, which states that if a manufacturer doesn't have a presence in the U.S., the importer is responsible (see definition 14 (e) of the law).

Ecology Response:
Agreed. Retail sellers are covered in subsection (c) of the same section.

Comment #2

Premium services (page 5): The proposed definition of "premium services" has been changed to add the phrase, "or any handling requirements imposed by the CEP owner or collector in excess of those required in this chapter." This phrase is problematic. Because the chapter does not provide detailed and specific collection requirements that must be met, I am concerned that the addition of this language could be easily used by plans to argue that they do not need to pay for even basic collection services. There are numerous reasons – logistical, legal and to avoid liability - in which collectors could reasonably need to handle CEPs in ways that are not required by this chapter. Examples are:

- Some collectors will not have adequate indoor space to store CEPs and will need to have a trailer on-site or more frequent collection service. For example, a transfer station or drop box in a rural area could easily be in this situation. Although enclosed storage is required by the chapter, trailers are not. Such on-site storage trailers or more frequent

collection, when needed, should be included in the reasonable costs that will be covered by the plans.

- Safe handling could require security, lighting, containment, etc. that are not required in the chapter.
- CEP owners, including small or large quantity generators, could need certain handling requirements to ensure that they will not be liable for illegal handling of their equipment downstream in the chain of custody. To avoid liability, CEP owners should have the right to require protective handling of materials of concern through to final disposition and require that the laws of importing countries are met through final disposition. CEP owners should also be able to require documentation of legal and safe handling through to final disposition.

Therefore, WCRC asks that Ecology remove the phrase "or any handling requirements imposed by the CEP owner or collector in excess of those required in this chapter" from the definition.

Ecology Response:
Ecology will delete "or collector" from the definition as this addition does not improve clarification of "premium service." However, "…CEP owner …in excess…" will remain. This clarifies that added services outside of basic collection are not included as a free service and must be paid for by the covered entity. Ecology will also change "CEP owner" to "covered entity" for consistency.

Comment #3

Materials of Concern: In addition, WCRC believes it would be very useful to include a definition for "materials of concern" in the definitions section rather than later in the rules:
"Materials of concern" include each of the following, and any equipment or component, or any aggregate material(s) derived from equipment or components (e.g. shredded, granulated, or mixed materials) containing or comprising any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;
(b) Batteries;
(c) CRTs and leaded glass, including processed and unprocessed leaded glass cullet; and
(d) Whole or shredded circuit boards.

Ecology Response:
Agreed. This definition is in section 650. Ecology will include it in the definition section as well. We have eliminated "shredded" from the definition based on other comments received.

Comment #4

Processor (page 5): The definition of "processor" includes a new requirement that a processor "prepares materials originating from CEPs for market as a commodity." What does it mean to be prepared for market as a commodity? In general, how does this language change who is considered to be a processor? Will some intermediate processors or collectors who do limited processing (who might not get materials to the point that they are considered a commodity) be excluded from the definition? WCRC would be concerned if this were the case, since all entities performing processing activities (such as disassembling or shredding) should be required to meet the processing standards. We ask Ecology to consider the possibility of removing this phrase from the definition. Please refer to my comments on WAC 173-900-450 related to this issue.

Ecology Response:
Agreed. This is duplicative of the language in "Processor" subsection (a) and should be deleted.

Comment #5

WAC 173-900-280 Administrative fee
Subsection (5)(b) regarding tier placement for new manufacturers (page 27) states that "Ecology will assign these manufacturers to Tier 4 for the second and future program years unless CEP unit sales data indicates another tier is appropriate." This seems to conflict with the definition of "New manufacturers to Washington state" (pages 4 and 5), which states that new manufacturers "become existing manufacturers for all program years after participation the first year." WCRC agrees that a new manufacturer should become an existing manufacturer after their first year, and thinks that their tier placement should then be based on the same process and criteria as other existing manufacturers. New manufacturers to Washington state are not necessarily small manufacturers, and should be treated the same as other existing manufacturers after their first year. Therefore, we recommend that the following sentence from subsection (5)(b) be deleted: ~~Ecology will assign these manufacturers to Tier 4 for the second and future program years unless CEP unit sales data indicates another tier is appropriate.~~, and be replaced with the following: "These manufacturers become existing manufacturers for all subsequent program years after the first year, and Ecology will assign their tier placement as described in subsection (5)(a)."

Ecology Response:
Agree with the fact that this is inconsistent. Ecology will re-write clarifying language.

Comment #6

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Subsection (2)(a) (page 31): We appreciate the work Ecology has already done to include transparency in the rules, and urge Ecology to take additional steps to make sure that the transparency is adequate. Transparency about final disposition of all materials of concern is essential. The clear intent of the law and of the legislature is safe and environmentally sound collection, transportation, and recycling of CEPs. Also, CEP owners - including businesses, governments and charities who are small or large quantity generators - must be able to ensure that they will not be liable for illegal handling of their equipment downstream through the chain of custody. To avoid liability, CEP owners should be able to choose programs based on transparent information about the fate of materials of concern through to final disposition. In addition, the public must have a way to hold manufacturers accountable for providing responsible recycling.

WCRC strongly supports provision (2)(a) (page 31) requiring that the authority or authorized party provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled. However, we urge Ecology to add the following clarifying language to this section: "Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals." Alternately, the following clarifying language could be added: "Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals."

Ecology Response:
Ecology believes that "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #7

Subsection 2 (pages 31): An essential requirement related to due diligence was dropped from the previous draft of the rules. WCRC urges Ecology to include the following language:
(2) The authority or authorized party of a plan must:
(c) Perform due diligence in the selection of all collectors, transporters, and processors used to provide services for the plan to ensure that they utilize practices that protect worker safety, public health, and the environment.
(d) Track Materials of Concern throughout final disposition, performing due diligence on and obtaining verifiable documentation from all vendors receiving materials of concern resulting from CEPs.

Please see my comments about on section WAC 173-900-030 for a definition of materials of concern. Also see my comments on WAC 173-900-650 for a definition of final disposition.

The people of Washington will want manufacturers' plans, through their authorized parties and the authority, to use due diligence in their choice of service providers. Nothing in the law keeps the authority or authorized parties from using due diligence as they choose service providers and, in fact, there are a number of relevant sections of the law that require such due diligence. Even the authority, which must accept equipment from registered collectors, must use due diligence to ensure that those collectors are registered. In addition, the law specifically gives the authority the ability to use due diligence for direct processors through the inclusion of standards for service in the authority's general operating plan (70.95N.320(2)) and through their contractual arrangements. In fact, the law requires audits of direct processors, which is clearly an important tool for applying due diligence. Therefore, WCRC urges Ecology to put the above provisions into the rules.

Ecology Response:
Due diligence is included in the voluntary preferred performance standards. The state can not regulate beyond its reach granted by the United States Constitution.

Comment #8

Subsection 2 (pages 31): WCRC requests that the following provision be added to subsection 2. Although similar language pertaining to direct processors is already in (and should remain in) the rules, this new additional section would apply to the authority and authorized parties.
(2) The authority or authorized party of a plan must:
(e) comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, and/or disposal, if the authority or authorized party exports CEPs outside of the U.S.

Ecology Response:
Ecology was only granted authority to establish performance standards for direct processors and collectors. This is beyond the scope of Ecology's authority.

Comment #9

Subsection 3(b) (page 32): This section states that the authority shall accept and use any processor that meets the requirements of this chapter and meets any requirements described in the authority's operating plan or through contractual arrangements. However, this list of requirements is incomplete and should be augmented to match the requirements set out in law (70.95N.280 (7)). Such text already exists in section WAC 173-900-600 (3)(a), (b) and (c) of the rules. Please replicate or refer to this text in WAC 173-900-300 3(b).

Ecology Response:
WAC 173-900-300(3)(b)(i) states that a processor must meet the requirements of this chapter, which would include subsection 600(3)(a), (b) and (c), as well as all other requirements. It is unnecessary to replicate the language.

Comment #10

WAC 173-900-335 Update and revisions to CEP recycling plans.

WAC 173-900-600 (1)(e) and (f) states that for a direct processor to process CEPs for a plan, they must be in "in compliance" status on ecology's web site and meet the minimum or preferred performance standards as assigned on the website. This is also the intent of the chart (page 65) that states that "in compliance" means the direct processor is registered and complies with the requirements in WAC 173-900-650. WCRC supports this approach. For a processor to be used by a plan, Ecology should have already received the compliance audit report for the processor, reviewed the report and determined that the processor meets at least the minimum standards, and posted the processor on the website as being in compliance and meeting either the minimum or preferred standards.

Unfortunately, there appears to be a gap in this system. This system will work when processor information, including the compliance audit report and contract face sheet, is submitted as part of the initial plan submission. However, if a plan changes or adds processors, they must submit a "nonsignificant" revision to the plan as described in 173-900-335 (4). Plan revisions are submitted after the change happens. The compliance audit reports and contract face sheet are submitted as part of the revision process – again, after the change happens. Ecology will only be able to determine if the processor is "in compliance" and at least meets the minimum standards when the compliance audit report is submitted.

This is problematic for the following reasons:

1) It appears that a direct processor could register (173-900-610(1), page 68) without Ecology receiving an audit compliance report. Ecology will not be able to determine if the processor has met the minimum or preferred standard, and won't be able to indicate this on the website. This would – and should - prevent Ecology from indicating that the processor is "in compliance."
2) An addition or change to direct processors used by a plan is currently considered to be a nonsignificant revision to a plan. Submission of the compliance audit report and contract face sheet are also considered to be nonsignificant revisions. Nonsignificant changes do not require approval, but in reality Ecology will need to review and approve the compliance audit report in order to determine whether the processor is in compliance with the minimum or preferred standards and to post this information to their website.

3) Revisions only need to be submitted to Ecology within 14 days of the change. Also, since adding or changing processors is currently considered to be a nonsignificant revision, there is no timeframe set for when Ecology must review the audit report and post information to the website. Even if this were considered to be a significant revision, Ecology would have up to 60 days for review. Either way, there will be a gap of time in which a plan could be using a new processor without Ecology determining whether the processor is in compliance with at least the minimum standards.
4) There will also be a gap of time during which covered entities will not know where their CEPs are being processed or whether their CEPs are being handled by a processor who meets the minimum standard, the preferred standard, or **no standard at all**.

To truly resolve this issue, changes or additions to processors should be approved by Ecology prior to the processor beginning to process CEPs for a plan. As described above, this is already required in WAC 173-900-600 (1) and (2). WCRC asks that Ecology develop a plan revision process that meets these provisions, i.e. requires plans to submit and receive approval for changes to direct processors, including the compliance audit report and contract face sheet, prior to the processor beginning to process CEPs for the plan.

This would require a number of changes in various sections of the rules, including the following:

- Requests to add or change processors should be submitted as a plan revision prior to the change happening.
- Any additions or changes to a processor, as well as submission of the audit compliance report and face sheet, should be considered a significant revision requiring Ecology approval.
- It's possible that a plan would need to quickly change a processor, for example if an existing processor is not in compliance with a law or regulation. Therefore, Ecology should review and determine whether the revision complies with the chapter in an expedited manner – perhaps within 14 days. Alternately, language could be added to address emergency situations.
- If a processor is listed on the direct processor registration list prior to a plan submitting a revision or while Ecology is reviewing a plan revision, Ecology should indicate that the processor's status is "in review" and their compliance with performance standards is "unknown." This would require an additional category in the chart on page 65.

Finally, the sequence related to a processor contracting with a plan, processor registration, plan submission of audit report, and plan revision review by Ecology is complicated. I'd suggest that Ecology look at all the sections related to these actions and make sure that the sequence is workable.

Ecology Response:
Prior to registering as a direct processor Ecology must receive, and approve, a CEP recycling plan that: includes that processor and an audit report for that processor. Direct processors must submit their registration form to Ecology thirty days prior to providing services to a plan and must be listed in an approved plan. This thirty day period gives Ecology plenty of time to confirm the information in the CEP recycling plan against the information provided in the processor's registration form.

In addition, the language in the rule is clarified to require Ecology approval of updates to a plan for the purposes of using a new processor. This clarifies that it is a 'significant revision" to a plan.

Comment #11

WAC 173-900-350 CEP recycling plan compliance

Subsection 1(b) (page 43): When a manufacturer is in plan violation, Ecology should give the manufacturer 30 days to correct the problem prior to placing the manufacturer in "in violation" status. The language should be changed to reflect this: Manufacturers who do not meet their financial obligations in their plan are in plan violation ~~and will be placed in "in violation" status (see WAC 173-900-255)~~. Ecology will follow the warnings and penalties procedures described in WAC 173-900-260.

Ecology Response:
This is correct. Language will be changed to clarify this and maintain consistency. Please see edits.

Comment #12

Subsection 2(b) (page 43): The same is true for this section. When a manufacturer is in plan violation, Ecology should give the manufacturer 30 days to correct the problem prior to placing the manufacturer in "in violation" status. The language should be changed to reflect this: Manufacturers who do not comply with the responsibilities identified and agreed to in their plan are in plan violation ~~and will be placed in "in violation" status (see WAC 173-900-255)~~. Ecology will follow the warnings and penalties procedures described in WAC 173-900-260.

Ecology Response:
This is correct. Language will be changed to clarify this and maintain consistency. Please see edits.

Comment #13

Subsection 3 (page 43): WCRC supports this approach. However, when a processor receives penalties, violations or regulatory orders from national, state or local government agencies, WCRC would like to see the notification process to Ecology happen quicker than what is currently written into the rules. Also, we believe that this information should be made public through Ecology's website. We therefore recommend the following additions to this section:

(3) Noncompliance with laws and regulations: The authority or authorized party must notify ecology within ~~thirty~~ 14 days if a direct processor used by the plan has notified the plan of any penalties, violations, or regulatory orders related to processing activities that the direct processor received from national, state or local government agencies.

(a) Within five days of receipt, ecology will send the direct processor a warning letter and follow warning and penalty procedures in WAC 173-900-680.
(b) Within five days of receipt, ecology will post on its website a list of penalties, violations, or regulatory orders related to processing activities that the direct processors received from national, state or local government agencies.
(c) ~~(b)~~ Within sixty days of providing notice to ecology, etc.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time.

Comment #14

WAC 173-900-355 Collection services

S*ubsections 1, 2 and 3 (page 44):* Not all collectors will be able to collect all sizes of CEPs. However, the rules should require that plans provide options for collection of all types and sizes of CEPs. This requirement was included in the last draft of the rules, but was omitted when this section was reorganized. WCRC recommends the following additions:

(1) Each plan must include a description of the method(s) for the reasonably convenient collection of all types and sizes of CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.
(2) County: The plan must provide collection services for all product types and sizes in each county of the state.
(3) Urban, city . . .that together provide at least one collection opportunity for all product types and sizes for every city or town in the state with a population of greater than ten thousand.

Ecology Response:
Collection services for all CEPs must be provided. Ecology will delete "types of" as a qualifier, in order to emphasize inclusiveness.

Comment #15

Subsection 4 (page 44): If a mail-back program is provided for rural areas, does anyone need to register as the collector or transporter?

Ecology Response:
Parcel services such as United Parcel Service or Federal Express will not be required to register as a collector or transporter.

Comment #16

Subsection 10 (page 45): Please add the following words to (10)(a)(iii): Open regularly scheduled hours on an ongoing basis.

Ecology Response:
This is in the statute and will be added to the rule.

Comment #17

Subsection 11 (page 46): It is possible that premium services will be offered to households as well as other covered entities such as businesses. Therefore, in the last sentence in subsection (11)(e)(2), please change "householder" to "householder or other covered entity using the service."

Ecology Response:
"Householder" will be changed to "covered entity" for consistency.

Comment #18

WAC 173-900-365 Annual compliance audit reports for direct processors

Subsection 1(page 47): This section requires that the annual compliance audit reports must certify that the direct processors meet certain standards. Who would need to certify the report? Would certification need to be from an accredited body such as ANAB? Or, is the intention to require that the authority or authorized party provide a warranty?

WCRC suggests the following clarification in subsection (1): For each direct processor used by the plan, the authority or authorized party must provide ~~an~~ a verifiable annual compliance audit report to ecology.

Ecology Response:
Thank you for the suggestion. The suggested language would not add value beyond what is required.

Comment #19

Subsection 2 (page 47): The authority or authorized party must submit the compliance audit report with their plan submittals (WAC 173-900-320), plan updates and revisions when there are additions or changes to direct processors used by the plan (WAC 173-900-335), and as part of the annual report (WAC 173-900-800).

Ecology Response:
Agreed. Please see edits.

Comment #20

Subsection 3 (page 47): WCRC suggest the following clarifying language: For demonstration of compliance with the minimum standards in WAC 173-900-650, the annual compliance audit must be conducted by a second or third party auditor not employed by the processor.

Ecology Response:
Thank you for the suggestion. The suggested language would not add value beyond what is required.

Comment #21

Subsection 4(b) (page 47): The law states that plans must contain "Documentation of . . . compliance with processing standards" (70.95N.060(5)(f)). In 4(b), the rule uses the word "confirmation" instead of "documentation." WCRC urges Ecology to use both words, to indicate that Ecology expects the audit reports to provide documents that show that the processors are complying with the standards. The audit information provided to Ecology needs to be detailed enough to determine if the processors are operating in accordance with the standards and other relevant laws and regulations. A "yes/no" checklist is not sufficient. Subsection 4(b) should then read as follows: "Confirmation and documentation that the direct processor meets each of the performance standards, including . . ." This is extremely important.

Ecology Response:
"Confirmation" will be deleted and "documentation" will be added in order to match the requirement in the law.

Comment #22

WCRC also recommend the following clarification in (4)(c): Documentation of actual conflict: When a conflict ~~with~~ occurs between the minimum direct processor performance standards ~~occurs~~ and an applicable national, state, or local law, rule or ordinance, documentation of the actual conflict and of compliance with the national, state, or local laws or rules that apply.

It would also be useful to add a definition for "actual conflict." The following is a possible starting place: Actual conflict means a situation where a direct processor cannot comply with Washington's processing standards without being in violation of the law of another country, state, or jurisdiction. The existence of a different regulatory system for processing CEPs or of

less stringent standards does not constitute an actual conflict. Economic or financial considerations are not relevant to the determination of whether an actual conflict exists.

Ecology Response:
Ecology agrees that the language needs some clarification and will do so. Please see edits.

Comment #23

Subsection (5): I think it would be very useful to specify what kind of professional training is required of an auditor. I've been told that the following certifications are possible minimum requirements: Certified Hazardous Materials Manager (CHMM), Registered Environmental Manager (REM), or Registered Environmental Professional (REP). WCRC recommends that Ecology research this issue and include minimum certification requirements for auditors who perform the annual compliance audit.

Ecology Response:
By naming specific certification programs, we exclude others. The suggested language will not be added.

Comment #24

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

In a later section (173-900-450), the activities of a collector have been expanded to allow for dismantling or disassembling CEPs for the purpose of removing components for reuse in refurbished electronic products. WCRC is concerned about this provision and recommends certain revisions, as described on the next page. However, if Ecology allows collectors to perform any functions beyond collection, we strongly recommend that collectors be required to indicate that they are engaged in those additional activities as part of their registration. Notification through the registration process will allow Ecology to prioritize those collectors for inspections to determine that they are not really acting as a processor.

In addition, as currently written, collectors may register but not participate in a plan. WCRC is concerned that registered collectors could use the registration status to be listed on Ecology's website and to attract customers, but not participate in a plan and ship to a processor that does not meet the minimum performance standards set out in the law. WCRC suggests that, starting in 2009, Ecology require that collectors indicate through their registration which plan they are participating in.

Subsection (1): The following should be required on the collector registration forms:
(x) Whether the collector is refurbishing and selling used CEPs. (Note: As discussed below, WCRC does not recommend that collectors be allowed to sell used components. However, if allowed by Ecology, the registration form should also indicate whether the collector is selling used components.)
(xx) Whether the collector plans to recycle any CEPs through means other than by submitting to a plan and, if so, which types of CEPs.
(xxx) Identify the plan to which the collector is submitting CEPs (starting in 2009).

Additional subsection: It may be useful to add additional columns to the information included on ecology's website regarding collector registration. There might be a column that shows that the registered collector is participating in a plan; a column that shows that the collector is refurbishing and selling used CEPs; and a column that shows which collectors report that they recycle some CEPs through means other than a plan.

Ecology Response:
Ecology does not see the benefit of asking for this information. Adding this requirement will increase costs for program complaince.

Comment #25

WAC 173-900-450 Performance standards for collectors

Subsection (1)(a) (Page 54): To make 1(a) and (b) parallel with each other, we suggest the following language be added to 1(a): Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans.

Ecology Response:
Agreed. Suggested language added for consistency.

Comment #26

Subsection (2) (page 54): This section states, "A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products."

WCRC fully supports reuse of refurbished and tested working CEPs. However we are concerned that, as written, this provision would create a large loophole allowing untested CEPs and components containing toxic materials of concern to be sold in large quantities without any oversight or documentation that they are actually being reused for their original purpose. If the price is right, this equipment could get shipped overseas and end up being "recycled" under the guise of reuse in places that do not have adequate human health and environmental protections.

In addition, all processors need to meet the minimum standards. Anyone who removes components in large numbers for bulk sale will likely be involved in activities that should be considered to be processing. The definition of processing in the law specifically allows for salvaging parts: "A processor may also salvage parts to be used in new products." No such provision is mentioned in the definition of collector.

Finally, I am interested in learning what manufacturers think of this provision, since it could potentially remove the components that have value and leave the plans with the remaining equipment of lower value.

I therefore recommend that collectors be allowed to refurbish whole units for resale under specific conditions, but not be allowed to disassemble specifically for sale of the parts. This is a slippery slope, and those who disassemble for sale of parts should be required to meet the minimum processing standards.

We recommend the following language:

(2) A registered collector may refurbish used CEPs and may dismantle or disassemble CEPs for the purpose of refurbishing used CEPs ~~removing components for reuse in refurbished electronic products~~, provided that the registered collector does all of the following:

(a) If whole CEP units are refurbished for sale or donation, they must be tested and in working condition and the collector must obtain documentation that the CEPs were sold or provided for legitimate reuse.

(b) The collector must inform the customer that their equipment may be refurbished for reuse and must guarantee that data on computer hard drives will be permanently erased according to current Department of Defense Standards.
(c) If components are removed from CEPs, those components must be utilized by the collector to refurbish CEPs that are then sold or donated by the registered collector as described in subsection (2)(a) of this section. Components not reused as described in (2)(a) must be sent for recycling to the plan's direct processor.
(d) Documentation of sales of all refurbished CEPs must be kept by the registered collector for a minimum of three years and must be made available to the Department of Ecology upon request.

In addition, since collectors could sell refurbished CEPs, please add to the collector standards the following requirement: Registered collectors must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time. The concern that CEPs or parts thereof will be shipped outside of the program is understandable. The intent of the law was to allow "reuse" when a product "is used for the same purpose for which it was originally purchased." This implies the whole CEP and components and not parts derived therefrom. Therefore, we will strike the ability of a collector to dismantle unless they are also registered as a processor.

Comment #27

Subsection (3) (page 55): Please add the word "materials" as follows: A registered collector must not dismantle CEPs for purposes of recycling components or materials unless . . .

Ecology Response:
Agree. Suggested language added to remain consistent with other sections of the rule.

Comment #28

Subsection (5)(e) (page 55): As described above in comments regarding WAC 173-900-300, WCRC believes that transparency about final disposition of all materials of concern is essential. We support subsection (5)(e), which requires that "Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPs received into the program are recycled."

However, we urge Ecology to strengthen this section by:

- Adding the following: "Collectors must post, in a readily visible location, at the collection site information that ~~can~~ will be shared with covered entities about how and where CEPs received into the program are recycled.

Ecology Response:
Collectors "must" post the information. The difference between "will" and "can" in this instance does not improve the ability of a covered entity to see the information.

Comment #29

- Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals." Alternately, the following clarifying language could be added: "Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals."

Ecology Response:
Ecology believes that "how and where" includes this and therefore it is not necessary to change the language. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #30

- Requiring that collectors that have a website provide the information on their website in addition to posting it at their physical location.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time.

Comment #31

- Requiring that collectors also make available, upon request, a "Certificate of Recycling" to covered entities using their collection service. This is already a requirement of collectors participating in Take It Back Networks. An example of the King County Take It Back Network's Certificate of Recycling can be found at: http://www.metrokc.gov/dnrp/swd/takeitback/documents/Certificate_of_recycling.rtf). Please add the following language: Collectors must also provide covered entities, upon request, with written and signed "certificates of recycling" that include the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time.

Comment #32

Finally, how will premium and curbside service collectors inform their customers about how and where CEPs received into the program are recycled? WCRC suggests adding language stating that collectors providing curbside or premium services must inform their customers at least annually via mail, bill inserts, or other direct means about how and where CEPs received into the program are recycled, including information about the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Ecology will delete "at the collection site" in order to be inclusive of all collection methods, as intended.

Comment #33

Subsections 5(c) and 6 (page 55): If I understand the new sampling procedures, all sampling will be done at processor locations rather than at collectors. If this is the case, why are subsections 5(c) and 6 needed?

Ecology Response:
This language is incorporated in the event that it is necessary for Ecology to verify CEPs sampled at a processor or quantities collected by visiting a collection location.

Comment #34

Additional section (8): Please add to the collector standards a requirement that registered collectors disclose to their customers the following information:
(8) No entity shall claim to be collecting CEPs on behalf of a plan unless it is registered and is submitting collected CEPs to a plan.
(9) Registered collectors that do not provide all collected CEPs to a plan must disclose this information to the covered entities using the collection service and to Ecology. Information regarding CEPs not submitted to a plan shall be posted in a readily visible location and also provided, upon request, in a signed certificate of recycling.

Ecology Response:
Agree with (8) amended to say "No entity shall claim to be a collector of CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan." The remaining suggested language is then unnecessary. This clarifies that only registered collector can claim to collect for a plan and assures that collected CEPs are submitted to a legitimate CEP recycling plan for processing.

Comment #35

WAC 173-900-460

Subsection (1) (page 55): Please change as follows: Beginning January 1, 2009, ecology may inspect any collector receiving CEPs for reuse or recycling, any registered collector, and any collector used by a plan for compliance with this chapter.

Ecology Response:
Under RCW 70.95N and these proposed rules, Ecology can only inspect those collectors that are participating in this program. Ecology can not inspect collectors that are not participating for compliance with these rules. Other laws and rules may apply to those non-participating collectors under which Ecology or other agencies have the authority to inspect.

Comment #36

WAC 173-900-470 Collector violation

Table 470 (page 56): When a collector is in violation, Ecology should give them 30 days to correct the problem prior to placing them in "in violation" status. The language in all three sections of the column starting "and Ecology Will" should be changed as follows: ~~List the collector's name on the "collector registration list" and~~ ~~place the collector in "in violation" status~~ Follow the warnings and penalties procedures in 173-900-480."

Ecology Response:
Agree. Suggested change was made. Please see edits.

Comment #37

WAC 173-900-550 Performance standards for transporters

WCRC is concerned that there are no minimum standards associated with transportation activities. For example, there are no requirements related to packaging and handling, and no requirement that registered transporters only deliver materials to registered processors. We ask the Ecology consider adding such requirements.

Ecology Response:
Ecology was not granted authority in RCW 70.95N to establish standards for transporters. Transporters are regulated under other statutes and rules.

Comment #38

WAC 173-900-570 Transporter violations

Table 570 (page 62): When a transporter is in violation, Ecology should give them 30 days to correct the problem prior to placing them in "in violation" status. The language in all three sections of the column starting "and Ecology Will" should be changed as follows: ~~List the transporter's name on the "transporter registration list" and place the transporter in "in violation" status~~ Follow the warnings and penalties procedures in 173-900-580.

Ecology Response:
Agree. Suggested change was made. Please see edits.

Comment #39

In addition, there should be a way for collectors to know that transporters are not only registered but are actually delivering equipment to a plan. The following could be required on the transporter registration form and posted on Ecology's website:
(x) Whether the transporter plans to recycle any CEPs through means other than by submitting to a plan
(xx) Identify the plan to which the transporter is submitting CEPs (starting in 2009).

Ecology Response:
Only registered transporters may be used by plans. Plans are responsible for using registered transporters, collectors, and processors.

Comment #40

WAC 173-900-600 What direct processors need to know to process CEPs for a CEP recycling plan

See my comments for WAC 173-900-335 - update and revisions to CEP recycling plans.

Also, WCRC asks Ecology to post on their website information about which processor(s) each plan has chosen to work with to implement that plan. In other words, the site should not only list the processors but also indicate which plan each processor has a contract with. When the plan changes the processors they are working with, Ecology would update this information on the website. This could be done by adding a column to the chart on page 65.

Ecology Response:
This information is required to be posted on Ecology's website. Please see RCW 70.95N.180.

Comment #41

WAC 173-900-650 Performance standards for direct processors

WCRC supports Ecology's approach of developing two sets of standards - mandatory minimum standards based on what Ecology can enforce and preferred standards. However, we believe that the proposed mandatory minimum standards can and should be significantly strengthened.

Preferred standards: WCRC also believes that the preferred standards, since they are voluntary, should require that processing happen domestically or in an OECD or EU country. We will provide separate comments at a later date on the preferred standards, which are not included in the proposed rules.

WCRC requests that Ecology explain why each of following sections from the draft national Responsible Recycling Practices have been placed in the preferred standards rather than the minimum standards:
5. On-Site Practices (sections related to worker and environmental protection)
10. Due Diligence
11. Exporting
13. Insurance
14. Closure Plan and Financial Responsibility
15. Data Sanitization/Destruction
16. Facility Security

Ecology Response:
Ecology has determined that these elements, as written, are outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #42

Subsection 2 (page 72): Since direct processor registration does not require an audit compliance report, it appears to me that Ecology will not know whether a registered processor meets the mandatory or preferred standards when they register. Therefore, I'd suggest adding the following additional language to subsection (2): "Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets, <u>or will indicate "unknown" if Ecology does not have adequate information to determine the processor's performance</u>."

Ecology Response:
The authority or authorized party must submit the audit with their plans, which are submitted to Ecology prior to processor registration and plan implementation. In addition, a direct processor must submit their registration form for approval at least 60 days prior to providing services for a plan.

Comment #43

Subsection 4 (page 72): To match the sections that follow, "materials that cannot be recovered" should be listed as one of the requirements. WCRC also urges Ecology to include a section on due diligence (see below).

Ecology Response:
The correct heading was added and clarified based on other comments received. It now reads "Recycling, reuse, and disposal."

Comment #44

Subsection 5 (pages 72 and 73) Prioritized hierarchy of responsible management strategies

Reuse - Subsection 5(a)(i) (page 72): It is important that Ecology protect against "sham" reuse. Therefore, we request that the following language be added to (5)(a)(i): Reuse –May direct~~ing~~ CEPs and CEP components to reuse and refurbishment as appropriate ~~to enable shipment for reuse~~, provided that all CEPs and components are tested and fully functional prior to resale or donation; accurately labeled; and packaged and shipped in a manner that will minimize damage during transport.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received. Reuse language is included subsection 650(11).

Comment #45

Recycling - Subsection (5)(a)(ii)(B) (page 73): This part should refer to subsections 9(d) and 10 - not just (10)(a).

Ecology Response:
WAC 173-900-650(5)(a) has been deleted from the rule based on comments received.

Comment #46

After Subsection (5)(a)(ii)(B), please add the following language which parallels the draft national Responsible Recycling Practices: Direct processors must use due diligence to send these materials for recovery at facilities that use technologies protective of health, safety, and the environment.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received.

Comment #47

Disposal - Subsection 5(iii) Disposal (page 73): This subsection should deal with disposal, not recycling. Therefore, part A should be deleted. In addition, since the law requires that the CEPs be recycled, not disposed, part B should make it clear that only residuals can be disposed. This language should also more closely reflect the national Responsible Recycling Practices. Please change part B to the following: ~~When~~ Any residuals ~~materials cannot be recycled, they~~ must be disposed of in conformance with applicable laws and regulations, and each residual stream must be sent to a facility that employs technology that is specifically designed for that stream and that is protective of health, safety, and the environment. Materials of concern may not be sent to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal.

Ecology Response:
Ecology does not have the authority to ban disposal of any residuals at this time. "Materials of concern" as defined in the rule are not regulated hazardous wastes and therefore can be disposed of in solid waste facilities. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received.

Comment #48

Subsection 6 Legal Requirements

Subsection 6(a)(iv) (page 73): Thanks to the Department of Ecology for including language related to compliance with the laws of all transit and recipient countries. WCRC asks that the language in subsection 6(a)(iv) be clarified as follows. A direct processor and their vendors that handle equipment and components containing materials of concern must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #49

Ad*ditional section to follow subsection (6)(a):* WCRC urges Ecology to require documentation of the requirement to comply with the importation requirements of transit and recipient countries. This is extremely important. Please add the following language: "A direct processor must document compliance with importation requirements of all importing and transit countries for all exports of materials, components or devices containing or comprising materials of concern. Such documentation shall include, at a minimum, approval from Competent Authorities in each importing and transit country."
Alternately, this language could be included in subsection (8) on recordkeeping.

Ecology Response:
Ecology already agreed that the annual compliance audit must be documented as complying with these standards. Therefore this added language is not necessary.

Comment #50

S*ubsection 6(b) (page 73):* In this subsection, it is not clear who is meant by a "customer." It's also not clear who must be told about subsequent penalties or regulatory orders. If "customer" refers to the authority or authorized party, this requirement is already covered in WAC 173-900-650 (15). If customers include registered collectors and covered entities, it would be useful to clarify this. Please note alternate language suggested under subsection 15.

Ecology Response:
"Customer" is corrected to "covered entity."

Comment #51

Subsection 7 Environmental, health and safety management systems (EHSMS)

WCRC strongly supports the inclusion of this section in the mandatory minimum standards. We ask that the following provision from the draft national Responsible Recycling Practices be included as subsection (7)(a)(vi):

A procedure for identifying and evaluating the environmental, health, and safety impacts of downstream vendors, and for utilizing this information in the selection of downstream vendors.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #52

Subsection 8 Recordkeeping

WCRC supports the inclusion of this section in the mandatory minimum standards.

Ecology Response:
Thank you for your comment!

Comment #53

Subsection 9 On-site requirements (pages 75-76)

Subsection 9(a)(ii) (page 75): Comparing this section to the draft national Responsible Recycling practices, it appears that the word "good" has been dropped in the following sentence: A direct processor must use good materials handling, storage, and management practices . . .

Ecology Response:
"Good" is an adjective that adds no practical clarity for enforcement ability. However, the sentence does need clarification. Please see edits.

Comment #54

Subsection 9(b) on disposal (page 75): WCRC strongly recommends deleting this subsection for two important reasons. First, pertinent information about disposal of residuals is already covered in subsection 5 on the prioritized hierarchy of responsible management. Second, this subsection implies that disposal of CEPs is allowable. This is clearly not the case. If CEPs were disposed, they would not be eligible to count toward a plan's equivalent share. Only non-recyclable residuals may be disposed. Please delete this misleading and problematic subsection.

Ecology Response:
The subsection is necessary but needs clarification. Please see edits.

Comment #55

Subsection 9 (c) use constituting disposal: I find this section to be confusing, especially part (ii). What is its intention? What does "incapable of performing the function for which it was originally created" mean?

Ecology Response:
If the material is used in a way that renders it not usable as a material in a CEP, it is considered disposal. Example – grinding plastic and using it as filler in concrete or grinding plastic and using it as fuel in a waste to energy facility. In these situations, the handling must comply with applicable hazardous waste and solid waste laws.

Comment #56

Subsection (9) (d) Materials separation and processing:
We strongly support Ecology's approach of listing materials of concern and requiring that they be handled in a protective manner. These include batteries, mercury-containing devices, all circuit boards, CRT glass, and any components, shredded material, or whole units containing them.

WCRC recommends that language be added to require that all direct processors – wherever they are located – handle batteries and mercury containing components in conformance with the Universal Waste Regulations in Chapter 173-303-573 of the Dangerous Waste Regulations. CRT glass should be handled in conformance with Chapter 173-303-071, which includes the proposed CRT rule. Circuit boards should be handled in conformance with Chapter 173-303-071. If there is any concern or drawback to referring to these sections, the pertinent text should be written directly into the electronics rules. By specifying these standards for managing materials of concern, the auditor will have more specific requirements to audit against.

Batteries, mercury containing components, and CRTs and leaded glass should be removed from CEPs and processed separately. However, our understanding is that processing technologies for circuit boards range from removal and separate processing to shredding along with whole units. We therefore do not believe that the rules should require that circuit boards be separated prior to processing. However, technologies should be used that provide as much separation and reclamation of mixed materials as possible, rather than sending mixed materials directly to smelters. New technologies are emerging that allow shredded fractions to be further separated for their highest material recovery.

The following is suggested language. Please note that in addition to adding underlined language, this subsection has been somewhat reorganized.

(d) Materials separation and processing

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) "Materials of concern" include each of the following:

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

(B) Batteries;

(C) CRTs and leaded glass; and

(D) <u>All</u> whole or shredded circuit boards.

(iii) A direct processor must remove <u>all</u> materials of concern, <u>except circuit board</u>, prior to mechanical or thermal processing.

<u>(iv) A direct processor must</u> handle ~~them~~ <u>all materials of concern, including any CEPs, CEP components, or shredded or mixed materials containing materials of concern,</u> in a manner consistent with ~~the regulatory requirements that apply~~ <u>Chapter 173-303 of Washington's Dangerous Waste Regulations. Specifically, batteries and mercury containing devices must be handled according to the Universal Waste Regulations in WAC Chapter 173-303-573. CRT glass and circuit boards must be handled according to WAC Chapter 173-303-071.</u>

<u>(v)</u> <u>The materials of concern,</u> or any substances contained in them, <u>must be handled</u> in a secured, sheltered enclosure with an appropriate catchment system. <u>(vi)</u> To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

<u>(vii) A direct processor must not send materials of concern to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal.</u>

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, until a material becomes a waste and then designated as hazardous, only then does it come under the purview of hazardous waste regulations.

Comment #57

Subsection 10 Materials recovery and materials disposal (page 76)

Subsection 10(c): WCRC supports this subsection, especially the requirement in 10(c) that a direct processor must direct streams that are not directed to reuse to materials recovery, unless doing so poses unacceptable risk or is not technically feasible. This is extremely important. We request that the following language be added to this subsection: Smelting whole CEPs is not materials recovery. After shredding or dismantling the CEPs, scrap metal and plastics should be sent for material recovery whenever possible rather than smelted or incinerated even with energy utilization or recovery.

Ecology Response:
Subsection 11(c) has been deleted. Ecology agrees with comments received that the language is ambiguous. "Risk" is not a defined against standard.

Comment #58

Subsection 10(e): Since only residuals may be disposed, I suggest adding the word "residual" to this section as follows: A direct processor must send each residual stream destined for disposal to a facility designed to safely handle all the contents of the residual stream.

Ecology Response:
Agree. Ecology made the suggested change. Please see edits.

Comment #59

Subsection 11 Materials that cannot be recovered (page 76)

WCRC has a number of serious concerns with this section and suggests the following critical changes.

The feasibility of material recovery should not be based on economics. This is an open door to allowing any number of materials to be disposed if recycling is more expensive than the plans are willing to pay. Second, only residuals should be disposed. Since CEPs are recyclable, "equipment" should not be allowed to be disposed. Finally, based on Washington's waste management hierarchy and the hierarchy described in subsection 5 of this section, energy recovery is a disposal strategy. The word "disposal" includes landfilling, incineration, and waste-to-energy incineration.

Subsection 11(a): We suggest the following language: A direct processor must identify and utilize ~~effective and~~ safe ~~energy recovery or~~ disposal strategies for all ~~equipment, components, and materials~~ residuals that are not technically ~~or economically~~ feasible to recover.

Ecology Response:
By definition, residuals can not be recycled. Please see edits in subsection 11(c).

Comment #60

Subsection 11(b): We suggest the following language: A direct processor must separate ~~equipment, components and~~ residual materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

Ecology Response:
By definition, residuals can not be recycled. The sentence needs clarification. Please see edits. Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #61

Subsection 11(c): WCRC strongly prefers that subsection 11(c) be completely deleted. It is unnecessary and could open the door to unsafe incineration, especially of materials of concern. However, if it is kept, we request that it only refer to non-toxic residuals and not recyclable materials, as follows: A direct processor may direct ~~streams~~ non-recyclable residuals that do not contain materials of concern or toxic substances with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #62

Subsection 11(d): Materials of concern are toxic. When they are contained in residuals destined for disposal, they should not be sent to solid waste facilities. WCRC therefore urges Ecology to make the following change: A direct processor must not send residuals containing whole or shredded materials of concern to incinerators, waste-to-energy incinerators or solid waste landfills ~~if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies~~.

Ecology Response:
This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

Comment #63

Subsection 12 Transport (page 77)

WCRC recommends adding “materials” to this section as follows: A direct processor must ensure that all CEPs and CEP components and materials to be transported are packaged in compliance with all applicable transport laws and rules.

Ecology Response:
Agree. Ecology made the suggested change. Please see edits.

Comment #64

Subsection 13 Prison labor (page 77)

Thank you for including this very important provision in the mandatory minimum standards.

Ecology Response:
Thank you for the comment!

Comment #65

Subsection 15 Notification of penalties and violations (page 77)

WCRC strongly supports this approach. To ensure that the authority or authorized party knows of any penalties and violations, and to ensure a timely response by the processors, we recommend the following additions to this language:
Prior to contracting with the authority or an authorized party, a direct processor must notify that authority or authorized party of any penalties, violations, or regulatory orders related to processing activities received in the previous three years.

Ecology Response:
Disagree. The audit will demonstrate that processors are in compliance with current laws. Compliance history is not necessary to determine current compliance.

Comment #66

Each direct processor must notify the Department of Ecology and the authority or authorized party of the plan(s) for which the direct processor provides services within 14 days if the direct processor receives any penalties, violations or regulatory orders related to processing activities. A direct processor must also make available to all covered entities and collectors a list of all such penalties, violations or regulatory orders upon request.

Ecology Response:
The rule language has been changed. The authority or authorized party no longer have to notify Ecology. The rule now states that the direct processor must notify Ecology within 30 days of receiving a penalty violation or regulatory order related to processing.

Comment #67

Additional subsection on Due Diligence

WCRC urges Ecology to include a mandatory standard requiring that direct processors provide due diligence on their subcontractors for materials of concern. We understand that Ecology is concerned that it might not have the authority to directly regulate subcontractors. However this due diligence requirement would be applicable specifically to the direct processor and does not regulate downstream vendors. We ask Ecology to do everything in its power to explore and implement approaches for ensuring that materials of concern are handled safely throughout final disposition so that environmental and human health is protected. For example, an alternate approach could be to require due diligence of the authority and authorized parties (see my comments on WAC 173-900-300 (2) above).

We urge the inclusion of the following language, which is based on language in part 10 of the draft national Responsible Recycling Practices:

> A direct processor must perform due diligence on and obtain verifiable documentation from downstream vendors to which they ship materials of concern, either directly or through intermediaries, to ensure that they utilize practices that protect worker safety, public health, and the environment.

Track Materials of Concern throughout final disposition, performing due diligence on and obtaining verifiable documentation from all vendors receiving materials of concern resulting from CEPs.

It might also be useful to include the following definition of final disposition: Final disposition means the point in the recycling/disposal chain where no further processing takes place and the materials are either ready for use as a direct feedstock in manufacturing new products or are finally disposed. This includes smelters for metals-bearing material; lead smelters or glass-to-glass manufacturing facilities for CRT glass; and landfills, incinerators, and waste-to-energy incinerators. This does not include bulk and material blends that are sent to other vendors for additional processing; or shredded and separated materials that are sent to other vendors for additional processing.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #68

WAC 173-900-660 Ecology determination of direct processor violations

Subsection 3 (page 78): Ecology should be able to also use inspections to determine if a direct processor is listed as meeting the minimum or preferred standards. The following language reflects this change: (3) Ecology will use the annual compliance audit report for a direct processor, and may also inspect a direct processor, to determine if the direct processor is listed as meeting the minimum standards . . .

Ecology Response:
The rule no longer contains violations for direct processors. If a direct processor does not meet the minimum performance standards or registration requirements in WAC 173-900 it is a violation for the authority or authorized party using that direct processor.

Comment #69

WAC 173-900-670 Direct processor violations

Table 670 (pages 78 and 79): When a direct processor is in violation, Ecology should give them 30 days to correct the problem prior to placing them in "in violation" status. The language in all three sections of the column starting "and Ecology Will" should be changed as follows: ~~List the direct processor's name on the "direct processor registration list" and place the transporter in "in violation" status~~ Follow the warnings and penalties procedures in 173-900-680.

Ecology Response:
The rule no longer contains violations for direct processors. If a direct processor does not meet the minimum performance standards or registration requirements in WAC 173-900 it is a violation for the authority or authorized party using that direct processor.

Comment #70

WAC 173-900-800 CEP recycling plan annual reports

Thanks to Ecology for requiring that critical information be included in the annual reports. WCRC strongly supports the annual report section as proposed, including the requirements to report on:

- Final destination for the processing of CEPs and their components and final destination for disposal of residuals;
- A list of subcontractors used by the direct processor including their facility addresses; and
- The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the OECD or the EU.

Ecology Response:
Thank you for the comment.

Comment #71

WAC 173-900-980 Public outreach

Subsection (1) page 99: Ecology may want to consider paralleling the law (70.95N.120 (1)) by adding the following requirement. "An independent plan and the standard plan must inform covered entities about where and how to reuse and recycling their CEPs at the end of the product's life, including provision of ecology's or another website or toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for reuse or recycling."

Ecology Response:
Agreed. RCW 70.95N.120 requires that a website and a toll free number must be provided. Language requiring such will be incorporated into the rule.

Comment #72

Subsection (2: page 99: The law required that the plans provide outreach about reuse, but unfortunately did not specify the same thing for Ecology. This was an oversight. Because the plans must provide this information and because the processing standards include the waste hierarchy in which reuse is prioritized over recycling, I encourage Ecology to provide outreach about reuse. In addition, it's critical that only registered collectors who are actually participating in a plan be listed. Equipment from unregistered collectors or registered collectors not used by a plan may be improperly processed, so those collectors should not be included in Ecology's outreach.

I'd therefore suggest the following additions:
(2) Ecology will promote CEP reuse and recycling by:
(a) Posting information describing registered collectors participating in a plan who ~~where to~~ reuse and/or recycle unwanted CEPs on its web site;
(b) Providing information about registered collectors participating in a plan who reuse and/or recycle~~ing~~ CEPs through a toll-free telephone service; ~~and~~
(c) . . .; and
(d) Ecology will only promote CEP recycling and reuse opportunities provided by registered collectors that are submitting CEPs to an approved plan and that meet all the collector performance standards in WAC 173-900-450. Registration alone does not qualify a collector for inclusion.

It is important that a collector who sells or donates reused or refurbished CEPs be listed on Ecology's website **only** if the collector is registered, submits CEPs to an approved plan, and meets all the collector performance standards in WAC 173-900-450 - including those additional reuse requirements recommended by WCRC. For example, all CEP units must be tested and in working condition prior to sale or donation. Please see my comments under WAC 173-900-450.

Ecology Response:
RCW 70.95N.120(2) indicates that Ecology will promote recycling of CEPs. The law also mentions reuse. The waste management priorities established in Chapter 70.95 RCW Solid Waste Management, are listed first waste reduction, recycling, landfill, or incineration for energy recovery of source separated wastes and lastly, landfill or incineration for energy recovery of mixed wastes. Ecology promotes reuse as part of the overall waste reduction strategy. It is not unique to CEP recycling.

Collectors that meet the performance standards and are collecting for a plan will be indicated as such on Ecology's webpage.

Comment #73

Small Business Economic Impact Statement for Amendments to Chapter 173-900 WAC

The Small Business Economic Impact Statement assumes that 50 cents per pound caps the amount plans will spend because that would be the amount a plan would pay for pounds it under collects in meeting its equivalent share (page 7). I request that Ecology consider whether 50 cents per pound is the correct amount to charge, or whether it is too low. Ecology has the option of adjusting this amount (RCW 70.95N.220(4)). If the 50 cents per pound amount is likely to cause unintended consequences, the Economic Impact Statement should indicate the possibility of an alternate.

That said, it does not appear that current costs are approaching 50 cents per pound. The Economic Impact Statement indicates that collectors currently receive $4.6 million in fees and $630,000 from sales of parts and recyclable materials (page 6) for about 23 million pounds of equipment (page 10). If that is gross income, much of that will pay for transportation and recycling of CEPs, components and materials that cannot be sold for a profit. This seems to imply that collection, transportation, and refurbishment or processing of the equipment is currently being done for about an average of 23 cents per pound. Is that correct?

Ecology Response:
No, this is not correct. This is only part of the cost. You need to sum the cost of collection, transportation, and processing.

Comment #74

As indicated in the Economic Impact Statement, service providers will incur additional costs to comply with the law. However, the 23 cents per pound is well under the 50 cents per pound "cap" described in the document.

Ecology Response:
No. Twenty-three (.23) cents per pound is just part of the costs. The costs may be as high as fifty (.50) cents for some entities.

Comment #75

The Economic Impact Statement states that collection facilities reported that they would need the plans to pay them 26 cents per pound for collection. This is high compared to others states. It also seems close to the total amount collectors are currently receiving, which covers transportation and processing as well as collection. How was the question to collectors phrased? Is it possible that collectors thought they were being asked how much would be needed per pound to cover collection, transportation and processing?

The Economic Impact Statement states that, "some plans may ship to China" (last paragraph, page 9). My understanding is that it is illegal to ship computers and TVs into China from the U.S., and therefore a processor who ships to China would not meet the minimum processing standard requiring that "A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries" (page 73 of the rules). Ecology should develop a process for enforcing this standard. In addition, please delete the statement in the Economic Impact Statement that some plans may ship to China.

Ecology Response:
We recognize that it may be illegal to ship CEPs to China from the U.S. under certain circumstances. China was only used rhetorically as an example. Ecology is changing this in the final Small Business Economic Impact Statement.

Comment #76

The Economic Impact Statement states that processor standards evaluated early in the rule development process were very costly and were abandoned because most plans would probably have opted to export the waste to the "third world" for recycling (page 14). The advisory committee was initially told that certain processing standards were deleted because they could not be enforced, not because they were costly. Since that time, however, we have been told that the current processing standards can indeed be applied to all direct processors used by the plans, including those out of state and even out of country. Please disclose which processing standards that were considered earlier have been dropped due to cost. WCRC asks that Ecology reconsider including additional strong standards that are enforceable both in and out of the state.

Ecology Response:
Based on survey results of processors, it appeared that the financial responsibility requirements in earlier drafts would likely have forced most processors to close. Therefore this requirement was not included in the proposed rule language.

Comment #77

The Economic Impact Statement indicates that it will cost an average of $9,000 per site to collect data on what county each CEP comes from (page 7, second paragraph). The law does not require this activity. The plans must report the total weight in pounds collected by county, but this can be obtained simply by totaling the weight collected at each collection site and service located in each county. Requiring collection sites to collect the address of each covered entity is unnecessary and would be a huge disincentive to collectors to participate. Please delete this section from the Economic Impact Statement.

Ecology Response:
Collections for a given site may come from more than one county. Some sites may not need to collect, but others will. Based on surveys of collectors, they estimated that to document what county a CEP came from would be an average of $9000 per site. This estimate only includes the documenting county and doesn't include tracking more specific information. Please see edits in the economic analyses documents.

Comment #78

CLARIFICATIONS

WAC 173-900-020 Applicability

WCRC suggests that subsection 7 (page 1) refer to all local governments in Washington State, not just local governments where CEP recycling services are provided. The law applies to all local governments in the state. For example, all local governments must promote CEP recycling. I recommend that subsection 7 be changed as follows:
(7) Any local government in Washington State ~~where covered electronic product (CEP) recycling services are provided~~.

Ecology Response:
Agreed. This is a clarification. Ecology made the suggested change. Please see edits.

Comment #79

It might also be worth clarifying that the covered entities in subsection (9) (page 1) must all be located in Washington State:
(9) Any household, charity, school district, small business, or small government located in Washington state (covered entities) that wants to recycle unwanted covered electronic products (CEPs).

Ecology Response:
Agreed. This is a clarification. Ecology made the suggested change. Please see edits.

Comment #80

WAC 173-900-030 Definitions

Collection services (page 2): WCRC suggests clarifying the definition of "collection services" by listing "residential at-home pick-up service" as an example of premium services. This would match the definition of premium services:
"Collection services" include drop-off collection sites or alternative collection services such as ~~residential at-home pick-up services,~~ curbside collection~~,~~ or premium services such as those provided when performing system up-grades at small businesses or residential at-home pick-up services.

Ecology Response:
Ecology does not believe this clarification is needed.

Comment #81

Computer (page 2): The definition of "computer" states that a computer is a machine "used by one user at a time." The definition also specifically excludes machines "capable of supporting two or more work stations simultaneously for computing." I've recently read articles describing software that allows up to ten people to work from one PC. I'm not certain whether this new development could create a loophole regarding what equipment is covered by the rules. However, I want to bring this to your attention for you to consider whether it would make sense to change or delete that language.

Ecology Response:
Comment noted. Ecology does not believe we need to change or delete that language.

Comment #82

WAC 173-900-200 Manufacturers who must register and participate in a CEP recycling plan

WCRC suggests two small technical clarifications in this section. First, there is a type in the chart (page 11) under "initial registration due date" for "new manufacturers to Washington state." The words "for sale" are repeated.

Ecology Response:
Ecology will make the suggested change. Please see edits.

Comment #83

Second, the chart (page 11) states that new manufacturers in Washington State must be licensed as a plan participant within 30 days of ecology approving registration. However, a new manufacturer's registration could be approved prior to Feb 2008 and therefore prior to when a plan is required. This could easily be clarified by adding a start date to the language: "Starting February 1, 2008, within thirty days of ecology approving registration."

Ecology Response:
Ecology does not believe this clarification is needed since we are aware of this concern. Ecology will not issue violations to manufactures for not being listed as a participant in a plan between the effective date of the rule and February 1, 2008.

Comment #84

WAC 173-900-205 Manufacturer's brands of CEPs that can be offered for sale or sold in or into Washington state

Regarding the chart on page 13, is it correct that there will be only one manufacturer list, the "manufacturer registration list" and not a "manufacturer plan list"? If so, will manufacturers on the "manufacturer registration list" shift back into pending status between the time that their plan is submitted and approved? Or will they remain in "in compliance" status?

The chart (page 13) states that for a manufacturer to be in compliance, it must be "participating in a plan." However, plans do not need to be submitted till February 2008 or fully implemented till January 2009. Manufacturer's are currently listed as being "in compliance" on Ecology's website without participating in a plan. I think this could be clarified by simply adding a start date to the language: "is participating in a plan (starting February 1, 2008)."

Ecology Response:
If, after February 1, 2008, a manufacturer had registered but is not participating in a plan, Ecology will issue a warning letter. If the violation is not corrected within 30 days, the manufacturer will be listed as "in violation" on the "manufacturer registration list". While Ecology reviews plans that are submitted on time, the manufacturers listed in those plans will remain in "in compliance" status because they are meeting the requirements of this chapter. If, however, ecology does not approve the plan, at that time Ecology will follow the warning, violation, and penalty procedures. To clarify, there is no manufacturer plan list.

Comment #85

WAC 173-900-220 How manufacturers know if they are registered

Subsection (7)(b)(ii) should refer to a manufacturer, not a transporter (page 20).

Ecology Response:
Ecology made the suggested change.

Comment #86

WAC 173-900-255 Manufacturer violations

On page 22, subsections (2)(c)(i) and (2)(c)(ii) seem to say the same thing. Should (2)(c)(i) refer to the "manufacturer's name," rather than the "manufacturer's brand"?

Ecology Response:
Sub-paragraph (i) is referring to the compliance status of a brand included in a registration and sub-paragraph (ii) addresses when a brand name is absent from a registration.

Comment #87

WAC 173-900-320 CEP recycling plan content
Subsection 6 (page 34): By beginning the second sentence with "at a minimum," this section could be misinterpreted to mean that the minimum description needed to meet the collection service requirements in WAC 173-900-355 is a description of how the plan has worked with certain local governments. I assume that Ecology intends to require a description of all the service requirements in WAC 173-900-355, for example how service is being provided in every county, for every city and town with a population greater than 10,000, for rural areas, etc. I think any confusion could be avoided by deleting "at a minimum" from the start of the second sentence.

Ecology Response:
Disagree. At a minimum suggests that plans should go beyond just working with solid waste management planning jurisdictions. By eliminating "at a minimum" suggests that the plans need only work with the local jurisdictions.

Comment #88

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

Subsection 3 (page36): "Authorizing" party should be "authorized" party.

Ecology Response:
Agree. Please see edits.

Comment #89

WAC 173-900-345 Changing CEP recycling plan participation.

Subsection 1 (page 42): This section states, "After February 1, 2008, no manufacturer may change CEP recycling plans for program year 2009." If a plan is disapproved, would Ecology allow the manufacturers proposing that plan to join another plan?

Ecology Response:
Manufacturers involved in a disapproved plan for 2009 will be required to join the standard plan.

Comment #90

WAC 173-900-370 Authority or authorized party violation

WCRC suggests that (2)(a) be expanded so that failing to implement the authority's or authorized party's own approved plan as submitted would also be a plan violation.

Ecology Response:
Anything in excess of what is required in the rule or law is voluntary. Ecology can not issue a violation for not meeting voluntary activities.

Comment #91

WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan

Subsection (2)(a) (page 51): Since collectors may choose to do business without participating in a plan, I'd suggest clarifying this section as follows: The only CEPs a collector can ~~collect and~~ submit to a plan are those CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

Plans may choose to allow additional products (e.g. mice, keyboards, other peripherals, etc.) to be collected in order to offer good customer service. Subsection (2)(a) might therefore be better stated as follows: Plans are not required to compensate collectors for any products other than CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

Ecology Response:
Agree. See edited language.

Comment #92

WAC 173-900-550 Performance standards for transporters

Subsection 1: Please require that all registered transporters must comply with all applicable environmental, worker safety and transportation laws, rules, and local ordinances.

Ecology Response:
Transporters are required to comply with all existing laws. The edits will reflect that transporters are subject to all applicable laws and not call out certain laws.

Comment #93

WAC 173-900-900 Return share sampling

As proposed in the rules, WCRC supports that sampling take place at processors rather than at collectors.

Ecology Response:
Thank you for your comment.

Comment #94

Subsection (2)(c) (page 89) states that if the third-party observer noticed that sampling is not conducted in accordance with the instructions, they must stop sampling for that day and notify ecology. This seems to conflict with *subsection (4)(a) (page 90),* which sets out a process for correcting a problem and indicates that the third-party observer must stop the sampling for that day if a problem cannot be corrected for the next sampled unit. WCRC supports the approach in subsection 4(a).

Ecology Response:
Agree. Clarifying edits have been made.

Comment #95

S*ubsection (4)(d) (page 90):* WCRC believes that this subsection should refer to return share, not equivalent share, as follows: "If any plan has more than one sample set eliminated for any reason, ecology may estimate that plan's ~~equivalent~~ return share based on samples collected . . .

Ecology Response:
Disagree.

Comment #96

Because I don't have knowledge about statistical sampling, I am not able to give additional specific comments about this section. However, I noticed a couple things that raised the following questions:

- *Subsection (2)(b)(iii) (page 89)* indicates that the direct processor will only be notified 24 hours in advance of sampling. Who will provide the sampling team? If the processor or the plan provides the team, how will they be able to ensure that adequate staffing is available for the sampling team with only 24 hours notice?

Ecology Response:
It is up to the authorized party or authority to assure sampling teams are available. The 24 hour notice is required to protect the integrity of the sampling protocol.

Comment #97

- *Subsection (4) page 90:* It might be useful to define what is meant by a "sample set."

Ecology Response:
Edits have been made to clarify the sentence.

Comment #98

WAC 173-900-910 Calculating return share

In subsection (1), it might be useful to add the word "determining" as follows: In order for a CEP to be counted in determining a plan's return share. .

Ecology Response:
Disagree. This does not add further clarification.

Comment #99

WAC 173-900-920 Use and publication of CEP return shares. Return share for program year 2009

It is unclear to me from this section whether Ecology intends to develop return share information once in 2007 for the 2009 program year, or whether it intends to update that information in 2008. If Ecology intends to develop the return share data in 2007 only (as required in the law), then I suggest changing subsection (1) to state: "(1) Ecology will announce the preliminary return share for each manufacturer and each plan by June 1 of ~~each year~~ 2007." The same change should be made in subsection (3). In addition, the title of WAC-900-910 (2) should be changed to "Return share issued in 2007 ~~through 2009~~."

Ecology Response:
Ecology is planning on publishing return share data each year.

Comment #100

Thank you so much for this opportunity to comment and for all your diligent and thoughtful work on the rules. Please feel free to contact me if you have any questions.

Sincerely,

Suellen Mele,
Program Director
Washington Citizens for Resource Conservation

Ecology Response:
You are welcome!

Commenter: Sarah Westervelt, Basel Action Network

Comment #101

Thank you for this opportunity to comment on the proposed rules affecting the Electronic Product Recycling Program WAC 173-900 and Dangerous Waste Regulations WAC 173-303. Rather than writing lengthy and detailed input like others are providing (and we fully support King County Solid Waste Division and WCRC input), we will be keeping our comments mercifully brief.

The Basel Action Network remains appreciative of the significant effort Ecology has put into drafting regulations for environmentally responsible recycling of WA's electronic waste, given informal opinions from the state AG's office that suggest what may and may not hold up in court if challenged, and given states' limitations in restricting export. At the same time we remain highly concerned that the minimum standards do not go as far as they can and must. If we create a program that provides free recycling for WA citizens at the expense of human and environmental health elsewhere, we have failed. If we create a program that does not hold the manufacturers responsible for the toxins in their products, we have also failed. BAN would like to ask Ecology to push even farther in creating accountability for the toxic materials, perhaps by making them the explicit responsibility of the plans, not the direct processors.

As the plans have the in-state presence, let's hold manufacturers (plans) directly responsible for the materials of concern, throughout final disposition. Clearly the legislature tasked you with writing regulations for environmentally sound recycling, and clearly your jurisdiction is with in-state entities. We're well aware that current practices amongst the most progressive OEMs is already that they are already tracking the "environmentally sensitive materials" throughout final disposition, and demanding that their vendors choose downstream vendors that meet the OEM restrictions on these materials. We've talked to 2 OEMs who are quite concerned that Ecology's minimum standards don't come close to this level of accountability, but that they will have to meet their own higher standards due to liability and brand name protection. Meanwhile, less progressive OEMs will pay much less for recycling that has no accountability for the toxic materials past the first tier recycler or asset recovery company. Let's make our minimum standards hold all OEMs accountable for these materials of concern throughout final disposition (see definition provided below, which is based on Canada's EPSC recycling standards. EPSC is an OEM-member organization. www.epsc.ca)

Ecology Response:
Thank you for bringing up these considerations.

Comment #102

There are of course, other key issues, as well.

Key Issues

1. **Hold manufacturers (not direct processors) responsible for Materials of Concern throughout final disposition**

As large quantity generator CEPs will be mixed with small quantity and household CEPS, and as the public and some covered entities have a right and a responsibility to know that their toxins (mercury, lead, cadmium, etc.) are responsibly managed throughout final disposition, WA regulations must hold manufacturer (standard and independent) plans responsible for the materials of concern throughout final disposition. One way to accomplish this is to insert the following language into the plan requirements.

WAC 173-900-300 Covered electronic product (CEP) recycling plans.

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

(a) Track Materials of Concern throughout final disposition, performing due diligence on and obtaining verifiable documentation from all vendors receiving MoCs resulting from CEPs.
(b) Provide collectors with information that will be shared with covered entities about how and in what countries CEPs received into the program are recycled and/or disposed. For all materials of Concern, this information will include countries where final disposition takes place.
(c) Ensure…etc.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. Your suggestion is an alternative to the prescribed law. Ecology can not accept this recommendation.

Comment #103

2. **Close massive loophole for CEPs to go unregulated via registered collectors**

Our reading of the draft regulations indicate that a) registered collectors may decide to only accept certain CEPs (e.g. televisions), but may take in (outside of the program) all other CEPs (free or at a charge) because they can get far more value out of reselling and recycling them (without any constraints from Ecology or the plans) compared to what plans will pay them for collecting, and b) that covered entities may arrive at such a registered collector facility with a carload of CEPs, and decide to leave all of it with the registered collector, out of convenience, even though they may (or may not) be told that only the TVs (in this example) will go into the program. How many covered entities would pack up and go to a second registered collector? Under the current regulations and statute, couldn't this be very inconvenient for the public?

We anticipate that the (smartest) plans will heavily encourage collectors to divert equipment out of the program, lowering their overall costs for recycling. Collectors will be happy to minimize what they take in under the program, but have free reign with most of the volumes. Possibly, TVs would make up the bulk of the small volumes of e-waste that actually make it into the WA program, and it would be a percentage of this small volume that Plans would have to pay their equivalent share of (or compensate others for). The economics would appear to dramatically favor diverting most equipment away from the WA program (with its costs and standards), and sending it into a profitable export/reuse/refurbishment market free of any constraints.

Registered Collectors must:

Meet reuse requirements
Send all scrap to a contracted direct processor
Audited, if doing reuse/refurb
Record keeping, provide documentation

Ecology Response:
Thank you for pointing out this potential issue. It is outside Ecology's purview to assume this scenario. Ecology will track the results of the program and report any deviations to the Legislature in its 2012 report.

Comment #104

3. Strengthen export language
Under (6) **Legal requirements,** change to**:**

(a) A direct processor must comply with all federal, state, and local requirements that are applicable to the operations and transactions in which it engages related to the processing of CEPs.

These include but are not limited to applicable legal requirements
relating to:
(i) Waste and recycling processing, storage, handling, and shipping; and
(ii) Air emissions and waste water discharge, including storm water discharges; and
(iii) Worker health and safety;

(b) The direct processor and their vendors must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology has determined that the regulation of downstream processors is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #105

Furthermore, Ecology must require that plans provide verifiable documentation, in the form of consents from 'competent authorities' and import permits, verifying that all exports of materials of concern (including circuit boards and cullet) are not violating laws in importing and transit countries.

Language (in plan requirements) must explicitly require the plans to ensure that the transfer of WA e-waste TO any direct processor must not violate laws in importing and transit countries, as well as the exports from the direct processors.

All of these changes to the rules will assist Ecology is meeting it's mandate to report exports to the legislature by 2010.

Ecology Response:
The required audits will document compliance.

Comment #106

4. Define reuse standards

The mandatory rules must clearly define that any registered collectors and/or registered processors who are sending parts or equipment into the reuse market (whether donated or sold), must ensure that only tested working equipment and parts are sent. Untested or non-working components and units must be considered waste for our purposes, and must fall under all requirements for CEPs.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. Therefore this suggested language is not necessary.

Comment #107

5. Transparency

Plans must be required to provide collectors with information including the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Ecology believes that "how and where" includes this provision, and therefore it is not necessary to change the language. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #108

6. Auditor qualifications

Must include one of the following industry-accepted certifications:

1. Certified Hazardous Materials Manager (CHMM)
2. Registered Environmental Manager (REM)
3. Registered Environmental Professional (REP)

Ecology Response:
By naming specific certification programs, we exclude others. The suggested language will not be added.

Comment #109

Definitions

Final Disposition: The point in the recycling/disposal chain where no further waste management activity (i.e. processing) takes place and the materials are either ready for use as a direct feedstock in manufacturing new products (i.e. require no further processing, but are a raw material commodity) or are finally disposed of (e.g. in a landfill or incinerator, including waste-to-.)

This includes:

- Smelters for metals-bearing material;
- Lead smelters or glass-to-glass manufacturing facilities for CRT glass;
- Landfills, incinerators, and waste-to-energy incinerators.

This does not include:

- Bulk and material blends that are sent to other vendors for additional processing;
- Shredded and separated materials that are sent to other vendors for additional processing.

Ecology Response:
Ecology does not believe it is necessary to include a definition of "final disposition" as related definitions exist in other laws that regulate wastes.

Comment #110

Materials of Concern

"Materials of Concern" include each of the following, and any equipment or component, or any aggregate material(s) derived from equipment or components (e.g. shredded, granulated, or mixed materials) containing or comprising any of the following:

(1) Any devices, including fluorescent lamps, containing mercury or PCBs
(2) Batteries
(3) Toner (not needed in WA)
(4) CRTs and leaded glass, including processed and unprocessed leaded glass cullet
(5) Circuit boards (whole, shredded, or in any other form)

Ecology Response:
Ecology has added a definition of "materials of concern." Please see edits. We have eliminated "shredded" from the definition based on other comments received.

Comment #111

Thank you for this opportunity to submit comments.

Sarah Westervelt
Basel Action Network

Ecology Response:
You are welcome!

Commenter: Sego Jackson, Snohomish County, Public Works

Comment #112

Thank you for the opportunity to provide comments on the rules related to Chapter 173-900 WAC Electronic Product Recycling Program and specific sections of the Dangerous Waste Regulations.

The following comments are submitted on behalf of Snohomish County Solid Waste Management Division.

WAC 173-900-030 Definitions

Premium services (page 5): The proposed definition of "premium services" has been changed to add the phrase, "or any handling requirements imposed by the CEP owner or collector in excess of those required in this chapter." This phrase creates an unworkable situation for collectors, has no basis in the law, and will undermine the service relationships between various parties. There are numerous reasons – logistical, legal and to avoid liability - in which collectors could reasonably need to handle CEPs in ways that are not required by this chapter. In fact, the chapter does not provide any detailed and specific service related requirements that must be met and these details should be left to the service providers to work out. The following provide more information and examples:

- Most collectors will not have indoor space adequate to store CEPs until a full truckload has accumulated. Therefore, current transporters and processors, in order to gain the customer account, and/or through negotiation, contract, etc., account for this in a number of ways. For instance, they may arrange frequent pick up of a smaller quantity of electronics, or they may provide a trailer on site for the units to be loaded into. In the case of the Snohomish County transfer station program, it would be impossible to provide the service at our three locations if our vendor did not provide truck trailers. In fact, that vendor has found it beneficial to site additional trailers at our locations as back up. There are also agreements in place as to when we call to report a trailer ready to move, the response time by the vendor, and process for resolving concerns about service response, etc. The law and rules have been silent on the negotiations and details of service, as they should be. It would be impossible to cover every circumstance that could arise and be resolved through business-to-business communication. An attempt to do this would require pages of prescriptive service requirements. That was not the intention. The problem with including this language, when there is absolutely no detail on what the provided service is to be in the law or rule, is that any need or request by the collector could be considered a "premium service" that can now include an added charge. The definition of premium service was developed to very specifically address at home upgrade services and at home pick-up services.
- The law was developed to encourage competition between plans, and we can anticipate that there will be differences between plans. These differences might include operating to a higher level of service offering, increased transparency, better customer service and relations, higher environmental standards, etc. Including this additional language in the definition decreases the likelihood of better service as a result of competition, but will encourage very poor provision of services with an additional charge for anything beyond bad service.

- Some collectors may choose, or legally be required, to go out to bid for whom the service provider will be, especially as multiple plans are anticipated. For example, Snohomish County is not able to simply agree that a particular charity can receive materials from our transfer stations, even at no charge to the County. A formal bid process is required that distinguishes between the possible service providers and includes factors such as: range of materials covered, type of container provided, frequency of pick-up, signage/educational materials provided, etc. Likewise, when we are paid for recyclables we receive, we cannot simply deliver recyclables to anyone we want, we have to go through a bid process that includes not only price but also service options too. These processes should be allowed to play out as the law was written and intended – through competitive processes and business relationships.
- Zoning or other laws in specific locations could require storage, lighting, containment, etc. that are not required in the chapter.
- CEP owners, including small or large quantity generators, could need certain handling requirements to ensure that they will not be liable for illegal handling of their equipment downstream in the chain of custody. To avoid liability, CEP owners should have the right to require protective handling of materials of concern through to final disposition and require that the laws of importing countries are met through final disposition. CEP owners should also be able to require documentation of legal and safe handling through to final disposition.

Ecology Response:
Ecology will delete "or collector" from the definition as this addition does not improve clarification of "premium service." However, "…CEP owner …in excess…" will remain. This clarifies that added services outside of basic collection are not included as a free service and must be paid for by the covered entity. Ecology will also change "CEP owner" to "covered entity" for consistency.

Comment #113

Materials of Concern: It would be useful to include a definition for "materials of concern in this definitions section rather than later in the rules:
"Materials of concern" include each of the following:

(f) Any devices, including fluorescent tubes, containing mercury or PCBs;
(g) Batteries;
(h) CRTs and leaded glass; and
(i) Whole or shredded circuit boards.

Ecology Response:
Agreed. This definition is in section 650. Ecology will include it in the definition section as well.

Comment #114

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Subsection (2)(a): Transparency about final disposition of all materials of concern is essential. We currently require all Take it Back Network Members to provide a certificate of recycling upon request to their customers that states the location of all processors for all materials resulting from the collected equipment. Processors are to provide this information to the collectors. We also require this information from our vendor that provides processing of the electronics we collect at three of our transfer stations.

Snohomish County SWMD strongly supports provision (2)(a) (page 31) requiring that the authority or authorized party provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled. However, we

recommend Ecology to add the following clarifying language to this section: Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Ecology believes that "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #115

Subsection 2 (page 31): It is important that we don't create a game of hot potato or deniability regarding materials of concern. Snohomish County SWMD has learned from direct experience on numerous occasions that processors and brokers will deny knowledge of what happens to materials that they handled, stating that they know whom it was sent to, but not what was done with it. This is unacceptable and does not protect the environment or human health.

An essential requirement to address this has been dropped from the previous draft of the rules in this section and needs to be included in the final adopted rules:

- The authority or authorized party of a plan must use due diligence in the selection of collectors, transporters, direct processors and subcontractors used for services provided for the plan.

Ecology Response:
Due diligence is included in the voluntary preferred performance standards. The State can not regulate beyond its reach granted by the United States Constitution.

Comment #116

Subsection 3(b) (page 32): This section states that the authority shall accept and use any processor that meets the requirements of this chapter and meets any requirements described in the authority's operating plan or through contractual arrangements. However, this list of requirements is incomplete and should be augmented to match the requirements set out in law (70.95N.280 (7). Such text already exists in section WAC 173-900-600 (3)(a), (b) and (c) of the rules. Please replicate or refer to this text in WAC 173-900-300 3(b).

Ecology Response:
WAC 173-900-300 3(b)(i) states that a processor must meet the requirements of this chapter, which would include subsection 600(3)(a), (b) and (c), as well as all other requirements. It is unnecessary to replicate the language.

Comment #117

WAC 173-900-355 Collection services

Subsections 1, 2 and 3 (page 44): We have found that not all collectors are able to collect all types or sizes of CEPs, yet these collectors provide a very important service to the public and role in a collection network. For instance, few if any of the Take it Back Network retail locations are able to accept all sizes of TVs, as the newer big screen TVs and older console TVs require a large space, special equipment for handling, etc. This has been true of the major retailer pilots and on-going programs to date as well. It is important that these collectors are part of the new system, but the public must also have access to services that can take all CEPs and all sizes.

Therefore, the rules should require that plans provide options for collection of all types and sizes of CEPs. Otherwise, what is a covered entity to do with very large television for instance, if a collector to accept them is not available? This requirement was included in the last draft of the rules, but was omitted when this section was reorganized. Snohomish County SWMD recommends the following additions:

(1) Each plan must include a description of the method(s) for the reasonably convenient collection of all types and sizes of CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.
(2) County: The plan must provide collection services for all product types and sizes in each county of the state.
(3) Urban, city . . .that together provide at least one collection opportunity for all product types and sizes for every city or town in the state with a population of greater than ten thousand.

Alternatively, the definition of product type can be revised to read: "Product type" means all sizes of product within one of the following categories: Computer monitors...

Ecology Response:
Collection services for all CEPs must be provided. Ecology will delete "types of" as a qualifier, in order to emphasize inclusiveness.

Comment #118

Subsection 11 (page 46): It is likely that premium services will be offered to other covered entities such as businesses, and not just households. Therefore, in the last sentence in subsection (11)(e)(2), please change "householder" to " covered entity using the service."

Ecology Response:
"Householder" will be changed to covered entity for consistency.

Comment #119

Subsection 13 (page 46): Under the approval criteria, please add an additional criteria: available for all types and sizes of CEPs.

Ecology Response:
There is no need to add this as all CEPs are included.

Comment #120

WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan

Subsection (2)(a) (page 51): Since collectors may choose to do business without participating in a plan, we suggest clarifying this section as follows: The only CEPs a collector can ~~collect and~~ submit to a plan are those CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).

Plans may choose to allow additional products (e.g. mice, keyboards, other peripherals, etc.) to be collected in order to offer good customer service. Subsection (2)(a) might therefore be better stated as follows: Plans are not required to compensate collectors for any products other than CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state.

Ecology Response:
Agree. See edited language.

Comment #121

WAC 173-900-450 Performance standards for collectors

Subsection (1)(a) (Page 54): To make 1(a) and (b) parallel with each other, we suggest the following language be added to 1(a): Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans.

Ecology Response:
Agreed, suggested language added for consistency.

Comment #122

Subsection (2) (page 54):

This section states, "A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products."

Snohomish County SWMD fully supports reuse and refurbishment of tested working units and components. However it is important that this provision not create a large loophole allowing untested CEPs and materials of concern to be sold wholesale in large quantities without any oversight or documentation that they are actually being reused. As written, a broker could potentially take large quantities of units or parts claiming intention to reuse, but with a high rate of non-reusable units or parts.

We therefore recommend the following additions to this section:

(2) A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products, provided that the registered collector does all of the following:

(a) If whole CEP units are refurbished for reuse, they must be tested and in working condition, computers must have their hard drives wiped to the current US Department of Defense Standards, and the collector must obtain documentation that the CEPs were sold or provided for legitimate reuse.
(b) If materials of concern or components containing materials of concern are removed from CEPs for reuse, they must be sold at retail by the registered collector and not sold wholesale for reuse.
(c) Documentation of sales of all refurbished CEPs, materials of concern, and components containing materials of concern must be kept by the registered collector for a minimum of three years and must be made available to the Department of Ecology upon request.

One alternative to subpart b of this language could be to allow materials of concern or components containing materials of concern to be sold for reuse only if the registered collector tests them and determines that they are working prior to such a wholesale sale and only if the registered collector obtains documentation that they were sold or provided for legitimate reuse.

Ecology Response:
This suggestion would result in a substantial change to the rule and therefore can not be accepted as proposed. The concern that CEPs or parts thereof will be shipped outside of the program is understandable. The intent of the law was to allow "reuse" when a product "is used for the same purpose for which it was originally purchased." This implies the whole CEP and not parts derived therefrom. Therefore, we will strike the ability of a collector to dismantle unless they are also registered as a processor.

Comment #123

Subsection (5)(e) (page 55): Snohomish County SWMD believes that transparency about final disposition of all materials of concern is essential. We support subsection (5)(e), which requires that "Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPs received into the program are recycled."

However, we urge Ecology to strengthen this section by:

- Adding the following: Collectors must post, in a readily visible location, at the collection site information that ~~can~~ will be shared with covered entities about how and where CEPs received into the program are recycled. Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Collectors "must" post the information. The difference between "will" and "can" in this instance does not improve the ability of a covered entity to see the information.
Ecology believes that "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #124

- Requiring that collectors also make available a "Certificate of Recycling" to covered entities using their collection service. Customers using the system would be provided with a certificate upon request. Please add the following language: Collectors must also provide covered entities, upon request, with written and signed "certificates of recycling" that include the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time.

Comment #125

- Requiring that collectors that have a website provide the information on their website in addition to posting at the physical location.

Making available a Certificate of Recycling, upon request, is already a requirement of collectors participating in Take It Back Networks.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore Ecology will not add the language at this time.

Comment #126

Also, premium and curbside service collectors must inform their customers about how and where CEPs received into the program are managed. Snohomish County SWMD suggests

adding language stating that collectors providing curbside or premium services must inform their customers at least annually via mail, invoice and bill inserts, or other direct means about how and where CEPs received into the program are recycled, including information about the countries of final disposition for covered electronic products, all materials of concern, and all residuals, and that they must provide a certificate of recycling upon request.

Ecology Response:
Ecology will delete "at the collection site" in order to be inclusive of all collection methods, as intended.

Comment #127

Additional comments on Section IV

Part IV (page 50) Collectors for CEP Recycling Plans. These comments are in addition to comments above on this section and are meant to address potential abuse. There could be abuses whereby a registered collector is perceived or advertises that it is participating in the program, but in fact is not submitting CEPs to a plan. There could also be incidents whereby non-registered collectors represent that they are participating with a plan when in fact they are not. Both cases misrepresent to users what is happening with their CEPs. The comments below offer some possible ways to address these situations.

WAC 173-900-400 (page 55)
Please consider adding these additional subsections:
(x) No entity shall claim to be collecting CEPs on behalf of a plan unless it is registered and is submitting collected CEPs to a plan.
(xx) Registered collectors that do not provide all collected CEPs to a plan must disclose this information to the covered entities using the collection service and to ecology. Information regarding CEPs not submitted to a plan shall be posted in a readily visible location and (then mimic text related to disclosure of CEPs going to plans in Subsection (5)(e) and require a signed certificate of recycling with this information provided upon request.
(xxx) Only registered collectors that are submitting CEPs to a plan and are being utilized by a plan may be promoted or referred through ecology's phone center, website, or promotional materials and advertising. Registration alone does not qualify a collector for inclusion.

Ecology Response:
Agree with (x) amended to say "No entity shall claim to be a collector of CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan". The remaining suggested language is then unnecessary. This clarifies that only registered collectors can claim to collect for a plan and assures that collected CEPs are submitted to a legitimate CEP recycling plan for processing.

Comment #128

WAC 173-900-410 Step 1 (page 52)

Please consider adding the following requirement for information to be included on the registration form:
(x) whether or not the collector plans to salvage any CEPs or parts for reuse, refurbishment or resale.
(xx) whether or not the collector plans to recycle any CEPs through means other than by submitting to a plan.
(xxx) identify the plan to which the collector is submitting CEPs.

This is tricky for a number of reasons, particularly before the program is initiated in 2009. Until arrangements and terms are set between collectors and plans, collectors have no way to know if they will get terms that are acceptable, so answering the question is difficult. One way to recognize that arrangements might be a little bumpy the first year of the program would be to make the above three registration requirements beginning with registrations (including renewals) in 2009 (if registrations are renewed mid year) or in 2010. Receiving this information as part of the registration process will allow ecology to prioritize its inspections based upon the level of possible "risk".

WAC 173-900-410 Step 1 (page 53)
It may be wise to add additional columns to the information included on ecology's website regarding collector registration. That might be a column that shows that the registered collector is participating in a plan (I'm not sure the basis of confirming this), a column that shows that the collector salvages whole units or parts for reuse/refurbishment/resale, and a column that shows the collector reports they recycle some CEPs through means other than through a plan.

Ecology Response:
Ecology does not see the benefit of asking for this information. Adding this requirement will increase compliance costs.

Comment #129

WAC 173-900-470 Collector Violations

Please amend Table 470, and related text in other sections (such as warnings and penalties) to include the following:

A collector claims to be collecting CEPs for a plan but is not providing CEPs to that plan, then it is a collector standards violation. I don't know what the "and Ecology will" action should be.

Ecology Response:
Ecology was not granted authority to create or enforce such a violation.

Comment #130

Also, consider if there is a place for text in the rules along the lines of: Nothing in this section shall prevent a plan from taking action against a collector that is claiming to be participating in a plan but is not submitting CEPs to that plan.

Ecology Response:
Plans do not have legal enforcement authority. If a plan would like to take such action, it would have to write it into contracts with collectors. Ecology can not require this.

Comment #131

WAC- 173-900-460 Ecology determination of collector compliance.

Subsection (1) (page 55) Please consider this change to text:

(1) Beginning January 1, 2009, ecology may inspect <u>any collector receiving electronic equipment for recycling, any collector claiming to be submitting CEPs to a plan, any registered collector, and</u> any collector used by a plan for compliance with this chapter.

Ecology Response:
Under RCW 70.95N and these proposed rules, Ecology can only inspect those collectors that are participating in this program. Ecology can not inspect collectors that are not participating for compliance with these rules. Other laws and rules may apply to those non-participating collectors under which Ecology or other agencies have the authority to inspect.

Comment #132

WAC 173-900-570 Transporter Violations

Comparable additional text to what is suggested in the comment above regarding collector violations may be prudent. It would be unfortunate if a collector arranged transportation with a transporter, believing the CEPs were being submitted to a plan, but instead they were diverted to a broker for overseas export instead of being submitted to a plan. While due to economic factors and the likelihood that the plans will arrange for the transportation, it is wise to protect against potential fraud and future factors that seem unlikely today.

Ecology Response:
Ecology was not granted authority to create or enforce such a violation.

Comment #133

Part VI Direct Processor Requirements

Snohomish County SWMD is greatly concerned that the processing of CEPs meet high standards that protect human health and the environment wherever CEPs are handled, processed, and the residuals disposed. For over seven years we have heard concern about the handling of e-waste from our citizens and customers, local organizations, decision makers, agencies, and the media. These entities care deeply that the collection and recycling of CEPs is done with integrity and in a manner very protective of people and the environment.

Detailed study of this issue and detailed comments are being provided by King County, Washington Citizens for Resource Conservation, and Basel Action Network. Snohomish County SWMD is in support of the intent of these comments. Below we provide additional comments and repeat several very important concerns expressed by others.

Comment regarding concept: The state should exercise every possibility to ensure protection of human health and the environment through its role as a regulator and can do so as a market player.

The State can be considered a “market player” because of its fiscal role in receiving funds and dispersing funds between under performing and higher performing plans. Therefore the State could require higher processing standards, as any market player could, than those currently encapsulated in existing law, in order to protect the interests of the citizens of the state regarding human and environmental health.

Under performing plans will submit a payment to the State that will be placed in a State account (see WAC 173-900-950, page 97). Money will be paid out of that State account to higher performing plans. This fiscal involvement may make the State a “market player” and broaden its capability in requiring high standards.

Ecology Response:
Disagree. The state is not a market player as the delegated enforcement agency identified in RCW 70.95N. The distinction is clear.

Comment #134

Subsection 5 (pages 72 and 73) Prioritized hierarchy of responsible management strategies

Reuse - Subsection 5(a)(i) (page 72): It is important that Ecology protect against "sham" reuse. Therefore, we request that the following language be added to (5)(a)(i): Reuse – Direct processors may direct~~ing~~ CEPs and CEP components to reuse, and refurbishment as appropriate to enable ~~shipment for~~ reuse, provided that they ensure that all CEPs and CEP components are tested and fully functional prior to resale or donation; accurately labeled; and packaged and shipped in a manner that will minimize damage during transport.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received. Reuse language is included subsection 650(11).

Comment #135

After Subsection (5)(a)(ii)(B), please add the following language which parallels the draft national Responsible Recycling Practices: Direct processors must use due diligence to send these materials for recovery at facilities that use technologies protective of health, safety, and the environment.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received.

Comment #136

WAC 173-900-650 Performance standards for direct processors.

Subsection (9)(d) (page 75) On-site requirements – Materials separation and processing
We strongly support Ecology's approach of listing materials of concern and requiring that they be handled in a protective manner. These include batteries, mercury-containing devices, all circuit boards, CRT glass, and any components, shredded material, or whole units containing them.

In order for the auditor to have standards to audit against, it is necessary that the rules for managing the materials of concern be specified. Snohomish County SWMD recommends that language be added to require that all direct processors – wherever they are located – handle batteries and mercury containing components in conformance with the Universal Waste Regulations in Chapter 173-303-573 of the Dangerous Waste Regulations. CRT glass should be handled in conformance with Chapter 173-303-071, which includes the proposed CRT rule. Circuit boards should be handled in conformance with Chapter 173-303-071. If there is any concern or drawback to referring to these sections, the pertinent text should be written directly into the electronics rules.

Batteries, mercury containing components, and CRTs and leaded glass should be removed from equipment and processed separately. However, circuit boards do not necessarily need to be separated prior to mechanical processing. After conversations with other stakeholders, we understand that processing technologies for circuit boards range from removal and separate processing to shredding along with whole units. Because the Washington standards for circuit

boards should allow for a range of technologies, we do not believe that the rules should require that circuit boards be separated prior to processing. However, technologies should be used that provide as much separation and reclamation of materials as possible, rather than sending mixed materials directly to smelters. New technologies are emerging that allow shredded fractions to be further separated for their highest recovery value.

The following is suggested language:

(d) Materials separation and processing

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during further processing.

"Materials of concern" include each of the following:

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

(B) Batteries;

(C) CRTs and leaded glass; and

(D) All whole or shredded circuit boards.

(ii) A direct processor must remove <u>all</u> materials of concern, <u>except circuit boards</u>, prior to mechanical or thermal processing.

(iii) A direct processor must handle all materials of concern, <u>including any CEPs, CEP components, or shredded or mixed materials containing materials of concern,</u> in a manner consistent with <u>Chapter 173-303 of Washington's Dangerous Waste Regulations</u>. <u>Specifically, batteries and mercury containing components must be handled according to the Universal Waste Regulations in WAC Chapter 173-303-573. CRT glass and circuit boards must be handled according to WAC Chapter 173-303-071.</u>

(iv) The materials of concern, or any substances contained in them, must be handled in a secured, sheltered enclosure with an appropriate catchment system. (v) To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

<u>(vi) A direct processor must not send materials of concern to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal</u>

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, until a material becomes a waste and then designated as hazardous, only then does it come under the purview of hazardous waste regulations.

<u>Comment #137</u>

Subsection 10 Materials recovery and materials disposal (page 76)

Subsection 10(c): Snohomish County SWMD supports this subsection, especially the requirement in 10(c) that a direct processor must direct streams that are not directed to reuse to materials recovery, unless doing so poses unacceptable risk or is not technically feasible. We request that the following language be added to this subsection: <u>Smelting whole CEPs is not materials recovery. After shredding or dismantling the CEPs, scrap metal and plastics should be sent for material recovery whenever possible rather than smelted or incinerated even with energy utilization or recovery.</u>

Ecology Response:
All usage of the word "recovery" have been changed to "recycling" in order to make clear the intent is materials use.

Comment #138

Subsection 10(e): Since only residuals may be disposed, we suggest adding the word "residual" this section as follows: A direct processor must send each residual stream destined for disposal to a facility designed to safely handle all the contents of the stream.

Ecology Response:
Agree. Ecology made the suggested change. Please see edits.

Comment #139

Subsection 11 Materials that cannot be recovered (page 76)

Subsection 11(a): Based on Washington's waste management hierarchy and the hierarchy described in subsection 5 of this section, energy recovery is a disposal strategy. The word "disposal" includes landfilling, incineration, and waste-to-energy incineration. By referring to "energy recovery or disposal" in this section, it reads as if energy recovery is something other than disposal. Second, the feasibility of material recovery should not be based on economics. This is an open door to allowing any number of materials to be disposed if recycling is more expensive is more expensive than disposal, and more than what the plans are willing to pay. Finally, since CEPs are recyclable, "equipment" should not be allowed to be disposed. We recommend the following changes: (a) A direct processor must identify and utilize ~~effective and~~ safe ~~energy recovery or~~ disposal strategies for all ~~equipment, components, and~~ materials that are not technically ~~or economically~~ feasible to recover.

Ecology Response:
By definition, residuals can not be recycled. Subsection (11) has been changed. Please see all edits in subsection (11).

Comment #140

Subsection 11(b): Similar changes are recommended in subsection 11(b): A direct processor must separate ~~equipment, components and~~ residual materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

Ecology Response:
By definition, residuals can not be recycled. Subsection (11)(b) has been changed. Please see all edits in subsection (11).

Comment #141

Subsection 11(c): Snohomish County SWMD requests that this text be clarified that it refers only to non-toxic residuals, not recyclable materials: (c) A direct processor may direct ~~streams~~ non-recyclable residuals that do not contain materials of concern with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #142

Subsection 11(d): Materials of concern are toxic. When they are contained in residuals destined for disposal, they should not be sent to solid waste facilities. We recommend the following change: A direct processor must not send residuals containing whole or shredded materials of concern to incinerators, waste-to-energy incinerators or solid waste landfills ~~if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies~~.

Ecology Response:
This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

Comment #143

Additional subsection on Due Diligence

We urge Ecology to include a mandatory standard requiring that direct processors provide due diligence on their subcontracts for materials of concern. We understand that Ecology believes that it does not have the authority to directly regulate subcontracts, however this due diligence requirement would be applicable specifically to the direct processor. It does not regulate downstream vendors but rather requires that the direct processor uses due diligence in its choice of vendors.

We urge the inclusion of the following language, which is based on language in part 10 of the draft national Responsible Recycling Practices:

A direct processor must perform due diligence on and obtain verifiable documentation from downstream vendors to which they ship materials of concern, either directly or through intermediaries, to ensure that they utilize practices that protect worker safety, public health, and the environment.

Direct processors must establish and maintain a verifiable chain of custody for materials of concern throughout final disposition.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards..

Comment #144

It might also be useful to include the following definition of final disposition: Final disposition means the point in the recycling/disposal chain where no further processing takes place and the materials are either ready for use as a direct feedstock in manufacturing new products or are finally disposed. This includes smelters for metals-bearing material; lead smelters or glass-to-glass manufacturing facilities for CRT glass; and landfills, incinerators, and waste-to-energy incinerators. This does not include bulk and material blends that are sent to other vendors for additional processing; or shredded and separated materials that are sent to other vendors for additional processing.

Ecology Response:
Ecology does not believe it is necessary to include a definition of "final disposition" as related definitions exist in other laws that regulate wastes.

Comment #145

***WAC 173-900-820* Nonprofit charitable organization collection reports** (page 88)

The intent of the law is to provide a mechanism to encourage plans to utilize non-profit organizations that will benefit the community and environment by returning some collected units for reuse, refurbishment and resale. It seems that it would be prudent to have the charitable organization also submit some information showing that it is in fact engaged in this activity regarding CEPs. While this poundage doesn't "count" in return share, it would demonstrate that the non-profit is attaining some level of reuse, and might be valuable in recalculating the "credit" provided to plans in the future (see WAC 173-900-940, page 97). Therefore, we recommend that charitable reuse organizations submit a count or estimate of the number of units that have been salvaged for reuse, etc. We have not discussed this idea with reuse organizations and therefore do not know if there are serious feasibility issues with this suggestion, and that should be examined by Ecology prior to including in final rules.

Ecology Response:
RCW 70.95N.150 only requires non-profit organizations to report the weight of CEPs sent to a plan for recycling. The amount of "credit" is set at 5% in excess of that amount. This suggestion is outside the scope of Ecology's authority. Ecology can not require this additional reporting without a reason grounded in the law.

Comment #146

***WAC 173-900-980* Public Outreach**

Subsection 2 (a) and (b) (page 99). Please amend to include reuse and to protect against abuse of the system by revising to read:

(2) Ecology will promote reuse and CEP recycling by:
   a. Posting information describing where to provide electronic equipment for reuse and where to recycle unwanted CEPs on its web site;
   b. Providing information about reuse of electronic equipment and recycling CEPs through a toll-free telephone service; and
   (new) Prioritizing reuse of electronic equipment in its promotional efforts.
   (new) Ecology will only promote CEP recycling opportunities provided by registered collectors providing collected CEPs to an approved plan.

Subsection (4) (page 99) Please amend to include promotion of reuse of electronic equipment.

Ecology Response:
RCW 70.95N.120 (2) indicates that Ecology will promote recycling of CEPs. The law also mentions reuse. The waste management priorities established in Chapter 70.95 RCW Solid Waste Management, are listed first waste reduction, recycling, landfill, or incineration for energy recovery of source separated wastes and lastly, landfill or incineration for energy recovery of mixed wastes. Ecology promotes reuse as part of the overall waste reduction strategy. It is not unique to CEP recycling.

Collectors that meet the performance standards and are collecting for a plan will be indicated as such on Ecology's webpage.

Comment #147

Again, thank you for the opportunity to provide comments.

Sincerely,

Sego Jackson
Principal Planner
Snohomish County Solid Waste Management Division

Ecology Response:
You are welcome!

Commenter: Nancy Atwood, Director of Policy and Legislative Affairs, AeA

Comment #148

AeA appreciates the opportunity to comment on the draft rules related to electronic product recycling including Electronic Product Recycling Program WAC 173-900 and Dangerous Waste Regulations WAC 173-303 and the *Environmentally Sound Management and Performance Standards for Direct Processors*. Our general request of the Department of Ecology (DOE) throughout the rule making process has been to keep the rules within the scope of the enabling legislation (2006 SB 6428) and as narrow as possible to allow a level and fair playing field for all who must comply with the law. At this point AeA believes the rules are overly specific and create unnecessary burdens for compliance. Please find examples below.

Several definitions in the draft Washington Administrative Code 173-900 (Draft WAC 173-900) do not match the legislation. For example, the definition of "manufacturer" in the rules varies significantly from the legislation, altering the possible scope of the law. (Draft WAC 173-900-030)

Ecology Response:
The definition in the rule clarifies the definition of manufacturer and is within the legislative intent.

Comment #149

Overall the prescriptive rule language fails to take into account current practices which are environmentally sound and support the viability of the recycling industry. For instance, rule language includes requirements to removal of "materials of concern" under all circumstances; and storage and shipment of battery terminals, which are covered under other existing rules. (Draft WAC 173-900-640)

Ecology Response:
RCW 70.95N requires the department to write performance standards for processors. In deliberations with our advisory panel while developing the rule language, it was agreed that the rule would reflect best management practices that were being developed by the US EPA. Materials of concern are a major part of those best management practices. Materials of concern include devices containing mercury or PCBs, batteries, CRTs and leaded glass, and whole or shredded circuit boards. These items were agreed upon with the recycling industry.

Comment #150

Expansion of requirements from legislative intent is common in the draft rule. For instance, overly detailed public notice requirements like those in relation to "how and where CEPs received into the program are recycled" do little to inform the public and add unnecessary steps to the process. (Draft WAC 173-900-450)

Ecology Response:
The requirement provides the public information about the final destination of their CEPs so they can make informed decisions about recycling their CEP.

Comment #151

Additionally, the rule should not require or allow DOE to determine the rates for the third-party observers. It is AeA understanding of legislative intent that the program should allow market forces to assist in the viability of the system, which forced prices and rates do not allow for. (Draft WAC 173-900-900)

Ecology Response:
The rule will require that only approved third-parties be used. Ecology will not establish rates that third parties would be paid. That will remain an issue of negotiation between the plan and the third party. Ecology will remove the language related to setting rates.

Comment #152

The intent principle should also be taken into account in rules that allow collection entities latitude in deciding who to sell collected CEPs to while the law mandates the authority to accept CEPs from any entity.

Ecology Response:
This statement makes the assumption that collectors "sell" CEPs. The authority is required to accept CEPs from any collectors and to fairly compensate for those services.

Comment #153

As addressed in comments to the DOE submitted in April, unnecessary triggers for covered electronic product (CEP) plan updates are still included in the rules. For instance, simple additions of standard plan participants or processes added, and changes to recordkeeping trigger the necessity to submit and updated plan to DOE within 14 days. While approval is no longer required for "nonsignificant revisions" the added paperwork of updated plan submissions is burdensome to the plans and directly effects DOE costs to administer the plan. (Draft WAC 173-900-335)

Ecology Response:
Ecology needs to be notified of changes in order to assure that changes provide equal services and that all manufacturers are participating in an approved plan. RCW 70.95N.070(1)(b) requires that all revisions to plans must be submitted to Ecology. The rule delineates which revisions do and which revisions do not need approval prior to implementation. To eliminate unnecessary paperwork, the authority or authorized party has the option of only submitting the portion of the plan that requires updating.

Rather than 14 days as stated in the proposed rules, the rule will be changed to reflect the 60 days allowed in the law.

Comment #154

Reporting requirements are overly broad. Sections relating to reporting requirements regarding export should be removed. Original statute sections related to export were vetoed by Governor Christine Gregoire due to the State's lack of authority in the area. While the veto message did encourage DOE to evaluate alternatives to the export of these wastes and recommend actions as needed to ensure capacity for their proper management, it did not allow for additional reporting. (Draft WAC 173-900-800).

Ecology Response:
While section 26 of the law, banning the export of CEPs to non-OECD countries was vetoed, RCW 70.95N.270(g) was not. The department is required to report no later than December 31, 2012, among other things: "An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such exports." This requirement is necessary to gather the required information in order to comply with the law.

Comment #155

Regarding the document *Environmentally Sound Management and Performance Standards for Direct Processors,* AeA opposes a two-tier system. Rules should be set that create a clear standard for all processors to meet and a secondary level such as the "Preferred Standards" simply complicate the process, and we believe may be unenforceable.

Ecology Response:
It was recommended by the advisory panel that Ecology adopt the "Responsible Recycling Practices for Electronics Recyclers" being established by EPA. Ecology has incorporated those practices which can be enforced into the rule and has incorporated the remainder in a voluntary program for "preferred" performance standard.

Comment #156

We encourage DOE to reevaluate its assumptions in the drafting of these rules and to redraft the documents staying within legislative scope and providing necessary guidance without being overly prescriptive. Give the system an opportunity to grow and develop without the assumption that "bad actors" will take over.

Sincerely,

Nancy Atwood
Director of Policy and Legislative Affairs

Ecology Response:
Thank you for your comments.

Commenter: C. Lorch, Total Reclaim Inc.

Comment #157

Comments to Chapter 173-900 WAC – Electronic Product Recycling Program

900-365 Annual compliance audit reports for direct processors

All direct processors should be required to comply with the same environmental health and safety standards, regardless of where they are located. Direct processors should be audited to the standards contained in the rule and the Washington Dangerous Waste Rules WAC 173-303. Auditors should be required to report any divergence of the direct processor from the standards contained in WAC 173-303 to plans. Plans should be responsible to report this divergence in annual reports to Ecology.

Ecology Response:
Direct processors must comply with the laws of the jurisdiction within which they are located. WAC 173-900-365 allows a direct processor to demonstrate conflicts with the performance standards created in WAC 173-900-650 and local jurisdictional laws. The processors will be audited to the minimum standards and where they are claiming compliance with preferred standards, audit to those standards as well. However, Ecology can not require compliance with, nor enforce, Washington Administrative Code outside the geographic boundaries of Washington State. That is "extraterritorial reach" which is prohibited by the US Constitution. Enforcement of the performance standards on direct processors is on the authority or authorized parties. If a plan uses a direct processor that does not meet the standards, the plan is in violation.

Comment #158

900-450 Performance standards for collectors

Although processors must comply with minimum performance standards related to providing downstream diligence for the end destinations of materials of concern, there are no such standards for collectors engaged in "re-use". Given the extremely fluid nature of off-shore trading and the high value for scrap materials, significant quantities of collected Covered Electronic Products (CEPs) could be consolidated and shipped by collectors to off-shore destinations, with little regard to the actual potential that the items could actually be re-used.

Registered collectors should be required to document weights, specific equipment by type and functionality, and where the materials are sent. Collectors should be required to comply with all importation requirements of all importing and transit countries, including those pertaining to the trans-boundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal. Finally, additional requirements should be developed to ensure that equipment not meeting minimum standards and functionality are only sent to registered processors.

Ecology Response:
The concern that CEPs or parts thereof will be shipped outside of the program is understandable. The intent of the law was to allow "reuse" when a product "is used for the same purpose for which it was originally purchased." This implies the whole CEP and components and not parts derived therefrom and they must be functional. Collectors may engage in reuse of whole CEPs or components only. However CEPs and components sent for reuse must not be included in the weight totals for the plan and are not part of the Electronic Product Recycling Program. If a collector ships to an unregistered processor, they can not be compensated for their collection services.

Weight documentation would be covered under the direct processor requirements and therefore it is not necessary to require the collectors to also provide this documentation. If a collector in any way dismantles CEPs to market materials for recycling, they must be a processor and register as such.

Comment #159

Subsection (5)(c) and (6): Please clarify what role collection sites have in sampling activities. Since sampling occurs at direct processor locations it is not clear what assistance or access of collectors are required to conduct sampling.

Ecology Response:
This language is incorporated in the event that it is necessary for Ecology to verify CEPs sampled at a processor or quantities collected by visiting a collection location.

Comment #160

900-550 Performance standards for transporters

According to the rule definition, ""Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products."

While it is reasonable to assume that the legal ownership of a CEP passes from the original owner to the collector at the time of delivery, the rule does not provide a clear definition of ownership of CEPs after the collector provides them to a transporter. When a transporter picks up the CEP from a collector, does the CEP become the property of the transporter or does the plan that is compensating the transporter become the owner of the CEP? If the transporter becomes the owner, they are transporting their own product and would not be required to be a commercial carrier under Washington Utilities and Transportation Commission rules. If instead, the plan owns CEPs while in transit, then a transporter would be classified as a commercial carrier and would fall under the rules and regulations of the Utilities and Transportation Commission. Please clarify this issue.

Ecology Response:
The rules that apply to transporting any recycled material apply here, too. It depends upon the contractual arrangements made by collector, transporter, and processor with the plan.

Comment #161

The rule does not include minimum standards associated with transportation activities, including specific requirements related to packaging and handling CEPs or minimum insurance requirements.

Ecology Response:
Ecology was not granted authority in RCW 70.95N to establish standards for transporters. Transporters are regulated under other statutes and rules.

Comment #162

In the original legislation transporters were only assumed to be engaged in providing transportation services, and not involved in re-use. Depending on the ownership issue of CEPs in transit noted above, a transporter could redirect materials from collectors to facilities other than registered processors. Please clarify responsibilities of transporters in terms of re-use. At a minimum the chapter should state, "Transporters must deliver covered electronic products to registered processors."

Ecology Response:
This is a clarifying change that will be incorporated into WAC 173-900-550.

Comment #163

Subsection (2): Please clarify what role transporters have in sampling activities. Since sampling occurs at direct processor locations it is not clear what assistance or access of transporters is required to conduct sampling.

Ecology Response:
This language is incorporated in the event that it is necessary for Ecology to verify CEPs sampled at a processor or quantities collected by visiting a collection location.

Comment #164

900-650 Performance standards for direct processors

Subsection (6)(b): "Upon request by a customer, a direct processor must make available information…" There is no definition of "customer" in the rule. Under this rule, a processor's "customers" are plans, not collectors, transporters, or generators of CEPs. Please clarify the intent of this sentence.

Ecology Response:
"Customer" is corrected to "covered entity."

Comment #165

Subsection (9)(d): Paragraph (iii) states, "A direct processor must remove materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with…" Paragraph (ii) defines "Materials of concern as including "Whole or shredded circuit boards". These two paragraphs are in direct contradiction. One could not remove shredded circuit boards before shredding.

In the electronics recycling industry a common type of mechanical processing is low-speed, high torque shredders used to efficiently liberate steel, aluminum, and other metals from non-metallic materials like plastics and circuit boards. It would be unnecessarily restrictive and very expensive to domestic recycling industries, and hence to plans that use these processors, if these rules prohibited processors from shredding materials that contain circuit boards.

Ecology Response:
Agreed. Ecology will remove "shredded" from subsection (ii).

Comment #166

Subsection (9)(d)(iii): The paragraph is unreasonably prescriptive regarding specific handling practices and storage methods that are otherwise covered in the Washington Dangerous Waste Regulations. Revise the paragraph to read: "A direct processor must remove materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained in them. ~~, in a secured, sheltered enclosure with an appropriate catchment system. To prevent short circuiting, direct processors must cover or otherwise separate battery terminals during storage and shipment~~."

Ecology Response:
Ecology agrees that language in WAC 173-900-650-9(d)(iii) is unnecessary because of existing regulations. Please see edits.

Comment #167

Subsection (11)(a): The paragraph is redundant with paragraph (c) as regards energy recovery. Further, "equipment, and components" should not be disposed, only residuals that may not be recyclable. Revise the paragraph to read: "A direct processor must identify and utilize effective and safe ~~energy recovery or~~ disposal strategies for all ~~equipment, components, and~~ materials that are not technically and economically feasible to recover."

Ecology Response:
Subsection (11) has been changed. Please see all edits in subsection (11).

Comment #168

Subsection (11)(b): Similarly, the paragraph should be revised to read: "A direct processor must separate ~~equipment, components, and~~ materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment."

Ecology Response:
By definition, residuals can not be recycled. Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #169

Subsection (11)(c): Materials of concern should not be directed to energy recovery. The paragraph should be revised to read, "A direct processor may direct streams that are not recyclable and do not contain materials of concern, with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #170

Subsection (14): Facility access. The manner in which this paragraph is structured, and especially sub-paragraphs (c) and (d), could be mis-interpreted to mean that a processor used by a plan must grant facility access to other plans or processors. Please clarify.

Ecology Response:
Agree. Sub-paragraphs (c) and (d) need clarification. Please see edits.

Comment #171

900-900 Return share sampling.

There is no provision in the rule to compensate processors for sampling activities. There is an unstated assumption that sampling will have no adverse impact on processors, and that plans will pick up any costs associated with sampling. This is anything but the truth. In a large scale processing facility, these activities will be very disruptive, will tie up management, supervisory, and production staff, will disrupt shipping and receiving activities, create significant safety issues, and will impact production. Further, if sampling is discontinued for any reason it could potentially ruin the processor's reputation or business. Ecology should establish a reasonable compensation rate for sampling activities and either compensate processors directly or require plans to compensate processors for the sampling.

Ecology Response:
Processors should be compensated for services rendered, including sampling. This is part of "fair compensation" plan requirements in WAC 173-900-325(16). The amount, however, is a contractual issue between the plans and processors. This should be covered within the $0.50 per pound cap on transferable costs between plans.

Comment #172

Subsection (2)(b)(iii): Sampling activities will occupy management and supervisory staff, tie up loading docks and receiving areas, and will be very disruptive to daily operations. For this reason, twenty-four hours notice is insufficient to prepare for this type of activity. This should be

changed to seventy two hours or longer to enable management to reconfigure operations and ensure adequate staff support.

Ecology Response:
The 24-hour notice is required to protect the integrity of the sampling protocol.

Comment #173

Subsection (2)(c): See (4) Incorrect Sampling below.

Ecology Response:
Agree. Clarifying edits have been made.

Comment #174

Subsection (2)(e)(viii): This paragraph is meaningless and should be stricken. A single day of receiving CEPs will not provide any meaningful information on the true annualized flow of CEPs through that facility. Further, how would a first time visiting third party observer be able to identify any meaningful "changes in rate and volume of CEPs coming into the facility;"?

Ecology Response:
This is observational data that will be collected over the time period of the sampling. No change will be made to this language.

Comment #175

Subsection (2)(e)(ix): This paragraph is unreasonably broad and is also meaningless. What "equipment and programs" does this refer to? Is this in reference to CEP equipment or a processor's equipment? Similarly, what programs? Further, the purpose of the third party observer during sampling activities is to ensure that sampling is done properly. Sampling observers are not at processor locations to audit the facilities, their equipment or programs.

Ecology Response:
This requirement was intended to address sampling equipment and sampling programs. It is ambiguous and will be revised.

Comment #176

Subsection (4): Incorrect Sampling - This section places an unreasonable burden on plans and their direct processors. In the event that the third party observer discontinues sampling for the day, there is no provision to re-sample, even at the plan's or processor's expense. The penalty for discontinued sampling could be that a plan would be assigned an equivalent share based on sampling from other processors, for up to 3 years. Ultimately, a single failed sampling could destroy the relationship between a processor and the plan, and could even result in a termination of the contract between the parties.

Further, the justification for discontinuing a sampling may or may not be "reasonable". The rule should provide opportunities to repeat sampling to ensure that good quality return share information is collected and to protect against arbitrary and capricious termination of sampling activities.

Ecology Response:
The integrity of the sampling is critical to defining the return shares. Return shares will drive the cost shares for the entire system. This is intended to prevent plans and direct processors from doing anything that could potentially be regarded as skewing a sample.

Comment #177

Small Business Economic Impact Statement for Amendments

On page 9 the statement is made that, "The estimated cost for transporting to, and processing in China is about $0.23 per pound." There is no explanation where this data originated or how the amount was calculated. This figure is incorrect and misleading.

Ecology Response:
The numbers have been changed.

Comment #178

There are numerous traders seeking to **purchase** container loads of electronics, working or non-working, new or old, for export to China and other developing countries. Despite this, collectors and processors in Washington and elsewhere are able to charge higher prices to customers willing to recycle materials domestically.

This cost figure creates the false impression that domestic processing methods are nearly cost competitive with the export market and that a relative "level playing field" exists.

Ecology Response:
The rule does not preclude competition. The processors are currently competing with other nations for throughput and this will not change. A level playing field is therefore not assumed. Local processors have the advantage of proximity where other countries have the advantage of cheaper labor.

Comment #179

Further, if the number is used to justify the state's view on the economic impact of the proposed rule and the potential for local processors to compete under an implemented Electronic Product Recycling Program, the entire analysis is potentially flawed.

Ecology Response:
The law caps the amount of payment made by a plan that underperforms at $0.50 per pound. This limits total revenues from the plans to collectors, transporters, and processors. The value used to parse this $0.50 between the collectors, transporters, and processors has been changed.

Commenter: Parker E. Brugge, Consumer Electronics Association (CEA)

Comment #180

COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION
TO PROPOSED RULE FOR CHAPTER 173-900
WASHINGTON ELECTRONIC PRODUCTS RECYCLING PROGRAM

CRITICAL ANALYSIS:
PRELIMINARY ECONOMIC AND LEAST BURDENSOME ANALYSIS FOR AMENDMENTS TO CHAPTER 173-900 WAC

The Consumer Electronics Association is pleased to offer these comments on proposed rule for Chapter 173-900 WAC, Electronic Products Recycling Program.

The State of Washington's Department of Ecology (Ecology") makes several assumptions that, at best, are extremely fragile and, at worst, are extremely erroneous. Below,

CEA outlines these assumptions by first exploring Ecology's faulty and tenuous definition of "willingness to pay." We then perform a simple sensitivity analysis to highlight how delicate Ecology's calculation of net benefit is and the degree to which a positive net benefit is extremely reliant on very sensitive assumptions.

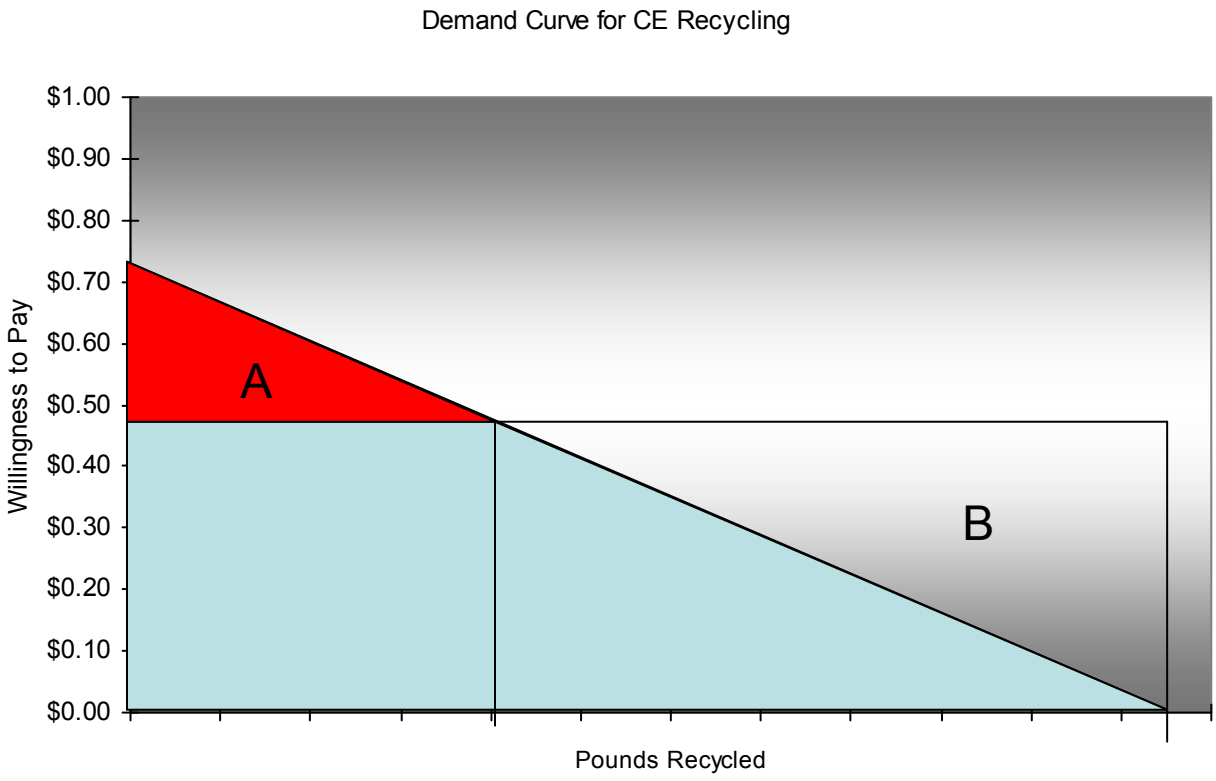
WILLINGNESS TO PAY

"Willingness to pay" is the sum of the area under the demand curve.

Ecology Response:
Willingness to pay is the amount someone is willing to pay in order to obtain something at a given point in time. The points along a demand curve indicate the marginal willingness to pay for a given quantity. The prices people actually pay are the minimum value one would use to estimate willingness to pay. The values in the CBA are therefore minimums. Further, it only includes the individual willingness to pay, via a price, and not societal willingness to pay.

Comment #181

Unfortunately, as Ecology admits, there is no estimated demand curve. Therefore, it is impossible to estimate willingness to pay. Nevertheless, Ecology assumes the current $0.49 being paid by consumers can be appropriated to a demand schedule and used to estimate willingness to pay. The logical fallacy of this argument can be illustrated in the following diagram.



Ecology Response:
Ecology did not attempt to use the entire area under the demand curve. We did not do the calculation as you show it. Instead, we expect that the demand curve will shift out and to the right over time as landfills refuse electronic products. Your graphic does not include the impact of landfills and transfer stations refusing to take CEPs. This means that at the world price the quantity will increase as demand shifts right along the supply curve, which in this case is price.

Comment #182

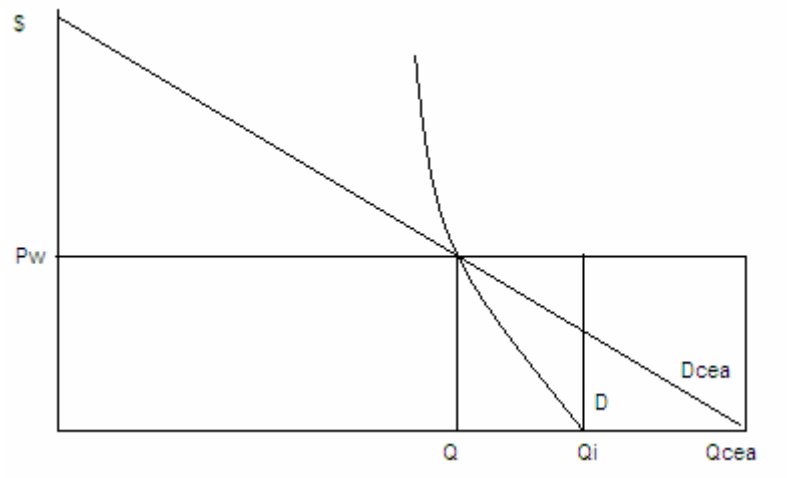
The demand curve for recycling is downward sloping.

Ecology Response:
This is not a demand curve for recycling alone, but includes the value of disposal. Some people will be willing to pay to get rid of the CEP and some will be willing to pay more just to know it was recycled.

Comment #183

Without an estimated demand curve, it is impossible to know what quantity will be achieved with a price near zero.

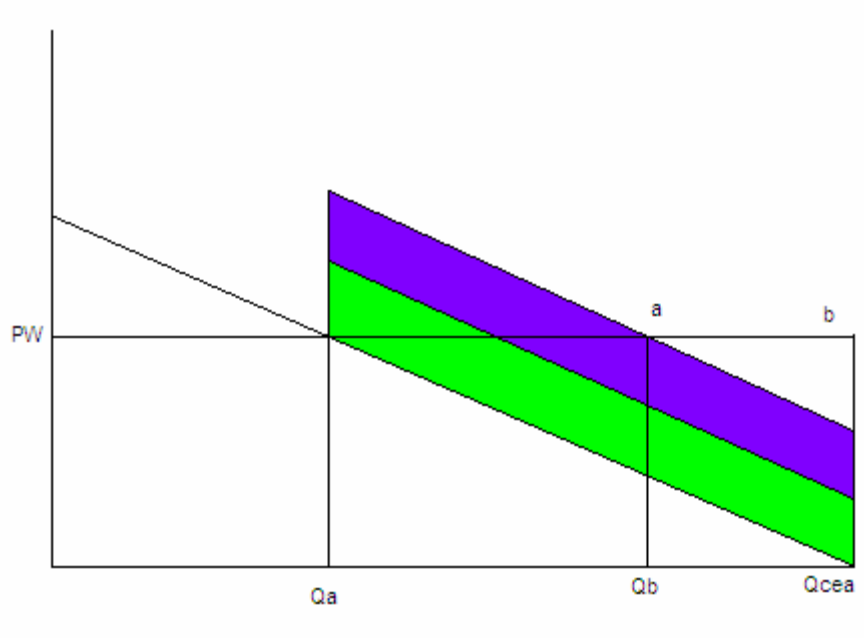
Ecology Response:
There is reason to believe the demand is relatively inelastic. (See the curve labeled D in the graph below.) When a person decides to get rid of a CEP in any area where garbage disposal is no longer an option, the CEP has to go somewhere. If people had elastic demand as your graphic displays, then we believe we would find much more illegal dumping, and dumping into other people's dumpsters. In other words, if people have elastic demand, dumping would occur in the area from Q to Qcea, (see our modification of your graphic below). People store CEPs in their homes until they have to get rid of them (i.e., an expensive move to make). Under your graph, most would then dispose of them illegally. In Washington there is some of this illegal disposal and use of other people's dumpsters, but we are seeing something smaller than what you imply, which is more likely to look like Q to Qi. The curving line is drawn to have only a small percentage being dumped illegally. Counting only the amounts that seven of the recyclers reported gives us a total of 22 million pounds being recycled. If the curves lay the way you have drawn them, that would imply more than half this amount being illegally dumped. People would be up in arms if this were the case because county cleanup crews and apartment owners would be carrying the cost of separation and recycling for those whose willingness to pay lies below the charges. Those who have to pay for the disposal of the illegally dumped and dumpster disposal CEPs would be carrying a cost greater than all of those who are paying for appropriate dumping. As you have drawn it, eight out of 12 CEPs would be handled by illegal dumping or imposing the cost on someone else's dumpster.



Comment #184

Ecology has guesstimated this quantity at 56.5 million pounds. We will explore this assumption in further detail in the following section, but for the sake of simplicity, we will assume Ecology has accurately estimated the quantity at 56.5 million pounds. In calculating a willingness to pay of $0.49*56.5M = $27.685M, Ecology assumes that area A in the graph is equivalent to area B. However, if area B is larger than area A, then Ecology has overstated the willingness to pay. This can only be determined with an estimated demand curve.

Ecology Response:
If graph areas A and B were actually as you say they are, there is an additional willingness to pay that comes into play. Drawing the graph below from your graph, we add in societal willingness to pay to clean up illegal disposal and to have CEPs recycled. There is an optimal level 'a' where the sum of the values intersects the world price for recycling. We don't know what it is, but it must be a fair distance toward the right, close to 'b', or there would be a great many CEPs lying around everywhere. You are therefore ignoring, in your graph, the societal willingness to pay to avoid illegal dumping (light green/light grey) and to avoid having the liability for cleaning up garbage dumps (dark purple/grey) that have contaminants in them or contaminants in the leachate. Despite the fact that we do not see large scale dumping of CEPs, the legislature decided that "b" is optimal based on the problems that people were having. Thus, under your scenarios, the purple and green areas of the graph must be large. Added to this is the societal willingness to pay above the demand curve value for those who are using appropriate disposal.



Comment #185

Sensitivity Analysis

We first examine the assumed increase in annual total mass of consumer electronics products recycled. In 2006, 22 million pounds of electronics goods were recycled in Washington, some of which will not be covered under the new plan. Excluding the products not covered under the new plan likely reduces the pounds recycled by a few million pounds. Ecology estimates that the amount of recycled products will more than double to 56.5 million pounds under the new plan.

Ecology Response:
Ecology used CEA recycling estimates to generate the 56.5 million pounds. The multiplier (1/0.24) value was taken from a document recommended to us by CEA staff on the CEA web site: http://www.findarticles.com/p/articles/mi_m0KWH/is_12_43/ai_n15978785/print

Further, the magnitude of recycling is less relevant than you imply. Both costs and benefits are a function of the amount of recycling. Because demand will shift out and to the right as landfills and transfer stations prohibit disposal of CEPs, both costs and benefits will shift together. The rule is not making the landfills and transfer stations do this. The rule fills the void created by the issues that CEP disposal creates.

Comment #186

Under the plan, consumers will face a near zero price and because demand is downward sloping, the quantity of products recycled will increase. However, without an estimated demand curve, it is impossible to know by how much it will increase.

Ecology Response:
We agree.

Comment #187

It appears that Ecology has arbitrarily selected the figure of 56.5 million pounds.

Ecology Response:
The figure was not arbitrary. We used a value from CEA documents to do the extrapolation.

Comment #188

Ecology's figure implies that the average consumer in the State of Washington will recycle 8.83 pounds of CE products per year under the plan, up from a current 3.44 pounds – which again includes products not covered under the new plan. This compares to 3.7 annual pounds per capita collected under comparable programs.[1]

Ecology Response:
Washington is already recycling 3.8 pounds per capita, and in many areas there is no program. We therefore expect that there will be very substantial increases. Further, the National Center for Electronics Recycling (NCER) web site covers different electronics in different places.

Comment #189

Ecology thereby implicitly assumes the new plan can collect over twice what comparable plans have been able to collect.

Ecology Response:
This was not implicit, but was an explicit and documented assumption based on CEA data.

Comment #190

Returning to willingness to pay, we investigate how sensitive the estimated net benefit is to changes in the willingness to pay. We find the costs outweigh the benefits if the willingness to pay decreases by just $0.033, holding all other assumptions constant. The net benefit is

[1] NCER Per Capita Collection Index (http://www.ecyclingresource.org/ContentPage.aspx?Pageid=24&ParentID=0).

clearly highly sensitive to any error in estimating the willingness to pay and we have already illustrated that the estimate for willingness to pay is extremely tenuous.

Ecology Response:
See the above responses related to your comments on willingness to pay. If we follow the implications of the basis for your analysis, it would lead one to extrapolate high illegal dumping costs.

Comment #191

We now turn to cost estimates. Taken together, it is assumed the cost of recycling one pound of electronics is $0.45. Here again, the calculated net benefit of the plan is extremely sensitive to assumptions. With an increase in costs of just $0.033, the calculated net benefit turns negative even while holding all other assumptions constant.

Ecology Response:
See the response to comment # 182. If we follow the implications of the basis for your analysis, it would lead one to extrapolate high illegal dumping costs.

Comment #192

Additionally, there are several costs that are simply not considered in Ecology's analysis. First, consumers must be aware of a shift in the burden of cost from themselves to product manufacturers in order for them to change their recycling patterns. The promotion and advertisement of the proposed plan implies additional costs, which may significantly alter the net benefit of this program.

Ecology Response:
The analysis considers only the level of costs required by the rule. The costs are based on the existing program in areas where CEPs can't be discarded as garbage.

Comment #193

Second, Ecology references transitional costs as a result of implementing this plan that cannot be estimated. However, the costs of this transition are deemed expensive by the report. Finally, Ecology mentions additional costs that are necessary for the implementation of the plan but not required by law; the report does not discuss these costs in detail. If enumerated, these disregarded costs could significantly adjust the calculations of net benefit.

Ecology Response:
The analysis only covers costs required by the rule. If a plan elects to do something that is not mandatory, then it is not a cost that is due to the rule. Given how the law is structured, the plans will have no incentive to spend more than $0.50 per pound.

Comment #194

The net benefit of the project is zero if these uncalculated costs are just seven percent more than the current estimated cost — another very slim margin of error. At best, considering that several critical costs are excluded from Washington's calculations, the net benefit is significantly less than what is reported.

Ecology Response:
See the response for comment # 182 above. If we follow the implications of the basis for your analysis, it would lead one to extrapolate huge illegal dumping costs. Further there are unquantified benefits.

Comment #195

Concluding Comments

At best, Ecology has excluded and significantly underestimated costs while considerably overestimated benefits. Moreover, the assumptions used by Ecology are extremely tenuous. Individually considered, each assumption is extremely sensitive to small changes – with small changes driving the net benefit of the proposed plan negative. Collectively, exactness in estimation is needed for Ecology's assumptions to produce a positive net benefit and Ecology has failed to provide adequate support for these assumptions.

Ecology Response:
Based on this comment we are including qualitative information as well as the quantitative data we have. If we had been willing to use the basis for your analysis, we would also have estimated very large savings from reducing illegal dumping. This would have created gains far larger than the margins you refer to.

Commenter: Comments # 196 - #205 were submitted in one letter from the following list of organizations below:

- **Suellen Mele, Washington Citizens for Resource Conservation**
- **Mo McBroom, Washington Environmental Council**
- **Sarah Westervelt, Basel Action Network**
- **Pamela Tazioli, Breast Cancer Fund**
- **Karen Ahern, Coalition for Environmentally Safe Schools**
- **LeeAnne Beres, Earth Ministry**
- **Bill LaBorde, Environment Washington**
- **Elise Miller, M.Ed., Institute for Children's Environmental Health**
- **Steven G. Gilbert, PhD, DABT**
- **Institute of Neurotoxicology & Neurological Disorders**
- **Steve Anthes, Kettle Range Conservation Group**
- **Elizabeth Davis, League of Women Voters of Washington**
- **Reverend Paul Benz, Lutheran Public Policy Office of Washington State**
- **Heather Trim, People for Puget Sound**
- **Robyn DuPre, RE Sources for Sustainable Communities**
- **Christine Hanna, Sightline**
- **Mike Petersen, The Lands Council**
- **Richard Grady, MD, Co-Chair, Environment & Human Health Committee Washington Physicians for Social Responsibility**
- **Karen Bowman, Washington State Nurses Association, and Washington State Association of Occupational Health Nurses**
- **Gregg Small, Washington Toxics Coalition**
- **Amy Peterson, WashPIRG**

Comment #196

Thank you for your continued work to ensure that the rules to implement Washington's electronics recycling law protect human health and the environment. As members of a broad coalition that helped pass this law last year, we are writing to share our support and concerns about the draft rule and request that some important changes be incorporated in the final rule.

We support Ecology's approach of developing two sets of standards - mandatory standards based on what Ecology can enforce and preferred standards. However, we believe that the proposed mandatory standards can and should be significantly strengthened.

Ecology Response:
Thank you for your comment.

Comment #197

Residents and other covered entities want their discarded computers, monitors and TVs to be responsibly recycled in ways that protect human and environmental health. They need adequate information to make choices about which options will provide the most environmentally sound recycling, and have the right to know that toxic materials from their discarded products are being handled safely throughout the entire recycling and disposal chain. In addition, business and government large quantity generators retain legal liability for toxic materials, and will need assurances that those toxic materials are handled properly throughout final disposition to avoid liability.

We therefore urge Ecology to improve the rules by making sure that they accomplish the following:

1) Include stronger performance standards for handling toxic materials. For example,
   - Require that all materials of concern (batteries, circuit boards, CRTs and leaded glass, and mercury-containing devices) be managed consistent with the standards in Washington's Dangerous Waste Regulations – regardless of where the processor is located. Text from pertinent sections of the Dangerous Waste Regulations should be included in the rules.

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, not until a material becomes a waste and is designated as hazardous does it come under the purview of the hazardous waste regulations.

Comment #198

- Ban materials of concern from disposal in solid waste landfills and incinerators, including waste-to-energy incinerators.

Ecology Response:
This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

Comment #199

2) Mandate that manufacturers and direct processors perform due diligence in choosing their vendors for materials of concern. Require that direct processors hold those vendors, through contractual obligations and verifiable documentation, to processing standards that protect human health and the environment throughout final disposition.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred performance standards.

Comment #200

3) Tighten language to ensure that manufacturers and processors comply with the importation requirements of all importing and transit countries, and require verifiable documentation of compliance.

Ecology Response:
The required audits will document compliance. The rule requires annual audits of processors used to provide services to the plans. One of the performance standards requires compliance with all applicable laws. Processors must provide the authority or authorized party documentation of compliance through the audit. Audit documentation must be submitted to Ecology with the recycling plans before a processor can be registered and provide processing services. Annual audit documentation must also be submitted with annual reports from the authority or authorized party responsible for plan implementation.

Comment #201

4) Ensure that recycling is not "sidestepped." Require that plastics from computers and TVs be recycled for material recovery whenever possible, and not be sent directly to smelters or incinerators even for energy utilization or recovery.

Ecology Response:
RCW 70.95N Electronic Product Recycling is a recycling law. Only "residual" material – by-pass wastes – can be disposed. Energy recovery is not recycling. Recyclable materials must be recycled into new products.

Comment #202

5) Encourage reuse while stringently guarding against "sham" reuse. Covered electronic products and components containing materials of concern must be tested and functioning properly prior to shipment for reuse.

Ecology Response:
By the definitions of reuse in the rule, the CEPs and components must be fully functional (with the same purpose as at the original purchase) prior to resale or donation. This would require that the CEP units be fully functional prior to shipment, distribution, or sale.

Comment #203

6) Ensure transparency. Manufacturers' plans must publicize, through their collectors and Ecology's website, how and where computers, monitors and TVs are recycled. Collectors must receive adequate information to provide their customers with the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #204

Inclusion of these provisions is necessary to implement the purpose and substance of the electronics recycling law and provide needed protections to workers, their communities, and the environment. Please also refer to the detailed comments submitted by Washington Citizens for Resource Conservation, which we support in full.

Ecology Response:
Please see Ecology's response to comments received from the Washington Citizens for Resource Conservation.

Comment #205

Ecology has a tremendous opportunity through this rulemaking process to create standards that are protective of human and environmental health. We respectfully submit these suggestions, and look forward to working with you as the draft rule is improved. We appreciate the time and resources you and others at Ecology have put into developing these rules.

Sincerely,

Suellen Mele
Washington Citizens for Resource Conservation

Mo McBroom
Washington Environmental Council

Sarah Westervelt
Basel Action Network

Pamela Tazioli
Breast Cancer Fund

Karen Ahern
Coalition for Environmentally Safe Schools

LeeAnne Beres
Earth Ministry

Bill LaBorde
Environment Washington

Elise Miller, M.Ed.
Institute for Children's Environmental Health

Steven G. Gilbert, PhD, DABT
Institute of Neurotoxicology & Neurological Disorders

Steve Anthes
Kettle Range Conservation Group

Elizabeth Davis
League of Women Voters of Washington

Reverend Paul Benz
Lutheran Public Policy Office of Washington State

Heather Trim
People for Puget Sound

Robyn DuPre
RE Sources for Sustainable Communities

Christine Hanna
Sightline

Mike Petersen
The Lands Council

Richard Grady, MD
Co-Chair, Environment & Human Health Committee
Washington Physicians for Social Responsibility

Karen Bowman
Washington State Nurses Association, and
Washington State Association of Occupational Health Nurses

Gregg Small
Washington Toxics Coalition

Amy Peterson
WashPIRG

cc: Cullen Stephenson
Jay Manning

Ecology Response:
Thank you for your comments!

Online Comments

Commenter: Mark Dabek, RE-PC

Comment #206

173-900-Part IV
Regarding 173-900-450 1c: What is a large quantity? This has never been clarified and poses a significant problem because the law references this in several instances and does not specify that the plan can determine what a "large quantity" is. This is another legal issue that needs to be addressed in the law itself because the arbitrary definition is not law it is fundamental subjective judgment and is subject to the whim of Ecology or the Authority. These potential conflicts of interest will be damaging to the future of this law.

Ecology Response:
The authority or authorized party must include a definition of “large quantity” in the CEP recycling plan submitted to Ecology for approval. Ecology will review these definitions and determine if they are appropriate. In relation to this law and these rules, “large quantities” refers to amounts of CEPs that might be generated from a school district, small business, or similar entity. In these cases, it makes sense to collect from the generator on-site rather than having the generator deliver the CEPs to a collection location only to be unloaded and reloaded into a different transport container. Plans will recommend the quantities that make this efficient for both the generator and transporter.

Comment #207

173-900-Part IV
Regarding 173-900-450 2: This will be regarded as a pivotal point regarding the success of this

program. I applaud Ecology for recognizing the conundrum and legal quagmire created by not allowing this activity. However it is clear that the Authority must have some way of policing this activity so that collectors do not engage in deceptive resale of this material. The rule should specify that these materials should be sold only to the general public through retail channels. Further this rule should be realistic and specify that this applies only to desktop computers and laptops where the hazards are non-existent and actual reuse in refurbished products will occur. CRTS and TV's have few if any parts that could find re-use in this way. Further at EOL (end of life) these materials would eventually end up in the Authority's recycling stream minus the cost of disassembly.

Ecology Response:
WAC 173-900-450(2) has been deleted. The intent of the law was to allow “reuse” when a product “is used for the same purpose for which it was originally purchased.” This implies the whole CEP and components and not parts derived therefrom. Therefore, we will strike the ability of a collector to dismantle unless they are also registered as a processor.

Comment #208

173-900-Part I
Regarding 173-900(all) Let us examine this closely: Being a collector is a voluntary action (making the whole law a fancy "Take It Back Network"). So if a collector joins this program that collector becomes liable for fines and penalties if it not "in compliance" not to mention being slandered by the state as Ecology uses a form of economic blackmail and market slander to levy a punitive public image against that collector. What this amounts to is that the state is asking collectors to enter into a contractual agreement in which the terms are strictly limiting yet undefined at the same time. Can a collector withdraw at any time? If a collector withdraws then his name should be expunged immediately from the database of the program. Otherwise the state will be held accountable for the potential damage to that collector's business. The state has to make clear that any collector is entering into a contract with the state and that contract must be defined in ways that leave no questions either for the state or the collector. Finally there is questionable legality to levying fines when the law doesn't require everyone engaged in that activity to comply. If a collector finds this program is useless to him then he should be able to withdraw without the state attaching a stigma to it. Although the current position is that the collectors transporters and processors are not contracting but only registering and shall be contracting with "the plan" it should be clear that any voluntary act is by legal definition a contract. A handshake is a contract that is supported by law. It is absolutely necessary that all terms of the contract the state is asking collectors transporters and processors to enter into are explicit and in conformance with existing law. Making "registration" a voluntary contract embodies contractual rights to both parties.

Ecology Response:
Thank you for your comment**.**

Comment #209

173-900-Part I
There is substantial doubt regarding the legality of levying fines and penalties when the law is not equally applied to all who perform the same activity. Once again the AG should revisit the "special law" aspect of this legislation and its impact on the state. If you join you’re in the "Country Club" or "Environmental Good ol' Boys Network" if not you are branded forever and labeled as an environmental outcast.

Ecology Response:
Thank you for your comment.

Commenter: John Keithly, InterConnection

Comment #210

General
Thank you for this opportunity to include my comments on the new Washington Electronic Product Recycling Program which will become effective on 1 January 2009. As for my background let me say at the outset that for the past five years I have been a board member of InterConnection which is presently involved in refurbishing and recycling computer and monitor equipment... particularly for reuse in foreign countries. During the time of my membership on the IC board I have been also been a teacher at Ballard High School and a member of Ballard Rotary. In these capacities I have arranged and participated personally in trips to foreign countries in order to chaperone groups of BHS students willing to help with setting up computer labs at designated sites in countries which had Rotary clubs which requested computer technology hardware and service support. I should mention that on our two most recent trips (to a Fiji island and to Uruguay) about 200 computers and monitors were delivered to each site and that this computer equipment was first collected inspected selected and packed for shipment by the staff and volunteers at Inter-Connection. Here is more detailed website information about our trips to Fiji and Uruguay:

http://ballard.seattleschools.org/pubs/c4w/index1.htm
http://http://c4w2uruguay.eponym.com/blog

The point of this brief note to suggest that there is considerable value in reusing computers and associated monitors that have not yet reached their end of useful life and that this reuse is especially warranted in countries where there are generally insufficient funds to purchase new equipment... particularly for K-12 schools and community service centers. With the above thought in mind I would like to propose that additional attention and verbiage be added to the new Washington Electronic Product Recycling Program documentation. The intent of this language would be to promote refurbishment and reuse of computers and monitors which are determined to be in good working condition (as determined by standards set by the Department of Ecology) and which meet the performance requirements of the countries who wish to obtain this equipment. Thank you for your consideration of this proposal...

John Keithly

Ecology Response:
RCW 70.75N Electronic Product Recycling is a recycling law targeting end of life televisions and computers that no longer provide the services for which they were designed. The intent of the law was to allow “reuse” when a product “is used for the same purpose for which it was originally purchased.” This implies the whole CEP and components and not parts derived therefrom. The law and rule encourage reuse. However, the manufacturers are not responsible for funding a reuse program. They are responsible for funding a recycling program. Beyond what is stated, reuse is outside of the purview of this law.

Commenter: Anthony Miskho, Fluor Hanford

Comment #211

173-303-071
I support the exclusion in WAC 173-303-071(3)(oo) provided that other related electronic wastes

are also addressed. The current Interim Enforcement Policy (April 2002 Pub # 02-04-017) addresses both Cathode Ray Tubes and related electronic wastes. It is not clear from the rulemaking package what decision Ecology has made regarding related electronic wastes or whether related electronic wastes are addressed by other provisions. Ecology needs to provide a mechanism for continued management of related electronic wastes.

Ecology Response:
The Interim Enforcement Policy will be updated to remove references to Cathode Ray Tubes (CRTs) since they are addressed by the exclusion in WAC 173-303-071(3)(oo). The Interim Enforcement Policy will remain in effect for related electronic wastes that may designate as dangerous waste. RCW 70.95N Electronic Product Recycling defined electronic products as "a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer, a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally." The scope of the recycling program is limited to these types of products.

Commenter: Ed Siegel, IMS Electronics Recycling

Comment #212

173-900-Part VI

It appears the latest revision allows for shredding of circuit boards and devices that contain circuit boards. We strongly feel that shredding should be allowed it is an important to the reduction of processing costs. Shredding is also a necessary step in preparing materials for smelters. This process will reduce the exportation of whole waste sub-components.

Ecology Response:

Agree. Ecology has removed "or shredded" from the definition of Materials of Concern. The rules allow for shredding as long as materials of concern can be separated for further processing.

Commenter: Suzanne Tresko, Spokane Regional Solid Waste System

Comment #213

173-900-Part VI
WAC 173-900-650 (13) Prison Labor. The System does not support language that does not allow use of state of federal prison labor in any aspect of collection or processing. For smaller towns and cities the use of prison labor is the only way they can reasonably afford to maintain waste diversion programs and facilities. Removing this ability would create an undue financial burden on those entities and their constituents to pay for processing facilities or the cost of transportation to other facilities

Ecology Response:
The Legislature explicitly prohibited the use of prison labor in the statute. RCW 70.95N.250(5) states: "No plan or program required under this chapter may include the use of federal or state prison labor for processing." This does not preclude the ability to use city or county inmates for processing services.

Comment #214

173-900-Part VI
WAC 173-900-650 (9) b (d) Materials separation and processing. The Spokane Regional Solid

Waste System supports language that allows for disposal of "material of concern" under existing dangerous waste and universal waste rules. One of the unifying factors in gaining statewide support for this legislation was the promise of no disposal bans. The Spokane Regional Solid Waste System does NOT support bans of any kind on the disposal any materials in MSW landfills or incinerators where those materials are currently allowed to be legally disposed.

Ecology Response:
No language in the rule bans disposal. Ecology is not authorized to ban disposal of any product. RCW 70.95N Electronic Product Recycling is a recycling law. The intent is to assure that materials derived from electronic products are recycled into new products. Process residuals – wastes – must be disposed at an appropriate solid waste or hazardous waste disposal facility. CEP owners may choose to dispose of their products at an appropriate solid waste or hazardous waste facility, which ever is applicable.

Commenter: John Swiderski , Washington Materials Management and Financing Authority

Comment #215

Thank you for the opportunity to submit comments and suggestions on the rule proposal affecting the Electronic Product Recycling Program WAC 173-900 and Dangerous Waste Regulations WAC 173-303.

The Washington Materials Management and Financing Authority ("Authority") was established, pursuant to RCW 90.75N.280, as a public entity to plan and implement a program to collect, transport, and recycle covered electronic products on behalf of its members. Membership in the Authority is comprised of registered participating manufacturers, manufacturers that are not participating in an independent plan, and all new entrants and white box manufacturers. Generally, the Authority acts as a business management organization on behalf of the citizens of the State. In this capacity, the Authority will develop a standard plan, manage financial resources, and contract for services to collect, transport, and recycle the sum of the equivalent shares of each participating manufacturer.

As an entity directly affected by the Department of Ecology's ("Ecology") proposed regulations, the Authority and its members appreciate being able to submit comments on the rule proposal. Our comments are as follows:

1. **Ecology Should Notify Plans of New Non-Compliance Status of Collectors, Transporters and Processors**

Under WAC 173-900-300(3)(a), the Authority must only use the services of registered collectors, transporters and processors that have "in compliance" status. The Authority supports and understands this requirement but requests that Ecology notify all approved plans via email of any change in a service provider's compliance status.

Ecology Response:
Please see the warnings and penalties sections related to collectors and transporters. Ecology will send a copy of the warning letter to the authority and the authorized party of each plan. The rule no longer contains violations for direct processors. If a direct processor does not meet the minimum performance standards or registration requirements in WAC 173-900 it is a violation for the authority or authorized party using that direct processor.

Comment #216

2. The Authority Retains Broad Discretion in Selecting CEP Processors Consistent with its Approved Operating Plan

The Authority notes for the record that the proposed regulations at WAC 173- 900-300(3)(b) do not in any way constitute an entitlement for processors to do work and be compensated by the Authority. The Authority reserves the right to utilize only transporters and processors that meet the environmental, performance and cost efficiency requirements specified in the operating plan.

Ecology Response:
Ecology agrees. The rule requires that processors must have contracts with plan operators in order to register. The rule is silent on the need for contracts with transporters. Therefore the Authority can make this a requirement in its operating plan.

Comment #217

3. The Authority Reserves the Right to Enter into Conditional Contracts with CEP Processors Identified as Participating in the Standard Plan

Pursuant to WAC 173-900-320(9), the Authority is required to provide information about direct processors of CEPs participating in the standard plan. For the record, the Authority notes that the initial plan submission may include processors that are participating conditionally subject to further due diligence to verify their conformance with the Authority's operating plan requirements. This conditionality may be necessary given the short time period available to enter into such contractual arrangements and the Authority's commitment to arrange for CEP recycling only by entities that meet the operating plan requirements.

Ecology Response:
Ecology understands the argument. This should be made in the Authority's recycling plan submitted to Ecology for approval.

Comment #218

4. The Authority Supports the Flexibility Provided in the Plan Update and Revisions Section

Proposed WAC 173-900-335 acknowledges the dynamic nature of several elements of approved recycling plans, including the inevitable addition of scores of new and/or discovered manufacturers to the standard plan and the need for flexibility in utilizing CEP service providers. The Authority supports the requirements in this section as providing a reasonable system by which Ecology can learn of changes in plan implementation status and strategies without requiring formal and burdensome plan updates.

Ecology Response:
Thank you for your comment.

Comment #219

5. Before Listing a Processor as "In Violation," Ecology Should Allow the Processor to Appeal the Relevant Determination

WAC 173-900-350(3) proposes to require the Authority to "notify Ecology within thirty (30) days if a processor used by the plan receives any penalties, violations, or regulatory orders

from national, state and local government agencies." Within 5 days of receiving the notice, Ecology will list the processor as "in violation." While the Authority recognizes that processors should be encouraged to abide by all applicable rules and regulations, Ecology's proposed regulations do not account for a processor's right to appeal an adverse determination. To allow for affected processors to pursue their right to appeal, the Authority suggests that Ecology revise the proposed regulations to require that Ecology be notified within thirty (30) days of the final resolution of any penalty, violation, or regulatory order.

Ecology Response:
The rule no longer contains violations for direct processors. If a direct processor does not meet the minimum performance standards or registration requirements in WAC 173-900 it is a violation for the authority or authorized party using that direct processor.

Comment #220

6. Ecology Should Provide a Warning Letter Prior to Issuing a Plan Violation

Pursuant to the proposed WAC 173-900-380, when sending a penalty notice for a "plan violation," Ecology will include a first penalty assessment of up to $5,000. The party committing the plan violation will then have thirty (30) days to correct the violation or be subject to a second penalty of up to $10,000. The Authority requests that Ecology provide notice of a violation before assessing a penalty, as Ecology has proposed for "annual report violations." Given the complexities of the standard and independent plans, the Authority and the authorized parties should be afforded an opportunity to correct any violation prior to being subject to a penalty. This is the approach that Ecology has taken with collector, transporter, processor, and retailer violations, and it should also be adopted for the Authority and other authorized parties.

Ecology Response:
RCW 70.95N.260 requires that Ecology issue a penalty without a warning letter provided.

Comment #221

7. Ecology Should Develop Guidelines Regarding the Determination of Any Penalty Amount

WAC 173-900-380 proposes to allow Ecology to assess a first penalty of "up to $5000" and second and subsequent penalties of "up to $10,000" for a plan violation. Likewise, Ecology can assess a first penalty of "up to $1000" and second and subsequent penalties of "up to $2000" for an annual report violation. However, the proposed regulations do not explain how Ecology will determine the amount of each penalty. Ecology should develop guidelines that specify how penalties will be assessed based on the severity of potential violations. Also, Ecology should specify whether there are any aggravating or mitigating factors that will impact the amount of a penalty.

This comment also applies to the penalties for collector violations in WAC 173- 900-480, transporter violations in WAC 173-900-580, processor violations in WAC 173-900-680, and retailer violations in WAC 173-900-740.

Ecology Response:
It is Ecology's practice to develop enforcement policies for each rule it promulgates. Ecology will be developing an enforcement policy for this rule as well that addresses first time versus multiple violations, ongoing versus short term enforcement activities, etc.

Comment #222

8. Ecology Should Require Collectors to Store CEPs in "Covered" Areas

Unless clarified, WAC 173-900-450(5)(d) could potentially be the most expensive requirement for the collection of CEPs within the context of the convenience requirements required by all approved plans. It is important that "enclosed" not mean "indoors" - the Authority suggests using the term "covered" storage areas using impervious surfaces to shield CEPs from rain and snow. Requiring that CEPs be stored "inside" is excessive and not required to prevent any conceivable environmental impact caused by used computers and televisions recently taken out of households and other covered entity uses.

Alternatively, requirements under proposed WAC 173-303-071(3)(oo) for the storage of CRTs "in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials)" could be a reasonable substitute for a requirement for collectors to store all CEPs indoors.

Ecology Response:
"Enclosed" is necessary in order to provide protection from weather conditions that could render the materials contained in the CEPs to be waste rather than recyclable. Enclosed containers such as an enclosed trailer with doors would meet this requirement.

Comment #223

9. Ecology Should Define "Charity" and "Nonprofit Organization"

The terms "charity" and "nonprofit organization" are used throughout the proposed regulations. To minimize confusion and to clarify which organizations belong in each category, Ecology should include a definition of each term in WAC 173-900-030.

Ecology Response:
Ecology has added a definition of "charity" and "nonprofit" and will have the same meaning for both. The definition is included in RCW 70.95N.150 and in section WAC 173-900-940 already.

Comment #224

Conclusion

Again, the Authority appreciates the opportunity to provide comments on the rule proposal. If you have questions about any of the issues raised in this letter please do not hesitate to contact me.

Sincerely,

/s/ John Swiderski

John Swiderski, Chairperson
Washington Materials Management
and Financing Authority

Ecology Response:
Thank you for your comments!

Ecology received 458 comment emails with identical content as presented below. To see a list of the people who submitted this comment please see Appendix A.

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. We have a responsibility to require the following safeguards in our recycling program:

- Mandate transparency so we know where the computers and TVs are going and how they will be recycled

- Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass. Make these standards at least as strong as those in Washington's dangerous waste regulations

- Require that manufacturers and recyclers choose responsible contractors who will safely handle toxic materials all the way throughout final recycling or disposal

- Follow the import laws of other countries where our electronic waste may be shipped for recycling or disposal

- Require that plastics are recycled whenever possible instead of smelted or incinerated

Thank you for taking these comments into consideration as you continue to strengthen our state's groundbreaking electronic products recycling program.

To see Ecology's response to this comment email please see comments 225 - 229:

Comment #225

"- Mandate transparency so we know where the computers and TVs are going and how they will be recycled"

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #226

"- Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass. Make these standards at least as strong as those in Washington's dangerous waste regulations"

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, until a material becomes a waste and then designated as hazardous, only then does it come under the purview of hazardous waste regulations.

Comment #227

"- Require that manufacturers and recyclers choose responsible contractors who will safely handle toxic materials all the way throughout final recycling or disposal"

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary as part of the preferred standards.

Comment #228

"- Follow the import laws of other countries where our electronic waste may be shipped for recycling or disposal"

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary as part of the preferred standards.

Comment #229

"- Require that plastics are recycled whenever possible instead of smelted or incinerated"

Ecology Response: RCW 70.95N Electronic Product Recycling is a recycling law. Only "residual" material – by-pass wastes – can be disposed. Energy recovery is not recycling. Recyclable materials must be recycled into new products.

Ecology also received 47 emails that made the same points as the comments 225 – 229 above with some slight rewording and additional content.

For the portions of these comments where the content is identical to the comment above, Please see the response to comments 225-229.

Some of these comments also included some additional feedback. These additional comments are presented below with the agency's response.

Commenter : Kathy Wilmering

Comment #230

I am so grateful that we will have rules to ensure responsible recycling of electronics. The points below are the strongest statement of what I myself would like to see happen: (see comment above)

Ecology Response:
Thank you for your comment!

Commenter: Bonnie Bledsoe

Comment #231

Please make sure that used electronic goods can be recycled! The 4 points below are excellent starting points to help in this process. We have to protect our environment and our health, and recycling responsibility is essential.

Ecology Response:
Thank you for your comment!

Commenter: Kristen Leathers

Comment #232

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health.

Ecology Response:
Thank you for your comment!

Commenter: Joan Harris

Comment #233

Thank you for making sure that electronics in Washington State are being recycled in a way that protects the environment and human health. We need to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of our state, or even outside of our country. We have a responsibility to require:

Ecology Response:
Thank you for your comment!

Commenter: Sara Cate

Comment #234

Hello Mr. Shepard,

I am a resident of Yakima and am aware of the need for more responsible recycling of electronics. I am worried about the impact of discarded electronics on our environment and the missed opportunity to develop industries here in the US that recycle their components. I support the following plan:

Ecology Response:
Thank you for your comment!

Comment #235

Thank you for considering this plan.

Ecology Response:
Thank you for your comment!

Commenter: Rob Bowman

Comment #236

I'm very pleased to learn that Ecology is working out details for implementing electronics recycling requirements passed by the legislature last year. We consumers collectively are adding to and replacing our computers, audio/video and telecommunications equipment in enormous numbers. I believe we can't wait any longer to contain the problem of disposal. So, I would like to:
-See where the computers and TVs are going and how they will be recycled

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Liz Illg

Comment #237

Please:

Ecology Response:
Thank you for your comment.

Commenter: Karin Link

Comment #238

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled responsibly. It is important that they be recycled in a way that preserves and enhances both out environment and human health. The following safeguards in our recycling program would make it that much more effective:

Thank you very much for taking these comments into consideration and for all your work!!

Ecology Response:
Thank you for your comment!

Commenter: Peter and Mary Alice Belov

Comment #239

-Adequately publicize sites where such items can be taken for recycling. Most do not mind a reasonable drive to such a site.

Ecology Response:
The law and rules require that manufacturers' plans include a public information element describing how they will inform the public of recycling opportunities. In addition, information about where and how to recycle is required to be provided by electronic product retailers. The Department of Ecology is required to provide a toll-free telephone number that the public can call to locate an electronic product collection location. Lastly, local governments are required to incorporate electronic product recycling information into their public information activities. Thank you for your suggestion.

Commenter: Mary Ferm

Comment #240

This Spring Bainbridge had a volunteer computer and monitor pickup that was heavily utilized, so I know that a state-monitored program would be well used.

Ecology Response:
Thank you for your comment!

Commenter: Becky Kelley

Comment #241

The passage of the electronic waste recyling law in 2006 was such an exciting opportunity for Washington to play a leadership role in promoting producer responsibility. I urge Ecology to adopt strong rules to implement the law in a way that sets the strongest possible example for future such programs, as well as ensuring that electronics in Washington State are being recycled in a way that protects the environment and human health.

Ecology Response:
The law created a specific program for the collection, transportation, and processing of electronic products for recycling. It required that manufacturers of these products pay for these services.

Commenter: Helen Venada

Comment #242

I READ THAT SOME OF THE LEAD FOUND IN CHILDREN'S TOYS AND IN OTHER PRODUCTS FROM CHINA LIKELY CAME FROM COMPUTER RECYCLING THERE.

Ecology Response:
Thank you for your comment.

Commenter: Joel and Lucinda Wingard

Comment #243

PASSING THE LEGISLATION WAS THE IMPORTANT STEP. EQUALLY, IF NOT MORE, IMPORTANT IS REQUIRING SAFEGUARDS IN THE REGULATIONS GOVERNING THE RECYCLING PROGRAM THAT ENSURE THE SAFEST POSSIBLE HANDLING OF THESE TOXIC MATERIALS.

Ecology Response:
The regulations ensure the safest possible handling of electronic products within the powers and authorities of the State of Washington and the Department of Ecology. Thank you for your comment.

Commenter: Cindy Black

Comment #244

And just want to add: I am not a "NIMBY…" I don't want Washington Sate polluted with electronic waste; but I ALSO don't want that waste going to a poor country with no choice but to take it in in exchange for badly needed cash, e.g., Haiti. This planet is tiny, and any ulceration is going to affect the whole body sooner than later. Thank you.

Ecology Response:
Thank you for your comment!

Commenter: Judith Kensinger

Comment #245

You will recognize the above message as it was produced by Priorities for a Healthy Washington. I want you to know that I sincerely endorse this statement of requirements, and will do my part in the recycling effort.

Ecology Response:
Thank you for your comment!

Commenter: Sara Wu

Comment #246

It doesn't make sense to clean up one place while we continue to pollute in another. Please develop plans to dispose of all toxic material or forbid their production.

Ecology Response:
The regulations ensure the safest possible handling of electronic products within the powers and authorities of the State of Washington and the Department of Ecology. Thank you for your comment.

Commenter: Todd Carey

Comment #247

I want to make sure that when a citizen from Washington state drops off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country.

Ecology Response:
The regulations ensure the safest possible handling of electronic products within the powers and authorities of the State of Washington and the Department of Ecology. Thank you for your comment.

Commenter: Tami Schendel

Comment #248

-force the dumps to sort more of the waste- I believe place that sell TV's should also take TVs and computers.

Ecology Response:
Ecology does not have the authority to ban disposal of these materials in solid waste facilities. Local governments are primarily responsible for solid waste management. Many of them have banned disposal of electronic products through local ordinances. Local governments also write solid waste management plans. These plans describe how solid waste will be managed within their jurisdiction (primarily counties). Many have required sorting of, or have established curbside collection of, recyclable materials.

Commenter: Angela Foster

Comment #249

Please mandate transparency so that we know where recycled e-waste is goin and now it will be recycled. Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass, and make these standards at least as strong as those in Washington's dangerous waste regulations. Require that plastics are recycled whenever possible instead of smelted or incinerated.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Only when a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. Ecology can not enforce these regulations outside its borders. Other states and national governments have their own regulations for hazardous waste and should enforce them.
This is a recycling law. CEPs covered in this program will be recycled. Energy recovery is not recycling. Residuals – process by-pass wastes – may be disposed of in compliant disposal facilities.

Commenter: Gina Hicks

Comment #250

First I would like to thank you for the good work so far regarding electronics recycling. I would like to submit my opinions in the hopes that they may help to further strengthen and improve the recycling program. I would like to see the following safeguards required in the recycling program:

Further, and I'm aware that this idea is both more controversial and bound to be resisted by manufacturers, I would like to see a mandatory takeback program for manufaturers. As long a s the manufacturers are isolated from the recycling responsibilities they have little incentive to reduce thier use of toxic materials. Shifting the disposal burden to the manufacturer will help them see the benefit of streamlining their production process and reducing toxic material use. This will benefit the workers who must work with these materials and the environment that must absorb them afterwards. If they manage to eliminate the toxic materials entirely they will also save money by not needing the permits and extra safety measures that are required for their handling.

Ecology Response:
Thank you for your comments. RCW 70.95N requires manufacturers to pay for the prescribed recycling program in the law. Part of the legislative findings state "that the system must encourage the design of electronic products that are less toxic and more recyclable." It is

believed that by requiring manufacturers to operate the recycling programs, product recyclability and other “design for the environment” features would be incorporated into products.

Commenter: Margaret Shield

Comment #251

Let’s create an E-Waste recycling system that truly protects our health and our environment!

Ecology Response:
Thank you for your comment!

Commenter: Gordon Adams

Comment #252

I ended up going to a company (Tek something) on Aurora Ave in Seattle and paying $35. That was more expensive than I had planned (I was thinking $15). I look forward to the time when this law comes into effect, and when the regulations make this process “real recycling”, rather than disposal.
Below are reasonable requests in the form letter:

Ecology Response:
Thank you for your comments.

Commenter: Steve Scott

Comment #253

As you develop rules to implement our new law mandating responsible recycling of waste which can damage our ecosystems, please keep in mind the following points:

Plastics should be fully recyclable and totally processed into reusable or innocuous materials

The standards for handling toxic materials, including circuit boards, mercury lamps (INCLUDING FLUORESCENT AND COMPACT FLUORESCENT LAMPS), batteries, and leaded glass should be strengthened. Make these standards at least as strong as those in Washington’s dangerous waste regulations

Minimize export to other countries where standards for processing are lower on non-existent

Ecology Response:
This is a recycling law. CEPs covered in this program will be recycled. Energy recovery is not recycling. Residuals – process by-pass wastes – may be disposed of in compliant disposal facilities.

Only when a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. Ecology can not enforce these regulations outside its borders. Other states and national governments have their own regulations for hazardous waste and should enforce them.

The law only authorizes inclusion of televisions, desktop computers, portable and laptop computers, and computer monitors.

The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Commenter: Peter Rimbos

Comment #254

I am encouraged with what you are doing to ensure that electronics in Washington are being recycled in a way that protects our shared environment and human health.
Specifically, I want to know that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of our state, or even outside of our country.
Thank you for listening to my concerns and for taking these public comments into consideration as you continue to strengthen our state's groundbreaking electronic products recycling program.

Ecology Response:
Thank you for your comments!

Commenter: Judy Blevens

Comment #255

Hi Jay!

"Back home" is in the rolling hills of NE Kansas (13 mi. from Atchison & 20 from St. Joe, MO) where the architecture. Landscape & friendliness here in Battle Ground match what I find in Bendena, Doniphan Co, KS.

Fourteen yrs. Ago we spent the spring we'd be moving from our 6-year. home in Las Vegas to decide which state we'd move to selecting a home within 50 mi. of Portland. Part of the reason I avoid shopping in OR is –shop in WA & the taxes I owe my state are deducted on the spot.
We were recycling what we could in LV once our bins were delivered; it was even better in BG. As of last summer, LV still has bi-weekly pickup; the last years there I went from 1-2 cans of trash for each pick-up down to less than 1 can. How wonderful it feels to keep recyclable things out of our landfills. Here I use bi-monthly trash pick-up, mainly because it stinks too much during summer to use monthly trash pick-up.

I'm co-chair of the ELCA's SW WA Synod Earthkeepers. When the synod asked for people interested in forming an Earthkeeping Task Force, I joined at the spot – I'm a farmer's daughter with a perspective on caring for the land city dwellers find hard to understand. Also—if I didn't volunteer would Clark Co. be represented? So far I'm the only one S of Tumwater that meets as a committee to direct 94 congregations in greater awareness of actions we can take.
(Jay, Did you attend the earthkeeping symposium at PLU in Spring 2004?)
"The Columbian" reports Clark Co. sites—I promote the info in those articles to members of our church & neighbors & those who sing in WSU-Vanc Community Singers. Were all these Clark Co. programs coming out in "The Columbian" Jan 2007 to present already in place but needing better publicity? Whatever—I'm using as many means as I can to promote communication< –>publicity.

Ecology Response:
Thank you for your comments!

Commenter: Jo Ann Showalter

Comment #256

Washington State is in the forefront of electronics recycling.

It is imperative to mandate transparency so we know where the computers and TVs are going and how they will be recycled.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Sara Bhakti

Comment #257

I am writing to express my concern that electronics in Washington State are being recycled responsibly to protect the environment and human health, and to be a good model for other parts of the country and world.

Especially I want reassurance that my computer or tv will not be passing on more pollution to other parts of the country and/or world.

Therefore, I request transparency about this recycling program and assurances that plastics and other components will be reused to the fullest extent.

Furthermore, I request that incentives for manufacturers be implemented so that they use less hazardous, greener and more recycle-friendly components in their production of these products. Thank you for attending to these concerns and for seeing that our electronic products recycling program is implemented in the strongest possible way.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

RCW 70.95N requires manufacturers to pay for the prescribed recycling program in the law. Part of the legislative findings state "that the system must encourage the design of electronic products that are less toxic and more recyclable." It is believed that by requiring manufacturers to operate the recycling programs, product recyclability and other "design for the environment" features would be incorporated into products.

Commenter: Den Mark Wichar

Comment #258

I worked hard in the campaign to have electronics in Washington State recycled to protect environment and human health.

Please accept these comments as you continue to strengthen our state's groundbreaking electronic products recycling program.

Ecology Response:
Thank you for your comments!

Commenter: Francy Bose

Comment #259

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. I was just talking about this with my family yesterday, because we have a computer that needs to be recycled. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. We have a responsibility to require the following safeguards in our recycling program:

Ecology Response:
The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Commenter: Carolee Colter

Comment #260

I'm writing because I want to make sure that when I drop off my computers for recycling that they won't end up causing more problems here in Washington or abroad. That's why I'm asking you to support certain elements for a recycling program:

-Transparency: we need know where the electronic waste is going and how it will be recycled

-Strong standards for handling toxics: as least as strong for electronic waste as for dangerous waste in Washington state regulations

-Responsible contractors: Require manufacturers and recyclers to choose contractors who will safely handle toxic materials in every stage of their life cycle.

Abide by laws of other countries: If we ship our waste to other countries, we should Follow their import laws

Plastics recycling: Not air-polluting smelting or incineration if at all possible.

Thank you for considering these comments.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the

information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Only when a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. Ecology can not enforce these regulations outside its borders. Other states and national governments have their own regulations for hazardous waste and should enforce them.

This is a recycling law. CEPs covered in this program will be recycled. Energy recovery is not recycling. Residuals – process by-pass wastes – may be disposed of in compliant disposal facilities.

Commenter: Martha Atkinson

Comment #261

As a former biologist for the USNPS (now disabled) I wish to than you for the good work you are doing to make sure that electronics in Washington Sate are being recycled in a way that protects the environment and human health.

Ecology Response:
Thank you for your comments!

Commenter: Robert and Alicelia Warren

Comment #262

Wa State was a national, award-winning leader in curbside recyclinga few years ago. We urge the WA state Dept. of Ecology to now take the lead in comprehensive safe recycling of TV's, computers, other electronic products with toxic materials, and plastics. With your strong leadership, our state can continue its environmental leadership. Thank you for your conscientious work on these issues.

Ecology Response:
Thank you for your comments!

Commenter: Thomas Angell

Comment #263

I want to make sure that when I drop off a computer, cell phone, TV, or other electronic equipment for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country.

Ecology Response:
Thank you for your comments!

Commenter: Tim Gould

Comment #264

The "e-waste" law enacted by the Washington State Legislature requires that discarded electronic components be recycled in a way that protects the environment and human health. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. The implementing regulations must follow the intent of the underlying law on electronic waste recycling.

Ecology Response:
Thank you for your comments!

Commenter: Roger Harrison and Ms. Margaret Harris

Comment #265

Dear Mr Sheppard

Thanks for your consideration of these points!

Ecology Response:
Thank you for your comments!

Commenter: Susan Cantrell

Comment #266

As a state and as a country, we are finally beginning to realize that our disposal methods have resulted in long-term environmental hazards. We are also becoming more aware of the toxic materials found in so many common household furnishings.

The other important aspect of any recycling program is making it relatively convenient for consumers to recycle their electronic products. People's hearts may be in the right place, but they will not expend a great deal of effort in making it happen. If people can recycle their electronic products at a central location with convenient hours, at a retailer of electronic goods, or through their regular waste management company, they will be more inclined to do so.

Ecology Response:
The law requires that collection services be "reasonably convenient and available to all citizens of the state…including both rural and urban areas." The services must be provided in every county of the state and at least one collection location in every city of 10,000 people or more. The collection sites must be staffed and open to the public on an on-going basis. Thank you for your comments!

Commenter: Ellen Bynum

Comment #267

-Close the loop so that manufacturing companies take responsibility for recycling their products and packaging, even if it means paying a small consumer fee to do so. This is already happening in European countries where government and industry recognized the cost of NOT closing the loop.

Ecology Response:
Washington State's new Electronic Product Recycling law (RCW 70.95N) places responsibility on manufacturers of electronic products to create recycling programs for their branded televisions and computers and is known as "producer responsibility." This approach requires manufacturers to "cost internalize" the cost of the recycling program. There is no visible fee charged to the consumer.

Comment #268

-Require manufacturers to establish a parts pool, so that electronics are not made obsolete because a single part is no longer available. This can be done on a website with either re-sale or exchange between posting parties.

Ecology Response:
This is outside the scope of authority granted to Ecology. This would have to be a directive from the Legislature.

Comment #269

I don't want to have to pay by the pound for destroying perfectly good printers/computers that can be reused and refurbished.

Ecology Response:
Washington State's new Electronic Products Recycling law places responsibility on manufacturers of electronic products to create recycling programs for their branded televisions and computers and is known as "producer responsibility." This approach requires manufacturers to "cost internalize" the cost of the recycling program. There is no visible fee charged to the consumer.

Commenter: Kate Pflaumer

Comment #270

Please strengthen the programs for recycling electronic waste:

Ecology Response:
Thanks you for your comment. The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Commenter: Ellen AAgaard

Comment #271

I recently recycled a computer printer at re-PC, so I know both how good it feels to recycle used electronics responsibly, and how important it is to have convenient and local electronics recycling. Ensure DOE's commitment to good computer and TV recycling habits by:

Ecology Response:
Thank you for your comments!

Commenter: Laurel Powell

Comment #272

As the mother of a young child & a woman who cares about the future of our planet, I want to thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health.

Ecology Response:
Thank you for your comments!

Commenter: Pradyumna Misra

Comment #273

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. We have a responsibility to require the following safeguards in our recycling program:

-Mandate transparency so we know where the computers and TVs are going and how they will be recycled

-Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass. Make these standards at least as strong as those in Washington's dangerous waste regulations.

-Require that manufacturers and recyclers choose responsible contractors who will safely handle toxic materials all the way throughout final recycling or disposal

-Follow the import laws of other countries where our electronic waste may be shipped for recycling or disposal

Thank you for taking these comments into consideration as you continue to strengthen our state's groundbreaking electronic products recycling program.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Only when a material becomes a waste and is then designated as hazardous, does it come under the purview of the hazardous waste regulations. Ecology can not enforce these regulations outside its borders. Other states and national governments have their own regulations for hazardous waste and should enforce them.

Commenter: Georgina Cavendish

Comment #274

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. We have a responsibility to require the following safeguards in our recycling program:

-Mandate transparency so we know where the computers and TVs are going and how they will be recycled

-Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass. Make these standards at least as strong as those in Washington's dangerous waste regulations.

-Follow the import laws of other countries where our electronic waste may be shipped for recycling or disposal

-Require that plastics are recycled whenever possible instead of smelted or incinerated

Thank you for taking these comments into consideration as you continue to strengthen our state's groundbreaking electronic products recycling program.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

The rules have been created within the scope and authority of the State of Washington and the Department of Ecology. Ecology has created a voluntary "preferred processor" program for issues that can not be required or enforced by the State.

Only when a material becomes a waste and is then designated as hazardous, does it come under the purview of the hazardous waste regulations. Ecology can not enforce these regulations outside its borders. Other states and national governments have their own regulations for hazardous waste and should enforce them.

Commenter: David Gladstone

Comment #275

Thank you for the food work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. MY wife and I want to make sure that when we drop off a computer or TV for recycling that it is not going to cause more pollution in our neighborhood, outside of the state, or even outside of the country.

Ecology Response:
Thank you for your comments!

Commenter: Elizabeth Davis , The League of Women Voters of Washington

Comment #276

The League of Women Voters of Washington strongly supported the electronic waste legislation enacted in 2006. We are a member organization of Priorities for a Healthy Washington. We commend the Department of Ecology for its hard and dedicated work in preparing these proposed implementation rules now ready for public review.

Following upon League's many studies, local, state and national, of solid and hazardous waste issues, our position statements for action have long supported laws and programs that reduce and prevent human and other exposures to hazardous materials, as well as those laws and programs that come under the general rubric of reduce, reuse and recycle.

While we think the proposed rules are very good overall, there are some areas that need additions and/or strengthening.

First, compliance with the rules and standards should apply to all entities that handle the E-waste brought to the recycling centers, and not just to those entities that first receive these materials. Let us not lose sight of the main goal here: to prevent the toxic substances contained in E-waste from harming people, animals, air, land and water. It makes no sense to stop this responsibility after the first handler.

Ecology Response:
Ecology has determined that regulating downstream processors is beyond the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred performance standards.

Comment #277

Second, there is the matter of transparency. The League, and I as an individual consumer of electronic products, want to know where our E-waste ends up. We already know that much of this waste goes to other countries, and is processed all too often in ways that disregard adverse health effects to the people processing these toxic components. While there is little, if anything, we can do to change or enforce the laws of other countries, we can let some sunshine in through a transparent reporting system.

Specifically, we can require the annual reports from all processors in the chain of custody to identify the destinations of the E-waste sent on by that processor. E-waste processors have a choice of where to send this material for re-use or further processing. Consumers have a choice of where they take their E-waste, and we want to take it to that recycling entity that we know handles it responsibly and without harm to people or the environment here in this country or abroad. Our rules should promote responsible handlers who follow appropriate safety and health standards. If we cannot control by regulation as the Department has reported to us, we can certainly know who these downstream processors are and what they are doing with this waste.

Such transparency in public discourse, policy-making and rule-making is essential. We, the people, do have a right to know this information. These two statements are an integral part of one of League's core principles: we believe that democratic government depends upon informed and active participation in government and requires that governmental entities protect the citizen's right to know by giving adequate notice of proposed actions, holding open meetings, and making public records accessible.

We urge the Department to look carefully at all possible avenues to provide the above information. The E-waste recycling program will be adversely affected in public opinion if we do not do due diligence in tracking the ultimate disposal site and we later discover that our E-waste is causing harm to people and the environment elsewhere.

Respectfully submitted,

Elizabeth Davis
Natural Resources Chair
League of Women Voters of Washington

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. However, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Rob VanOrsow, City of Federal Way

Comment #278

Subject: Comments on Electronic Product Recycling - Rule Development

Mr. Shepard-
Please accept the following comments, which were developed originally by involved stakeholders (including Snohomish County and Washington Citizens for Resource Conservation). Raising these same concerns will be of benefit for residents and businesses in the City of Federal Way, so the comments are repeated below.

WAC 173-900-030 Definitions

Premium services (page 5): The proposed definition of "premium services" has been changed to add the phrase, "or any handling requirements imposed by the CEP owner or collector in excess of those required in this chapter." This phrase creates an unworkable situation for collectors, has no basis in the law, and will undermine the service relationships between various parties. There are numerous reasons – logistical, legal and to avoid liability - in which collectors could reasonably need to handle CEPs in ways that are not required by this chapter. In fact, the chapter does not provide any detailed and specific service related requirements that must be met and these details should be left to the service providers to work out. The following provide more information and examples:

- Most collectors will not have indoor space adequate to store CEPs until a full truckload has accumulated. Therefore, current transporters and processors, in order to gain the customer account, and/or through negotiation, contract, etc., account for this in a number of ways. For instance, they may arrange frequent pick up of a smaller quantity of electronics, or they may provide a trailer on site for the units to be loaded into. In the case of the Snohomish County transfer station program, it would be impossible to provide the service at our three locations if our vendor did not provide truck trailers. In fact, that vendor has found it beneficial to site additional trailers at our locations as back up. There are also agreements in place as to when we call to report a trailer ready to move, the response time by the vendor, and process for resolving concerns about service response, etc. The law and rules have been silent on the negotiations and

details of service, as they should be. It would be impossible to cover every circumstance that could arise and be resolved through business-to-business communication. An attempt to do this would require pages of prescriptive service requirements. That was not the intention. The problem with including this language, when there is absolutely no detail on what the provided service is to be in the law or rule, is that any need or request by the collector could be considered a "premium service" that can now include an added charge. The definition of premium service was developed to very specifically address at home upgrade services and at home pick-up services.

- The law was developed to encourage competition between plans, and we can anticipate that there will be differences between plans. These differences might include operating to a higher level of service offering, increased transparency, better customer service and relations, higher environmental standards, etc. Including this additional language in the definition decreases the likelihood of better service as a result of competition, but will encourage very poor provision of services with an additional charge for anything beyond bad service.
- Some collectors may choose, or legally be required, to go out to bid for whom the service provider will be, especially as multiple plans are anticipated. For example, Snohomish County is not able to simply agree that a particular charity can receive materials from our transfer stations, even at no charge to the County. A formal bid process is required that distinguishes between the possible service providers and includes factors such as: range of materials covered, type of container provided, frequency of pick-up, signage/educational materials provided, etc. Likewise, when we are paid for recyclables we receive, we cannot simply deliver recyclables to anyone we want, we have to go through a bid process that includes not only price but also service options too. These processes should be allowed to play out as the law was written and intended – through competitive processes and business relationships.
- Zoning or other laws in specific locations could require storage, lighting, containment, etc. that are not required in the chapter.
- CEP owners, including small or large quantity generators, could need certain handling requirements to ensure that they will not be liable for illegal handling of their equipment downstream in the chain of custody. To avoid liability, CEP owners should have the right to require protective handling of materials of concern through to final disposition and require that the laws of importing countries are met through final disposition. CEP owners should also be able to require documentation of legal and safe handling through to final disposition.

Ecology Response:
Ecology will delete "or collector" from the definition as this addition does not improve clarification of "premium service." However, "…CEP owner …in excess…" will remain. This clarifies that added services outside of basic collection are not included as a free service and must be paid for by the covered entity. Ecology will also change "CEP owner" to "covered entity" for consistency.

Comment #279

1) Include stronger performance standards for handling toxic materials. For example,
- **Require that all materials of concern (batteries, circuit boards, CRTs and leaded glass, and mercury-containing devices) be managed consistent with the standards in Washington's Dangerous Waste Regulations – regardless of where the processor is located. Text from pertinent sections of the Dangerous Waste Regulations should be included in the rules.**
- **Ban materials of concern from disposal in solid waste landfills and incinerators, including waste-to-energy incinerators.**

WAC 173-900-650 Performance standards for direct processors

Subsection (9) (d) On-site requirements – Materials separation and processing (page 75): We strongly support Ecology's approach of listing materials of concern and requiring that they be handled in a protective manner. These include batteries, mercury-containing devices, all circuit boards, CRT glass, and any components, shredded material, or whole units containing them.

We recommend that language be added to require that all direct processors – wherever they are located – handle batteries and mercury containing components in conformance with the Universal Waste Regulations in Chapter 173-303-573 of the Dangerous Waste Regulations. CRT glass should be handled in conformance with Chapter 173-303-071, which includes the proposed CRT rule. Circuit boards should be handled in conformance with Chapter 173-303-071. If there is any concern or drawback to referring to these sections, the pertinent text should be written directly into the electronics rules.

The following is suggested language (added language is underlined):

(d) Materials separation and processing

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during further processing.
"Materials of concern" include each of the following:

(A) Any devices, including fluorescent tubes, containing mercury or PCBs;
(B) Batteries;
(C) CRTs and leaded glass; and
(D) All whole or shredded circuit boards.

(ii) A direct processor must remove <u>all</u> materials of concern, <u>except circuit board</u>, prior to mechanical or thermal processing.
(iii) A direct processor must handle all materials of concern, <u>including any CEPs, CEP components, or shredded or mixed materials containing materials of concern,</u> in a manner consistent with <u>Chapter 173-303 of Washington's Dangerous Waste Regulations. Specifically, batteries and mercury containing components must be handled according to the Universal Waste Regulations in WAC Chapter 173-303-573. CRT glass and circuit boards must be handled according to WAC Chapter 173-303-071.</u>
(iv) The materials of concern, or any substances contained in them, must be handled in a secured, sheltered enclosure with an appropriate catchment system. (v) To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.
<u>(vi) A direct processor must not send materials of concern to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal</u>

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

<u>Comment #280</u>

2) Mandate that manufacturers and direct processors perform due diligence in choosing their vendors for materials of concern. Require that direct processors hold those vendors, through contractual obligations and verifiable documentation, to

processing standards that protect human health and the environment throughout final disposition.

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Subsection 2 (pages 31): An essential requirement related to due diligence was dropped from the previous draft of the rules. We urge Ecology to include the following language:
(2) The authority or authorized party of a plan must:
(c) perform due diligence in the selection of collectors, transporters, direct processors and subcontractors used to provide services for the plan to ensure that they utilize practices that protect worker safety, public health, and the environment.

WAC 173-900-650 Performance standards for direct processors

Subsection 5 (pages 72 and 73) Prioritized hierarchy of responsible management strategies
After Subsection (5)(a)(ii)(B), please add the following language which parallels the draft national Responsible Recycling Practices: Direct processors must use due diligence to send these materials for recovery at facilities that use technologies protective of health, safety, and the environment.

Subsection 7 (pages 73 and 74) Environmental, health and safety management systems
We ask that the following provision from the draft national Responsible Recycling Practices be included in this subsection:
Includes a procedure for identifying and evaluating the environmental, health and safety impacts of downstream vendors, and for utilizing this information in the selection of downstream vendors.

Additional subsection on Due Diligence
We urge Ecology to include a mandatory minimum standard requiring that direct processors provide due diligence on their subcontracts for materials of concern.
The following is recommended language:
A direct processor must perform due diligence on and obtain verifiable documentation from downstream vendors to which they ship materials of concern, either directly or through intermediaries, to ensure that they utilize practices that protect worker safety, public health, and the environment.

Direct processors must establish and maintain a verifiable chain of custody for materials of concern throughout final disposition.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #281

3) Tighten language to ensure that manufacturers and processors comply with the importation requirements of all importing and transit countries, and require verifiable documentation of compliance.

WAC 173-900-650 Performance standards for direct processors
Subsection 6 Legal Requirements

Subsection 6(a)(iv) (page 73): Thanks to the Department of Ecology for including critical language related to compliance with the laws of all transit and recipient countries. We support

this section, and we ask that the language in subsection 6(a)(iv) be clarified as follows. A direct processor and their vendors must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #282

4) Ensure that recycling is not "sidestepped." Require that plastics from computers and TVs be recycled for material recovery whenever possible, and not be sent directly to smelters or incinerators even for energy utilization or recovery.

Ecology Response:
RCW 70.95N Electronic Product Recycling is a recycling law. Only "residual" material – by-pass wastes – can be disposed. Energy recovery is not recycling. Recyclable materials must be recycled into new products.

Comment #283

WAC 173-900-650 Performance standards for direct processors
Subsection 10 Materials recovery and materials disposal (page 76)

Subsection 10(c): We support this subsection, especially the requirement in 10(c) that a direct processor must direct streams that are not directed to reuse to materials recovery, unless doing so poses unacceptable risk or is not technically feasible. This is extremely important. We request that the following language be added to this subsection: Smelting whole CEPs is not materials recovery. After shredding or dismantling the CEPs, scrap metal and plastics should be sent for material recovery whenever possible rather than smelted or incinerated even with energy utilization or recovery.

Ecology Response:
Subsection 10(c) has been deleted. Ecology agrees with comments received that the language is ambiguous. "Risk" is not defined against a standard.

Comment #284

Subsection 11 Materials that cannot be recovered (page 76)

The feasibility of material recovery should not be based on economics. This is an open door to allowing any number of materials to be disposed if recycling is more expensive than the plans are willing to pay. Second, only residuals should be disposed. Since CEPs are recyclable, "equipment" should not be allowed to be disposed. Finally, based on Washington's waste management hierarchy and the hierarchy described in subsection 5 of this section, energy recovery is a disposal strategy. The word "disposal" includes landfilling, incineration, and waste-to-energy incineration.

Subsection 11(a): We suggest the following language: A direct processor must identify and utilize ~~effective and~~ safe ~~energy recovery or~~ disposal strategies for all ~~equipment, components, and~~ materials that are not technically ~~or economically~~ feasible to recover.

Ecology Response:
Subsection (11) has been changed. Please see all edits in subsection (11).

Comment #285

Subsection 11(b): We suggest the following language: A direct processor must separate ~~equipment, components and~~ residual materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

Ecology Response:
Agree to change "equipment, components and" to residual. Please see edits. Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #286

Subsection 11(c): We strongly prefer that this subsection be deleted. However, if it is kept, we urge that it be clarified that it refer only to non-toxic residuals - not toxic or recyclable materials: (c) A direct processor may direct ~~streams~~ non-recyclable residuals, that do not contain toxic substances or materials of concern, with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #287

Subsection 11(d): Materials of concern are toxic. When they are contained in residuals destined for disposal, they should not be sent to solid waste facilities. We therefore urge Ecology to make the following change: A direct processor must not send residuals containing whole or shredded materials of concern to incinerators, waste-to-energy incinerators or solid waste landfills ~~if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies~~.

Ecology Response:
This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

Comment #288

5) Encourage reuse while stringently guarding against "sham" reuse. Covered electronic products and components containing materials of concern must be tested and functioning properly prior to shipment for reuse.

Ecology Response:
By the definitions of reuse in the rule, the CEPs and components must be fully functional (with the same purpose as at the original purchase) prior to resale or donation. This would require that the CEP units be fully functional prior to shipment, distribution, or sale.

Comment #289

WAC 173-900-650 Performance standards for direct processors

Subsection 5 Prioritized hierarchy of responsible management strategies

Reuse - Subsection 5(a)(i) (page 72): It is important that Ecology protect against "sham" reuse. Therefore, we request that the following language be added to (5)(a)(i): Reuse –May direct~~ing~~ CEPs to reuse and refurbishment as appropriate ~~to enable shipment for reuse~~, provided that all CEPs are tested and fully functional prior to resale or donation; accurately labeled; and packaged and shipped in a manner that will minimize damage during transport.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received. Reuse language is included subsection 650(11).

Comment #290

6) Ensure transparency. Manufacturers' plans must publicize, through their collectors and Ecology's website, how and where computers, monitors and TVs are recycled. Collectors must receive adequate information to provide their customers with the countries of final disposition for covered electronic products, all materials of concern, and all residuals.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #291

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Transparency about final disposition of all materials of concern is essential. The clear intent of the law and of the legislature is safe and environmentally sound collection, transportation, and recycling of CEPs. CEP owners - including businesses, governments and charities who are small or large quantity generators - must be able to ensure that they will not be liable for illegal handling of their equipment downstream through the chain of custody. To avoid liability, CEP owners should be able to choose programs based on transparent information about the fate of materials of concern through to final disposition. In addition, the public must have a way to hold manufacturers accountable for providing responsible recycling. We appreciate the work Ecology has already done to include transparency in the rules, and urge Ecology to take additional steps to ensure such transparency.

Subsection (2)(a) (page 31): We strongly support provision (2)(a) requiring that the authority or authorized party provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled. However, we urge Ecology to add the following clarifying language to this section: Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals. Alternately, the following clarifying language could be added: Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #292

WAC 173-900-450 Performance standards for collectors

Subsection (5)(e) (page 55): We support subsection (5)(e), which requires that "Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPs received into the program are recycled." However, we ask Ecology to strengthen this section by:

- Adding the following: "Collectors must post, in a readily visible location, at the collection site information that ~~can~~ will be shared with covered entities about how and where CEPs received into the program are recycled. Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals." Alternately, the following clarifying language could be added: "Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals."
- Requiring that collectors also make available a "Certificate of Recycling" to covered entities using their collection service. Customers using the system would be provided with a certificate upon request. Making available a Certificate a Recycling, upon request, is already a requirement of collectors participating in Take It Back Networks. Please add the following language: Collectors must also provide covered entities, upon request, with written and signed "certificates of recycling" that include the countries of final disposition for covered electronic products, all materials of concern, and all residuals.
- Requiring that collectors that have a website provide the information on their website in addition to posting it at their physical location.

Rob Van Orsow
Solid Waste & Recycling Coordinator
City of Federal Way - Public Works Dept.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Larry Blanchard, City of Kent

Comment #293

Dear Mr. Shepard:

On behalf of the City of Kent, thank you for this opportunity to comment on WAC 173-900, the proposed rules affecting the Electronic Product Recycling Program.

We support Ecology's approach of developing two sets of standards — mandatory minimum standards based on what Ecology can enforce and preferred standards. However, we believe that the proposed minimum standards can and should be significantly strengthened.

Residents and other covered entities want their discarded computers, monitors and TVs to be responsibly recycled in ways that protect human and environmental health. They need adequate information to make choices about which options will provide the most environmentally sound recycling, and have the right to know that toxic materials from their discarded products are being handled safely throughout the entire recycling and disposal chain. In addition, business and government large quantity generators retain legal liability for toxic materials, and will need assurances that those toxic materials are handled properly throughout final disposition to avoid liability.
We therefore urge Ecology to improve the rules by making sure that they accomplish the following:

1) Include stronger performance standards for handling toxic materials. For example,

- **Require that all materials of concern (batteries, circuit boards, cathode ray tubes (CRT's) and leaded glass, and mercury-containing devices) be managed consistent with the standards in Washington's Dangerous Waste Regulations — regardless of where the processor is located. Text from pertinent sections of the Dangerous Waste Regulations should be included in the rules.**

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, until a material becomes a waste and then designated as hazardous, only then does it come under the purview of the hazardous waste regulations.

Comment #294

- **Ban materials of concern from disposal in solid waste landfills and incinerators, including waste-to-energy incinerators.**

Ecology Response:
This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

Comment #295

WAC 173-900-650 Performance standards for direct processors

Subsection (9) (d) On-site requirements — Materials separation and processing (page 75): We strongly support Ecology's approach of listing materials of concern and requiring that they be handled in a protective manner. These include batteries, mercury-containing devices, all circuit boards, CRT glass, and any components, shredded material, or whole units containing them.

We recommend that language be added to require that all direct processors — wherever they are located — handle batteries and mercury containing components in conformance with the Universal Waste Regulations in Chapter 173-303-573 of the Dangerous Waste Regulations. CRT glass should be handled in conformance with Chapter 173-303-071, which includes the proposed CRT rule. Circuit boards should be handled in conformance with Chapter 173-303-071. If there is any concern or drawback to referring to these sections, the pertinent text should

be written directly into the electronics rules.

The following is suggested language (added language is underlined):

(d) Materials separation and processing

(i) A direct processor must remove from covered electronic products (CEP's) and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during further processing. "Materials of concern" include each of the following:

(A) Any devices, including fluorescent tubes, containing mercury or PCBs;
(B) Batteries;
(C) CRT5 and leaded glass; and
(D) All whole or shredded circuit boards.

(ii) A direct processor must remove all materials of concern, <u>except circuit board,</u> prior to mechanical or thermal processing.

(iii) A direct processor must handle all materials of concern, <u>including any CEP5, CEP components, or shredded or mixed materials containing materials of concern,</u> in a manner consistent with <u>Chapter 173-303 of Washington's Dangerous Waste Regulations. Specifically, batteries and mercury containing components must be handled according to the Universal Waste Regulations in WAC Chapter 173-303-573. CRT glass and circuit boards must be handled according to WAC Chapter 173-303-071.</u>

(iv) The materials of concern, or any substances contained in them, must be handled in a secured, sheltered enclosure with an appropriate catchment system.

(v) To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

(vi) <u>A direct processor must not send materials of concern to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal</u>

Ecology Response:
Thank you for the suggestion. This is a valid concern. Ecology does not have the authority to ban disposal of these materials in solid waste facilities.

<u>Comment #296</u>

2) **Mandate that manufacturers and direct processors perform due diligence in choosing their vendors for materials of concern. Require that direct processors hold those vendors, through contractual obligations and verifiable documentation, to processing standards that protect human health and the environment throughout final disposition.**

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

<u>Comment #297</u>

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Subsection 2 *(pages 31):* An essential requirement related to due diligence was dropped from the previous draft of the rules. We urge Ecology to include the following language:
(2) The authority or authorized party of a plan must:
(c) perform due diligence in the selection of collectors, transporters, direct processors and subcontractors used to provide services for the plan to ensure that they utilize practices that

protect worker safety, public health, and the environment.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #298

WAC 173-900-650 Performance standards for direct processors

Subsection 5 (pages 72 and 73) Prioritized hierarchy of responsible management strategies
After Subsection (5)(a)(ii)(B), please add the following language which parallels the draft national Responsible Recycling Practices: Direct processors must use due diligence to send these materials for recovery at facilities that use technologies protective of health, safety, and the environment.

Ecology Response:
Thank you for your comment. Based on comments received, subsection 650(5)(a) has been deleted.

Comment #299

Subsection 7 (pages 73 and 74) *Environmental, health and safety management systems* We ask that the following provision from the draft national Responsible Recycling Practices be included in this subsection:
Includes a procedure for identifying and evaluating the environmental, health and safety impacts of downstream vendors, and for utilizing this information in the selection of downstream vendors.

Additional subsection on Due Diligence
We urge Ecology to include a mandatory minimum standard requiring that direct processors provide due diligence on their subcontracts for materials of concern.
The following is recommended language:
A direct processor must perform due diligence on and obtain verifiable documentation from downstream vendors to which they ship materials of concern, either directly or through intermediaries, to ensure that they utilize practices that protect worker safety, public health, and the environment.

Direct processors must establish and maintain a verifiable chain of custody for materials of concern throughout final disposition.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #300

3) **Tighten language to ensure that manufacturers and processors comply with the importation requirements of all importing and transit countries, and require verifiable documentation of compliance.**

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #301

WAC 173-900-650 Performance standards for direct processors
Subsection 6 Legal Requirements

Subsection 6(a)(iv) (page 73): Thanks to the Department of Ecology for including critical language related to compliance with the laws of all transit and recipient countries. We support this section, and we ask that the language in subsection 6(a)(iv) be clarified as follows. A direct processor and their vendors must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology has determined that this element, as written, is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #302

4) **Ensure that recycling is not "sidestepped." Require that plastics from computers and** TVs **be recycled for material recovery whenever possible, and not be sent directly to smelters or incinerators even for energy utilization or recovery.**

Ecology Response:
RCW 70.95N Electronic Product Recycling is a recycling law. Only "residual" material – by-pass wastes – can be disposed. Energy recovery is not recycling. Recyclable materials must be recycled into new products.

Comment #303

WAC 173-900-650 Performance standards for direct processors
Subsection 10 Materials recovery and materials disposal (page 76)

Subsection 10(c): We support this subsection, especially the requirement in 10(c) that a direct processor must direct streams to materials recovery that are not directed to reuse, unless doing so poses unacceptable risk or is not technically feasible. This is extremely important. We request that the following language be added to this subsection: Smelting whole CEPs is not materials recovery. After shredding or dismantling the CEPs, scrap metal and plastics should be sent for material recovery whenever possible rather than smelted or incinerated even with energy utilization or recovery.

Ecology Response:
Subsection 10(c) has been deleted. Ecology agrees with comments received that the language is ambiguous. "Risk" is not defined against a standard.

Comment #304

Subsection 11 Materials that cannot be recovered (page 76)

The feasibility of material recovery should not be based on economics. This is an open door to allowing any number of materials to be disposed if recycling is more expensive than the plans are willing to pay. Second, only residuals should be disposed. Since CEPs are recyclable, "equipment" should not be allowed to be disposed. Finally, based on Washington's waste management hierarchy and the hierarchy described in subsection 5 of this section, energy recovery is a disposal strategy. The word "disposal" includes landfilling, incineration, and waste-to-energy incineration.

Subsection 11(a): We suggest the following language: A direct processor must identify and utilize ~~effective and~~ safe ~~energy recovery~~ ~~or~~ disposal strategies for all ~~equipment, components, and~~ materials that are not technically ~~or economically~~ feasible to recover.

Ecology Response:
Subsection 11(a) has been changed based on multiple comments received. Please see edits to subsection (11).

Comment #305

Subsection 11(b): We suggest the following language: A direct processor must separate ~~equipment, components and~~ residual materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

Ecology Response:
Agree to change "equipment, components and" to residual. Please see edits. Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #306

Subsection 11(c): We strongly prefer that this subsection be deleted. However, if it is kept, we urge that it be clarified that it refer only to non-toxic residuals - not toxic or recyclable materials: (c) A direct processor may direct ~~streams~~ non-recyclable residuals, that do not contain toxic substances or materials of concern, with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11) has been changed. Please see edits to subsection (11).

Comment #307

Subsection 11(d): Materials of concern are toxic. When they are contained in residuals destined for disposal, they should not be sent to solid waste facilities. We therefore urge Ecology to make the following change: A direct processor must not send residuals containing whole or shredded materials of concern to incinerators, waste-to-energy incinerators or solid waste landfills ~~if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.~~

Ecology Response:
Subsection (11) has been changes Please see changes to subsection (11).Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #308

5) **Encourage reuse while stringently guarding against "sham" reuse. Covered electronic products and components containing materials of concern must be tested and functioning properly prior to shipment for reuse.**

Ecology Response:
By the definitions of reuse in the rule, the CEPs and components must be fully functional (with the same purpose as at the original purchase) prior to resale or donation. This would require that the CEP units be fully functional prior to shipment, distribution, or sale.

Comment #309

WAC 173-900-650 Performance standards for direct processors

Subsection 5 Prioritized hierarchy of responsible management strategies
Reuse - Subsection 5(a)(i) (page 72): It is important that Ecology protect against "sham" reuse. Therefore, we request that the following language be added to (5)(a)(i): Reuse —May direct~~ing~~ CEPs to reuse and refurbishment as appropriate ~~to enable shipment for reuse~~, provided that all CEPs are tested and fully functional prior to resale or donation; accurately labeled; and packaged and shipped in a manner that will minimize damage during transport.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. However, WAC 173-900-650(5)(a) has been deleted from the rule based on comments received. Reuse language is included subsection 650(11).

Comment #310

6) **Ensure transparency. Manufacturers' plans must publicize, through their collectors and Ecology's website, how and where computers, monitors and TVs are recycled. Collectors must receive adequate information to provide their customers with the countries of final disposition for covered electronic products, all materials of concern, and all residuals.**

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #311

WAC 173-900-300 Covered electronic product (CEP) recycling plans

Transparency about final disposition of all materials of concern is essential. The clear intent of the law and of the legislature is safe and environmentally sound collection, transportation, and recycling of CEP5. CEP owners - including businesses, governments and charities who are small or large quantity generators - must be able to ensure that they will not be liable for illegal handling of their equipment downstream through the chain of custody. To avoid liability, CEP owners should be able to choose programs based on transparent information about the fate of materials of concern through to final disposition. In addition, the public must have a way to hold manufacturers accountable for providing responsible recycling. We appreciate the work Ecology has already done to include transparency in the rules, and urge Ecology to take additional steps to ensure such transparency.

Subsection (2)(a) *(page 31):* We strongly support provision (2)(a) requiring that the authority or authorized party provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled. However, we urge Ecology to add the following clarifying language to this section: Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals. Alternately, the following clarifying language could be added: Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #312

WAC 173-900-450 Performance standards for collectors

Subsection (5)(e) (page 55): We support subsection (5)(e), which requires that "Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPs received into the program are recycled." However, we ask Ecology to strengthen this section by:

- Adding the following: "Collectors must post, in a readily visible location, at the collection site information that can ~~will~~ be shared with covered entities about how and where CEP5 received into the program are recycled. Such information must include the countries of final disposition for covered electronic products, all materials of concern, and all residuals." Alternately, the following clarifying language could be added: "Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals."
- Requiring that collectors also make available a "Certificate of Recycling" to covered entities using their collection service. Customers using the system would be provided with a certificate upon request. Making available a Certificate a Recycling, upon request, is already a requirement of collectors participating in Take It Back Networks. Please add the following language: Collectors must also provide covered entities, upon request, with written and signed "certificates of recycling" that include the countries of final disposition for covered electronic products. all materials of concern, and all residuals.
- Requiring that collectors that have a website provide the information on their website in addition to posting it at their physical location.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #313

Inclusion of these provisions is necessary to implement the purpose and substance of the electronics recycling law and provide needed protections to workers, their communities, and the environment. We appreciate the time and resources you and others at Ecology have put into developing these rules.

Sincerely,
Larry Blanchard
Public Works Director

Ecology Response:
Thank you for your comments!

Other emails:

Commenter: Walter L. Johnson

Comment #314

Subject: Don't forget about the rest of us

A lot of people put together their own PC's these days because of a desire to customize what they use. It is impractical for all these individuals who build for themselves and perhaps family and friends only to register as manufacturers, but they do generate electronic wastes. For that reason some funding for recycling should come directly from the manufacturers and importers of high risk electronic components like power supplies with their fee paid through registered system manufacturers only for hardware sold to those manufacturers for intergration. When I have old, unusable electronics, I take them to the CREAM program for recycling of circuit boards and power supplies, but the basics like steel cases I put in regular recycling. The screws I keep.

Ecology Response:
Thank you for your comments. Ecology is aware that some consumers choose to build their own computers. If a consumer is selling the computer for profit, they must be a licensed business in the state. Manufacturers are required to label their covered electronic products (televisions and computers) with their brand name in order to be able to identify the responsible producer at end of life to cover recycling costs. The law is a "producer responsibility" law, requiring manufacturers to internalize the cost of recycling.

Comment #315

In Clark County, WA, we already have free electronics recycling, so it wouldn't hurt to look at what our county's program does. One thing though is that the recycling should not expose the

recyclers to harm. A lot of electronics recycling is done by hand by relatively uneducated people in developing countries with hammers, etc. All we achieve in that case is moving the environmental waste problem from the U. S. to the third world, including solid waste issues.

Ecology Response:
The State of Washington and the Department of Ecology are limited to regulate inter-state and international commerce by the US Constitution commerce clause. Ecology has written rules that are within the State's authority. Ecology has created a voluntary program, "Preferred Standards for Electronic Product Processors" that addresses issues such as processing out of country.

Comment #316

Manufacturers should be encouraged to actually reuse components that aren't soldered in place. I have never returned brand name toner cartridges, even though I have accumulated seven, because my belief is they provide free shipping solely to keep them out of the hands of toner refill companies, an anti-competitive measure. Besides, sending them back one at a time is inefficient and even the need to call is enough to keep the people who never get around to doing their rebates from recycling. For recycling to happen on a widely distributed basis, it needs to be convenient.

Ecology Response:
The new Electronic Product Recycling law (RCW 70.95N) requires manufacturers of televisions and computers to provide collection, transportation, and processing of old televisions and computers at no cost to the consumer. The services need to be statewide and convenient to all Washington citizens. Thank you for your information.

Comment #317

You might take a lesson from Denver, CO, which when I lived in the metro area collected all of the in-city trash. In the interests of efficiency, they collected large items, like furniture, just one trash day a month. Likewise, electronics recycling will work best if done at the home location or by paying Goodwill, ARC, etc. to act as collection agents through their normal operations. You can't underestimate the willingness of people to just stuff an old item of electronics in the garage or a closet for the next generation do do something about. My oldest sister I think even still has a PC Junior and I still have Commodore Vic 20 and Vic 64 computers in storage because at the time storage was easier. I don't think Commodore is even in business anymore. I think I even have an old Atari playstation in storage just because leaving it there is easiest.

Walter L. Johnson
Vancouver, WA

Ecology Response:
Thank you for the information.

Commenter: Glen H. Schailey

Comment #318

Subject: Electronics Recycling

This week I had to dispose of a TV that was unrepairable.

I had 3 choices, Take it to a recycler locally in Federal Way (where I live) for $75.00.
Take to Tacoma for $.30 a pound. $28.00 + tax 28 mile drive.
or find a place to just dump it.

I choose option 2.

If it a financial hardship, people will not recycle the products.

Ecology Response:
The new Electronic Product Recycling law (RCW 70.95N) requires manufacturers of televisions and computers to provide collection, transportation, and processing of old televisions and computers at no cost to the consumer. The services need to be statewide and convenient to all Washington citizens. Thank you for your information.

Commenter: Peter Willing

Comment #319

Subject: TV and computer recycling

I understand you are involved in drafting the WAC to go with last year's law. Good work. My hopes for the WAC go like this:

Make sure we know what is happening to the stuff -- not just shipping the problem off to some third world country with weak environmental laws

Ecology Response:
The rule requires that collectors post information telling covered entities “how and where” CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650.

Comment #320

An education component that tries to reach, for example, the construction/remodel guy who has no idea that fluorescent tubes have mercury in them

Ecology Response:
RCW 70.95N Electronic Product Recycling only applies to televisions and computers. Fluorescent tubes are outside the scope of this law and rule.

Comment #321

A system that brings total life-cycle costs back to the manufacturer of products that should be recycled. The core charge you pay for a new lead-acid battery might be something of a model.

Ecology Response:
The new Electronic Product Recycling law (RCW 70.95N) requires manufacturers of televisions and computers to provide collection, transportation, and processing of old televisions and computers at no cost to the consumer. The law is a “producer responsibility” law, requiring manufacturers to internalize the cost of recycling. There is no “core charge” required.

Comment #322

Thanks for the good work.

Sincerely
Peter Willing

Ecology Response:
Thank you for your comments!

Commenter: Connie Gallant

Comment #323

Subject: For Jay Shepard:

Dear Mr. Shepard:

I am writing to you in hopes that you can forward my message to the group in charge of the public meeting to be held on August 23rd in Bellevue - or forward it to the proper department. I cannot attend the meeting, thus I am sending my comments.

I would like to ask DOE to make sure that any computer and TV recycling program policy includes the protection to human health and our environment. Strong standards to hold manufacturers accountable are needed. It is important that we, the public, are reassured that the toxic materials are being handled safely.

I have faith in DOE's ability to carry out such policy.

Thank you,
Connie Gallant

Ecology Response:
Thank you for your comments!

Commenter: Susan Donaldson

Comment #324

Subject: continuation of electronic recycling

Dear Mr. Shepard:

I'm grateful for the passage of legislation for the recycling of electronics goods last year. Please work to see that that that sort of legislation continues and expands to ensure that plastics are recycled whenever they can be (it's distressing to me that in Pierce County only #1 and 2 plastics can be recycled) and that waste materials shipped to other countries are handled responsibly there.

Thank you for your concern.

Yours truly
Susan Donaldson

Ecology Response:
Thank you for your comments!

Commenter: Ellie Cook

Comment #325

Subject: Computer and TV Recycling

Hi there,

As a concerned citizen, I wanted to contact you at the Department of Ecology to ask that you support responsible computer and TV recycling that protects us and the environment.

Thanks so much.

Ellie Cook
citizen of Washington state

Ecology Response:
Thank you for your comments!

Commenter: Barbara Rider

Comment #326

Subject: WA state recycling of electronics

I'm really excited that WA state now is moving forward to try to fix our recycling stream to include electronics, as well.

I hope you will be able to make the process work so that there is a clear tracking method of where the computers and TVs that are turned in to be recycled actually end up where they should, and not in a land fill here in the US or elsewhere.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650.

Comment #327

I'm also very concerned that the standards include handling some of the toxic elements from these items and others including items with lead and mercury in them.

With the advent of many people switching to use low power light bulbs, which mostly contain mercury, its even more important to make sure we keep mercury out of our environment. I'd like to see this expanded to require a $.050 deposit
on every light bulb sold in this country - I think this would encourage people to return defunct light bulbs rather than toss them in the trash.

Ecology Response:
RCW 70.95N Electronic Product Recycling only applies to televisions and computers. Fluorescent light bulbs are outside the scope of this law and rule.

Comment #328

I would also like to see the recycling contractors be representative of honest and responsible companies that actually follow the proper processes to insure recycling and/or disposal.

Thank you so much!

Sincerely
Barbara Rider

Ecology Response:
Thank you for your comments!

Commenter: Randy Ray

Comment #329

Subject: Recycle electronics responsibly

Jay,

DO these mass same responses from groups like this weigh on how Ecology decides on how to modify a Rule?

If so, the business community can start the same trash for your email box?? Just wondering. Plus see comments below.

Randy Ray

Thank you for the good work you are doing to make sure that electronics in Washington State are being recycled in a way that protects the environment and human health. I want to make sure that when I drop off a computer or TV for recycling that it is not going to cause more pollution in my neighborhood, outside of the state, or even outside of the country. We have a responsibility to require the following safeguards in our recycling program:

- Mandate transparency so we know where the computers and TVs are going and how they will be recycled (ECOLOGY JURISDICTION DOES NOT EXEND OVER ITS BORDER OF WA)

- Strengthen the standards for handling toxic materials, including circuit boards, mercury lamps, batteries, and leaded glass. Make these standards at least as strong as those in Washington's dangerous waste regulations. (AND PLEASE DO CLASSIFY A TV OR COMPUTER AS A DANGEROUS WASTE WILL MEAN NOTHING RECYCLED ACCORDING TO LAW)

- Require that manufacturers and recyclers choose responsible contractors who will safely handle toxic materials all the way throughout final recycling or disposal (Already in LAW)

- Follow the import laws of other countries where our electronic waste may be shipped for recycling or disposal (ALREADY IN LAW)

- Require that plastics are recycled whenever possible OR smelted or incinerated for energy.

Thank you for taking these comments into consideration as you continue to strengthen our state's groundbreaking electronic products recycling program.

Sincerely
Randy Ray

Ecology Response:
Thank you for your comments!

Commenter: Lisa Sepanski, King County

Comment #330

Thank you for the opportunity to provide comments on the draft Chapter 173-900 WAC. The following comments are submitted on behalf of the King County Solid Waste Division (SWD).

In general, the SWD supports the Department of Ecology's (Ecology) approach of developing two sets of standards for processing covered electronic products (CEPs) — the mandatory "minimum standards" which are based on what Ecology can enforce and the "preferred standards" which are a more stringent set of voluntary standards that parallel the national "Responsible Recycling Practices For Electronics Recyclers".

As the intent of this law is to protect human health and the environment, the SWD would like Ecology to pursue the most aggressive mandatory minimum standards as possible for processors that handle materials of concern. This includes requiring the plans to ensure that all of their downstream vendors, regardless of where they are located, are complying with the standards. In addition, since the preferred standards are voluntary, we recommend that these standards require that the processing of CEPs take place domestically or in European Union countries or in developed nations that are part of the Organization for Economic Cooperation and Development (OECD). This parallels that high standards that King County has set in its own electronic recycling program, the Take it Back Network.

Specific issues have been identified below. In most cases, we have attempted to offer specific recommendations that will work toward achieving our goal of establishing an electronics recycling program that is protective of human health and the environment.

Issue: Changes to the definitions section.
WAC 173-900-030 Definitions: The SWD recommends adding or amending the definitions as follows:

Add:
"Materials of concern" include each of the following:
(a) Any devices, including fluorescent tubes, containing mercury or PCBs;
(b) Batteries;
(c) CRTs and leaded glass; and
(d) Whole or shredded circuit boards.

Ecology Response:
Agreed. This definition is in section 650. Ecology will include it in the definition section as well. We have eliminated "shredded" from the definition based on other comments received.

Comment #331

"Conflict" means a situation where a direct processor cannot comply with Washington's processing standards without being in violation of the law of another country, state, or jurisdiction. The existence of a different regulatory system for processing CEPs or of less stringent standards does not constitute an actual conflict. Economic or financial considerations are not relevant to the determination of whether an actual conflict exists.

Ecology Response:
This is not necessary. The language in section 650 related to documentation of conflict, was clarified based on comments received. Please see edits.

Comment #332

Amend:
"Premium services" The proposed definition of "premium services" was changed in this version of the rules to add the phrase, "or any handling requirements imposed by the CEP owner or collector in excess of those required in this chapter." This phrase is problematic because the chapter does not provide detailed and specific collection requirements that must be met. The addition of this language could be used by plans to argue they should not need to pay for basic collection services. The SWD recommends that Ecology delete this addition and use the original definition.

Ecology Response:
Ecology will delete "or collector" from the definition as this addition does not improve clarification of "premium service." However, "…CEP owner …in excess…" will remain. This clarifies that added services outside of basic collection are not included as a free service and must be paid for by the covered entity. Ecology will also change "CEP owner" to "covered entity" for consistency.

Comment #333

"Processor" A new definition of "processor" was proposed in this version of the rules which includes a requirement that a processor "prepares materials originating from CEPs for market as a commodity." Please explain how this changes who is considered to be a processor and your rationale for making this change.

Ecology Response:
This is duplicative of the language in "Processor" subsection (a) and will be deleted.

Comment #334

Issue: The new version of the rules allows collectors to dismantle and disassemble CEPs for reuse in refurbished electronic products which may create a loophole where untested and broken products can be shipped for "reuse" without any oversight or regulations.
WAC 173-900-450 "Performance standards for collectors" section (2) (page *54):* This section states that "A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished electronic products."

The SWD agrees that it would be ideal to promote the reuse of whole electronic products such as working computers, monitors and TVs. However, since this law was intended to address recycling, not reuse, this section of the rules may create a large loophole that would allow untested CEPs and components to be shipped anywhere and to be sold or donated without any

documentation that they are actually being reused for their original purpose. We are specifically concerned about the electronic products that contain “materials of concern” which include any devices that have mercury-containing components such as fluorescent tubes, in addition to batteries, CRTs and leaded glass and circuit boards.

As the rules are written, there is no way to confirm that refurbished electronic products that contain materials of concern are actually being reused. If the price is right, this equipment could get shipped overseas and end up being “recycled” under the guise of reuse in places that do not have adequate protections for the environmental or human health.

In addition, anyone who removes components in large numbers for bulk sale will be involved in activities that should be considered to be “processing”. The definition of processing in the law specifically allows for salvaging parts: “A processor may also salvage parts to be used in new products.” No such provision is mentioned in the definition of “collector”. Also, this practice could potentially remove the components that have value and leave the manufacturer plans with components that have little or no value.

We therefore recommend that collectors be allowed to refurbish whole units for resale under specific conditions, but not be allowed to disassemble the parts for resale. This is a slippery slope, and those who disassemble for sale of parts should be required to meet the minimum processing standards.

It is also unclear in the rules if the collectors are required to send the remaining components and materials to the plans for processing. It is our recommendation that the collectors be required to send the materials that are not reused to the plan’s direct processors.

One final concern is the fate of the equipment from the customer’s perspective. If a customer believes that their computer is being recycled by a state-authorized plan, they may not take the time to erase their hard drive because they believe that the hard drive will be destroyed when the computer is recycled. If they bring the computer to a registered collector with this assumption, but the collector actually refurbishes the computer and sends it to Africa without erasing the hard drive, the collector and the state may be liable for this misunderstanding.

Please consider the following changes (added language is underlined):

(2) A registered collector may refurbish used CEPs and may dismantle or disassemble CEPs for the purpose of refurbishing used CEPs ~~removing components for reuse in refurbished electronic products,~~ provided that the registered collector does all of the following:

(a) If whole CEP units are refurbished for reuse, they must be tested and in working condition, computers must have their hard drives wiped to the current US Department of Defense Standards, and the collector must obtain documentation that the CEPs were sold or provided for legitimate reuse.

(b) The collector must inform the customer that their equipment may be refurbished for reuse and must guarantee that their data will be permanently erased according to current Department of Defense Standards,

(c) If components are removed from CEPs, those components must be utilized by the collector to refurbish CEPs that are then sold or donated by the registered collector as described in subsection (2)(a) of this section. Components not utilized in refurbished CEPs as described in (2)(a) must be sent for recycling to the plan’s direct processor.

(d) Documentation of sales of all refurbished CEPs must be kept by the registered collector for a minimum of three years and must be made available to the Department of Ecology upon request.

Ecology Response:
This suggestion would result in a substantial change to the rule and therefore can not be accepted as proposed. The concern that CEPs or parts thereof will be shipped outside of the program is understandable. The intent of the law was to allow "reuse" when a product "is used for the same purpose for which it was originally purchased." This implies the whole CEP and not parts derived therefrom. Therefore, we will strike the ability of a collector to dismantle unless they are also registered as a processor.

Erasing hard drives falls into "premium services" that the customer can request, but plans are not required to provide and pay for. There is no suggestion expressed or implied in RCW 70.95N that data destruction be provided as part of recycling. Therefore there should be no expectation.

Comment #335

In order to further guard against "sham" reuse the SWD also recommends that the performance standards for direct processors, WAC 173-900-650, section (5) "Prioritized hierarchy of responsible management strategies" be amended to include the following language:

WAC 173-900-650 "Performance standards for direct processors" section (5) (a)(i) (page 72): **Reuse** – May direct~~ing~~ CEPs to reuse and refurbishment as appropriate ~~to enable shipment for reuse~~, provided that all CEPs are tested and fully functional prior to resale or donation: accurately labeled; and packaged and shipped in a manner that will minimize damage during transport.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase) prior to resale or donation. Therefore, this suggested language is not necessary.

Comment #336

ISSUE: Collectors can register and appear on Ecology's web site, but not participate in the plan.
WAC 173-900-450 "Performance standards for collectors" as currently written allows collectors to register but does not require them to participate in a plan. The SWD is concerned that registered collectors could use the registration status to attract customers, but not participate in a plan and rather, ship the equipment to processors outside of the plan that do not have adequate environmental, health and safety standards. We suggest that Ecology include the following performance standard for collectors:

(x) A registered collector must participate in a plan.

This would require that if collectors register with Ecology then they are obligated to participate in a plan.

Ecology Response:
This is clarified in WAC 173-900-450. Collectors may collect. Collectors may not claim to collect for a plan unless they are doing so. If they claim to be collecting for a plan and don't submit the collected CEPs to a plan, it will be a violation. Please see edits.

Comment #337

ISSUE: If a collector dismantles CEPs for recycling and they have to comply with the direct processor performance standards, do they have to have a contract with the plans to recycle CEPs?
WAC 173-900-450 "Performance standards for collectors" section (3) (page *55)* states: "A registered collector must not dismantle CEPs for purposes of recycling components unless they also meet the direct processor performance standards and are a registered direct processor under this chapter."

It is not clear what obligations the collector would have to meet if it were to register as a collector and then chooses to dismantle and recycle certain types of CEPs. According to this section, they are required to register as a processor. However, it is not clear where they fall in the regulations if they do not get a contract with the plans as a processor. Are they a registered collector and a registered processor, but not a direct processor? Does this mean they still need to follow the processor performance standards — except that they won't be audited by the manufacturer plans?

Ecology Response: Only direct processors, with contracts with the authority or authorized party, can be registered. Yes, they would be a direct processor if they are providing processing services directly for a plan. If a collector has an agreement with a direct processor to dismantle, then no, they would be a vendor for the processor.

Comment #338

ISSUE: The rules need to ensure transparency in order to provide covered entities with information about how and where CEPs are recycled.
The clear intent of the law and of the legislature is safe and environmentally sound collection, transportation, and recycling of CEPs. CEP owners - including businesses, governments and charities who are small or large quantity generators - must be able to ensure that they will not be liable for illegal handling of their equipment downstream through the chain of custody. To avoid liability, CEP owners should be able to choose programs based on transparent information about the fate of materials of concern through to final disposition. In addition, the public must have a way to hold manufacturers accountable for providing responsible recycling.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #339

WAC 173-900-450 "Performance standards for collectors" section *(5)(e)* (pg *55)* requires that "Collectors must post, in a readily visible location, at the collection site information that can be shared with covered entities about how and where CEPS received into the program are recycled." We strongly support this language and ask Ecology to strengthen this section by adding the following:
"Collectors must post, in a readily visible location, at the collection site information that ~~can~~ will be shared with covered entities about how and where CEPs received into the program are recycled. "Such information must include the final destination for processing of the CEPs and

CEP materials or components, and the final destination for disposal of residuals."

In addition, we recommend that Ecology require that the collectors make available a "Certificate of Recycling" to covered entities using their collection service. The Certificate should provide information on the final destination for processing of materials of concern and the final destination for disposal of residuals. Customers using the system would be provided with a certificate upon request. This is currently a requirement of participation in Take It Back Network, and a sample certificate can be found at www.metrokc.gov/dnrp/swditakeitback/documents/Certificate_recycling-electronics.rtf.

Please consider adding the following language:
(f) Collectors must provide covered entities, upon request, with written and signed "certificates of recycling" that includes the final destination for covered electronic products, all materials of concern. and all residuals.

It would also be very useful if collectors that have a website were required to provide the information on their website in addition to posting it at their physical location.
WAC 173-900-300 "Covered electronic product (CEP) recycling plans" section (2)(a) (page 31) requires that the authority or authorized party provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled. We support this language and recommend that Ecology add the following clarifying language to this section:
Such information must include the final destination for processing of the CEPs and CEP materials or components, and the final destination for disposal of residuals.

Ecology Response:
Ecology believes that this is an onerous requirement with costs associated with it. Therefore, Ecology will not add the language at this time.

Comment #340

ISSUE: The performance standards for direct processors section is confusing and difficult to interpret.
WAC 173-900-650 "Performance Standards for Direct Processors" section *(5)* Prioritized hierarchy of responsible management strategies (page 72) requires the direct processors to adhere to the waste management hierarchy. In the recycling and disposal sections, it refers the reader to Section 10(a) which then refers the reader back to Section *5.* This is a confusing circular loop — the main point being made is that the materials that are not directed to reuse should be processed according to the waste management hierarchy in Section *5.* We recommend referring to the subsections 9(d) and 10 which provides more complete information on materials recovery.

Ecology Response:
Thank you for your comment. Based on comments received, subsection 650(5)(a)has been deleted.

Comment #341

Section (11) "Materials that cannot be recovered" is not listed under Section (4) "Minimum performance standards for processors" but it is listed in the rule. We recommend incorporating this Section into subsection (10) "Materials recovery and materials disposal" since disposal covers the topic of "materials that cannot be recovered".

Ecology Response:
The language has been changed based on multiple comments received. Please see edits.

Comment #342

We also recommend reorganizing Section (9) "On-site requirements" to move "Disposal" and "Materials separation and processing" to Section (10) Materials recovery and materials disposal. The "Speculative accumulation" section which was under Subsection (9)(a) "General" might fit better in Subsection (9)(e) "Storage" — since what you are talking about is storing materials on-site. In addition, we suggest moving all references to "materials of concern" to Subsection (1 0)(d) under "Materials separation and processing".

All of these suggestions have been include in Appendix A of this letter which provides a sample of how the section could be reorganized for ease of use.

Ecology Response:
Ecology has done some minor reorganizing of the rule for ease of use. Please see edits.

Comment #343

The SWD recommends that the following sections be clarified and/or amended:

Subsection 9(c) "Use constituting disposal" is confusing and the SWD would like clarification about the intent of this section and recommend that it be rewritten.

Ecology Response:
If the material, such as plastic, is used in a way that renders it not usable for the purpose for which it was originally designed, (i.e. as plastic for another product) it could be considered disposal. Example – grinding plastic and using it as filler in concrete or grinding plastic and using it as fuel in a waste to energy facility. This rule would consider these activities disposal and the handling must comply with applicable hazardous waste and solid waste laws.

Comment #344

Subsection 10(c) requires that a direct processor must direct streams that are not directed to reuse to materials recovery, unless doing so poses unacceptable risk or is not technically feasible. The SWD requests that the following language be added to this subsection:
Smelting whole CEPs is not materials recovery. After shredding or dismantling the CEPs, scrap metal and plastics should be sent for material recovery whenever possible rather than smelted or incinerated even with energy utilization or recovery.

Ecology Response:
Subsection 10(c) has been deleted. Ecology agrees with comments received that the language is ambiguous. "Risk" is not defined against a standard.

Comment #345

In Subsection 10(e), since only residuals may be disposed, the SWD suggests adding the word "residual" to this section as follows:
A direct processor must send each residual stream destined for disposal to a facility designed to safely handle all the contents of the stream.

Ecology Response:
Agree. See edits.

Comment #346

Section 11 (page 76) includes several areas that are of concern and the SWD recommends the following changes.

Subsection 11(a): Based on Washington's waste management hierarchy and the hierarchy described in subsection *5* of this section, energy recovery is a disposal strategy. The word "disposal" includes landfilling, incineration, and waste-to-energy incineration. By referring to "energy recovery or disposal" in this section, it implies that energy recovery is something other than disposal. Second, the feasibility of material recovery should not be based on economics. This is an open door to allowing any number of materials to be disposed if recycling is more expensive than the plans are willing to pay. Finally, since CEPs are recyclable, "equipment" should not be allowed to be disposed. The SWD recommends the following changes:
(a) A direct processor must identify and utilize ~~effective and~~ safe ~~energy recovery or~~ disposal strategies for all ~~equipment, components, and~~ materials that are not technically ~~or economically~~ feasible to recover.

Ecology Response:
Subsection 11(a) has been changed based on multiple comments received. Please see edits to subsection (11).

Comment #347

Subsection 11(b): Similar changes are recommended:
(b) A direct processor must separate ~~equipment, components and~~ residual materials destined for ~~energy recovery or~~ disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.

Ecology Response:
Agree to change "equipment, components and" to "residual." Please see edits to subsection (11). Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #348

Subsection 11(c): The SWD recommends that this subsection be deleted. However, if it is kept, we request that it be clarified that it refer only to non-toxic residuals, not recyclable materials: (c) A direct processor may direct ~~streams~~ non-recyclable residuals that do not contain materials of concern with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternate management strategies.

Ecology Response:
Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #349

Subsection 11(d): Materials of concern contain toxic constituents such as lead and mercury. When they are contained in residuals destined for disposal, they should not be sent to solid waste facilities. The SWD recommends the following change:

(d) A direct processor must not send residuals containing materials of concern to incinerators, waste- to-energy incinerators or solid waste landfills ~~if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.~~

Ecology Response:
Ecology does not have authority under current law to disallow disposal of residuals in solid waste incinerators or energy recovery facilities.

Comment #350

ISSUE: Performance standards should be expanded to include additional requirements from the "Responsible Recycling Practices" document.
The SWD supports Ecology's use of the draft national Responsible Recycling Practices as the basis for Washington's performance standards for direct processors. We also support Ecology's approach of developing two sets of standards - mandatory minimum standards based on what Ecology can enforce and preferred standards. However, we recommend that the proposed mandatory minimum standards be strengthened.

The SWD request that Ecology provide an explanation for why each of following sections from the national Responsible Recycling Practices have been placed in the preferred standards rather than the minimum standards:
5. On-Site Practices (sections related to worker and environmental protection)
10. Due Diligence
11. Exporting
13. Insurance
14. Closure Plan and Financial Responsibility
15. Data Sanitization/Destruction
16. Facility Security

Ecology Response:
Ecology has determined that these elements, as written, are outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #351

ISSUE: Materials of concern should be handled in a manner consistent with the Dangerous Waste Regulations.
WAC 173-900-650 "Performance standards for direct processors", section (9) (d) On-site requirements
— Materials separation and processing (page 75) requires processors to remove any materials of concern prior to mechanical or thermal processing. We strongly support Ecology's approach of listing materials of concern and requiring that they be handled in a protective manner. As noted above, we recommend that Ecology provide a definition of "materials of concern" in the Definitions section WAC 173-900-030. These include batteries, mercury-containing devices, all circuit boards, CRT glass, and any components, shredded material, or whole units containing them.

The rules for managing the materials of concern should be explicit in order for the auditor to have standards to audit against. The SWD recommends that language be added to require that all direct processors — wherever they are located — handle batteries and mercury containing components in conformance with the Universal Waste Regulations in Chapter 173-303-5 73 of the Dangerous Waste Regulations. CRT glass should be handled in conformance with Chapter 173-303-07 1, which includes the proposed CRT rule. Circuit boards should be handled in

conformance with Chapter 173-303-071.

Batteries, mercury containing components, CRTs and leaded glass should be removed from equipment and processed separately. Because the Washington standards for circuit boards should allow for a range of technologies, we do not believe that circuit boards need to be separated prior to processing. However, technologies should be used that provide as much separation and reclamation of materials as possible, rather than sending mixed materials directly to smelters. New technologies are emerging that allow shredded fractions to be further separated for their highest recovery value.

The following is suggested language:

(d) Materials separation and processing

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during further processing.

"Materials of concern" include each of the following:

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

(B) Batteries;

(C) CRTs and leaded glass; and

(D) All whole or shredded circuit boards.

(ii) A direct processor must remove <u>all</u> materials of concern, <u>except circuit boards,</u> prior to mechanical or thermal processing.

(iii) A direct processor must handle all materials of concern, <u>including any CEPs, CEP components, or shredded or mixed materials containing materials of concern,</u> in a manner consistent with <u>Chapter 173-303 of Washington's Dangerous Waste Regulations. Specifically, batteries and mercury containing components must be handled according to the Universal Waste Regulations in WAC Chapter 173-303-573. CRT glass and circuit boards must be handled according to WAC Chapter 173-303-071.</u>

(iv) The materials of concern, or any substances contained in them, must be handled in a secured, sheltered enclosure with an appropriate catchment system.

(v) To prevent short circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

(vi) A direct processor must not send materials of concern to solid waste landfills, incinerators, or waste-to-energy incinerators for disposal

If there is any concern or drawback to referencing these specific sections, we recommend that the relevant text be written directly into these rules. If there is a conflict with the laws in another jurisdiction or country, the process outlined in section WAC 173-900-365 "Annual compliance audit reports for direct processors" would apply.

Ecology Response:
This change is beyond the scope and authority granted in RCW 70.95N. Further, only until a material becomes a waste and is designated as hazardous does it come under the purview of hazardous waste regulations. Circuit boards and materials derived therefrom will be allowed to be shredded prior to separating. The definition of "materials of concern" has been incorporated.

<u>Comment #352</u>

Issue: Language needs to be tightened to ensure that manufacturers, processors and collectors comply with the importation requirements of all importing and transit countries, and require verifiable documentation of compliance.

WAC 173-900-650 "Performance standards for direct processors" Section 6 Legal Requirements includes critical language related to compliance with the laws of all transit and recipient countries. However, the SWD recommends clarifying the language in subsection 6(a)(iv) (page 73) as follows:
6(a)(iv) A direct processor and their vendors that handle equipment and components containing materials of concern must comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #353

We also recommend that the following provision be added to WAC 173-900-300 "Covered electronic product (CEP) recycling plans", subsection 2 (pages 31) which would apply directly to the authority and authorized parties:
(2) The authority or authorized party of a plan must:
(a) comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, and/or disposal, if the authority or authorized party exports CEPs outside of the U.S.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #354

ISSUE: Ecology should require the plans to perform due diligence in choosing their vendors for materials of concern.

An essential requirement related to due diligence was dropped from the previous draft of the rules. At a minimum, we recommend that Ecology include the following language in the rules:
WAC 173-900-300 "Covered electronic product (CEP) recycling plans" subsection (2) (pages 31):
(2) The authority or authorized party of a plan must:
(c) Perform due diligence in the selection of collectors, transporters, and processors used to provide services for the plan to ensure that they utilize practices that protect worker safety, public health, and the environment.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #355

In addition, we request that Ecology add the following language into section WAC 173-900-650 "Performance standards for direct processors" Section 5 (pages 72 and 73) "Prioritized hierarchy of responsible management strategies" which is based on language in part 10 of the draft national Responsible Recycling Practices:
A direct processor must perform due diligence on and obtain verifiable documentation from

downstream vendors to which they ship materials of concern, either directly or through intermediaries, to ensure that they utilize practices that protect worker safety, public health, and the environment. Direct processors must establish and maintain a verifiable chain of custody for materials of concern throughout final disposition.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #356

We also ask that the following provision from the draft national Responsible Recycling Practices be added to section 7 "Environmental, health and safety management systems (EHSMS)":
(x) Includes a procedure for identifying and evaluating the environmental, health and safety impacts of downstream vendors, and for utilizing this information in the selection of downstream vendors.

Ecology Response:
Ecology has determined that the regulation of downstream processors is outside the scope of Ecology's authority to enforce and therefore must remain voluntary.

Comment #357

ISSUE: The audit information needs to be detailed enough to determine if processors are operating in accordance with the processing standards and other relevant laws and regulations.
WAC 172-900-365 "Annual compliance and audit reports for direct processors" subsection 4(b) (page 47) states that each audit report must include "Confirmation that the direct processor meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities". However, the law states that plans must contain "Documentation of . . . compliance with processing standards established" (70.95N. *060(5)(f)).* The word "confirmation" is used in subsection 4(b) instead of "documentation." The SWD recommends using the word "documentation" as this is what is required in the law.

Ecology Response:
This has been changed to say "documentation" to be consistent with the law. Please see edits.

Comment #358

The SWD recommends that Ecology include the following language as an additional subsection in WAC *173-900-365* "Annual compliance audit reports for direct processors", Minimum performance standards:
(X) If any direct processor used by the plan is outside of the US, the authority or authorized party must ensure that all exports to the direct processor also comply with all importation requirements of all importing and transit countries, including those pertaining to the transboundary movement of electronic equipment, components. materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

The SWD recommends adding the following subsection to Section (4):
(x) Documentation of compliance with importation requirements of all importing and transit countries for all exports of materials, components or devices containing or comprising materials of concern. Such documentation shall include, at a minimum, approval from Competent

Authorities in each importing and transit country.

Ecology Response:
Ecology already agreed that the annual compliance audit must be documented as complying with these standards. Therefore this added language is not necessary.

Comment #359

The SWD recommends adding the following language to Section *(5):*
This annual compliance audit must be completed by an auditor who through professional training, work experience and certification has appropriate knowledge to evaluate the environmental compliance of the processing facility. At a minimum, they must possess one of the following certifications:

1. Certified Hazardous Materials Manager (CHJVIM)
2. Registered Environmental Manager (REM)
3. Registered Environmental Professional (REP)

Ecology Response:
By naming specific certification programs, we exclude others. The suggested language will not be added.

Comment #360

ISSUE: The public outreach efforts should provide information about reuse and other relevant information.
The law requires that the **plans** provide outreach about reuse, but unfortunately did not specify the same thing for Ecology and local governments. Because the plans must provide this information and because the processing standards include the waste hierarchy in which reuse is prioritized over recycling, the SWD recommends that Ecology provide information to the public about reuse options.

In addition, it's critical that only registered collectors who are actually participating in a plan be listed. Equipment from unregistered collectors or registered collectors not participating in a plan may be improperly processed, so those collectors should not be included in Ecology's outreach materials.

The SWD recommends the following additions:
(2) Ecology will promote CEP reuse and recycling by:
(a) Posting information describing registered collectors participating in a plan who ~~where to~~ reuse and/or recycle unwanted CEPs on its web site;
(b) (b) providing information about registered collectors participating in a plan who reuse and/or recycle~~ing~~ CEPs through a toll-free telephone service;
(c) …
(d) Ecology will only promote CEP recycling and reuse opportunities provided by registered collectors that are submitting CEPs to an approved plan. Registration alone does not qualify a collector for inclusion.

Ecology Response:
RCW 70.95N.120(2) indicates that Ecology will promote recycling of CEPs. The law also mentions reuse. The waste management priorities, established in RCW 70.95 Solid Waste Management, are listed first as waste reduction, recycling, landfill, or incineration for energy recovery of source separated wastes and lastly, as landfill or incineration for energy recovery of

mixed wastes. Ecology promotes reuse as part of the overall waste reduction strategy. It is not unique to CEP recycling.

Collectors that meet the performance standards and are collecting for a plan will be indicated as such on Ecology's webpage.

Comment #361

Inclusion of reuse opportunities should be done in conjunction with requiring that any location listed for reuse must ensure that reused units and components are tested and functioning properly before sale.

The SWD recommends that Ecology post on their website information about which processor(s) each plan has chosen to work with to implement the plan. When the plans change the processors they are working with, Ecology would update this information on the website.

Ecology may also want to consider paralleling the law (70.95N.120 (1)) by adding the following requirement to WAC 173-900-980 "Public Outreach" Section (1) (page 99):
"An independent plan and the standard plan must inform covered entities about where and how to reuse and recycling their CEPs at the end of the product's life, including provision of ecology's or another website or toll-free telephone number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for reuse or recycling."

Ecology Response:
Agreed. RCW 70.95N.120 requires that a website and a toll free number must be provided. Language requiring such will be incorporated into the rule.

Comment #362

ISSUE: Timely Response to Processor Violations
In a number of places in the rules, there are requirements related to the disclosure of financial penalties, regulatory orders or violations that the direct processor might receive. To ensure a timely response by the processors as well as full public disclosure, we recommend the following changes:
WAC *173-900-650* "Performance standards" subsection (15) Notification of penalties and violations (page 77):
Prior to contracting with the authority or an authorized party, a direct processor must notify that authority or authorized party of any penalties. violations, or regulatory orders related to processing activities received in the previous three years.

Ecology Response:
Disagree. The audit will demonstrate that processors are in compliance with current laws. Compliance history is not necessary to determine current compliance.

Comment #363

Each direct processor must notify the authority or authorized party of the plan(s) for which the direct processor provides services within 14 days if the direct processor receives any penalties, violations or regulatory orders related to processing activities. A direct processor must also make available to all covered entities and collectors a list of all such penalties, violations or regulatory orders upon request.

WAC 173-900-350 "Noncompliance with laws and regulations" subsection (3) (page 43)

The authority or authorized party must notify ecology within ~~thirty~~ 14 days if a direct processor used by the plan has notified the plan of any penalties, violations, or regulatory orders related to processing activities that the direct processor received from national, state or local government agencies.

(a) Within five days of receipt, ecology will send the direct processor a warning letter and follow warning and penalty procedures in WAC 173-900-680.

(b) Within five days of receipt, ecology will post on its website a list of penalties. violations, or regulatory orders related to processing activities of registered direct processors received from national, state or local government agencies.

(c) Within sixty days of providing notice to ecology, the authority or authorized party:

(i) May continue using the direct processor if they are listed as "in compliance" on the "processor registration list"; or

(ii) Must submit a plan update removing that direct processor from plan and making necessary changes if another direct processor must be added.

(iii) If the plan continues to use a direct processor "in violation" status, it is a "plan violation." Ecology will follow the violation, warning, and penalty procedures in Part III of this chapter.

In the following section, it is not clear what is meant by a "customer." The SWD requests that Ecology clarify who the customer is and also who must be told about subsequent penalties or regulatory orders.

Ecology Response:
The word "customer" in section 650 where this requirement exists has been clarified to indicate that it is the "covered entity".

Subsection 350(3) has been deleted from the rule. The rule establishes performance standards for direct processors used by plans. The law requires that processors, used by plans, must comply with performance standards established by Ecology. The authority, or authorized party, are responsible for ensuring this compliance (RCW 70.95N.250). The rule now states that it is a plan violation to use direct processors that do not meet the performance standards.

Comment #364

WAC 173-900-650 "Performance standards for direct processors" section (6) Legal requirements. (b) Upon request by a customer, a direct processor must make available information about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

Ecology Response:
Enforcement documents are public record and are already available for public review.

Comment #365

ISSUE: Changes to processors or submission of audit compliance report should be considered a "significant" change.
WAC 173-900-335 "Updates and revisions to CEP recycling plans" (4)(b) and Table 335 list the nonsignificant revisions to the recycling plans that do not require Ecology's approval. The list includes "Any additions or changes to direct processors used by the plan."

The SWD considers it significant if a plan changes processors. As an example, a plan could change from using local processors to using facilities that are out of state or in the developing

countries. The SWD feels that Ecology should review and approve such a change and recommends that any additions or changes to direct processors be considered a significant revision to a plan. In addition, we recommend that the submission of the audit compliance reports for a new direct processor be considered to be a significant revision.

Ecology Response:
Prior to registering as a direct processor Ecology must receive, and approve, a CEP recycling plan which includes that processor and an audit report for that processor. Direct processors must submit their registration form to Ecology thirty days prior to providing services to a plan and must be listed in an approved plan. This thirty day period gives Ecology plenty of time to confirm the information in the CEP recycling plan against the information provided in the processor's registration form.

In addition, the language in the rule is clarified to require Ecology approval of updates to a plan for the purposes of using a new processor. This clarifies that it is a 'significant revision" to a plan.

Comment #366

Comments on the Small Business Economic Impact Statement for Amendments to Chapter 173- 900 WAC
The report was based on the assumption that 50 cents per pound caps the amount plans will spend for collection and processing because that would be the amount a plan would pay if they fall short of meeting their equivalent share (page 7). The SWD recommends that Ecology consider whether 50 cents per pound is the correct amount to charge for failing to meet the equivalent share, or whether it is too low. Ecology has the authority to change that amount if it is not adequate to provide environmentally sound recycling services. If the 50 cents per pound amount is problematic, the report should indicate that and recommend a more accurate amount.

Ecology Response:
RCW 70.95N set the initial fee for collection, transportation, and recycling costs at 45 cents per pound ($0.45) plus 5 cents per pound administrative fee ($0.05). The law allows the agency to adjust this fee annually. Ecology will review the data and may publish a revised fee prior to January 1 of each program year.

Comment #367

The report states that, "some plans may ship to China" (page 9). It is illegal to ship computers and TVs into China, and therefore a processor who ships to China would not meet the minimum processing requirement that "A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries, that are applicable to the operations and transactions in which it engages related to the processing of CEPs" (page 73 of the rules). The report needs to be amended to reflect the fact that CEPs cannot be shipped to China for recycling. In addition, we recommend that Ecology develop a process for enforcing this requirement.

Ecology Response:
We recognize that it may be illegal to ship CEPs to China from the U.S. under certain circumstances. China was only used rhetorically as an example in the Small Business Economic Impact Statement. Ecology is changing this in the final Small Business Economic Impact Statement to use offshore shipping as the example.

The agency's enforcement mechanism is the annual audit reports for direct processors and notification from the direct processor, within thirty days, about penalties, violations, and regulatory orders that they receive related to processing activities.

Comment #368

The report states that processor standards evaluated early in the rule development process were very costly and were abandoned because most plans would probably have opted to export the waste to the "third world" for recycling (page 14). The advisory committee was told that certain processing standards were deleted because they could not be enforced, not because they were costly. Since that time, however, we have been told that the current processing standards can indeed be applied to all direct processors used by the plans, including those out of state and even out of country.

Ecology Response:
Most processors would have been unable to obtain the financial responsibility required in an earlier draft of the rule. The cost would have been very high if the insurance had even been available. If the processors closed, then there would have been no other place to handle the waste.

Comment #369

The SWD requests that Ecology disclose the enforceable processing standards that were considered earlier have been dropped due to cost. The SWD requests that Ecology reconsider including any strong processing standards that are enforceable both in and out of the state.

Ecology Response:
Most processors would have been unable to obtain the financial responsibility required in an earlier draft of the rule. The cost would have been very high if the insurance had even been available. If the processors closed, then there would have been no other place to handle the waste. Most of the waste would have gone offshore.

Comment #370

The report indicates that it will cost an average of $9,000 per site to collect data on what county each CEP comes from (page 7, second paragraph). Such data collection is not required by the law. The plans must report the total weight in pounds collected by county, but this can be obtained simply by totaling the weight obtained from collection sites and services located in each county. Requiring collection sites to document addresses of covered entity would be a nightmare and a huge disincentive to collectors to participate. Please delete this section from the report.

Ecology Response:
This has been fixed.

Comment #371

The report indicates that collectors currently receive $4.6 million in fees and $630,000 in sales of parts and recyclable materials (page 6) for about 23 million lbs of equipment (page 10). If that is gross income, some of that will pay for transportation and recycling of CEPs, components and materials that cannot be sold for a profit. This seems to imply that collection, transportation, and refurbishment or processing of the equipment is currently being done for about an average of 23

cents per pound. Is this a correct assumption?

Ecology Response:
This is incorrect. This is only part of the cost. You have to add together the separate costs of collection, transportation, and processing.

Comment #372

The report states that collection facilities reported that they would need the plans to pay them 26 cents per pound for collection. This is high compared to others states. It also seems close to the total amount collectors are currently receiving, which pays for transportation and processing as well as collection. The SWD requests that Ecology provide information about how the survey of the collectors was conducted and how this question was phrased. It seems plausible that collectors may have thought they were being asked how much would be needed per pound to cover collection, transportation and processing — rather than just collection.

Ecology Response:
The collectors would like to be reimbursed for activities they will not be able to pursue. In addition to the fees they collected, some collectors also resold usable machines and components. The survey questions were added to the analysis.

Thank you for all the work that Ecology has done to draft these rules and for the opportunity to provide these comments.

Sincerely,

Kevin Kiernan
Interim Division Director

Enclosure

Appendix A
Proposed reorganization of WAC 173-900-650 Performance Standards for Direct Processors

Note that this text is provided as an example of how the section might be reorganized to improve readability. It does not incorporate any other changes that may have been recommended for this section elsewhere in this letter.

WAC 173-900-650 Performance standards for direct processors.
(1) This section includes performance standards for environmentally sound handling and management of CEPs by direct processors to protect human health and the environment. There are two levels of performance standards:
(a) Minimum standards;
(b) Preferred standards.
(2) Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets.
(3) Each registered direct processor used by a plan must meet the minimum performance levels in this section to provide processing services for a plan.

(4) Minimum performance standards for direct processors.
Minimum performance standards for direct processors include the following requirements:
Prioritized hierarchy of responsible management strategies.
Legal requirements.
Environmental, health, and safety, management systems.

Recordkeeping.
On-site requirements.
Materials recovery and materials disposal.
Transport.
Prison labor.
Facility access.
Notification of penalties and violations.
Conflict with minimum performance standards.

(5) **Prioritized hierarchy of responsible management strategies.**
(a) A direct processor should adhere to a hierarchy of responsible management strategies for end-of-life CEPs and CEP components which calls for, in order of preference:

(i) **Reuse**-Directing CEPs and CEP components to reuse, and refurbishment as appropriate to enable shipment for reuse.

(ii) Recycling -

(A) Direct processors must take all practicable steps to manually and/or mechanically dismantle, separate, and when appropriate process CEPs and CEP components to enable materials recovery.

(B) Direct processors must dismantle and separate CEPs and CEP components into separate "streams" based on the risks they may pose and how they can most effectively be managed in conformity with subsection (9)(d) and (10) of this section, including removing and, as appropriate, placing in separate streams components or materials that may pose risks to worker safety, public health, or the environment, and then

(iii) **Disposal** - Direct processors must manage any residual that cannot safely or technically be recycled in accordance with (a)(ii) of this subsection by disposing of the residual materials in conformance with applicable laws and regulations.

~~(A) If necessary, further dismantling and separating of CEPs and their components into separate streams based on the risks they may pose and how they can most effectively be managed in conformity with subsection (IO)(a) of this section.~~

(b) A direct processor must periodically evaluate its management strategies to assure it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes.

(6) **Legal requirements.**
(a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries, that are applicable to the operations and transactions in which it engages related to the processing of CEPs. These include but are not limited to applicable legal requirements relating to:

(i) Waste and recycling processing, storage, handling, and shipping; and
(ii) Air emissions and waste water discharge, including storm water discharges; and
(iii) Worker health and safety; and
(iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, refurbishment, recycling, or disposal.

(b) Upon request by a customer, a direct processor must make available information about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

(7) **Environmental, health, and safety management systems (EHSMS).**
(a) A direct processor must develop, document, fully implement, and update at least annually a written

EHSMS that includes all of the following:

(i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.

(ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

(A) **Plan**

(I) Identification of environmental impacts, and legal and regulatory requirements;

(II) Establishment of environmental goals, objectives and targets;

(III) Plan actions that work toward achieving identified goals;

(IV) Plan for emergency preparedness and response; and

(V) Commitment of management support.

(B) **Do**

(I) Establish roles and responsibilities of the EMS and provide adequate resources;

(II) Assure that staff are trained and capable of carrying out responsibilities; and

(III) Establish a process for communicating about the EMS within the business.

(C) **Check**

(I) Monitor key activities and track performance;

(II) Identify and correct problems and prevent recurrence; and

(III) Provide a measurement system that quantifies the application of the model.

(D) **Act**

(I) Conduct annual progress reviews;

(II) Act to make necessary changes to the EMS; and

(III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Zl0 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) Is conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAER's") standard, or other standards designed at a level appropriate for the processing of CEPs at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the EMS relevant to the activities they perform.

(8) **Recordkeeping.**

(a) A direct processor must maintain documentation such as commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of equipment, components, and materials into and out of its facilities.

(b) A direct processor must retain the documents required in this subsection (8) for at least three years.

(9) **On-site requirements.**

(a) **General**

(i) A direct processor must have the expertise and technical capability to process each type of CEP and CEP component it accepts in a manner protective of worker safety, public health, and the environment.

(ii) A direct processor must use materials handling, storage and management practices,

including keeping all work and storage areas clean and orderly.

(iii) A direct processor must use a certified scale to weigh CEPs and their components counted towards a plan's equivalent share.

~~(b) **Disposal**~~

~~(i) these practices relate to CEPs that are generated, transported, collected, accumulated, stored and physically dismantled (demanufacturered) for recovery and recycling of useable materials.~~

~~(ii) Electronic equipment that is intended to be disposed of (rather than recycled at any point in the process and residues from these activities must be properly designated and managed under applicable laws.~~

(b) Storage

(i) A direct processor must store materials of concern removed from equipment and components in a manner that:

(A) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(B) Is secure from unauthorized entrance; and

(C) Is in clearly labeled containers and/or storage areas.

(ii) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating electronic equipment or materials derived there from for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating electronic equipment or materials derived there from for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent (should we include the relevant WAC?).

(c) **Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

(10) **Materials recovery and materials disposal.**

(a) A direct processor should use the hierarchy of management strategies in subsection *(5)* of this section for each type of equipment, component, and material that is not directed to reuse.

(b) Types of equipment, components, and materials shall be placed in separate streams as necessary to assure the risks posed by each stream are adequately addressed.

(c) A direct processor must direct streams, that are not directed to reuse, to materials recovery unless doing so poses unacceptable risk or is not technically feasible.

(d) Materials separation and processing

(i) A direct processor must remove from CEPs and CEP components destined for material recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) "Materials of concern" include each of the following:

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

(B) Batteries;

(C) CRTs and leaded glass; and

(D) Whole or shredded circuit boards.

(iii) A direct processor must remove materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with WAC Chapter 173-303 Dangerous Waste Regulations.

(iv) The materials of concern, or any substances contained in them, must be handled in a secured, sheltered enclosure with an appropriate catchment system. To prevent short

circuiting, direct processors must cover or otherwise effectively separate battery terminals during storage and shipment.

(v) A direct processor must not send materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.

~~(iii) Use constituting disposal means the use of material derived from electronic equipment in a manner that renders the material incapable of performing the function for which it was originally created.~~

(e) Disposal

(i) Materials that cannot be recovered.

(A) A direct processor must send each stream destined for disposal to a facility designed to safely handle all the contents of the stream.

(B) A direct processor must identify and utilize effective and safe energy recovery or disposal strategies for all equipment, components, and materials that are not technically or economically feasible to recover.

~~(b) A direct processor must separate equipment, components, and materials destined for energy recovery or disposal into separate streams as necessary to minimize risks to worker safety, public health, and the environment.~~

(C) A direct processor may direct streams with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams without posing a higher risk to worker safety, public health, or the environment than alternative management strategies.

(ii) Use constituting disposal *(the intent of this section is unclear)*

(A) Use constituting disposal means the use of material derived from electronic equipment in a manner that renders the material incapable of performing the function for which it was originally created.

(B) Material that is used in a manner constituting disposal must comply with the applicable solid or hazardous waste requirements where disposal occurs.

(11) **Transport.**

A direct processor must ensure that all CEPs and CEP components to be transported are packaged in compliance with all applicable transport laws and rules.

(12) **Prison labor.**

Direct processors may not use federal or state prison labor for processing.

(13) **Facility access.**

Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

(a) Ecology and ecology's designee(s);

(b) Third-party observer for the purposes of sampling;

(c) For processors used by the standard plan:

(i) The authority;

(ii) The authority's designee(s);

(d) For processors used by independent plans:

(i) The plan's authorized party;

(ii) The authorized party's designee(s).

(14) **Notification of penalties and violations.**

Each direct processor must notify the authority or authorized party of the plan(s) for which the direct processor provides services if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

(15) **Conflict with minimum performance standards.**
To the extent that the minimum processor performance standards in this section conflict with laws applicable to a processor in another state or country, the processor may comply with the applicable national, state, or local laws and rules if the following is included in the annual compliance audit report (see WAC 173-900-365(4)):
(a) Documentation of the conflict; and
(b) Documentation of compliance with the national, state, or local laws or rules applicable to the processor.

(16) **Preferred performance standards.**
In addition to meeting the minimum performance standards in this section, a processor may receive preferred status from Ecology if the processor conforms with the standards in Ecology's *"Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors."*

Ecology Response: Ecology made some minor organizational changes. Please see edits. Thank you for you comments.

Commenter: Loren R. Dunn, Representing Thomson Inc.

Comment #373

Dear Mr. Shepard:

The following comments are submitted on behalf of our client, Thomson Inc. ("Thomson"), and pertain to Ecology's published final version of the Phase II electronic product recycling regulations. Thank you for the opportunity to provide these comments.
In general, Thomson has some concerns about the direction that Ecology has taken preparing the draft regulations. Ecology's approach to implementing the statute is generally consistent with the statutory framework, and appears to be designed to minimize Ecology's anticipated administrative costs associated with developing and implementing the new electronic product recycling program.

However, Thomson has identified a couple of fairly serious problems with Ecology's draft of the regulations. This letter outlines those problems, and a set of proposed fixes to the regulations that, while not entirely curing the problems, would minimize their impact.

1. Definition of "Manufacturer" does not conform to the statute.

The proposed regulatory definition of the term "Manufacturer", which is located at WAC 173-900-030, does not track the statutory definition of "Manufacturer", which is located at RCW 70.95N.020(14). The lack of parallelism between the two definitions is potentially very confusing. The regulatory definition as written leaves a great deal of uncertainty as to which parties are covered by the regulations, and which are not.

Thomson would note that for many of the other definitions in the regulations, Ecology has wisely chosen to use the precise operative language that was adopted in the statute. For example, the definitions of "Authority", "Board", "Covered Entity", "Equivalent Share", and "New Entrant", as well as many others, follow, virtually identically, the statutory language. In general, Thomson recommends this as a good policy choice.

In some of the regulatory definitions, Ecology has apparently sought to clarify or expand upon the definitions contained in the statute. Such clarifications can be appropriate and useful when they do not change the fundamental meaning of the statute. For the most part, in those

instances where Ecology has revised the statutory definition, it has been to expand on the definition, and not to change its meaning. For example, in the definitions of “Covered Electronic Product”, “Independent Plan”, “Orphan Product”, and a number of others, Ecology has expanded and clarified the definition.

However, as is discussed below, the definition of “Manufacturer” in the proposed regulations neither clarifies nor expands on the statutory definition. Instead, it circumscribes that definition, and eliminates a key class of market players from the definition, and thus from coverage under the regulations.

Ecology Response:
The law was written with the understanding that the brand owner was the manufacturer. This is borne out in reviewing the many directives describing the operative elements of prescribed program in the law about brand:

RCW 70.95N.020(16), RCW 70.95N.020(33), RCW 70.95N.040(4)(b), RCW 70.75N.110, RCW 70.95N.140(2)(f), RCW 70.95N.160, RCW 70.95N.180(1)(a)&(b), and RCW 70.75N.290(1)(a). Nowhere in the law is the concept of licensee responsibility inferred or implied. The entire law is based on brand and brand ownership. Therefore the recommended language can not be accepted.

Comment #374

2. Regulatory definition of “Manufacturer” should include licensees.

The regulatory definition of “Manufacturer” focuses on persons who own the brand of the electronic products that are subject to the statutory provisions. But, the concept of the legal ownership of a brand is almost wholly absent from the statutory definition. The statutory definition focuses on persons who are the actual manufacturers of electronic products. The regulatory definition does not.

By focusing on the “legal ownership” of brands, the regulations essentially re-define what is a very precise statutory definition. This re-definition artificially circumscribes the coverage of the term “Manufacturer” under the regulations. It also produces two adverse consequences, both of which affect Thomson’s interests.

First, the proposed regulatory definition effectively eliminates a class of manufacturers who are quite significant players in the marketplace - - licensees. Licensees are manufacturers who do not own the brand under which their product is sold, but who have all rights to use the brand, and who otherwise control the design, construction, manufacturing, sales, and distribution of the products that they create. Under the statute, such producers are clearly responsible for the products that they make and market. See RCW7O.95N.020(14)(a), (b), and (e). The regulations, however, do not capture or include this class of manufacturers.

Second, the proposed regulatory definition imposes responsibility on mere licensors - that is, parties who merely own a brand name, but who have no residual rights to use the brand, or are not otherwise designing, constructing, manufacturing, selling, or distributing the products that a true manufacturer does. The statute does not create responsibility for such licensors—the mere brand owners. It focuses responsibility on actual manufacturers.

As Thomson has explained, with respect to televisions, today, it is merely a licensor. It does not manufacture any covered products and has not done so since July 31, 2004. Thomson manufactured RCA branded televisions from October 1, 1987 through July 31, 2004. However, under the statutory definition, Thomson would be considered a Manufacturer for RCA branded

products for two years as it "had manufactured" RCA branded televisions from July 2002 through July 31, 2004 when it (actually an affiliate of Thomson) owned the RCA brand. Thus, Thomson is only a "Manufacturer" according to the statutory definition for two (2) years—July 2002 through July 2004—because that is the only time it "has manufactured a covered electronic product under its own brand names for sale in or into this state." Under the proposed regulations, however, Thomson is considered the Manufacturer of all RCA branded televisions, regardless of whether Thomson actually designed, manufactured, sold, or distributed the televisions; one of its licensees designed, manufactured, sold, or distributed the televisions; the former brand owner designed, manufactured, sold, or distributed the televisions; or the former brand owner's licensees manufactured, sold, or distributed the televisions. By contrast, the true manufacturers of RCA branded televisions are not, under this draft of the regulations, likely to be held responsible for their products unless those manufacturers also own the brand under which they sell the television.

Thomson has identified two possible fixes to the regulations. The first, and Thomson's preferred, proposed fix would focus the definition of "Manufacturer" on the act of manufacturing, not on the ownership of the manufacturer's brand. Thomson's proposed language is shown in all caps below:

"Manufacturer" means the person who:

(a) ~~Has legal ownership of the brand, brand name or cobrand of covered electronic products sold in or into Washington state~~; MANUFACTURES A COVERED ELECTRONIC PRODUCT FOR SALE IN OR INTO THIS STATE UNDER ITS OWN BRAND NAME OR A BRAND NAME LICENSED TO IT;

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

~~(c)~~ Imports, or sells at retail, an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America((~~.~~)); or

(((~~d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.

Thomson's second alternative proposed fix would help to clarify the definition of Manufacturer, and would reverse some of the adverse effects of the problems described above. While this alternative would not fix the mistaken focus on brand ownership, and is less preferred by Thomson, it would not dramatically change or impede Ecology's proposed program.

This proposed fix is drawn, in part, from the definition of Manufacturer that is found in the recently passed Oregon electronic products recycling statute. That statute explicitly includes licensees in the definition of "Manufacturer". Thomson proposes that similar language be added to Washington's regulatory definition of Manufacturer, Thomson's proposed language is shown in all caps in the paragraphs below:

"**Manufacturer**" means the person who:

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

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

~~(c))~~ Imports, or sells at retail an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America((~~.~~)); or

(((~~d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in

(b) of this subsection, and elects to register in lieu of the importer.

Ecology Response:
The law was written with the understanding that the brand owner was the manufacturer. This is borne out in reviewing the many directives describing the operative elements of prescribed program in the law about brand:
RCW 70.95N.020(16), RCW 70.95N.020(33), RCW 70.95N.040(4)(b), RCW 70.75N.110, RCW 70.95N.140(2)(f), RCW 70.95N.160, RCW 70.95N.180(1)(a)&(b), and RCW 70.75N.290(1)(a).

Nowhere in the law is the concept of licensee responsibility inferred or implied. The entire law is based on brand and brand ownership. Therefore the recommended language can not be accepted.

Comment #375

3. Amend the registration requirement WAC 173-900-215.

Thompson would also propose that Ecology amend Section 215 to clarify that licensees are also required to register with the Department as manufacturers. Thomson proposes the following language (with Thomson's proposed language shown in all caps), as an amendment to Section 215:

WAC 173-900-215 Initial CEP manufacturer registration.
Step 1: Complete the manufacturer registration form.
(1) CEP manufacturers must use the on-line or paper manufacturer registration form provided by ecology.
(2) A manufacturer must provide all of the following information to ecology:
(a) The name, contact, and billing information of the manufacturer;
(b) The manufacturer's brand names of CEPs, including:
(i) All brand names sold in Washington state in the past, including the years each brand was sold;
(ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name;
(c) All brand names of electronic products for which the registrant IS THE LICENSEE OR assembles but does not have legal ownership of the brand name placed on the product;
(d) When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;
(e) When a logo, mark, or image is used as a label, the manufacturer must include either a graphic representation of the logo, mark, or image and a general description of the logo, mark, or image as it appears on the manufacturer's electronic products;
(f) The method or methods of sale used in or into Washington state; and
(g) CEP recycling plan participation information.

Ecology Response:
The law was written with the understanding that the brand owner was the manufacturer. This is borne out in reviewing the many directives describing the operative elements of prescribed program in the law about brand:
RCW 70.95N.020(16), RCW 70.95N.020(33), RCW 70.95N.040(4)(b), RCW 70.75N.110, RCW 70.95N.140(2)(f), RCW 70.95N.160, RCW 70.95N.180(1)(a)&(b), and RCW 70.75N.290(1)(a).

Nowhere in the law is the concept of licensee responsibility inferred or implied. The entire law is based on brand and brand ownership. Therefore the recommended language can not be accepted.

Comment #376

4. Amend the successor duties provision under WAC 173-900-290.

Thomson also proposes that Ecology amend Section 290 to clarify that licensees are also subject to successor liability as manufacturers. Thomson proposes the following language (with Thomson's proposed language shown in all caps) as an amendment to Section 290:

Ecology Response:
The language as currently written does not preclude licensee agreements. Nor does it preclude negotiations between licensees and brand owners. Therefore the proposed added language is not necessary.

Comment #377

WAC 173-900-290 Successor duties. Any person acquiring a manufacturer, or brand, or who has acquired a manufacturer, or brand, shall have all responsibility for the acquired company's CEPs, including CEPs manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase agreement, OR A SUBSEQUENT LICENSING AGREEMENT, and the acquiring manufacturer provides ecology with a letter from the other entity accepting responsibility for the CEPs. Cobranding manufacturers AND LICENSEES may negotiate with MANUFACTURERS OR retailers for responsibility for those products and must notify ecology of the results of their negotiations.

5. Provide for sampling flexibility under WAC 173-900-900.

Thomson is concerned that the sampling protocol under Section 900 focuses on tracking product brands, and not the manufacturers, as is required under the statute. So, Thomson requests that the following language, in all caps, be inserted as indicated into the draft. The new language will help to ensure that accurate records of the manufacturers of the units sampled will be recorded as part of the sampling program.

Ecology Response:
As required by the statute, sampling does focus on product brand:

RCW 70.95N.110 Covered electronic sampling**.**
(1) An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include *a list of the brand names* of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are *identified for each brand name or that lack a manufacturer's brand*, the total weight of the sample by product type, and any additional information needed to assign return share. (Emphasis added).

Nothing in the rule precludes a plan from adding detail to their sampling plan or a manufacturer from asking for that detail. Adding the language would increase the cost of the sampling activity. Therefore, the added language suggested below is unnecessary.

Comment #378

Step 7: Reporting the sample.
(o) At the end of the sampling day the plan must provide the results to the third-party observer. The results must include all of the following:

(i) The data as required by the sampling program for each CEP unit, WHICH SHALL INCLUDE, AT A MINIMUM:

(A) BAR CODE DATA FROM THE BAR CODE AFFIXED TO THE CEP UNIT DURING SAMPLING

(B) WEIGHT OF THE CEP UNIT

(C) BRAND OF THE CEP UNIT, TAKEN FROM THE FRONT OF THE UNIT

(D) TYPE OF THE CEP UNIT (TELEVISION, COMPUTER, ETC.)

(E) MANUFACTURER NAME, TAKEN FROM LABEL ON BACK OF UNIT

(F) DATE OF MANUFACTURE OF THE UNIT, TAKEN FROM BACK OF UNIT (IF AVAILABLE);

(ii) A list of the brand names of CEPs by product type;

(iii) The number of CEPs by product type;

(iv) The weight of CEPs that are identified for each brand name;

(v) The weight of CEPs that lack a manufacturer's brand; and

(vi) The total weight of the sample by product type.

(p) The third-party observer will certif' the results and submit one paper and one electronic copy of the results to ecology and the authority or authorized party.

(8) Optional Additional Sampling. Any plan may, at its own cost, implement additional sampling activities, or acquire additional sampling data, beyond those activities required under the provisions of this section. Such sampling and data collection activities may not, however substitute for or prevent the collection of data as required under this section.

Ecology Response:
Thomson understands that Ecology may not be willing, at this point, to require more complete data collection in the standard sampling protocol. If so, Thomson would ask that the following new subsection (8) be added to WAC 173-900-900. It would clarify that plans are allowed, at their cost, to obtain additional data from sampling activities beyond those required under the standard sampling protocol.

Comment #379

Thanks again for the opportunity to provide these comments. I look forward to talking with you about them, and would be glad to answer any questions you may have.

Sincerely,

Loren R. Dunn
of
RIDDELL WILLIAMS P.S.
Counsel for Thomson, Inc.

LRD/dkh

Ecology Response:
Thank you for your comments!

Commenter: Charles Brennick , InterConnection Computer Reuse and Learning Center

Comment #380

I direct the non profit organization InterConnection. The InterConnection Computer Reuse and Learning Center provides computer hardware skills to low income and unemployed people in Seattle and surrounding areas. Anyone who completes the hardware skills program receives a free computer.

Since 2004:

- 325 people have completed the Computer Hardware Maintenance and Repair Work skills program and received a free computer.
- 11,504 refurbished computers have been refurbished and provided to non-profit organizations and schools all over the world.
- Over 213,000 pounds of computers have been recycled and 110,136 pounds of electronic devices such as printers and scanners.
- 26,415 hours have been donated by volunteers.

In my opinion the law will negatively impact our program and will be bad for reuse.

My concerns are:

- There are no requirements for reuse
- There are no incentives for companies or individuals to choose collectors that do reuse.
- The law does not protect the environment or preserve natural resources as much as it could have.
- It has the potential to decrease the number of computers reuse organization, especially charitable reuse organization, will receive.
- The fact that the law does not require or offer specific incentives for reuse is a serious flaw.

Environmental Impact

Reusing just one computer with a CRT monitor saves:

- 30 lbs of hazardous waste
- 77 lbs of solid waste
- 147 lbs (17.5 gallons) of water from being polluted
- 32 tons of air from being polluted
- 1,333 lbs of CO2 from being emitted
- 7,719 kilowatts of energy (*U.S. Environmental Protection Agency)*

Facilitating recycling will only get more used computers off the market. Consumers will have no choice but to purchase new equipment which uses more natural resources and will create more electronic waste.

Why did does the law not include requirements or more incentives for computer reuse when reuse is more environmentally friendly than recycling?

Law will decrease the number of computers available for reuse

The law will decrease the number of computers available to charitable reuse organizations due to economic conditions and the percent share requirement.

Economics.
Manufacturers will set the price for processing materials. Processors will get paid the same for PIs and P4s, new or old monitors. Therefore, processors will be motivated to process as much material as possible to make up for the lower prices set by the manufacturers.

An example of how this law will develop can be seen in California where a similar electronics recycling law has existed for several years. Like Washington, California recyclers get paid for each item they handle. There is no difference between a dead monitor and a working monitor or a Pentium 1 computer or a Pentium 4 computer. They are all valued the same. I contacted several non profit organizations in California. Here is what a few of them had to say:

Jim Lynch, Program Manager, Computer Recycling & Reuse, San Francisco, “There are clear cases of unintended consequences from the California Ewaste law. It has been harmful to reuse programs”.

Pat Furr, Computers for Classrooms. Chico California, “There is no incentive for reuse. Very large recyclers are spreading out throughout the state in an ever ending attempt to garner more and more of the market.”

Steven Wyatt, Computer Recycling Center, 'The effect of SB 20 is that it's focused on end-of-life recycling, and it's screwed up the idea of reuse of these old products,"

Percent Share:
According to the law, each Plan has to meet a certain quota. If one plan does not process their share they will have to pay the other plan. Manufacturers will expect the processor they select to meet quotas. If they don’t they could choose another processor. This will created a “grab as much as possible” environment and will result in less computers for charitable reuse organizations that do not have funds to pay for them.

What does the law do to ensure computer reuse organizations, especially charitable reuse organizations, will still receive sufficient numbers of computers?

Collectors Ability to Disassemble Computers

I disagree with the following paragraphs:

Page 54, paragraph 2
“2. A registered collector may dismantle or disassemble CEPs for the purpose of removing components for reuse in refurbished products.

3. A registered collector must not dismantle CEPs for purposes of recycling components unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

This paragraph would prevent InterConnection trainees from taking apart computers. They disassemble computers for more than just recycling the metals. Trainees disassemble for the purpose of training. They learn how the parts of the computers are connected, the names of the

components and get over their fear of touching the inside of computers If they can't disassemble computers they will lose this valuable training component.

We also earn revenue from the sale of metals from the disassemble computers. These metals are sold to Hallmark Refinery in Mount Vernon. The monthly revenue is about $3,000 per month.

Since volunteers disassemble computers the net profit from this program is significant. If we earn more revenue from disassembling computers than what the Plan pays for scrap computers than we should have the option to disassemble. This would create a better market environment and ensure the Plan pays appropriately.

According to the law we can't recycle any CEPs. Network cards, sound cards and motherboards are CEPs. What do we do with cards that we test and don't work? As a collector, we can't send them to a recycler. Do we throw them away?

Collectors should have the option of disassembling computers if their weight is not counted towards the plan.

Why can't collectors recycle computers if they don't count the weight towards the Plan?

Non Profit Credit:

The following paragraph was added as a mechanism to encourage plans to utilize non profit organizations as collectors.

WAC 173-900-940 Equivalent share credits. Plans that use the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations.

It is my understanding that the intent of this paragraph was to encourage Plans to utilize non profits involved in computer reuse. However, the paragraph only states "the business of reuse". Any non profit that reuses any items, including building materials, would get the same credit.

The paragraph would be more effective at encouraging Plans to use non profits involved in computer reuse by altering it to say:…. that are primarily engaged in the business of **COMPUTER** reuse and resale must be given an additional five percent.

Additional Comments:
Collectors must be allowed to sell products wholesale. InterConnection ships approximately 400 computers to one non profit recipient. The recipient distributes them to schools and other needy organizations. We do not know who the end recipients are since it is up to the non profit abroad to make the decisions. This would be considered a wholesale activity and if there are any restraints on wholesale shipments to one organization for distribution would be prohibited.

****
Charles Brennick, Director

Ecology Response:
The rule, WAC 173-900, is an interpretation of the law RCW 70.95N Electronic Product Recycling. The law is a recycling law. The law does not preclude reuse. It was determined during the process of developing the law that the reuse market did not need intervention by the state. Reuse, particularly of computers, would go on.

RCW 70.95N.200 provided an incentive for reuse by non-profit organizations that sold donations at retail. It gave those plans that used those non-profits as collectors a 5% credit over the amount that was collected by the non-profits. That is the extent of the incentive provided in the law. Ecology can not go beyond the authority it was provided in the law when writing the rule.

The law also does not make a distinction between computers and other electronic products for reuse. The law addresses all types of CEPs.

It is important to note that reuse was defined as the exchange of whole functioning CEPs, or components, that will be used for the same purpose for which they were originally manufactured. Disassembling and selling metal bearing parts is recycling and would fall under the rules governing processors. Disassembling and removing parts for reuse would also fall under the rules governing processors.

Commenter: Larry King, Hewlett-Packard Company

Comment #381

Hewlett-Packard Company Comments
on the
Washington State Electronic Recycling Program Proposed Rule
(Dated: July 17, 2007)

Hewlett-Packard Company ("HP") submits the following comments on the Department of Ecology ("Ecology") July 17, 2007, Proposed Rule (Chapter 1 73-900-WAC, Electronic Product Recycling Program) ("Proposed Rule") for implementing the Washington State Electronic Product Recycling Act ("Act").

These comments follow comments submitted by HP earlier this year on successive informal drafts of the Proposed Rule. HP greatly appreciates the time and consideration that Ecology has given to the comments that HP and others have submitted on the drafts of the informal Rule and to the stakeholder group discussions that Ecology hosted. As a result, the Proposed Rule is a significant improvement over earlier drafts.

HP has several serious concerns with the Proposed Rule, however. HP's basic issues are that:

- some provisions of the Proposed Rule are beyond the scope of the Act, adding requirements that are not found in the Act or that are inconsistent with the Act; and

- some provisions are impractical to implement, unfair, or unreasonably burdensome.

In submitting these comments, HP's fundamental goal is to help produce a sound, effective final Rule that adheres to the Act's requirements and that assists in implementing the Act in an effective, efficient way.

Unlike many statutes, the Act is a relatively detailed and clear statute that was the product of

significant negotiation and compromise among legislators and stakeholders who shared an interest in developing an effective electronics product recycling program for the citizens of the State of Washington. Accordingly, there is less need for interpretative rules than might otherwise be the case. In addition, a fundamental principle of the Act is to allow the competitive market to be central to the Act's implementation in order to achieve efficiencies and least cost solutions and a minimum of regulatory burden. This means that there is a premium on reducing regulatory burdens where possible when developing rules to implement the Act. And no rules should be more restrictive than or in addition to the Act's requirements.

In sum, HP's comments focus on seeking to ensure that the final Rule adheres to the Act's requirements and avoids unnecessary regulatory constraints.

Our comments are organized into four parts. The first part addresses all of the Proposed Rule provisions except those parts of the Proposed Rule that pertain to "Direct Processor Requirements" and "Sampling, Return Share, and Equivalent Share." The second part addresses
the Direct Processor Requirements. The third part addresses sampling methodology issues in the provisions governing Sampling, Return Share, and Equivalent Share. The fourth part addresses the August 22, 2007 draft "Covered Electronic Product (CEP) Recycling Plan Template."

Specific sections of the Proposed Rule are cited in the comments by reference only to the last three numbers of the section, *i.e.,* "WAC 173-900-900" will be cited as "Section 900" or "§ 900".

Within each part of our comments, the comments address sections of the Proposed Rule in numerical order.

Part 1
Comments on Proposed Rule Requirements Other Than on "Direct Processor Requirements" and on "Sampling, Return Share, and Equivalent Share"

1. Section 030, p. 4.[1] The Proposed Rule's definition of "Manufacturer" deviates from the statutory definition. The Proposed Rule's definition of "manufacturer" in Section 030 differs substantially from the Act's definition. *Compare* § 030 *with* RCW § 70.95N.020 (14). The Legislature carefully considered the definition of "manufacturer" and enacted a comprehensive, clear definition. Elaboration is not necessary and using language in the Proposed Rule that differs from the language in the Act to define the same word ---"manufacturer" –
will likely create confusion, ambiguity, and/or uncertainty about who is subject to the Rule. Given the importance of the definition of "manufacturer" to the implementation of the Act and the Rule, the definition should be the same for both.

Footnote 1: Page references are to the July. 17, 2007, Proposed Rule.

2. Section 215(c), p. 18. The Proposed Rule requires that the manufacturer must provide registration information for CEP brands for which the "registrant *assembles* **but does not have legal ownership of the brand name placed on the product," contrary to the Act's requirements.** The Proposed Rule requires the manufacturer to provide in its registration form "all brand names of electronic products for which the registrant *assembles but does not have legal ownership of the brand name placed on the product."* § 215(c) (emphasis added) As we show below, the Proposed Rule, therefore, is requiring the manufacturer to list on its registration form brands for which the registering manufacturer *is not the "manufacturer"* as defined by the Proposed Rule and by the Act.

The Proposed Rule is explicit in stating that a "manufacturer" is only "the person" who *"has legal ownership of the brand,* brand-name or cobrand of covered electronic products sold in or into Washington state." § 030("Manufacturer", subsection (a) (emphasis added) [the other two subsections of the Proposed Rule's definition of "manufacturer" incorporate the requirement of *having legal ownership of the brand,* brand-name or cobrand; see § 030("Manufacturer", subsections (b) & (c)].

Analysis of the Act's definition of "manufacturer" reveals that a person who "assembles but does not have legal ownership of the brand name placed on the product" is not a "manufacturer," i.e., a "manufacturer" is a person who "assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state *under the assembler's brand names."* RCW § 70.95N.020 (14) (b) (emphasis added)

Thus, the Proposed Rule requires the manufacturer to list on its registration form brands for which the registering manufacturer *is not the "manufacturer"* as defined by the Proposed Rule and by the Act.

The Proposed Rule then makes the registered manufacturer responsible for the "brand names included on the [registration] form" by providing that Ecology can deny a manufacturer's registration if it is not "complete and accurate." § 220(7) (a). Thus, if a manufacturer does not list on its registration form brands for which it is not, by definition, the "manufacturer", i.e., brands that the registrant assembles but for which the registrant does not have legal ownership, the registration form would not be complete or accurate. Ecology would be required by the Proposed Rule to deny the manufacturer's registration. If Ecology denies a manufacturer's registration, *"[t]he manufacturer's brands [i.e., any or all of the manufacturer's brands] are not allowed to be offered for sale or sold in or into Washington state."* § 220(7)(b)(iii) (emphasis added)

In sum, a manufacturer can suffer the severest penalty possible -- not being able to sell its own electronic products in or into Washington state -- if it fails to register brand names for which it is *not, by definition, the manufacturer.* Nothing in the Act supports this result. It is illogical and unfair.

Moreover, as a practical matter, Section 215(c) would cause needless confusion as to who should be responsible for the CEPs in question. *By definition,* the person who has legal ownership of the brand in question is the "manufacturer" of the products that bear its brand name. *See* § 030("Manufacturer") (defines "manufacturer as "the person who (a) Has legal ownership of the brand.. . .") Therefore, Section 215(c) makes two persons responsible for a particular brand when, by law, only one of those should be responsible.

For these reasons, Section 215(c) should be deleted.

Ecology Response:
WAC 173-900-215(c) requires that manufacturers provide Ecology with the brand names of electronic products for which they assemble but do not legally own the brand. This information only provides Ecology with a cross check to make sure that all brands that might be sold in the state are identified. This requirement does not hold the assembling manufacturer responsible for brands it does not own.

Comment #382

3. Sections 255(2)(c) and 255(5)(b), p. 22-3. The Proposed Rule prevents manufacturers from selling covered electronic products (CEPs) based on retailer actions, including retailer sales that are perfectly legal, contrary to the Act. The Proposed Rule

makes it a “manufacturer registration violation” if a retailer offers for sale or sells a manufacturer’s brand CEP in or into Washington State, and the manufacturer’s brand is not listed on the Department’s website (unless the manufacturer notifies retailers in writing that the manufacturer’s brand of CEPs cannot be offered for sale in Washington State), and makes it a “manufacturer labeling violation” if a retailer sells a CEP from a manufacturer that is not properly labeled. §§ *255(2)(c) &* (5)(b)

Moreover, the Proposed Rule makes it a manufacturer labeling and/or registration violation when retailers are granted an exemption to sell unlabeled products or unregistered manufacturer products *without being in violation.* The Proposed Rule’s retailer sell-through exemption provides that “if a retailer can prove that the retailer ordered [a CEP] from the manufacturer …prior to January 1, 2007,” the sale of a CEP from an unregistered manufacturer is not a “retailer selling violation;” and that “if a retailer can demonstrate to ecology that the retailer was in possession of [an unlabeled CEP] prior to January 1, 2007,” the sale of the CEP is not a “retailer labeling violation.” *See §§ 730 (2)(a)(iii) & 3 (a)(iii).”* Yet because the manufacturer violations section contains no analogous consumptions, a manufacturer incurs a registration or labeling violation in both situations.

The penalty for uncured manufacturer registration or labeling violations is severe: Thirty days after a manufacturer receives a warning letter from Ecology that it has such a violation, the manufacturer’s CEPs cannot be sold or offered for sale in Washington unless the compliance requirements of the warning letter have been met. *See* §§ 205(1) & 260(2).

The Act nowhere authorizes Ecology to penalize *manufacturers* for *retailer* violations. Rather, under the Act’s enforcement scheme manufacturers and retailers are liable for failing to meet their *own* respective statutory responsibilities. *See* RCW § *70.95N.260(1) &* (3). Consistent with this scheme, the Proposed Rule appropriately: (i) makes it a manufacturer registration and labeling violation, respectively, if a *manufacturer* sells brands of CEPs not listed on Ecology’s manufacturer registration list or sells CEPs that are not properly labeled; and (ii) makes it a Retailer selling and labeling violation, respectively, if a retailer sells brands of CEPs not listed on Ecology’s manufacturer registration list or sells CEPs that are not properly labeled. *See* §§ *255(2)(a)&(b),* 255(5)(a), & 730(2)&(3). Given these Rule penalty/enforcement provisions that are specifically tailored to address manufacturer and retailer violations, it is not necessary to penalize manufacturers for retailer acts in order to enforce the Act’s registration and labeling requirements.

Penalizing manufacturers for retailer acts is not only statutorily unwarranted and unnecessary; it is unfair. For example, a manufacturer that has complied with labeling requirements under Section 255(5)(a) by permanently affixing to its CEPs “a readily visible label with the manufacturer’s brand name” should not be prevented from having its products sold simply because a retailer that it does not control and without the manufacturer’s knowledge subsequently obscures the label or causes it to be removed.

In sum, the requirements of Sections *255(2)(c)* and 255(5)(b) that impose liability on manufacturers for retailer actions should be deleted. Then the Proposed Rule will appropriately penalize manufacturers only for manufacturer acts and penalize retailers only for retailer acts.

Although fundamental principles of fairness and due process require deletion of these Proposed Rule provisions that make manufacturers liable for retailer actions, if Ecology does not make these deletions, Ecology should, at a minimum, revise Section 255 in two respects.

First, in Section *255(5)(b),* the words “is not labeled” should be replaced with the words “that the manufacturer has not labeled.” This would make a manufacturer liable for a retailer’s sale only if the *manufacturer* fails properly to label the sold CEPs.

Ecology Response:
We agree with this suggested change to WAC 173-900-255(5)(b) for clarification. Please see edits.

Comment #383

Second, to cure the Rule's failure to accord to manufacturers the benefit of the Rule's sell-through exemption, which the Rule provides to retailers, Sections 255(2) and *(5)* must be revised to include sell-through exceptions similar to those in the Retailer Requirements -- otherwise manufacturers will be in violation of the Rule for retailer acts, even when those retailer acts are *not violations,* an illogical result. As revised, Sections 255(2) and *(5)* would provide that if a retailer or a manufacturer proves that a retailer purchased an unregistered brand CEP prior to January 1, 2007, or if a retailer or, a manufacturer proves that an unlabeled CEP was in the "possession" of a retailer prior to January 1, 2007, the retailer may sell the CEP without the manufacturer committing a registration or labeling violation.

Of course, depending, on the retailer's cooperation and other factors, it may be difficult for a *manufacturer* to prove the *retailer's* purchase or possession date. This reinforces HP's main point: that manufacturers should not be liable for retailer actions, and that the best solution simply is to delete those elements of Sections 255(2)(c) and 255(5)(b) that impose liability on manufacturers for retailer acts.

Ecology Response:
RCW 70.95N.160(1) prohibits the sale of non-branded products after January 1, 2007. RCW 70.95N.160(2) allows retailers to exhaust their stock of unlabelled products in their possession prior to January 1, 2007 after that date. The statute did not grant the same to manufacturers. Indeed, the law requires that all products sold in or into the state of Washington after January 1, 2007 be labeled and be provided by registered manufacturers. Therefore, Ecology can not afford manufacturers the ability to exhaust stocks in the same manner that retailers were granted.

Comment #384

4. Sections 320(6) and 810(7)(c)&(d), pp. 34 and 87. The Proposed Rule establishes a standard of review for local government "satisfaction reports" that is inconsistent with the Act and requires that plans "must work with" local government entities, contrary to the Act. Section 810(7) provides a standard of review for Ecology review of local government satisfaction reports. The standard of review is not consistent with the Act and is unfair to the Authority and the Authorized Parties.

Under subparts (c) and (d) of Section 810(7), if -- based on a local government "satisfaction report" and the Authority or an Authorized Party's "response" to that report -- Ecology finds that a plan is "failing to provide service in a community," the Authority or the Authorized Party must submit an updated plan to Ecology. This standard of review is not the statutory standard and is a broad, vague standard that could result in plan changes being required even for a trivial concern about service.

In RCW § *70.95N.090,* the Act explicitly states "collection services" requirements. Accordingly, the Section 81 0(7)(c) standard of review that applies to the review of collection' services needs to be revised to replace the vague, undefined phrase "failing to provide service in a community" with the phrase "failing to provide collection services as required by RCW 70.95N.90."

Then Section 320(6) requires that the Authority or Authorized Party "must work with the local government entities responsible for preparing local solid waste management plans." The Act does not require this. It requires only that "[t]he department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the, department in reviewing plan updates and revisions." RCW § 70.95N.230(3). Section 810, as revised above, is consistent with this provision, while section 320(6) exceeds it. Moreover, the term "work with" in section 320(6) is undefined. Whatever its meaning, the Act does not require that each Authorized Party/Authority undertake the burdensome task, at the plan preparation stage or any other stage, of soliciting input from and addressing the concerns of *every* local entity responsible for preparing local solid waste management plans.

In sum, the Legislature determined it sufficient that local entities have an *opportunity* (not an obligation) to submit satisfaction reports, after plan implementation, and have those reports "used" by Ecology in "reviewing plan updates and revision." RCW § 70.95N.230(3). Section 320(6) is inconsistent with the Act, burdensome and, in view of the procedures and standard of review provided by Section 810 for reviewing satisfaction reports, unnecessary. Section 320(6) should be deleted.

Ecology Response:
Disagree. First, plans are required to work with local governments to assure that plans are developed that meet community needs, as required in the law. Second, under WAC 173-900-810 it is optional, not obligatory, for local entities to submit satisfaction reports. Based on input from Ecology's advisory panel, this section provides the opportunity for plan operators to respond to concerns raised in satisfaction reports before further action would be taken.

Comment #385

5. Sections 320(7) and 320(8), p. 34-5. The Proposed Rule requires plans to provide information that plans are not likely to have prior to implementation, e.g. "types of CEPs collected" and "days and /hours of operation for each site." Section 320(7) requires a plan to contain detailed information about collectors to be used by the plan that the Authority or the Authorized Party is not likely to have when the plan must be submitted, such as "types of CEPs collected" and "days and hours of operation for each site." Similarly, Section 320(8) requires a plan to contain information about transporters that the Authority and/or Authorized Party is not likely to have when the plan must be submitted, such as "counties and cities where the transporter provides service for the plan" and "types of CEPs transported." For example , for the program year beginning 2009, the plan must be submitted to the Department by February 1, 2008, eleven months before the plan is to be implemented.

Sections 320(7) and 320(8) should be revised to require only information about collectors and transporters that is both essential and available at the time of plan submission. Thus, the requirements to provide information about "types of CEPs collected," "days and hours of operation of each site," "types of CEPs transported" and "counties and cities where the transporter provides services for the plan" should be deleted as should any other nonessential information requirement.

Ecology Response:
A plan, by definition, is "A scheme, program, or method worked out beforehand for the accomplishment of an objective." Plan content requirements will demonstrate to Ecology the adequacy of planned services that will be provided. Ecology will not be able to make a determination of adequacy without the detailed information required.

Comment #386

6. Section 320(11), p. 35. The Proposed Rule adds a toxicity requirement to the "Design for Recycling" provision that is unwarranted by the Act. Section 320(11) requires plans to describe "how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage the design of electronic products that *are less toxic* and contain components that are more recyclable." *(emphasis added).*

There are several problems with the requirement that manufacturers "communicate and work with processors utilized by that plan to promote and encourage the design of electronic products that are less toxic." First, the requirement exceeds the Act's plan requirements provisions. The Act requires plans to contain only "a description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling." RCW § 70.95N.060(j).

Second, the requirement concerning "products that are less toxic" is vague. It is unclear what exactly is meant by "communicating and working with processors" to "encourage the design" of products that are less toxic, and what obligations arise from the requirement. Does this language obligate manufacturers to redesign products marketed globally based on the input from processors participating in Washington's recycling program?

In sum, if the Legislature had wanted to impose a costly obligation that manufacturers communicate and work with processors to design less toxic products, it would have included that language in RCW § *70.95N.060(j).* Consistent with the Act, the May 7 Draft Rule used the exact language of the Act in Section 320(9) [which has become Section 320(11)] *(i.e.,* "a description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage the design of electronic products and their components for recycling.") The language of Section 320(11) should be replaced with the language from Act in RCW § *70.95N.060(j).*

Ecology Response:
Disagree. RCW 70.95N.010 states that "the system must encourage the design of electronic products that are *less toxic and more recyclable*." (emphasis added). The requirements in RCW 70.95N.060(j) are there as a way to encourage the improvement of the recyclability of electronic products. Electronic products that do not contain toxic material are more recyclable than those that include a composite of toxic and not-toxic material.

Comment #387

7. Section 335, Table 335, p. 39-40. The Proposed Rule unnecessarily imposes burdensome requirements. that Ecology approve "changes to levels of service other than additional services," "any changes to the implementation timeline" and "any changes to the public outreach plan, other than additional public outreach and marketing." There are several problems with the requirements in Table 335 that Ecology approve "changes to levels of service other than additional services," "any changes to the implementation timeline" and "any changes to the public outreach plan, other than additional public outreach and marketing." Most fundamentally, the requirement for Ecology approval of these categories of changes is unnecessary and burdensome, particularly given the requirements of other Rule provisions.

Section 370(2) gives Ecology the power to declare a plan "in violation" if changes in the plan cause it to fail to "meet [] the requirements in this chapter." Section *335(4)* guarantees that Ecology will learn of such changes because the section requires that both significant and non-significant plan revisions identified in Table 335 be reported to Ecology. Thus, these sections

already provide adequate enforcement of the Act's plan requirements standards. Requiring separate, specific Ecology approval of certain service, timeline and outreach changes simply adds an unnecessary, time-consuming and costly regulatory burden.

There are several additional problems regarding the changes to "level of services" requirement. First, the term "level of services" is not defined. It is unclear, for example, whether it includes changes in hours of operation of a collector, changes in the collector being used in a geographic area, or something else. Changes regarding hours of operation are ministerial and should not require Ecology approval. Second,. the Authority must accept devices from all collectors. If a collector changes hours, for instance, the Authority has no control over that change and it should not require Ecology approval. Finally, the "levels of services" requirement does not address the situation where the Authority or Authorized Party must discontinue the use of a collector because the collector is "in violation" status. In that case, the Authority or Authorized Party must discontinue, the use of the collector and Ecology approval should not be required.

Table 335 should be revised to state "no revisions requiring approval" in the rows corresponding to "collection services," implementation timeline" and "public outreach and marketing requirements." Rather than adding confusing and burdensome Ecology approval requirements not required by the Act, it should suffice that, as required by Section *335(4),* plans are required to *report* to Ecology significant and non-significant changes and that Ecology has the power to declare plans "in violation" if such changes violate applicable regulatory and statutory requirements.[2]

Footnote 2: If Table *335* is not revised as suggested, Section 450(5)(b), p. *55,* should be revised to require collectors to "immediately notify the authority and authorized parties of changes in hours and days of operation and types of CEPs accepted that result in a change in collection services, other than a change that produces additional services." This will allow plans to be revised and submitted to Ecology for changes to "collection services, other than a change that produces additional services," within the short timeframe (14 days) permitted by Section *335(4).*

Ecology Response:
Ecology needs to be notified of changes in order to assure that changes provide equal services and that all manufacturers are participating in an approved plan. RCW 70.95N.070(1)(b) requires that all revisions to plans must be submitted to Ecology. The rule delineates which revisions need approval and which revisions do not, prior to implementation. To eliminate unnecessary paperwork, the authority or authorized party has the option of only submitting the portion of the plan that requires updating.

Rather than 14 days in the proposed rules, the rule will be changed to reflect the 60 days allowed in the law.

Ecology agrees to have the collector notify the authority or authorized party of any changes in the days and hours of operation they would like to change or the types of CEPs products collected. Please see edits in Collector Performance Standards WAC 173-900-450.

Comment #388

8. Section 350(2)(b), p. 43, defines what constitutes a manufacturer plan violation; the section needs to be clarified to be made consistent with the manufacturer warning provisions. Section 350(2)(b) provides that "Manufacturers who do not comply with the responsibilities identified and agreed to in their plan are in plan violation and will be placed in 'in violation' status." This provision should be clarified by inserting the phrase "after receiving 30 days warning pursuant to WAC 173-900-260," to be consistent with the manufacturer warning provisions of that section, which allow the thirty-day warning period.

Ecology Response:
Agree to the need for clarification. Please see edits.

Comment #389

9. Section 355(13), p. 46. The Proposed Rule requires collection services to be "available to all citizens," contrary to the Act. Section 355(13) requires that Ecology consider, as criteria to approve a plan's collection services, whether services are "(a) Reasonably convenient; (b) *Available to all citizens of Washington state;* (c) Provided in both rural and urban areas; (d) Provided in every county of the state; and (e) Provided for each city or town with a population of greater than ten thousand." *(emphasis added.)* Taken literally, subpart (b) means plans must make collection services "available" to *every citizen,* including, for example, prisoners and persons in the most remote rural areas, no matter how difficult or burdensome**.**

Subpart (b) exceeds the Act's requirements. The Act does not require collection services to be available to all citizens of the state. The Act's plan requirements provision requires a plan to describe its methods "for the reasonably convenient collection of all product types of CEPs in Rural and urban areas..." RCW § 70.95N.060(5)(c). "Availability to all citizens" is not mentioned. The Act's collection services provision mentions availability, but "availability" is modified by the concept of reasonability. The Act provides: "[a] program must provide collection services for covered electronic products of all product types that are reasonably convenient and available to all citizens of the state..." RCW § 70.95N.90(1).

Since, at most, the Act requires collection services to be reasonably available to citizens, "reasonably" should be inserted before "available" in Section 355(b), so that the Rule is consistent with the Act.

Ecology Response:
RCW 70.95N.090 states that services must be provided "…that are reasonably convenient and available to all citizens of the state…" "Reasonably" applies to "convenient" not available. So, the services must be reasonably convenient to all citizens of the state and available to all citizens of the state. "Reasonably convenient" then means suitable to the need but not excessive to the need. "Available" means ready to use. Ready to use can not be quantified as excessive or not. One can only determine whether a thing is ready to use, or not.

Comment #390

10. Section 365(1), p. 47 and Section 650(17), p. 77. The Proposed Rule references Ecology's "Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors" without stating where these Standards are available as required by Washington State law and providing the required twenty-day notice. Sections 365(1) and 650(17) require a direct processor, if it wants to achieve "preferred status," to meet or to conform to the standards in Ecology's "Environmentally Sound Management and Performance Standards for Electronic Product Recycling Processors" ("Performance Standards"). On August 14, 2007, Ecology distributed via its listserve and posted on its website the Performance Standards. These Sections pose two problems. First, to comply with statutory requirements, the Rule must state where copies of these Standards are available.[3] Second, the Washington State Administrative Procedure Act requires that, for other than emergency rules, an agency must provide a twenty-day notice of the proposed rule and agency failure to comply with this notice requirement means that the rule is not effective for any purpose. RCW §§ 34.05.320, 34.05.345. Because the public comment period on the Proposed Rule closes on August 30, 2007, Ecology has not provided the twenty-day notice period necessary to adopt the Preferred Standards as part of the Proposed Rule.

Footnote 3: See RCW § 34.05.365, which provides: "An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes, copies ***readily available to the public***. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. ***The rule must state where copies of the incorporated matter are available." (emphasis added.)***

Ecology Response:
The Preferred Standards describe a voluntary program. They are not administrative rules and are therefore not subject to the APA requirements.

Comment #391

11. Section 365(1), (2) and (3), p. 47, and Section 600(3)(a)(ii), p. 66. The Proposed Rule requires the Authority and Authorized Parties to conduct and be financially responsible for the preparation of compliance audit reports for their direct processors, contrary to the Act. By way of background, the May 7 Draft Rule made processors responsible for submitting annual compliance audit reports. Former Option A, Section 650(12) required "each processor [to] submit an annual compliance audit report to ecology with their annual registration form.. .."

The Proposed Rule has improperly shifted the burden of conducting processor audits to the Authority and Authorized Parties. Section 600(3)(a)(ii) requires processors 'to "[s]ubmit to annual compliance audits meeting the audit requirements of [Section *365] conducted by or for the authority." (emphasis added.)* Sections *365(1),* (2) and (3) require: (i) "for each direct processor used by the plan, *the authority or authorized* party must provide an annual compliance audit report to ecology;" (ii) the compliance audit report must be submitted to Ecology with the Authority or Authorized Party plan submittal and as part of the Authority's or Authorized Party's annual report; and (iii) audits must be conducted by an auditor *"not employed by the processor." (emphasis added.)*

Nothing in the Act requires the Authority or Authorized Parties to conduct or pay for processor audits. The Act requires only that plans submitted by the Authority or Authorized Parties *"contain* the following elements:. . . (5) *documentation of audits* of each processor. . . ." RCW § *70.95N.060(5)(f'). (emphasis added)* The only other mention of audits in the Act is the provision that states that the "department may audit processors." RCW § 70.95N.250.

Moreover, requiring the Authority and Authorized Parties to conduct and pay for audits of each processor that they use is impractical, duplicative, and unnecessarily expensive. This requirement could result in each processor being audited multiple times, i.e., by each Authority and Authorized Party that uses the processor. This requirement would impose a substantial commitment of time and resources on the processor that would be subject to these multiple audits as well as requiring the payment for multiple duplicative audit reports by the Authority and each Authorized Party that uses the direct processor.

In sum, consistent with the Act's provisions, processors wishing to participate in plans should pay for their own audits. The requirements of Sections 365(1), (2) and (3) and Section 650(17) that state who must conduct and pay for direct processor audits should be revised and the final Rule; should contain language similar to language in Option A, Section 650(12) of the May 7 Draft Rule, which required direct processors to conduct and pay for audits of their facilities and operations.

Ecology Response:
Agree. And, the rule does not require that the authority or authorized party pay for the annual audit reports, only that they submit it to Ecology. Further, the rule requires that the audit be done by a party not employed by the processor. "Not employed" means not a regular employee, in this instance. Who pays for the audits is left to the authority or authorized party to negotiate with the processors with which they might contract.

Comment #392

12. Section 800(2)(a)(iv), p. 84. The Proposed Rule requires the Authority and Authorized Parties to provide CEP "final destination" information in plan annual reports, information that is difficult, if not impossible, to obtain. Section 800(2)(a)(iv) requires the Authority and Authorized Parties to include, in the annual report that must be filed with the Department information on the "[f]inal destination for the processing of CEPs and their components and final destination for disposal of residuals." This provision exceeds the Act's requirements. The Act nowhere requires that the final destination of CEPs, their components and residuals be reported. Additionally, the requirement to track and determine the final "destination for disposal of residuals" is a particularly difficult, if not impossible, task. Some materials may go through many processing steps, each one of which may produce both a useful product and residual materials that must be further processed or disposed. Moreover, the processing of residual materials will often involve combining materials from many different sources for processing and further handling, such as metals and plastics recycling. The ultimate disposal destination of residuals, finally, may be known only by subcontractors. Importantly, the processing standards of the Act apply only to processors *directly used* by the Authority or Authorized Party, not to subcontractors. Moreover, as a practical matter, the Authority and Authorized Party will likely not know and/or have contact with these subcontractors.

In preparing the Proposed Rule, Ecology deleted similar "final destination" language that had been contained in Sections 300(2)(c) and 450(5)(f) of the May 7 Draft Rule.[4] Ecology should do the same here and delete Section 800(2)(a)(iv) in its entirety. While making this revision is the sound approach for revising and improving the Proposed Rule, if Ecology does not delete Section 800(2)(a)(iv) in its entirety, then the requirement of this Section to include information regarding the "final destination for disposal of residuals" should be deleted.

Footnote 4: Section 300(2)(c) of the May7 Draft Rule had required the Authority and Authorized Parties to provide collectors with information regarding the "final destination for processing and final disposition of the CEPs and CEP material or components." Section *450(5)(f)* of the May 7 Draft Rule had required collectors to post information on the "final destination and final disposition of CEPs submitted for recycling to the program."

Ecology Response:
While section 26 of the law, banning the export of CEPs to non-OECD countries was vetoed, RCW 70.95N.270(g) was not. The department is required to report no later than December 31, 2012, among other things: "An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such exports." It is necessary to gather the required information in order to comply with the law.

In addition, RCW 70.95N.140(h) allows the department to collect additional information it deems necessary through the annual reports. RCW 70.95N.250(3) requires that Ecology establish rules regarding non-recycled residuals that may need proper disposal. In order to verify proper disposal, it is necessary to receive a report describing the location and quantity of residual disposables.

Comment #393

Part 2
Comments on "Direct Processor Requirements"

The Act requires Ecology to "establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan." RCW § 70.95N.250. In analyzing the proposed direct processor performance standards, our review focused on certain key considerations that are particularly relevant to evaluating the processor standards, in addition to the basic issues identified above, at page 1.

Ecology's "Preliminary Economic and Least Burdensome Analysis for Amendments to Chapter 173-900 WAC" (July 2007) states that the processor "[p]erformance standards evaluated early in the rule development process were very costly. These have been abandoned because most plans would probably have opted to export the waste to the less developed nations for recycling…." Thus economic feasibility is a particularly relevant criterion for the processor performance standards. HP agrees that unnecessarily costly processor performance standards should be revised or omitted.

Many of the processors that will be used by the Authority and Authorized Parties will be out-of-state processors. These processors will be subject to existing environmental and worker health and safety requirements established by the federal government and the state in which the processor is located. These authorities consider their requirements adequate to protect the environment and worker health and safety and to provide "environmentally sound management" requirements for processors in their states. Thus, Washington State should consider carefully whether it is necessary to establish processor requirements that are not addressed by existing laws and regulations and should adopt only those requirements it considers essential for "environmentally sound management."

Ecology Response:
Ecology agrees and believes that the standards proposed are essential for environmentally sound management.

Comment #394

This recommendation is particularly important because the U.S. Environmental Protection Agency ("EPA") is developing what it hopes will become nationally uniform responsible recycling practices for electronics recyclers, *e.g.,* processors. For almost two years EPA has been. using a stakeholder process[5] to develop "Responsible Recycling Practices for Electronics Recyclers" ("R2 Practices"). EPA is on the verge of having the R2 Practices field tested and then further refined, based on the field test results. The goal of this effort is to develop a "commonly-accepted set of R2 practices for electronics recyclers."[6] Accordingly, Washington State should avoid enacting regulations that establish mandatory processor requirements that are inconsistent with the R2 Practices. Moreover, because the R2 Practices are under development, and because it is more difficult to eliminate promulgated regulatory requirements than to promulgate new requirements, it is prudent for Washington State to rely on its own existing environmental and worker health and safety requirements to the maximum extent feasible in order to avoid creating conflicting regulatory schemes between the final R2 Practices and Washington State processor requirements.

Footnote 5: The stakeholder group has' included representatives of the U.S. EPA and state environmental agencies, the electronics recycling industry (including reuse/refurbishers), public interest groups, and original equipment manufacturers.

Footnote 6: "Responsible Recycling Practices for Electronics Recyclers," Facilitator Draft Strawproposal, Version 16.2 (July 2007), at p.2..

As a result of these considerations, unduly prescriptive and/or highly detailed Proposed Rule requirements should be omitted. In addition, the processor standards should be written so that they can "stand the test of time" and will not have to be amended frequently as processing technologies change. The processor standards should also not be so prescriptive as to limit innovation in processing technologies.

Accordingly, HP' s comments recommend revision or deletion of Proposed Rule requirements that are not necessary or appropriate for environmental protection and worker health and safety, that are not financially cost effective, that are not required by the Act or are inconsistent with the Act, or that should be revised for other reasons.

In addition, to recommending revisions of certain Proposed Rules, HP recommends that Ecology consider modifying the rulemaking schedule in order to improve the final product. Unlike the Proposed Rule requirements addressed in Part 1 of HP' s comments, the proposed processor' standards have not benefited from an extensive informal Rule development process. Thus, it is likely that better processor standards would result if Ecology evaluates carefully all of the comments submitted by the various stakeholders and interested parties on the current proposal, creates a revised draft proposed processor standards, circulates that draft for public review and comment, evaluates those comments carefully, and produces the final processor performance standards. The modest additional time and effort required by this process should more than pay for itself in improved processor' performance standards.

HP's specific comments on the Proposed Rule direct processor performance standards follow.

1. Section 600(2), p. 65, Section 620(1), p 69, and Section 640(1) and (3), p. 71. The Proposed Rule establishes no specific time period within which Ecology must complete its. review of processor registration forms; a specific time period should be specified to facilitate implementation of the Act. Section 600(2) provides that "at least sixty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in 'in compliance'. status..." Section 620(1) states that "[a]fter receiving a registration form, ecology will review the form to decide if the form is complete and accurate."

These provisions do not establish a specific time period within which Ecology must complete its review and approval of a processor registration form. Section 600(2), along with Section 620(1), implies that Ecology can take up to sixty days, at a minimum, to complete its review of the processor registration form and approve the registration form 'and list the processor as "in compliance" or ask the processor for more information or deny the processor registration. Sixty days is too long, particularly because the Proposed Rule's enforcement/warning provisions allow the Authority only sixty days from the date of the issuance to the direct processor of the warning letter to replace a non-compliant, processor *(see* §§ 680(3)(b), 380(1)(c), (2) & (3)). And it may take weeks to locate an available direct processor and, if the processor is not registered, have it submit a registration form, which then needs to be reviewed and approved by Ecology.

To determine processor compliance, Ecology merely has to review the processor's registration form and determine that it is "complete and accurate." *See* § 620(3)(a). Ecology should be able to accomplish this task within thirty days, if not sooner, given the simple nature of the - information contained in the form.[7] Accordingly, "thirty" should replace "sixty" in Section 600(2). Section 620(1) should be revised to state that Ecology must approve or deny a processor registration, or request more information, within thirty days of receiving the registration form. And "thirty" should replace "sixty" in Section 640(1).

Footnote 7: Section 610(1) specifies that a registration form must include only the following information: "(a) Contact and location information; (b) Business license information; (c) Documentation of any necessary operating permits issued as required by local, state, or national authorities; (d) Description of services provided; (e) Geographic areas from which electronic products are accepted; and (f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter."

Ecology Response:
Agree. Up to 30 days is appropriate.

Comment #395

2. Section 610(1)(f), p. 68. The Proposed Rule requires processors to be under contract with the Authority/Authorized Party before they can register; this is 'not required by the Act. For a direct processor to register with Ecology, Section 610(1)(f) requires the processor to list "[t]he names of plans the direct processor is contracted to provide processing services to [in order to] meet the requirements of this chapter." If this provision is intended. to impose a requirement that a processor must have contracted with. a plan *before* registering, the provision poses two problems. First, the Act does not impose such a requirement. Second, as a practical matter, the Authority or an Authorized Parties must ensure that a processor is registered before entering into a contract with that processor to provide services for its plan because the Act requires that plans may use the services only of registered processors. *See* RCW § 70.95N.060(7) In addition, Ecology's website provides that processor registration may occur in September 2007,[8] five months before February 1, 2008 when plans must be submitted to Ecology. As a result, processors that choose to register in 2007 are not likely to have executed at that time a contract with an Authority or an Authorized Patty to provide processor services for a particular plan.

Footnote 8: The Website states: "Registration for processors will be available in September 1, 2007." http://www.ecy.wa.gov/programs/swfaleproductrecycle/processor.html

Thus, if Section 610(1)(f) imposes a requirement that a processor must have contracted with a plan before registering, then Section 610(1)(f) should be deleted.

If, on the other hand, Section 61 0(1)(f) is intended to provide Ecology with information, should it exist, of processor contractual arrangements with an Authority or an Authorized Party which arrangements anticipate that such services will be provided for a plan, this is information that Ecology will receive in the normal course through the submission of plans to Ecology by the Authority and Authorized Parties, because the plans must list the registered processors that are to be used by the plans. *See* RCW § *70.95N.060(5)(b),* (e) & (f), (7); §§ 320(9)&(12), 355, & Table *355.*

Thus, if Section 610(1)(f) is intended only to obtain certain information if it is available, then Section 610(1)(f) should be deleted.

Ecology Response:
Disagree. This was discussed and agreed to in the advisory panel meeting of which HP was a part. Only registered processors can provide services to plans. The concern was in part to clarify what was meant by "direct processor." It was determined that a contract was necessary in order to clearly define what a direct processor was.

Comment #396

3. Section 650(1), p. 72 and 650(17), p. 77. The Proposed Rule improperly and confusingly establishes two sets of performance standards. Section 650(1) establishes two

sets of performance standards: mandatory "minimum standards" and voluntary "preferred standards."

Because Section 650(17) provides that a processor that meets the preferred performance standards shall "receive preferred status from ecology," the Proposed Rule suggests that this Status is the reason for the "preferred standards." The Proposed Rule does not, however, provide any information about this "preferred status," such as what benefits a processor gains from being in preferred status. Accordingly, under the Proposed Rule, this "preferred status" has no meaning. Putting aside whether Ecology can legally provide a processor with certain benefits that are not equally available to all processors, the fact that the Proposed Rule does not provide any substantive content for this "preferred status" is reason enough to delete the preferred standards.

More importantly, the Act nowhere authorizes two sets of standards. Instead, the Act simply requires Ecology to "establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan." RCW § 70.95N.250.

In addition, many of the preferred standards establish requirements applicable to "downstream vendors." See, "Environmentally Sound Management and Performance Standards for Direct Processors" (Draft, August 2007), §§ 3(c), 6(f), 7(e), 13. For example, Section 6(f) requires a direct processor to "conduct [] due diligence on each downstream vendor to which it sends materials for recycling.. . [and requires that the direct processor must use one of three specified methods to] . . . verify[] that the downstream vendor. .. [meets four specific requirements]." Because the Act is applicable only to direct processors *(see* RCW § 70.95N.250(1)) and not to downstream vendors, these downstream vendor requirements are inconsistent with the Act. Ecology should not be using its authority under the Act to establish "voluntary" direct processor performance standards that the Act prohibits Ecology from making mandatory but which "voluntary" standards Ecology appears to want to use to provide "preferred" status to direct processors.

In sum, statutory and practical considerations require Ecology to promulgate one set of direct processor standards. References to preferred standards and preferred status and the preferred standards themselves should be deleted from the Proposed Rule.[9]

Footnote 9: Ecology does not take this recommended action, Ecology should, at a minimum, change the names of the two standards to "mandatory" and "voluntary." This change more accurately conveys to processors the nature of the regulatory obligations that are established by the two sets of processor performance standards.

Ecology Response:
It was recommended by the advisory panel that Ecology adopt the "Responsible Recycling Practices for Electronics Recyclers" being established by EPA. Ecology has incorporated those practices which can be enforced into the rule and has incorporated the remainder in a voluntary "preferred" performance standard.

Comment #397

4. Section 650(5)(a)(i), p.72. The Proposed Rule gives priority to "reuse," a preference inconsistent with the Act's focus on recycling. For processing CEPs, section *650(5)(a)(i)* requires the first order of preference for a direct processor to be "Directing CEPs and CEP components to reuse, and refurbishment as appropriate to enable shipment for reuse." For several reasons the Proposed Rule should not establish this reuse preference.

First, prioritizing reuse is inconsistent with the Act's requirements. The Act requires manufacturers to participate in a plan "to implement and finance the collection, transportation, and *recycling* of covered electronic products." RCW 70.95N.020(30)(1) *(emphasis added).* The Act defines "recycling" as:

> "transforming or remanufacturing unwanted electronic products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and byproducts with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery."

RCW § 70.95N.020(24). "Recycling" does not include "reuse" or "refurbishment" of a CEP. Thus, the Proposed Rule requirement that "reuse" should be the preferred management strategy for end-of-life CEPs is not only not mentioned as a management strategy, it is also contrary to Act's focus on recycling as the preferred end-of-life CEP management strategy.[10]

Footnote 10:The Act does require plans to "inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life" (RCW § 70.95N. 120(1)), but does not require plans or processors to reuse devices that are delivered to processors.

Second, the Proposed Rule's "reuse" preference requirement means that a recycler whose business is to recycle materials without considering reuse would not be able 'to participate in the Washington State CEP recycling program. This is contrary to the Act, which imposes only the following requirements for processor registration: "identification information and documentation of any necessary operating permits issued by state or local authorities." RCW § 70.95N.240(2)

Third, the Proposed Rule's "reuse" preference requirement means that covered entities that do not want their CEPs to be reused could not participate in' the Washington State CEP recycling program. Some covered entities will not want their end-of-life CEPs to be reused for a number of reasons, including for privacy and security considerations. The only constraint that the Act imposes on having a CEP recycled by the Washington State CEP recycling program is that the CEP has been "used in the state by any covered entity regardless of original point of purchase." RCW § 70.95N.020(6). Thus, as applied to covered entities who submit CEPs for recycling, the "reuse" preference is contrary to the Act.

Fourth, the Proposed Rule's "reuse" preference requirement is inconsistent with the Proposed Rule's sampling methodology. Section 900(7)(m)(iii) requires that the sampling team "place a unique bar code sticker on *every CEP entering the processing facility* during the assigned sampling period... . Prior to placing the bar code on the' CEP, no sorting of CEPs by type must occur at the processing facility." (emphasis added) The sampling computer program will then identify which of the marked CEPs are to be sampled. § 900(7)(m)(v) Thus, the proposed sampling methodology does not permit excluding any CEPs from being sampled, such as a CEP that is to be directed for reuse. And the sampling results determine each manufacturer's return share and equivalent share *recycling* obligations. Therefore the proposed sampling methodology would not work if direct processors were required to give a preference to reuse, because the Proposed Rule makes clear -- consistent with the intent of the Act -- that reused CEPs cannot be counted in determining a manufacturer's return share and equivalent share recycling obligations and, thus, cannot be part of the sampling set.[11]

Footnote 11: Section 300(2)(b) correctly states that the Authority or Authorized Party must ensure that "any CEP that is reused or refurbished after being received by the processor is not included in any weight counts or used to satisfy an equivalent share." Section 800(2) states that the annual report must including the "total weight in pounds of CEPs. . . not including CEPs gleaned for reuse or refurbishment." Section 930(1) provides that the equivalent share is calculated "not including any CEPs gleaned for reuse or refurbishment."

Fifth, the Proposed Rule's "reuse" preference requirement would likely significantly increase the cost of the program. Each processor would have to individually and thoroughly evaluate each CEP it received to determine if the CEP could be reused or be refurbished for reuse. Second, each CEP that could be reused or refurbished would have to be taken out of the recycling processing stream and separately handled. Then, because covered entities are less likely to submit to collectors CEPs that can be reused than those that cannot and collectors may, in turn, select out CEPs that are appropriate for reuse before submitting CEPs to processors, it is likely that only a few of the CEPs submitted to processors would be appropriate for reuse or refurbishment likely making the careful reuse evaluation of all incoming CEPs in substantial part a waste of time. All of these factors would significantly increase the cost of CEP recycling in comparison with the situation in which there was no "reuse" preference requirement. As noted above, Ecology abandoned processor performance standards that were "very costly." It would be much more cost effective if consumers simply were encouraged to explore reuse options prior to submitting their CEPs to the industry take-back program.

For all of these reasons, the "reuse" preference requirement of Section *650(5)(a)(i)* should be deleted and the reference to reuse hierarchy in Section 650(10) should be deleted. Deleting this "reuse" preference provision will not, however, hamper the many available reuse options available to Washington State residents, including, but not limited to, prolific internet sales opportunities.

Ecology Response:
The law provided a definition of "reuse" as when a product "is used for the same purpose for which it was originally purchased." This implies whole CEPs and components and not parts derived therefrom. Ecology will strike the ability of a collector to dismantle unless they are also registered as a processor. Further, any CEP extracted for reuse, as in the case where a non-profit retailer sells a collected CEP for re-sale, can not be included in the weight counts and return share sampling. The manufacturers will not pay for this activity.

However, Ecology agrees that the placement of the "Hierarchy" is redundant with other requirements in the performance standards and will therefore be eliminated. Please see edits to WAC 173-900-650(5).

Comment #398

5. Section 650(5)(a)(ii)&(iii), pp. 72-73. The Proposed Rule establishes "recycling" and "disposal" as the second and third preferences for the "prioritized hierarchy of responsible management strategies" which hierarchy is not required to be explicitly established by the Act and does not serve a, practical purpose within the Proposed Rule. The Legislature found that "a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established." RCW § 70.95N.010 (emphasis added) The Legislature enacted a specific provision for the "promotion of covered product recycling." RCW § 70.95N.120. And the Act requires Ecology to "establish by rule guidelines regarding nonrecycled material that may be properly disposed after covered electronic products have been processed." RCW § 70.95M.250(3) (emphasis added) In sum, the Act adequately establishes the basic legislative priority preference for recycling and provides for disposal of nonrecycled residuals. Thus, Subsections 650(5))a)(ii)&(iii) are unnecessary. To the extent these subsections provide substantive guidance, these substantive

factors are adequately addressed in other specific Section 650 subsections which deal with recycling and disposal, e.g., see Sections 650(9)-(12).

Therefore, Subsections *650(5)(ii)* and (iii) and Section 65 0(1 0)(a) should be deleted.

Accordingly, in light of Comment No. 4 above and Comment No. 9 below, Section *650(5)* should be deleted in its entirety.

Note: In the event that Ecology does not adopt the recommendation to delete Section 650(5), Comment Nos. 6-8 below address specific aspects of Section 650(5).

Ecology Response:
See previous response.

Comment #399

6. Section 650(5)(a)(ii)(A) & (B), p.'72-73, and Section 650(9)(d) on p.75. The Proposed Rule requires direct processors: to, take "all practicable steps" to dismantle and separate CEPs and CEP components, a burdensome requirement not required by the Act; to dismantle and separate CEPs and CEP' components into separate. streams based on the risks they may pose in conformity with Sections '650(9)(d) and (10)(a), unnecessarily duplicating requirements; and to remove from CEPs and CEP components destined for recovery any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing, an unnecessary mandate. Section *650(5)(a)(ii)(A)* requires direct 'processors to *"take all practicable steps* to manually and/or mechanically dismantle, separate, and when appropriate process CEPS and CEP components to enable materials recovery." (emphasis added) Section *650(5)(a)(ii)(B)* requires direct processors to "dismantle and separate CEPs and CEP components into separate 'streams' based on the risks they may pose, referencing Sections *650(9)(b)* and 650(10)(a), which, in turn, references back to Section *650(5).* And Section 650(9)(b) requires a direct processor to remove from CEPs and CEP components destined for material recovery any materials of concern that would "pose a risk to worker safety, public health, or the environment during subsequent processing."

The Act does not impose a requirement "to take all practicable steps." The directive to "take all practicable steps," is unnecessarily burdensome, because "practicable" implies anything that is feasible without respect to economics. The requirement of Section *650(5)(a)(ii)(B)* is unnecessary because it is duplicated by other provisions of the Proposed Rule as evidenced by the internal cross-references to other sections of the Proposed Rule.[ER19] Regarding Section 650(9)(d), it is unnecessary to require removal from CEPs and CEP components destined for recovery materials of concern based on safety reasons because processes exist that can safely and in compliance with applicable environmental requirements process CEPs and CEP components without removal of all Materials of Concern. As an example of this is that some smelters are designed to manage equipment and .components with batteries and mercury lamps in compliance with environmental and worker health and safety requirements.

Ecology Response:
Thank you for your comment. Subsection 650(5)(a) has been deleted.

Comment #400

To correct these issues, the phase "take all practicable steps" should be replaced with "as appropriate" in (A), and Section 650(9)(d) should be clarified with a statement that "Direct processors do not need to dismantle and separate Materials of Concern if a subsequent

processor has controls in place to properly manage them, such as mercury capture system at a smelter to accommodate mercury in feedstock." Section 650 (5)(a)(ii)(B) is unnecessarily duplicative and confusing and should be deleted.

Ecology Response:
Ecology can not regulate "subsequent processors". Ecology can not add the proposed language.

Comment #401

7. Section 650(5)(a)(iii), p. 73. The Proposed Rule requires direct processors to manage residual materials that cannot "safely or technically" be recycled in accordance with the cited subsection, omitting a key management criterion: economic feasibility. Section 650(5)(a)(iii), which establishes management criteria for disposal of residuals, states that a direct processor "must manage any residual that cannot safely or technically be recycled" in accordance with this subsection, which references Section 650(10)(a), and Section *650(10)* establishes management standards for materials recovery and materials disposal. Thus, as noted above, the best solution for clarifying these confusing, unnecessary and duplicative Rule provisions is to delete Section 650(5). If this is not done, then the standard in Section 650(5)(a)(iii) should be not only that a residual cannot safely or technically be recycled, but also that a residual is not *economically feasible* to recycle. This is consistent with Section 650(11)(a), which provides that "[a] direct processor must identify and utilize effective and safe energy recovery or disposal strategies for all equipment, components and materials that are not technically or *economically feasible* to recover." (emphasis added) Thus, the criterion of "economically feasible" should be added to Section 650(5)(a)(iii).

Ecology Response:
Subsection 650(5)(a) has been deleted. Please see edits.

Comment #402

8. Section 650(5)(b), p 73. The Proposed Rule inappropriately 'requires processors to take advantage of "new more effective technologies." Proposed Section *650(5)(b)* requires a processor to "evaluate its management strategies to assure [that] it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes." A business decision by a processor to invest in new technologies would be dependent on many factors and should not be required by these standards. Also, it is the prerogative of the manufacturer or other entity contracting with processors to select those that deliver the appropriate level of efficiency and technology to suit their needs, such as cost and speed of processing. This proposed section exceeds the scope of the Act and is unnecessarily burdensome. Thus, Section 650(5)(b) should be deleted.

Ecology Response:
This section is necessary to meet this intent. The act directed Ecology to adopt performance standards for environmentally sound management for processors (RCW 70.95N.250). In order to minimize any burden, this requirement is only a periodic review that can be established through a processor's environmental management system.

Comment #403

9. Sections 650(6)(b), p. 73 and 650(15), p. 77 and 350(3), p. 43. The term "regulatory order" is used as if it is synonymous with the terms "penalty" and "violation," which is not the case under Washington State law. Section *650(6)(b)* requires direct processors to provide customers, at their request, information about "any financial

penalties, regulatory orders, or violations" received by the processor during the past three years and any subsequent penalties, orders, or violations. Section 650(15) requires direct processors to notify the Authority or Authorized Party of the plans for which the processor is providing services if the processor receives "any penalties, violations or regulatory orders" related to processing activities. Section 350(3),.which concerns "noncompliance with laws and regulations," requires the Authority or Authorized Party to notify Ecology within 30 days if a direct processor notifies the Authority's or the Authorized Party's plan of "any penalties, violations, or regulatory orders" related to processing activities. In sum, the Proposed Rule is using the term "regulatory orders" as if it were synonymous with the terms "penalties" and "violations."

Under Washington State law, this is not the case. A brief review of statutory and regulatory authorities found eight instances in which the term "regulatory order" was used as being synonymous with a "permit" or a "rule."[12] One instance was found when the term "regulatory order" was used in a manner that would appear to be synonymous with a "notice of violation."[13] But the statutory references cited in this instance did not use the term "regulatory order." Because the term "regulatory order" is being used in the Proposed Rule as if receipt of a "regulatory order" by a direct processor means that the processor has committed a violation which could result in placing the processor in "in violation" status. This would mean that the processor would not be able to continue to provide services to a plan and might put a processor out of business. Thus, it is important that the term "regulatory order" be deleted from the Proposed Rule.

Footnote 12: Statutory: RCW **§~** *70.94.154(6)* (rule); 70.94.155(2) (permit); 70.94.155(3) (permit); 70.138.040(1) (regulation); 90.03.600 (permit, rule); 90.48.422 (permit). Regulatory: WAC 173-400-131(3)(e) (permit); 173-400-131 *(5)(a)* (compliance permit).

Footnote 13: WAC 173-201A-530 (violation).

In sum, the term' "regulatory order" is not synonymous with "penalty" or "violation" and should be deleted from Sections 650(6)(b), 650(15) and 350(3).

Ecology Response:
Ecology agrees a regulatory order is not the same thing as a penalty or violation. A regulatory order is a separate tool available to agencies to enforce laws and rules. The language will remain.

Comment #404

10. Section 650(6)(b), p. 73. The Proposed Rule inappropriately includes a requirement that direct processors make information regarding penalties available to "customers". Section 650(6)(b) requires a direct processor, upon request by a "customer," to make available to the customer information regarding penalties and violations received by the processor in the past three years and in the future. The term "customer" is not defined. If "customer" means the Authority or Authorized Party, this information can be obtained by the Authority or Authorized Party as part of their contract negotiations with the direct processor. Thus Section 650(6)(b) is not needed and should be deleted. If "customer" means any covered entity that provides a processor with a CEP, then this section is overreaching, is certainly not anticipated by the Act, and should be deleted. In the event that this, change is not made, then the requirement should be made more reasonable by addressing only those violations that are not corrected by the processor within 30 days.

Ecology Response:
"Customer" has been changed to "covered entity." This requirement is not excessive. The information is public information.

Comment #405

11. Section 650(9)(a)(iii), p.75. The Proposed Rule establishes a "speculative accumulation" standard for "electronic equipment and materials derived therefrom" and requires that this equipment and materials be regulated as a solid waste or a hazardous waste if it is stored for more than 180 days. Section 650(9)(a)(iii)(A) defines "speculative accumulation" as "holding, storing or accumulating electronic equipment or materials derived therefrom for more than one hundred eighty days." Section *650(9)(a)(iii)(B)* then states that if a facility holds, stores, or accumulates "electronic equipment or materials derived therefrom" for more than 180 days, the facility will be considered to be holding, storing, or accumulating solid or hazardous waste and be subject to applicable treatment, storage or disposal regulations.

The accumulation period should be one year rather than 180 days, consistent with federal and state hazardous waste accumulation requirements. See 40 CFR Section 261.1(c)(8); WAC 173-303-016. Accordingly the 180-day time period in Section 650(9)(a)(iii)(A) should be changed to one year and all references to "180 days" in Section 650(9) should be changed to one year.

Ecology Response:
Ecology chose to apply one standard to all CEPs, components, parts, and materials and to provide a consistent and high level safeguard for the environment. Ecology did this initially through an enforcement policy on electronic wastes that limits "storage" to 180 days, anything beyond that timeframe was considered speculative accumulation. The enforcement policy was used as the basis for the standard in this rule. Throughout the time that the policy was in effect- since 2002- there has only been one request for an extension of the 180 day time frame.

Comment #406

12. Section 650(9)(d), p.75. The Proposed Rule establishes ambiguous standards for the management of "Materials of Concern," which standards need to be clarified. Section *650(9)(d)(i)* provides that direct processors must remove from CEPs and CEP components "any materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing." Section 650(9)(d)(ii) provides that materials of concern "include" four specific materials.

The use of the term "include" makes the listing open ended and undefined and means that there may be other undefined materials of concern. Because the Proposed Rule establishes specific management requirements for "Materials of Concern", the word "include" should replace with the word "are" so that the term "Materials of Concern" is precisely defined and a regulated entity can understand what materials are subject to the special regulatory requirements.

Ecology Response:
Agree. Please see edits.

Comment #407

Similarly, the phrase "that would pose a risk" makes the provision ambiguous. To eliminate the ambiguity, the phrase "that would pose a risk" should be replaced with the phrase "if such materials pose a risk." This will clarify that a processor need remove materials of concern only if a risk is involved.

This revision is necessary because certain processors and processing methods are (or may in the future be) designed and operated so that they can handle CEPs or components of CEPs

that contain one or more of the listed Materials of Concern safely without removing the Materials of Concern. As an example noted above, smelters exist with mercury capture systems that are designed to manage safely and in compliance with applicable environmental and worker health and safety requirements equipment and components with mercury lamps.

Ecology Response:
Ecology disagrees with this concern. No changes will be made.

Comment #408

13. Section 650(9)(d)(iii), p. 75-76. The Proposed Rule improperly requires the use of a catchment system for the removal of Materials of Concern. Section *650(9)(d)(iii)* requires that Materials of Concern be removed "in a secured, sheltered enclosure with an appropriate *catchment system."* (emphasis added) The term "catchment system" is not defined. A standard dictionary definition of "catchment" is "something that catches water."

This requirement is inconsistent with the Proposed Revision of WAC 173-303-071, which requires CRT processing to be performed "within a building with a roof, floor, and walls" but does not require a "catchment system." The requirement for a catchment system should be deleted, and instead the Rule should state that the processing should be performed within a building with a roof, floor and walls.

Ecology Response:
Ecology agrees with other comments received that language in WAC 173-900-650-9(d)(iii) is unnecessary because of existing regulations. Please see edits.

Comment #409

14. Section 650(9)(d), p. 76. The Proposed Rule requires batteries to be stored and shipped in a' specific manner, which is not necessary under applicable law. Section 650(9)(d) states that "direct processors must cover or otherwise effectively separate battery terminals during storage and shipment." This level of detail should not be provided in the Proposed Rule. U.S. Department of Transportation requirements cover the shipping of electrical devices and forbid the shipping of electrical devices "which are likely to create sparks or generate a dangerous quantity of heat, unless packaged in a manner which precludes such an occurrence." 49 CFR *§* 163.21(c) There are many different types of batteries, and battery technology is constantly changing. For some batteries, battery terminals may need to be separated during shipping, but for other batteries (such as some rechargeable batteries with recessed contacts), this is not needed. Direct processors can satisfy battery safety concerns by complying with existing law. Section 650(9)(d) should be deleted.

Ecology Response:
Ecology agrees with other comments received that language in WAC 173-900-650-9(d)(iii) is unnecessary because of existing regulations. Please see edits.

Comment #410

15. Section 650(10)(c), p.76. The Proposed Rule requires that "streams" of equipment, components, and materials be recovered unless this would pose an unacceptable risk or is **not technically feasible, thereby omitting a key criterion: economic feasibility.** Section 650(1 0)(c) requires that a direct processor. "must direct steams [of electronic equipment]. **. .** to materials recovery unless doing so poses unacceptable risk or is not technically feasible." Section 650(1 0)(c) should be revised to provide that streams must be directed to materials recovery unless the streams cannot be safely or technically recycled or unless it is not

economically feasible to direct the streams to materials recovery. This change is consistent with Section 650(11)(a), which recognizes the economic feasibility criterion for energy recovery and disposal.

Ecology Response:
This change will not be made. Please see edits to Subsection 650(11)(a) which made it consistent with subsection 650(10)(c).

Comment #411

16. Section 650(11)(c) and (d), p. 76. The Proposed Rule establishes comparative risk. standards that are ambiguous and that cannot feasibly be implemented. Section 650(11)(c) 'states that a direct processor "may direct streams with high BTU values to energy recovery if the energy recovery facility is capable of combusting such streams *without posing a higher risk to worker safety, public health, or the environment than alternative management strategies." (emphasis added)* Section 650(11)(d) states that a direct processor "must not send materials of concern to incinerators or solid waste landfills *~f doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies." (emphasis added.)*

The use of comparative risk based standards in these two subsections does not provide recyclers with concrete guidance or a specific criterion that can be implemented in a practical way. These standards may result in differential results among responsible recyclers, which is not appropriate. In addition, the only way that a sound comparative risk analysis of the type required by the Proposed Rule can be done may be to conduct a complex "Life Cycle Analysis ("LCA"). Performing LCAs is challenging even if one has all of the necessary resource input and output data and LCA software and use knowledge on hand—in reality, many of these are not readily available and are very costly and time consuming to acquire. (Moreover, some operations may consider their resource input and/or output data proprietary, and then only rough estimates would be available, making LCA results of limited use.)

The Rule should allow the use of energy recovery for materials that cannot be recovered if the energy recovery facility is operating in compliance with applicable law, including existing state environmental and OSHA laws and regulations. Similarly, it should allow the use of incineration and landfills for materials that cannot be recovered if the incinerators and landfills are operating in accordance with applicable law, including existing state environmental and OSHA laws and regulations.

Section 650(11)(c) should be revised to provide that processors may direct streams to energy recovery if the energy recovery facility is designed to manage the materials directed to energy recovery. Section 650(11)(d) should be revised to state that a direct processor may direct streams to incineration facilities or solid waste landfill facilities if the facilities are designed to manage the materials directed to them.

Ecology Response:
Subsection 650(11)(c) has been deleted based on comments received. Chapter 70.95N RCW Electronic Product Recycling is a recycling law created to direct unwanted CEPs to recycling. Separated streams of material derived from CEPs must be directed to recycling. Only residual materials that can not be recycled can be sent to solid waste disposal facilities. Solid waste disposal facilities include energy recovery facilities. Energy recovery is not recycling. Therefore, separated streams of recyclable materials can not be disposed.

Comment #412

17. Many of the Proposed Rule sections establish risk-based criteria that are undefined and vague and make it difficult for a processor to know what it must do to comply with the requirement. Three examples of these risk-based criteria are:

- Section 650(1 0)(b) -- "Types of equipment, components, and materials are placed in separate streams as necessary *to assure the risks posed by each stream* are adequately addressed;" (emphasis added)

- Section 650(1 0)(c) **--** "A direct processor must direct streams, that are not directed to reuse, to materials recovery unless doing so *poses unacceptable risk* or is not technically feasible." (emphasis added)

- Section 650(11)(b) **--** "A direct processor must separate equipment, components, and materials destined for energy recovery or disposal into separate streams as necessary *to minimize risks* to worker safety, public health or the environment." (emphasis added)

Use of these undefined and vague risk criteria in the Proposed Rule makes it difficult for a processor to know what it must do to comply with the requirement. Among the problems posed by this fact are: (1) processors will not know what to do to comply with the requirement; (2) different processors will use different standards when trying to comply with the same criterion, making implementation of the rule inappropriately variable and likely unnecessarily costly for some processors; (3) Ecology cannot accurately and fairly determine if a processor has failed to comply with the regulatory requirement making it difficult to enforce the Rule fairly. A better approach is to require processors to comply with applicable legal requirements. And if some one considers applicable legal requirements not sufficiently stringent, Washington State has adequate procedures by which existing requirements can be changed.

Thus, Ecology should carefully examine each instance in the Proposed Rule where a "risk-based" criterion is 'used and substitute applicable legal requirements as appropriate.

Ecology Response:
Agree. Subsections 10(b) and (c) will be deleted. These are covered by work, health and safety, and environmental protection laws and regulations. Subsection (11)(c) has been changed. Please see all edits in subsection (11).

Comment #413

Part 3
Comments on "Sampling, Return Share, and Equivalent Share"

1. Part IX re Sampling, p. 89. The Proposed Rule does not state that items going for reuse or refurbishment will not be sampled and counted, which is an essential requirement for proper calculation of return share. Part IX does not state that any items going for reuse or refurbishment will not be sampled and counted. It should do so to be consistent with the Act and other provisions of the Proposed Rule that require that CEPs sent for reuse or refurbishment are not counted when calculating return share obligations. Examples' of these statutory and regulatory requirements follow.

RCW *§* 70.95N.110(1) states: "An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products *entering its program* every program year." (emphasis added) The definition of "program" at RCW *§*

70.95N.020(22) is: “Program’ means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.” The definition of “recycling at RCW § 70.95N.020(24) is: “Recycling’ means transforming or remanufacturing unwanted electronic products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration.” Thus, “recycling” does not include reuse.

The Proposed Rule contains more specific language: Section 300(2)(b) states that the Authority or Authorized Party must ensure that “any CEP that is reused or refurbished after being received by the processor is not included in any weight counts or used to satisfy an equivalent share.” Section 800(2) states that the annual report must including the “total weight in pounds of CEPs…not including CEPs gleaned for reuse or refurbishment.” Section 930(1) states that the equivalent share is calculated by “not including any CEPs gleaned for reuse or refurbishment.”

In sum, the essential requirement that reused or refurbished CEPs may not be counted when determining return share and equivalent shares should be stated explicitly in Part IX.

Ecology Response:
Agree. Pease see edits in Section 900.

Comment #414

2. Section 900(2)(b)(iii), p. 89. The Proposed Rule should state explicitly that the 24 hour notification period involves only work days and excludes week-ends and holidays. Section 900(2)(b)(iii) provides that the sampling third party observer must “notify the direct processor twenty-four hours prior to the day when sampling will occur at the processor’s facility.” For obvious practical reasons, this provision should state explicitly that the 24 hour notification period involves only work days and excludes week-ends and holidays.

Ecology Response:
Agree. Language will be added for clarity. Please see edits.

3. Section 900(6)(a), p.91. The Proposed Rule requires that the sampling methodology must be used for five years before Ecology can “adjust” the return share sampling, which is inconsistent with sound, practical management considerations. The sampling methodology that is being adopted by this rulemaking is extremely important for the fair and appropriate implementation of the Act. The sampling methodology provides the data by which each manufacturer’s return share and equivalent share will, be determined. Significant time and effort and careful thought has been devoted to developing the sampling methodology with the goal of creating a fair, efficient and workable sampling system. The system has not been implemented, however.

As with any new program, until it has been tried in practice -- field tested **--** it is not known if it will work as intended. Almost any new program when implemented produces unanticipated problems that need to be corrected. It is essentially a given that changes in the sampling methodology will be needed. For example, the sampling methodology depends on technology that is new and may not work.

There is no reason to require as part of the Proposed Rule that the sampling methodology must be used for five years without change. If no change is needed, there will be no change. If change is needed to ensure that the system is fair, efficient and workable, then change should be made. Therefore the five-year requirement of Section 900(6)(a) should be deleted and the section should be revised to provide that Ecology should review the sampling results periodically and no less frequently than every two years and should make revisions to the sampling program and protocols as necessary to produce accurate, replicable results that can

be relied upon by all interested parties.

Ecology Response:
RCW 70.95N.100(3) indicates that Ecology may reassess the sampling required after the fifth program year. The time period is based on the law.

Comment #415

4. Section 900(7)(b)(i), p.91. The Proposed Rule requires Ecology to determine "the hourly rate, per diem, and mileage reimbursement the plan must pay to each third party used by the plan" for the third-party observers that Ecology requires each plan to select. The act provides that the "sampling must be conducted in the presence of the department or a third-party organization approved by the department," RCW *§* 70.95N.110(2), but does not state that Ecology will determine the hourly rates, per diem, ,and mileage reimbursement that ,a plan must pay to each third party used by the plan. Ecology can create the list of approved third-parties, but the Authority and Authorized Parties should be able to contract with those third-party observers and set payment terms independently of Ecology.

Ecology Response:
This has been deleted.

Comment #416

Part4
Comments on draft "Covered 'Electronic Product (CEP) Recycling Plan Template
(Dated: August 22, 2007)

The draft Covered Electronic Product (CEP) Recycling Plan Template ("Template") (August 22, 2007) contains text and many requirements that are essentially identical to the Proposed Rule. Accordingly, for the Template requirements and text that are or are essentially the same as Proposed Rule requirements and text, HP's comments on those requirements and text apply to the Template's corresponding requirements and text.[ER36]

Ecology Response:
Thank you for the comment. The template is not part of the proposed rule. Ecology will consider your comments in relation to the development of the template.

Commenter: David B. Weinberg, Representing the Electronic Manufacturers Coalition for Responsible Recycling ("Coalition")

Comment #417

Dear Mr. Shepard:

We submit these comments on the Phase 2 proposed rule amending WAC 173-900 and WAC 173-303, on behalf of our client the Electronic Manufacturers Coalition for Responsible Recycling ("Coalition") and its members.[1] The Coalition's members, or their parents, affiliates or licensees, manufacture "covered electronic products" ("CEP5") that are the subject of regulation in the Washington Electronic Product Recycling Act Revised Code of Washington (RCW) § 70.95N.0l0, *et seq.* (the "Act").

Footnote 1: The Coalition's members are: Canon U.S.A., Hitachi America, JVC Americas, LO Electronics, Mitsubishi Digital Electronics, Panasonic Corporation, Philips Consumer Electronics, Sanyo Fisher, Sharp Electronics, Thomson Inc. and Toshiba America Consumer Products.

The Coalition recognizes the substantial burdens facing the Department of Ecology ("Ecology") staff as it seeks to implement the Act and respects the efforts being made to do so. As explained below, however, we believe several aspects of the proposal are unwise, inconsistent with Ecology's unambiguous mandate, and/or conflict with limitations on state authority established by the United States Constitution These provisions are thus unlawful[2] and should be revised.

Footnote 2: For example, an Ecology rule is invalid if it "exceeds the statutory authority of the agency" or is "arbitrary and capricious." RCW 34.05.570(2)(c). Ecology thus will exceed its statutory rulemaking authority if it adopts anile that alters the plain language of the Act. *See Edelman v. State ex rel. P.D.C.,* 152 Wn.2d 584, 586, 592 (Wash. 2004) (agency "exceeded its authority in making a rule that alters an unambiguous statute"); *Postema v. Pollution Control Hearings Bd.,* 11 P.3d 726, 733 (Wash. 2000) ("an agency's view of the statute will not be accorded deference if it conflicts with the statute."). In reviewing any final rule, the Court also will pay close attention to the intention of the legislature in adopting the various provisions of the Act. *See, e.g., Konig v. City of Des Moines,* 158 Wn.2d 173, 181 (Wash. 2006) ("When interpreting any statute, our primary objective is to ascertain and give effect to the intent of the legislature.").

For your convenience, we have presented our comments in the order in which they are raised by the draft regulations.

1. The definition of "manufacturer" at proposed WAG 173-900-030 should be replaced with the statutory definition of "manufacturer" at RCW § 70.95N.020.

As explained below, the statutory and proposed regulatory definitions of "manufacturer" are very different both in their wording and substantive meaning. To properly comply with its legislative mandate, Ecology should revise the regulation to simply incorporate the statutory definition

Under the definition in the proposed rule, certain manufacturers that have responsibility to recycle electronic products under the statute would be relieved of that obligation. Of particular concern, the definition in the proposed rule ignores those "manufacturing" scenarios where brand owners license the use of a brand to a separate company that actually manufactures and has control over the product.

Many companies own recognizable CEP brand names but are no longer themselves manufacturers of CEPs. These companies instead license the right to use their brand name on CEPs produced by other product manufacturers. Other companies license a brand name to others, but also manufacture CEPs for which they will be responsible to recycle. Some companies never were manufacturers but have come to own brand names, and license these to other companies. Most importantly, the license agreement fees that product manufacturers typically pay to brand owners are not enough to cover the costs of collecting and recycling these products.

Under these circumstances, it is the actual producer of the products, not the owner (and licensor) of the brand, who should bear the obligations created by the Washington law. Under the proposed definition, however, this responsibility would
be shifted to the brand owner.

The statutory definition (RCW § 70.95N.020) avoids this problem by, in subsection (a), only covering entities that both manufacture products and own a brand and, in subsection (e), covering importers regardless of whether they own a brand name or not. To properly fulfill the Legislature's intent, the definition contained in the proposed rule should be replaced with the statutory definition.

Ecology Response:
The law was written with the understanding that the brand owner was the manufacturer. This is borne out in reviewing the many directives describing the operative elements of the prescribed program in the law about brand:
RCW 70.95N.020(16), RCW 70.95N.020(33), RCW 70.95N.040(4)(b), RCW 70.75N.110, RCW 70.95N.140(2)(f), RCW 70.95N.160, RCW 70.95N.180(1)(a)&(b), and RCW 70.75N.290(1)(a).

The definition of "manufacturer" was clarified to assure this understanding.

Comment #418

2. The proposed conditional hazardous waste exclusion for CRTs and CRT glass in proposed WAC 173-303-071 should be expanded to cover all CEPs (including all wastes covered by Ecology's current CRT and computer-related waste enforcement policy).

Washington State law and proposed WAC 173-900 require collection and recycling programs to be established for all CEPs, which includes cathode ray tube or flat panel computer monitors, desktop computers, laptops or portable computers, and cathode ray tube or flat panel televisions. Collection programs will be collecting these wastes together.

However, WAC 173-303-071 proposes to conditionally exclude from the State's hazardous waste handling requirements only CRTs and CRT glass waste. This provision should be broadened to cover any CEPs that meet hazardousness characteristics, whether they be CRTs, flat panel monitors and televisions or portable and laptop computers.

There is no policy reason to exclude these additional materials from hazardous waste regulation. Indeed, at present, all such CEPs that are collected for recycling and meet hazardousness characteristics are exempted from regulation by Ecology's conditional enforcement policy.[3] But this policy is not a regulation, and the regulated community needs the certainty provided by a regulation that this exemption from unnecessary regulation will be maintained. The policy thus should be fully incorporated into WAC 173-303-071.

Footnote 3: Interim Enforcement Policy Conditional Exclusion for Cathode Ray Tubes* and Related Electronic Wastes, Washington Dept. of Ecology, Publication No. 02-04-017, Revised December 2003.

Ecology Response:
The federal hazardous waste regulations set a baseline stringency for all state hazardous/dangerous waste regulations, and they authorize individual states to implement the federal program. Ecology's Dangerous Waste Regulations cannot be less stringent than the federal hazardous waste regulations. Ecology could exclude wastes that designated as state-only waste, but Ecology cannot exclude wastes that would designate for the federal characteristics. EPA excluded CRTs from their regulations, making it possible for Ecology to also exclude them. There is limited designation information about electronic wastes. If electronic wastes don't designate as dangerous waste, they don't need to be excluded. If they do designate, Ecology's Interim Enforcement Policy will continue to cover them. It is being revised to remove the references to CRTs, but other electronic wastes will continue to be part of the policy. In the future, if EPA excludes other electronic wastes, Ecology will be able to also exclude them.

Comment #419

3. The tier structure for administrative fees set forth in proposed WAC 173-900-280 should be revised to fairly reflect a manufacturer's market share, as required by RCW § 70.95N.230.

RCW § 70.95N.230 requires that annual manufacturer fees set by Ecology must "be based on a sliding scale that is representative of annual sales of covered electronic products in the state." The market share "sliding scale" that Ecology has established, however, is not structured so that it fairly assesses manufacturers that have very different levels of annual sales. This inconsistency with the statute should be corrected.

Proposed WAC 173-900-230 establishes a tier structure that applies the same fee to all manufacturers with a 5% or greater market share (Tier 1). A sliding scale applies (Tiers 2-7) only to those manufacturers that hold less than 5% of the market share. The result is that a company with a 4.99% market share pays $12,800 while a company with a 5.1% market share pays $48,200, almost four times as much. Moreover, a 5.1% share company pays the same amount as companies with a 10% or 20% share. This is not a "sliding scale," as the law requires. *See* RCW
§ 70.95N.230(2). It also is fundamentally and unjustifiably unfair and invalid.

Proposed WAC 173-900-230 needs to be revised to be fully consistent with the Legislature's mandate that the sliding scale fee structure be representative of annual sales of covered electronic products in the state. To do this, it must impose lesser obligations on manufacturers that have smaller market shares, even if those shares are greater than 5%.

Ecology Response:
As described, when a market share is on the cusp between one tier and another, it might seem frustrating. At the same time, basing the administrative fees "on a sliding scale" was the direction from the Legislature. The tier system was the recommendation from the advisory panel, which included many manufacturers, that Ecology consulted with during the phase 1 and phase 2 rules development processes. The tiers were established during the phase 1 process and adopted in November 2006. Members of the "coalition" have complied with the phase 1 rules. Any changes to the rule in relation to tiers are clarifying only.
One note is that if a tier includes fewer than three manufacturers, the tier goes away and the manufacturers in the higher tier join those in the lower tier. This is to assure that propriety market information is held confidential.

Comment #420

4. The provision in proposed WAC 173-900-320 that would require manufacturer recycling plans to show how manufacturers will work with processors to promote less toxic and more recyclable products should be delete.

Proposed WAC 173-900-320(11) would require consultation between manufacturers and processors to encourage designs for recycling. This obligation would be both difficult to implement and unnecessary.

Because of European RoRS requirements, the covered products subject to this proposed rule will soon include no lead or mercury. These are the principal toxic materials that have been of concern in CEPs. There thus seems little need for further consultation with anyone (processors or otherwise) about promotion of less toxic products.

Even if there were, practicalities would make such consultations meaningless. Electronic products sold today will be recycled, on average, 15 years from now. One cannot predict the recycling technologies and processes that will be used so far in the future. Perhaps more importantly, very little, if any, CEP design occurs in Washington or, for that matter, in the United States. There thus is no practical way to provide for communication between processors employed in connection with the recycling of Washington State CEPs and product designers.

In short, this requirement will result in nothing but meaningless paperwork and should be deleted.

Ecology Response:
Disagree. RCW 70.95N.010 states that "the system must encourage the design of electronic products that are *less toxic and more recyclable*." (emphasis added). This is a requirement in the law. RCW 70.95N.060(j) states: "*A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling." (Emphasis added).*
Electronic products that do not contain toxic material are more recyclable than those that include a composite of toxic and non-toxic material.

Comment #421

5. Proposed WAC 173-900-345(1) should be revised to make the deadline for changing plans a reasonable period after Ecology's May 1st deadline for plan approval.

Proposed WAC 173-900-345(1) would prohibit any manufacturer from changing plans after February 1, 2008 for plan year 2009. In light of other deadlines in the proposal, this could have the effect of precluding manufacturers from participating in independent plans, and thus should be changed to a reasonable time after May 1, 2008.

The proposed rules would require that independent plan submissions be submitted to Ecology by February 1, 2008. Ecology then would have ninety days (until May 1st to approve or reject them. So, under the proposed regulation, manufacturers could not change from the independent plan they had expected to join even if the terms of that plan had been changed as a result of Ecology's review. Nor would a manufacturer be able to switch from the standard plan to a more attractive independent plan.

This proposed limitation also is inconsistent with the proposed WAC 173-900-330, which establishes a deadline of January 1, 2009 for participating in operational approved plans. Thus, the proposed rules are internally inconsistent.

More importantly, the proposal also is inconsistent with the Act. It only limits manufacturers switching from an independent plan to the standard plan to a timeframe "at least five months prior to the start of the next program year." RCW §70.95N.080(2). For 2009, this would be August 1,2008.

Similarly, a manufacturer participating in the standard plan has the right under the statute to switch to a newly approved independent plan after May 1st, 2008, should the manufacturer decide this option is preferable. RCW § 70.95N.080(2) states:
"Manufacturers may not change from one plan to another during a program year." This clearly indicates that changes can be made prior to the start of a program year.

In light of these considerations, the deadline for manufacturers to change plans in 2008 must, for practicality's sake, and to maintain consistency with the Act, be set at a reasonable date ***after*** Ecology's May 1st deadline for plan approval.

Ecology Response:
RCW 70.95N.040(d) requires that in their registration, starting on January 1, 2007 and annually thereafter, manufacturers will indicate "(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval." It made sense to allow delay of this decision in the phase 1 rule. It is reasonable to require that manufacturers make their declaration of plan participation in their January 1, 2008 registration. The authority and authorized parties need this information in order to assure a comprehensive plan that includes all members. The date will be changed from February 1, 2008 to January 1, 2008.

Comment #422

6. The requirement in proposed WAC 173-900-355 (10)(a)(1) and 173-900-450(5)(a) that all collection sites be staffed during operating hours should be eliminated.

There is no rational basis for requiring that all collection sites be staffed during all hours that they are open, and this provision should be dropped.

Failure to include this provision will not mean that most independent and standard plan collection sites will be unstaffed. As a practical matter, most will be. But the provisions proposed under 173-900-355 (l0)(a)(l) and 173-900-450(5)(a) will make it impossible for plans to also collect used CEPs through drop-off collection boxes. There is no rational reason to preclude this.

The Coalition knows of at least one collector that is considering providing, as one of its service options, 24-hour, 7 days a week drop-off collection boxes. Having some collection points in the State that are available at the consumer's complete convenience could be valuable and significantly increase collection rates. Precluding collectors from operating such collection boxes would unnecessarily limit consumer options and unnecessarily increase the costs manufacturers must bear.

Ecology Response:
RCW 70.95N.090(1)(c) requires that "Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis." This is the minimum requirement. This does not preclude provision of alternative services, such as a drop boxes as adjunct to staffed collection sites.

Comment #423

7. Language should be added to proposed WAC 173-900-450 to require local governments to make collected materials available to all interested approved plans, apportioned according to each plan's collective manufacturers' market share, and to do so at cost.

The Coalition wrote to Mr. Shepard of Ecology in January urging that counties not be allowed to profiteer from theft potentially near-monopoly positions as collectors to drive up plan costs and impose extra-legal requirements on plans. (Copy attached and incorporated herein) Disappointingly, Mr. Shepard replied in March that the Act does not give Ecology the authority to prevent local governments from turning their collection programs into profit centers, at the expense of manufacturers. (A copy of his response also is attached.)

Mr. Shepard's assertion is incorrect. Section 70.95N.0l0 of the Act expressly requires that a new e-waste collection, transportation and recycling e-waste system be established, and that "the responsibility for this system *must be shared among all stakeholders,* with manufacturers

financing the collection, transportation and recycling system....” The concept of shared stakeholder responsibility can only be served if the financing obligations of the latter clause are read to extend only to manufacturers’ payment of the costs of the services articulated — collection, transportation and recycling — not to require that manufacturers provide a profit to public entities that already are collecting and/or could in the future collect, consistent with their governmental charters and obligations and unique positions, ewaste. Any other reading of the latter (manufacturer finance) clause would eviscerate the Legislature’s directive.

Most simply put counties are not “just like other collectors,” as Mr. Shepard asserted. They are agencies of government who have a variety of historic obligations. With the Act the Legislature has relieved them of some of these responsibilities. But it has not authorized Ecology to sanction a scheme that would indirectly tax manufacturers of CEDs to support other governmental functions.

Nor is Mr. Shepard correct in asserting that Ecology does not have authority to take the steps the Coalition has requested. That authority is created by Section *70.95N.230(4)* of the Act.

Any reading of the Act consistent with Mr. Shepard’ s characterization would be inconsistent with both the spirit and, probably, the letter of Washington’s Constitution and other legal documents that provide the foundation of local government. For example, Washington’s Constitution prohibits the use of public money for “making a profit….“ *See* WASH. CONST. art. XI, § 14. This anti- profiteering policy is reflected in the many statutes that govern the functioning of public utilities. *See, e.g.,* RCW § 36.58.130 (“A solid waste disposal district may provide for all aspects of disposing of solid wastes. *All moneys received by a solid waste disposal district shall be used exclusively for district purposes.”)* (emphasis added); RCW § 36.89.080 (declaring that “the service charges and rates collected [for storm water control facilities] shall be deposited in a special fund or funds in the county treasury to be used *only* for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities….”)

The policy against government profiteering is also reflected in the home rule charters of some Washington State counties. For example, the King County Charter declares that monies collected by a municipal corporation, such as a waste management and recycling agency, may only be used to cover the agency’s operating expenses, interest on and redemption of the agency’s outstanding debt, agency-related capital improvements, and the reduction of rates and charges for the agency’s functions. *See* KING COUNTY CHARTER § 230.10.10 (“Revenues or property received for [municipal] functions *shall never be used for any purposes other* than the operating expenses thereof, interest on and redemption of the outstanding debt thereof, capital improvements, and the reduction of rates and charges for such functions.”) (emphasis added). Allowing counties to draw profits off their existing collection infrastructures to fund governmental functions unrelated to e-waste recycling would seem to be inconsistent with the aforementioned legal mandates.

Moreover, regulatory programs, such as those authorized by the Act, are only permissible under the United States Constitution to the extent they serve a legitimate public purpose. *See Lingle v. Chevron USA. Inc.,* 544 U.S. 528, 542 (2005) (explaining that “a regulation that fails to serve any legitimate governmental objective may be so arbitrary or irrational that it runs afoul of the Due Process Clause” (citing *County of Sacramento v. Lewis,* 523 U.S. 833, 846 (1998)). Here, it appears to be the explicit goal of some of the stakeholders who have been working with Ecology to take the manufacturer’s property (the funds they will be spending on the system), without compensation, for the purpose of creating a profit for local governments. We do not believe this falls within the scope of legitimate public purposes.

For all these reasons, the Coalition urges that Ecology reconsider the position asserted by Mr. Shepard and add a provision to the rules requiring local governments to make available collected waste to all approved plans at the governmental body's direct cost. Clearly, such a provision could legitimately require that interested plans contact governmental bodies by some specified reasonable date, and not require or allow the governmental body to sell to any plan more than that plan's equivalent share.

Ecology Response:
Ecology has reviewed the previous discussions, communications, and responses on this subject as well as these new arguments presented. Ecology believes that local governments will operate within the authorities provided to them related to public services and solid waste management services. The regulatory framework already exists. Should their behavior as a collector demonstrate that they are operating outside of their authority, there certainly would be grounds to challenge them.

Comment #424

8. To avoid constitutional infirmity, proposed WAC 173-900-650 must be revised to recognize that Washington cannot require out-of-state processors to meet Washington requirements.

Proposed WAC 173-900-650 would preclude independent plans from using out of state processors, even if those processors were in full compliance with all pertinent regulations of the state in which they operate and Federal law, unless those state and federal regulations and laws met the standards promulgated by Ecology. This is unconstitutional.

The Commerce Clause of the U.S. Constitution (Article I, Section 8, Clause 3) places substantial limits on the ability of states to exercise extraterritorial authority, as would proposed WAC 173-900-650. *See, e.g, Lewis v. BT Investment Managers, Inc.,* 447 U.S. 27 (1980); *NCAA v. Miller,* 10 F.3d 633 (9th Cir. 1993). State requirements that control commerce occurring wholly outside the state — as would arrangements between an independent plan and a processor operating in another state — are *per se* unconstitutional. *Healy v. Beer Institute,* 491 U.S. 324, 332 (1989); *Brown Forman Distillers Corp. v. New York State Liquor Auth.,* 476 U.S. 573 (1986).

Even if one were to conclude that the proposed regulation's reach was not per *se* unconstitutional, the same finding would be compelled by another Commerce Clause test that the Supreme Court has mandated be applied where a state's requirements have extraterritorial impact: that the legitimate local concerns reflected by the requirements outweigh the interference with interstate commerce. Given the developed law governing recycling of materials in virtually all states of the Union, there is no legitimate local interest of Washington that would be served by imposing on lawful activities in other states requirements not otherwise mandated in their locations. *See Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970) (a state statute violates the Commerce Clause if the burdens it imposes on interstate commerce are "clearly excessive in relation to the putative local benefits").

We understand that Ecology believes it is simply implementing the authority granted by Section 70.95N.250(2). But interpreting that provision as authorizing the proposed regulations would compel the conclusion that it, too, is unconstitutional. A statute that runs afoul of the Commerce Clause 'is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature." *Healy v. Beer Inst.,* 491 U.S. 324, 332 (1989).

Therefore, rather than trying to impose additional regulatory obligations on processing facilities located outside of Washington, the proposed rule should be revised so that its current content applies only to facilities in Washington, and that it requires facilities outside of Washington to be in compliance with the laws applicable in the jurisdiction in which they are located.

Ecology Response:
The rule establishes performance standards for direct processors used by plans. It does not preclude processors outside the State of Washington from being direct processors. The law requires that processors, used by plans, must comply with performance standards established by Ecology. The authority, or authorized party, are responsible for ensuring this compliance (RCW 70.95N.250). It is a plan violation to use direct processors that do not meet the performance standards.

Comment #425

9. The requirement in proposed WAC 173-900-650(9)(d) that processors always remove circuit boards or other materials of concern from CEPs prior to material recovery should be deleted.

Circuits boards and other materials of concern in CEPs are individually removed and separated for recycling in most situations today. In some cases, however — such as with entirely obsolete equipment — it may be more economical and efficient to mechanically shred the entire product and then use various mechanical or chemical technologies (flotation, magnets, etc.) to separate the materials for recycling (plastic, ferrous metals, non-ferrous metals, etc). There is no rational basis to preclude this practice, but it would be precluded by proposed WAC 173-900- 650(9)(d).

This change is especially important because, going forward, product design changes will make components in many computers and televisions entirely obsolete. There simply will be no substantial market for these components. Separating out components before recycling will make no make sense.

To the extent this proposed regulation was intended to assure clean and safe recycling conditions, the same result can be achieved if materials that are separated after shredding are cleaned.

For these reasons, the requirement that processors always remove from CEPs destined for material recovery any circuit boards and other materials of concern should be eliminated.

Ecology Response:
The language in the rule has been changed to allow for the shredding of circuit boards prior to the removal of materials of concern. However, other parts that contain materials of concern still must be separated prior to thermal or mechanical processing. This requirement is included to protect worker safety and the environment.

Comment #426

10. The requirement of proposed WAC 1 73 -900-800(2)(i) that a plan's annual report include data on the amount of material exported from Washington State to non-EU or non-OECD countries should be eliminated.

Proposed WAC 173-900-800(2)(i) would require that a plan's annual report include data on the amount of material exported from Washington State to non-EU or non-OECD countries. There is no statutory authorization for this requirement. Moreover, it is completely inconsistent with the desire to avoid interference with international shipments that lead Governor Gregoire to veto

Section 26 of SB 6428 (which had prohibited exports to most non-EU and non-OECD countries).

Moreover, constitutionally this proposed rule suffers from problems similar to those described in point 8 above.

Finally, even if the provision were otherwise defensible, imposing this reporting requirement on plan sponsors is unnecessarily burdensome. The same information would be required to be reported by exporters to US EPA under proposed WAC 173-303-071(3)(oo)(i)(E). This provision will require exporters of CRTs and CRT glass to notify the Agency of intended exports to all countries including, but not limited to, information on the country of destination and the frequency and quantity of those exports. Ecology can more easily and simply get this information from US EPA.

For all these reasons, proposed WAC 173-900-800(2)(i) should be eliminated.

Ecology Response:
RCW 70.95N.270(1)(g) requires that Ecology include, in a report due to the Legislature by 12-31-2012, "An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European Union, and recommendations for addressing such exports." The veto of section 26 assured that this could happen. Because these materials are not wastes and include more than CRTs, the information is neither collected nor available from EPA. Therefore, in order to comply with the reporting requirement to the Legislature, Ecology must collect the information from the authority or authorized parties.

Comment #427

11. Proposed WAC 173-900-900 should be revised to: 1) preclude Ecology from setting third party observer fees; and 2) allow plans to switch third-party observers.

The return share sampling requirements in proposed WAC 173-900-900 are unnecessarily specific and therefore burdensome. The provisions pertaining to use of third-party observers are particularly troublesome, because they would result in a situation where independent plans could be held hostage by an outside party.

Proposed WAC 173-900-900 both allows Ecology to set third-party observer fees and precludes plans from switching from one third-party observer to another under any circumstance. ***See*** WAC I73-900-900(2)(g) and (7)(b). The statute only establishes the requirement that such third-party auditors be approved by Ecology, not that Ecology set or sanction their rates. ***See*** RCW § 70.95N.ll0. Imposing the restrictive requirements of the proposed regulation would interfere with the legitimate contractual rights of plan sponsors.

The Coalition does not object to a requirement that only persons certified by Ecology as appropriate observers be employed for this purpose. But the certification system must be transparent and open to any qualified person who seeks certification. In addition, fees should be set by the free market and plans must have the ability to discharge an observer who is not performing properly.

Even if there were a legitimate basis for Ecology to become involved in these cost and contractual matters, Ecology could not do so as casually as the proposed regulation anticipates. A system would have to be established to review and approve rates against some standard, as is done for public utility services, and a mechanism for enforcing quality performance standards

by observers would have to be established. *Cf., e.g.,* RCW § 36.94.140 (stating that counties shall charge uniform rates for the same class of customers for sewerage and water services and listing numerous factors counties should consider in setting rates); RCW §§ 80.36.080, .180 (providing that "[a]ll rates.. . of telecommunications companies …[for] services rendered and equipment and facilities supplied,.. . shall be fair, just, reasonable and sufficient" and enabling a commission to enforce prohibition on discrimination in rates). It is difficult to see, however, how such rules could be developed and promulgated without delaying implementation of the entire e-waste recycling program.

Rather than devote resources to the development of a regulatory program that could assure fairness and evenhandedness by third-party observers, Ecology should simply revise the proposed rule to leave these matters to the market.

Ecology Response:
The rule will require that only approved third parties be used. Ecology will not establish rates that third parties would be paid. That will remain an issue of negotiation between the plan and the third party. Ecology will remove the language related to setting rates.

Comment #428

12. The proposed return share sampling requirements in WAC 173-900-900 should be revised to provide for the identification of not just a product's brand name but also the product's manufactures name.

Section WAC 173-900-900 of the proposed rules should be revised to reflect the realities of brand ownership and licensing in the electronics industry, as described in item 1 above. The CEP manufacturer — not the brand owner — is responsible under Washington law to pay for collection and recycling of its products. *See* RCW §§ 70.95N.020(l 4) and 70.95N.030. Thus, it is critical that the statistical sampling that will be conducted at processing facilities be designed to identify not only the brand name of CEPs but also the actual manufacturer. For many brands, the manufacturer name is the brand name. But when that is not the case *(e.g.,* as with license agreements), the manufacturer also needs to be identified. Otherwise, there will be no way to properly assess all manufacturers' equivalent shares and subsequent share payment obligations.

To accommodate these realities, Section WAC 173-900-900 of the proposed rules needs to be revised to require both manufacturer and brand name identification when the two are different. The Coalition would like to work with Ecology to help to design a sampling methodology to address this very important issue.

Ecology Response:
The law was written with the understanding that the brand owner was the manufacturer. This is borne out in reviewing the many directives describing the operative elements of prescribed program in the law about brand:
RCW 70.95N.020(16), RCW 70.95N.020(33), RCW 70.95N.040(4)(b), RCW 70.75N.110, RCW 70.95N.140(2)(f), RCW 70.95N.160, RCW 70.95N.180(1)(a)&(b), and RCW 70.75N.290(1)(a). Nowhere in the law is the concept of licensee responsibility inferred or implied. The entire law is based on brand and brand ownership. Therefore, the recommended language can not be accepted.

Comment #429

13. The equivalent share formula in proposed WAC 173-900-930 should be revised to take into account both the amount collected and the amount processed.

The manufacturer equivalent share formula in proposed WAC 173-900-930 is:

Manufacturer return share percentage/100 x the total weight in lbs of CEPs collected by a plan

The plan equivalent share is equal to the total of the equivalent shares for all manufacturers.

Share payments, in contrast, are based on assessing whether the total weight of CEPs collected by a plan ***and processed*** by its processor during the program year is less than the equivalent share. The payment must be equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, processing and recycling cost for CEPs and an administrative fee. *See* proposed WAC 173-900-960.

These two calculations should be consistent. To make them so, the formula under WAC 173-900-930 should be revised to read as follows:

Manufacturer return share percentage/100 x the total weight in lbs of CEPs collected and processed by a plan (not including CEPs for reuse or refurbishment)

Ecology Response: Ecology agrees that CEPs and components gleaned for reuse should not be included in the weight totals. However, the weight must be based on "collected weight" minus reuse so that residual is still included in the total. Please see edits.

Comment #430

14. WAC 173-900-960(4) establishes unreasonable estimated program costs (per pound of CEPs) and should be revised to reflect data from operational programs in other states.

WAC 173-900-960(4) sets the initial "reasonable collection, transportation, processing and recycling cost for CEPs" at $0.45 per pound. This fee is not at all reasonable and there is data to establish this fact from other states with operational recycling programs. Ecology's own cost-benefit analysis lists per pound costs in Maine and Minnesota at $0.37/lb and $0.27/lb. respectively. Given that pursuant to RCW § 34.05.328(1)(e) Washington has a responsibility to develop the least burdensome alternative, Ecology should establish a lower cost structure to achieve the least burdensome requirement. This cost structure should, at a minimum, take into account the lower cost estimates from Maine and Minnesota.

Ecology Response: The law prescribes this fee for the first year and directs Ecology to reassess the fee annually thereafter.

* * *

The EMCRR appreciates this opportunity to provide comments on the proposed regulations. If you have any questions about the Coalition's concerns or position, please contact me.

Sincerely,

/S/

David B. Weinberg
Coalition Legal Counsel

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January 31, 2007

David B. Weinberg
202.719.7102
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Via Email and First Class Mail

Jay Shepard
Solid Waste & Financial Assistance Program
Washington State Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Re: EMCRR Concerns Regarding Governmental Agency Collectors

Dear Mr. Shepard:

I am writing at the request of our client, the Electronic Manufacturers Coalition for Responsible Recycling, to thank you for listening to our concerns at the last Advisory Panel meeting regarding Government Agency Collectors, but also to reiterate the importance of the issues that were discussed.

The discussions at the Advisory Panel reconfirmed and reemphasized the need for rule language to preclude the scenarios we described. As you heard, the counties have now stated that in addition to "bidding up the price" and adding additional environmental performance requirements, they might also expect a Plan to accept at no charge computer peripherals and other non-CEP. In other words, they are attempting to unilaterally expand the scope of the Washington State Electronic Recycling Law.

The examples given by the counties of current contracts with scrap metal dealers (which impose conditions on how the scrap metal is to be processed) are not relevant because those businesses are not mandated by law to do business in Snohomish and King Counties. While the Electronics Product Recycling Law does not directly require a Plan to collect it's Equivalent Share (ES) in every county, being precluded from collecting its ES in those two large counties could prevent a Plan from meeting it's mandated statewide ES.

EMCRR thus reiterates that *counties must not be allowed to use their potentially near monopoly position as collectors to drive up costs and impose extra-legal requirements on Plans*. In light of the county representative's announced intention to do just that, it is imperative that DoE add to the draft language as described in the attachment to the letter sent to you by David Thompson on January 4, 2007. For your convenience, another copy of that attachment is enclosed.

Again, thank you for your efforts. We look forward to seeing draft rules that maintain a level playing field for all participants and allow the Plans to collect and recycle CEP in an environmentally sound manner at the lowest cost possible.

Sincerely,

David B. Weinberg

Enc.

cc: Jay Manning
Cullen Stephenson
Rep. Brian Sullivan
Rep. Brian Blake
Rep. Joel Kretz
Rep. Ed Orcutt
Sen. Erik Poulsen
Sen. Jim Honeyford
Governor Chris Gregoire

Jay,

The undersigned manufactures are greatly concerned about the potential for large Governmental Agency Collectors of e-scrap to use their unique position to favor one Plan over other Plans, drive up collection costs, or impose additional environmental performance conditions on participating Plans.

Please see the attached document which explains these concerns in more detail and includes a request for DOE to include Rule language to prevent these undesirable outcomes.

In Maine, we initially saw a similar situation where prices were being artificially bid up between the collectors and the processors.

Our goal is to create a level playing field and allow the Plan(s) to manage e-scrap in an environmentally sound manner at the lowest possible cost.

Sincerely;

David C. Thompson

David Thompson
Director Corporate Environmental Department
Panasonic Corporation of North America

and,

Chairman
Electronic Manufacturers Coalition for Responsible Recycling (EMCRR)

1/31/2007

Mike Watson
Senior Compliance Manager
Global Asset Recovery Services
Dell | Managed Services

Larry King
Business Strategy Manager
Americas Product Take Back
Hewlett Packard Company

1/04/07

EMCRR Concerns Regarding Governmental Agency Collectors

Potential Problems: As details of the operation of the Washington State Electronic Recycling program are being developed, it has become clear to manufacturers that the large governmental agencies that are currently collecting e-scrap in heavily populated areas may have the ability to amass a significant percentage of the e-scrap generated in the State. The potential exists for these agencies to use their position to create an unlevel playing field for the Standard Plan and/or Independent Plan(s) and to artificially increase the cost of recycling CEP in the State.

This could happen in several ways:

1. Prevent Plans from obtaining their return share of CEP A collection agency could refuse to allow a Plan to obtain its return share of CEP collected in the area served by the collection agency. This could have the affect of preventing the Plan from achieving its return share on a statewide basis and force the Plan to pay a penalty for under performing,

   State agencies that act as collectors should not be using their unique position as established collectors to favor one Plan over another. One of the concepts of the Washington State law is to produce low program costs through competition between Plans. Allowing a large government agency to favor one Plan over another has the potential to eliminate this competition, and potentially eliminate a Plan altogether.

2. Artificially increase program costs A collection agency could use its position to put competing Plans in a bidding war with each other for the large quantity of CEP controlled by the collection agency. This could quickly lead to all Plans bidding up the price of collected CEP to the point where the Plans overall program costs are approaching the $.50/pound penalty for not reaching their RS. For example, if the actual cost to a collection agency to collect CEP is $.05/pound, they could use their "monopoly" to create a market price of $.15/ pound and generate a $.10/pound profit.

   The Law envisions creating competition among Plans to find efficient low cost and environmentally sound means of collecting, transporting and recycling CEP. The extra $.10 paid by the Plans in the above example does nothing to improve recycling of CEP in the State. If anything, this will favor a Plan that uses lower cost, potentially less environmentally preferable methods of recycling, and may encourage other Plans to do the same in order to make up the difference. Collection agencies should not be able to use their position to artificially increase the operating costs for Plans and should not be using this program as an opportunity to make a profit. This will likely result in higher product costs for Washington citizens.

3. Create addition program requirements above and beyond the Law A collection agency could use it's position to force a Plan to adopt or follow additional environmental related requirements above and beyond the Law in order to obtain it's share of collected CEP, The most frequently mentioned requirement by these groups is the condition that all CEP received from the agency must be processed in state and/or cannot be exported.

The legislature has addressed these issues (export control and in-state processing) and enacted a consensus Law that includes environmentally sound management practices that all approved Plans must follow. Collection agencies should not be allowed to go outside the legislative and rule making process to create a second set of environmental standards that Plans are required to meet in order to receive and process their required return share of CEP. Allowing collection agencies to do so is surely an invitation to litigation.

Request from manufacturers: In order to prevent the scenarios described above the manufactures represented on the Advisory Panel request the DOE to add language to the Rules that accomplishes the following:

1. Government agencies that act as collectors should be required to provide each approved Plan with that Plans approximate return share of CEP collected by the agency, if the Plan so requests. The requesting Plan(s) must pay the same price per pound as other Plan(s) being supplied by the agency. The requesting Plan(s) must give the collection agency adequate notice that it wishes to obtain its share during the Plan year and must meet other reasonable business conditions that are also required of other Plans supplied by the agency.
2. Government agencies that act as collectors may only charge a reasonable amount for CEP collected by the agency. The amount should be enough to cover actual collections costs plus reasonable overhead and management cost. The Law currently envisions that there may only be one Plan and therefore requires the Plan to pay a reasonable cost in order to protect the collectors. If, on the other hand, an agency collector is in a near monopoly position, the same type of safe guards should be in place to protect the Plan(s).
3. Government agencies that act as collectors, as well as any other Government Agency, should not be allowed to impose additional environmental related requirements on Plans whose programs already meet the standards established by the Law and by DOE rules and who have been approved by DOE to operate under this Law.

Alternative Request: If for any reason the three conditions discussed in the above Requests cannot be imposed by DOE on Government Agencies that act as collectors then, as an alternative, the manufacturers request DOE to add language to the Rules that accomplishes the following:

4. If a Plan(s) is unable to obtain its required return share of CEP from a Government Collection agency for one of the reasons discussed above (or a similar situation), then the Plan(s) should be relieved of the requirement to collect its return share relative to the amount collected by that Agency.

From: Shepard, Jay (ECY) [mailto:jshe461@ECY.WA.GOV]
Sent: Tuesday, March 06, 2007 8:10 PM
To: Weinberg, David
Cc: vernamr@us.panasonic.com; King, Lawrence (HP Product Recycling); Mike Watson, DELL; Thompson, David; Schreiner, Bari (ECY)
Subject: RE: Letter dated 1/31/07

Mr.. Weinberg
I am responding to the letter reference in your e-mail dated 1-31-07, below..

We are continuing our rule development process and have looked at the issues brought forward by you on behalf of the EMCRR. Unfortunately, Ecology's ability to limit participation of government agencies as collectors in the way requested is limited. However, the Electronic Product Recycling law does provide some protections for plan operators.

This law has changed the playing field within which collection, transportation and processing of CEP will occur within the state.

First, the Materials Management and Finance Authority, responsible for implementing the standard plan, is required to accept products from all registered collectors. However, the authority can contract with those collectors. These contracts are negotiated between the parties and the authority controls the rate it will pay for collection services. It would seem logical that the Authority might set one rate that they will pay contracted and registered collectors and a different rate they may pay uncontracted registered collectors. The market will drive the rate paid.

Independent plans can work with any collectors they wish. Independent plans can contract with a single or multiple collectors to provide services throughout the state. These collectors could compete with the standard plan collectors or be the same. The market and need for services will drive the collection services for both standard and independent plans.

The law was designed to put the competitive market economy to work to provide the best deal for everyone.

Your second issue related to local governments imposing additional environmental related requirements.

Currently, local governments that provide collection services release a request for bids asking for transportation and processing services as described in their bid documents and asking for a price. The winning processor will be the one that provides the services requested at the most reasonable cost to the local government.

The new law changes this. If a local government wants to continue to provide collection services within the parameters of the new law, it would either work with the standard plan, independent plans or a combination. The local government will be just like other collectors. They will be compensated at the level the market will bear. Again, the competitive market economy is at play here.

The Department of Ecology was not given authority to restrict the ability of local governments to establish requirements for processors of CEP they collect. If local governments want to create additional requirements beyond those in the regulations, that would be between the local government and the plan operator. The authority or authorized party need not pay for those additional requirements as they would be extraordinary to the requirements of the regulations. These would be considered "premium services" and the local government would have to provide funding for those services.

For these reasons, we have not drafted any language to exclude local governments from providing collection services or to direct the distribution of materials they would collect.

The latest draft language will be distributed to our advisory panel and interested parties this week. We have a short turn around time for responses (one week). I believe that you and the members of the

EMCRR will find that the requirements placed on collectors and processors across the board will address the issues you raise and maintain a competitive and level playing field for all parties . I look forward to your comments .

Jay Shepard
Washington Department of Ecology
360 407-7040
jshe461@ecy.wa.gov

Verbal testimony at Public Hearing

Commenter: Jeff Gaisford, King County Solid Waste

Comment #431

It pays to get here early. Good afternoon. I'm Jeff Gaisford. I'm the recycling and environmental services manager for King County Solid Waste. And, first I want to thank you for all the hard work Ecology has done to prepare for the implementation of this landmark product stewardship legislation. We've really appreciated participating in the rule making process, and we're here to offer our comments at this critical point in the process. I want to provide a little background of why I'm here today and then end with my comments. King County has encouraged the proper recycling of electronics for a number of years and we've banned the disposal of certain electronic items two years ago. In 1999, King County established the "Take it back" network, which is a network of electronics recyclers, resellers, non-profits and retailers that provide collection, processing and recycling services for electronic products that are generated by our residents and businesses. We currently have 33 Take-it-back network members – partners that accept electronics. Our Take-it-back partners must meet high standards in order to join the network. They must provide certificates of recycling, use due-diligence in selecting a recycler, meet specific insurance requirements and agree to handle all materials domestically and in developed countries. It is hoped that the Ecology rules will also meet the rigorous standards set by the Take-it-back network. So now for my comments. We support Ecology's approach of developing two standards: mandatory standards and preferred standards. However, we believe that the proposed mandatory standards can and should be significantly strengthened. In addition, to give residents and other covered entities the opportunity to choose programs that adhere to the preferred standards, it will be critical that the information about the plans are transparent to the public. To attain these essential goals, we encourage Ecology to improve the rules by making sure that they accomplish the following:

1. Include stronger performance standards for handling of toxic materials. For example, require that all batteries, CRTs and leaded glass, mercury containing devices be managed according to the universal waste rules and proposed CRT rule in Washington's dangerous waste regulations, regardless of where the processor is located.

Ecology Response:
Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #432

2. Mandate that direct processors use due diligence in choosing their vendors for toxic materials and hold those vendors through contractual obligations to processing standards that protect human health and the environment.

Ecology Response:
Ecology has determined that requiring due diligence is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #433

3. Tighten language to ensure that manufacturers and direct processors comply with the importation requirements of all importing and transit countries and require documentation of compliance.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards that have been developed require compliance with all jurisdictional laws by direct processors used by the authority or authorized parties. Compliance will be verified through audit documentation.

Comment #434

4. Require that plastics from computers and televisions be recycled whenever possible, and not sent directly to smelters, incinerators and energy recovery facilities.

Ecology Response:
The law, RCW 70.95N Electronic Product Recycling is a recycling law. The rule requires that all materials derived from CEPs be recycled. Only "residuals" – by-pass wastes – may be disposed. Incineration and energy recovery are not recycling. Only metal bearing materials derived from CEPs should be sent to smelters.

Comment #435

5. Encourage the reuse of real working computers while stringently guarding against shipment by collectors or processors to developing countries for sham reuse. All equipment shipped for reuse should be tested or working.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with the same purpose as the original purchase). Non-functional CEPs can not be shipped for reuse.

Comment #436

6. Ensure transparency. Manufacturers should publicize through their collectors how and where computers and televisions are recycled. Collectors should receive adequate information to provide customers with certificates of recycling that describe the final destinations for materials of concern and for the disposals of residuals.

   Again, we thank you for the opportunity to provide comments at this time. We will submit more detailed written comments next week.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It

is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Sarah Westerveldt, Basel Action Network

Comment #437

Hi, I'm Sarah Westerveldt with the Basel Action Network. And, I just wanted to start out by saying that Washington has a very progressive e-waste law – one of the first in the country holding manufacturers responsible for taking back their products. Now we must make sure that our rules that implement this law are strong enough to successfully achieve the overarching goals of protecting human health and the environment. If we require manufacturers to take back their toxic products but we don't hold them fully accountable for where the toxins end up, we are effectively protecting Washington citizens at the expense of other communities and most likely in developing countries. Ecology has worked hard involving stakeholders in trying to develop complex regulations that will be protective. We fully commend your efforts and particularly yours, Jay. We also believe the draft regulations, and particularly the mandatory standards do not go far enough in some key areas and we encourage Ecology to set new precedence in the final regulations. I have four main points to make. And, these are in regard to the baseline mandatory standards.

1. The first point is that we really believe the regulations must tighten up the requirements around the toxic materials generated in Washington and find a way to hold the manufacturers responsible for them throughout final disposition. The current draft does not do this. We believe that some of the covered entities – the school districts and small governments and small businesses could be held legally liable for their mercury, lead, hexavalent chromium, etc. in their e-waste throughout final disposition under the federal superfund laws. They have not only a right but a responsibility to know exactly how and where these toxins are managed until they are properly disposed of or turned into commodities for manufacturing new products.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Comment #438

2. The second point is that the export issue is really very important to many Washington citizens. How will Ecology aggressively enforce the requirement not to violate the laws in importing countries. US auditors are not capable of this. Manufacturers have an economic incentive to ignore this. We must see regulations include some real enforcement teeth with an active role for Ecology or these regulations will do nothing to prevent the current exodus of Washington's e-waste to developing countries, usually in violation of their laws. There is a huge economic incentive to export this difficult waste stream, but it is illegal for China and other developing countries to import it from the United States, because we have not ratified

the Basel Convention. The statute, in fact, mandates that Ecology report back to the legislature in the year 2010 with volumes of e-waste going off shore to developing countries. With the current, open ended language in the draft regulations, all manufacturers would be able to say that they and their direct processors are not exporting any material, because it can all be sold to brokers downstream from them, who will then export Washington's e-waste. Therefore, to provide accurate numbers to the Legislature, Ecology must require to track the Washington materials throughout final disposition and ensure that exports anywhere along the chain of custody are in compliance with laws in the importing and transit countries. Our organization would be happy to assist Ecology in understanding what those laws are in the importing and transit countries.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #439

3. The third point. To ensure manufacturer accountability for the toxins and for export and to give Washington citizens informed choices about where they might want to turn in their e-waste, there must be public access to information about just how and where those toxins are processed throughout final disposition. The current draft regs do not require this level of transparency. We'd like to see countries of final disposition for all materials of concern posted on the Ecology website for each plan.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. This information will be available to the public when annual reports are published on the Ecology website.

Comment #440

4. And the fourth point. In a laudable effort to support local businesses who must thrive under this new law, the draft regulations now allow – currently allow – registered collectors to divert 100% of collected electronics into "reuse" with no real standards for acceptable reuse practices, particularly relative to export and to the e-waste – the scrap that they will generate, no auditing requirements and no oversight by anyone. Therefore, all collectors sending parts and equipment into the reuse market must be audited, must be required to test all equipment and parts as fully functional prior to reselling them, and must send all of their scrap or non working devices to the direct processors who meet the standards.

Ecology Response:
By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase). Non-functional CEPs can not be shipped for reuse.

Comment #441

Thank you very much, and we will be submitting written comments as I'm sure you expect. Thanks, Jay.

Ecology Response:
Thank you for your comment!

Commenter: Mo McBroom, Washington Environmental Council

Comment #442

Thank you. My name is Mo McBroom. I'm with the Washington Environmental Council, and in the spirit of the kindness of everyone who's letting me jump ahead, I will be extremely brief. First of all, I want to congratulate Ecology on the monumental task that you've tackled and expertise that you've brought to this issue. We all appreciated all of the time that you've sunk into it. The Washington Environmental Council was one of the members of the coalition that worked so hard to pass this bill and it is one of the environmental community's four priorities for a healthy Washington, so it is extremely important to us. When we got involved as an organization we heard from our members that they needed a responsible way to recycle their computers. When we lobbied the legislature, we heard from legislators who cared about this issue because they wanted their constituents to have a responsible way to recycle computers. And, after we passed the law, it was lauded in the media and by many, many folks because it was believed it would provide a responsible way to recycle computers. So, the implementation of this bill and the processing standards that we're now working on are for us the most critical piece of this. I am going to save any detailed comments for what you are going to get in writing from the environmental community. But, I'd like to touch very briefly on just one point, and that relates to incineration. There's a section in the performance standards for direct processors that deals with incineration – that's subsection 11. And, the section states that "a direct processor must identify and utilize effective and safe energy recovery or disposal strategies for all equipment, components and materials that are not technically or economically feasible to recover. And, I really want to focus on that word economically. Because the feasibility of material recovery shouldn't be based on economics from our standpoint. It's an open door. This could be an open door, allowing any number of materials to be disposed of if recycling is more expensive than the plans are willing to pay. So, we would respectfully request that that word "economically" be taken out. We need to ensure – second – that recycling isn't sidestepped. The rule should require that plastics from computers and TVs be recycled from material recovery whenever possible and not be sent directly to smelters or incinerators, even for energy utilization or recovery. So, that's the one point I wanted to make. Again, we thank Ecology so much for the time and effort and you will be receiving many written comments from the environmental community. Thank you.

Ecology Response:
Agree. The language has been changed. Please see edits. RCW 70.95N is a recycling law. The rule requires that all materials derived from CEPs be recycled. Only "residuals" – by-pass wastes – may be disposed. Incineration and energy recovery are not recycling. Only metal bearing materials derived from CEPs should be sent to smelters.

Commenter: Karen Bowman, Washington State Nursing Association and the Washington State Association of Occupation Health Nurses

Comment #443

Ready? Alright. I'm here today representing the Washington State Nursing Association and the Washington State Association of occupational Health Nurses. Nurses have a professional responsibility to support a healthy environment, which includes a healthy and safe work environment, too. So, we'd like to take this opportunity to thank the Department of Ecology for all its efforts and hard work in making sure electronics in Washington State are recycled responsibly, and that protecting workers' health and the environment remain a priority.

- We urge Ecology to stronger performance standards for handling toxic materials, such as requiring all materials of concern be managed consistent with the standards in Washington's dangerous waste regulations, protecting workers who work with toxic equipment as the equipment is recycled.

Ecology Response:
Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #444

- Require that manufacturers and recyclers choose responsible contractors who will safely handle these toxic materials all the way through the whole process, recycling process, to its final recycling or disposal destination.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established a voluntary program for preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Comment #445

- Protect disparate populations in developing countries by tightening language to ensure that manufacturers and processors comply with critical requirements of all importing and transit countries and require verifiable documentation of compliance.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established a voluntary program

for preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Comment #446

- And finally, require that plastics are recycled whenever possible instead of smeltering or incineration.

  Thanks for the opportunity to do the comment.

Ecology Response:
The law is a recycling law. The rule requires that all materials derived from CEPs be recycled. Only "residuals" – by-pass wastes – may be disposed. Incineration and energy recovery are not recycling. Only metal bearing materials derived from CEPs should be sent to smelters.

Commenter: Dick Lilly, Seattle Public Utilities

Comment #447

Good Afternoon. I'm Dick Lilly**.** I'm the business area manager for waster prevention and product stewardship for Seattle Public Utilities. And, like many other organizations here, we want to thank and compliment the Department of Ecology on the excellent job done developing the regulations needed to implement the electronic products recycling law. At this time, SPU would like to offer comments on two areas where the draft of the proposed regulations, WAC Section 173-900 could be clarified or modified to ensure the most effective implementation of Washington's pioneer producer responsibility legislation. One of these areas is in the language found in several sections of the proposed regulation regarding the relationship of curbside collectors such as the City of Seattle and other cities to the standard and independent plans. The other area of concern for the city is performance standards for processors.

First, regarding curbside collection, the law itself states at Section 060 paragraph 6, the standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compensated at a lower rate for collection costs than the compensation offered other collectors providing drop-off collection sites in that geographic area. At 090, paragraph 3, a program may provide collection services in forms different than collection sites, such as curbside services if those alternate services provide equal or better convenience to citizens or equal or increased recovery of unwanted covered electronics products. And, at 280, paragraph 6, the authority shall compensate registered collectors for the reasonable costs associated with collection but is not required to compensate nor restricted from compensating the additional collection costs resulting from additional convenience offered to customers through premium and curbside services. In these sections, SPU believes the intent and effect of the legislation is to place the drop-off and curbside collection systems on an equal footing in negotiating with and obtaining compensation from the plans. We believe that, likely inadvertently, this equality has not been carried forward in the language of the proposed regulations and in several sections of the draft of WAC 173-900 should be revised to make it clear that the plans including the standard plan, should, just as with drop-off, negotiate with curbside programs for services and reasonable cost reimbursements. And, that the goals of customer convenience and maximum recovery of electronic products be given significant weight in these negotiations.

The sections that concern SPU where changes along these lines would improve the quality of the regulations include 173-900 -300 subparagraphs 3C, 355-11A and E and 400, 5 and 6. SPU would be glad to meet with DOE staff to discuss language for these sections.

Ecology Response:
The law states: "…is not required to compensate nor restricted from compensating the additional collection costs…" The rule in subsection 300(4)(c) states "if a collector offers premium or curbside services, the compensation paid by the standard plan does not have to cover additional costs associated with those services." The rule language, the same as the language in the law, does not preclude or restrict higher compensation.

Subsection 355(11)(a) is silent on curbside services. Subsection 355(11)(e) simply allows those that provide alternative services such as curbside collection services to charge an additional fee to covered entities to cover the costs not paid by a plan. Should a curbside collection provider not be compensated in full for the services from the plan, they may get the balance from ratepayers. It is necessary to allow this because of RCW 70.95N.280(6).

Subsection 400(5) directs the authority to "…compensate registered collectors, in "in compliance" status, for the reasonable costs associated with collection of CEPs…". Subsection 400(6) requires that a written agreement exist between the authority and premium and curbside service providers spelling out the negotiated compensation that will be paid, as you suggest.

These provisions were created to protect both the interests of the service providers and the authority or authorized parties in order to assure that reasonable (market based) compensation is provided.

Comment #448

Second, SPU has reviewed the draft document Environmentally Sound Management and Performance Standards for Direct Processors, prepared by DOE. We disagree with the two tiered approach that creates minimum performance standards based on the draft regulations in section 173-900-650 and preferred standards left optional in a separate document. We believe that when it comes to protection to our environment, there aren't two options. Only one. The best available research proven management practices. Because of that, we believe DOE should re-draft Section 173-900-650 so that it calls out the best practices as a performance standard for all processors. Particularly with regard to Sections 12 – CEPs and Components Going to Reuse, Section 13, Due Diligence Downstream, and Section 14, Export of the Performance Standards Document.

Thank you for the preparation of the comprehensive draft regulations and thank you for your attention to these issues.

Ecology Response:
Ecology has determined that the elements you are requesting for inclusion in the minimum performance standards are outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred performance standards.

Commenter: Elizabeth Davis, League of Women Voters of Washington

Comment #449

Good Afternoon. My name is Elizabeth Davis, Natural Resources Chair for the League of Women Voters of Washington. The League strongly supported the electronic waste legislation enacted in 2006. We are here today continuing this support. We commend Department of Ecology for bringing forward for public review these proposed implementation rules. Following upon Leagues many studies of solid and hazardous waste issues, our position statements for

action have long supported laws and programs that reduce and prevent exposures to hazardous materials, as well as those that fall under the general rubric of reduce, reuse and recycle. While we thing the proposed rules are very good overall, there are some areas that need additions and/or strengthening. And, I will comment on only two at this time. First, compliance with the rules and standards should apply to all entities that handle the e-waste brought to the recycling centers and not just to those entities who first receive these materials. Let us not lose sight of the main goal here – to prevent toxic substances contained e-waste from harming animals, people, air and land, water. It makes no sense to stop this responsibility after the first handler.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Comment #450

Second, there is the matter of transparency. The League, and I as a consumer of electronics want to know where our e-waste ends up. We already know how much of this waste ends up in other countries. And, is processed in ways that disregard the adverse health effects of processing these toxic components on the people doing the work. While there is little, if anything, that we can do to change or enforce the laws of other countries, we can let some sunshine in through our transparent reporting system here. Specifically, we can require the annual reports from processors from first to last to state the destination of the e-waste sent on by that processor. We have a pretty good idea of how e-waste is handled both here and in other countries. E-waste processors have a choice of where to send this material for reuse or further processing. Our rules should promote professional handlers who follow appropriate safety and health standards. We must not allow our e-waste to harm people or the environment, here or abroad. Such transparency and public discourse policy making and rule making is essential.

Thank you for the opportunity to speak today, and I will submit written comments later.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this, and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. This information will be available to the public when annual reports are published on the Ecology website.

Commenter: Dave Peters, Kitsap County Recycling Coordinator

Comment #451

I'm Dave Peters, Kitsap County's Recycling Coordinator. First off, I'd like to say that Kitsap County supports Department of Ecology's proposed revision of the Electronic Product Recycling program, WAC 173-900. Think you've done a good job on it. I have two specific comments.

One is on WAC 173-900 – 335 Subparagraph 2 currently provides service in each city or town with a population of 10,000 or greater. This describes two of our cities, Bainbridge and Bremerton. We also have an unincorporated urban growth area, Silverdale, which meets this definition in terms of population, but it may not meet the definition of city or town. Therefore, we would suggest to revise the language to say provide service in each city, town or unincorporated urban area with a population of 10,000 or greater.

Ecology Response:
RCW 70.95N was explicitly clear about the service levels that were required. The law was silent on issues related to urban growth areas and did not mention the Growth Management Act. We can not make the recommended change.

Comment #452

Second comment has to do with minimum performance standards and the preferred performance standards. We believe that the proposed minimum performance standards can and should be significantly strengthened. We're – I'm not going to take more time to repeat what you've heard from the preceding people. I will just submit it in writing in the interest of time.

Thank you very much.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Commenter: Zeke Adams

Comment #453

Hello, my name is Zeke Adams. I'm here with Interconnection. Due to lack of information on my part, my comment is a lot shorter than it was originally going to be. But, I would mainly just like to add that a lot of laws get put into effect without proper – without making it so that it's all worded properly, so that there's lots of loopholes afterwards. And, I would just like to state that it would be great if this could be very clearly, very – I just don't want there to be a bunch of confusion that ends up screwing us over later on very badly, because we just overlooked a few words, or something like that. And, really, that's the only comment I would like to add, because of lack of information on my part. Thank you for your time.

Ecology Response:
Thank you for your comments!

Commenter: Houda Smith

Comment #454

Thank you for making sure that computers are properly recycled after the end of their life. My name is Houda Smith and I am a volunteer and a student at Interconnections, which is the computer reuse learning center. Many Pentium 3s and Pentium 4s that go to recycle are not at the end of their life. These computers can be used to teach students like myself in hardware component recognition testing and refurbishing. Refurbished computers can be used by many underserved communities, locally and globally. Reuse is a more desired option according to the universally accepted waste management hierarchy than recycling. So, why is reuse not recommended in this law? Thank you for taking these comments into consideration.

Ecology Response:
RCW 70.95N Electronic Product Recycling is a recycling law. The law does not preclude reuse. It was determined during the process of developing the law that the reuse market did not need intervention by the state. Reuse, particularly of computers, would go on.

By definition of reuse in the rule, the CEPs and components must be fully functional (with same purpose as at the original purchase). Non-functional CEPs can not be shipped for reuse.

Nothing in this rule precludes education and training programs.

Disassembling and selling metal bearing parts is recycling and would fall under the rules governing processors. Disassembling and removing parts for reuse would also fall under the rules governing processors.

Commenter: Colleen Robertson, Digital Bridge Technology Academy

Comment #455

My name is Colleen Robertson. I am a teacher with Digital Bridge Technology Academy, and this summer we're housed at Interconnection. We are involved with Interconnection in many ways. We conduct classes in hardware and software and use the donated and machines that are brought in to be refurbished and reused as a teaching tool. Those machines, after a certain number of volunteer hours are given not only to the volunteers that are working on the floor, but also shipped abroad to other countries. I'm sure you are aware, but, we are concerned at Interconnections that it will no longer exist after this plan is put into effect because of the monetary disincentive for manufacturers to encourage reuse. Since reuse is higher on the hierarchy, as Houda mentioned, it should be encouraged, not discouraged. Some collectors will reuse computers, but companies and individuals are not being given any incentive to use these collectors through this law.

Thank you for hearing my comments.

Ecology Response:
RCW 70.95N.200 provided an incentive for reuse by non-profit organizations that sold donations at retail. It gave those plans that used the non-profits as collectors a 5% credit over the amount that was collected by the non-profits. That is the extent of the incentive provided in the law. Ecology can not go beyond the authority it was provided in the law when writing the rule.

Commenter: Chris Luboff

Comment #456

Well, everyone knows that I am Chris Luboff. And, I'm here today as a private citizen. And, I'd like to add my thanks to everybody including DOE for all the hard work they've done on this process. I've been following the electronic recycling legislation and the rulemaking closely as a former solid waste planner for the City of Seattle and also as a board member of the Washington Toxics Coalition. But, also, especially as a citizen, who has several old computers and TVs in their basement. I'm very careful with the products that I buy. I'm careful with what I do with them when I throw them away. And, I really care what happens to my computer when I get rid of it. I don't want it to cause pollution or to harm people here or anywhere else throughout the process of recycling and disposal. I think that Washington's electronic recycling law represents a really exciting model of a new paradigm for solid waste management. And, I looked back, when I was thinking about these regulations and I was remembering that some of the impetus for this law, the original legislation, were the heartbreaking stories about electronics going overseas, and causing harm and pollution over there.

And, it seems to me that an important intention of the law was to make sure that that wouldn't continue to happen…that we Washington State Citizens when we get rid of our computers can be assured that wherever they go throughout the process, they will not be causing harm. And, so I wanted to make 3 points related to strengthening the rules to assure this intention is met. First of all, it is confusing but I realize now that direct processors are those that have the first – who have an actual contract with the plan. And that they are required to meet certain minimum standards wherever they are located, whether they are in Washington, whether they are out of state or whether they are in another country. I'm also aware that Washington processors must comply with the state dangerous waste regulations, because they are in the state. But, that those dangerous waster regulations are not specifically included in the minimum requirements. And so, I think in the interest of both fairness for our state processors and for safe handling in general, I'd like to see the standards in the Washington state dangerous waste regulations apply to out of state and off-shore processors – direct processors, as well. And, of course that particularly applies to the "materials of concern," the batteries, the mercury containing devices, the circuit boards and the leaded glass.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #457

Secondly, and I know we just talked about this a little bit, as you mentioned, direct processors are just the first in a potential chain of secondary and tertiary processors of downstream vendors. I think that is really important that we, as citizens, can be sure when we discard our computers, they are handled properly all the way through. Not just by the first processor but by anybody else downstream. I would like the rule to establish some specific requirements that would assure that manufacturers and direct processors choose their downstream vendors very carefully, so that materials are handled properly and safely. And, I heard what you said about not being able to use third parties to enforce Washington laws, but I'm sure there must be some language that could be included in the regulations that the direct processors would have to comply with, that they would have to ensure that their downstream vendors are acting properly. And, documenting that. And then, lastly, as a citizen I feel that I have a right to know that this is happening. I am pleased with the proposed requirement that plans made public how and where electronics are recycled as far as direct processors are concerned, but I am worried about the secondary and tertiary downstream vendor issue and what is happening. It seems to me that the way it's written currently we could end up with exactly the same situation that we've already had in the past with places in China or Nigeria or wherever else being polluted from our computers.

This is pretty groundbreaking legislation. We've all read all these articles in the papers about "hey, it's going to be safe to dispose of your computer now." We have certain expectations as citizens when our computers go into this system and to have inconsistent standards or standards that only apply to part of the whole chain from beginning to end, I think, is somewhat deceptive. So, I hope the final rules will make sure that our electronics are safely handled all the way through. Thank you again for all your hard work and for the opportunity to comment.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Commenter: Sego Jackson, Snohomish County Solid Waste Management Division

Comment #458

Hi, I'm Sego Jackson. Principle planner with Snohomish County Solid Waste Management Division, and first of all, I would really like to acknowledge and thank all the Ecology staff, especially Jay and Bari for your diligent work on this. I know that it has been very trying and it will pay off because this is so important to us throughout the state of Washington. As you know, everyone across the country is watching our process, and how it plays out, too. So, it really has very important national significance. I'll be very brief, because you'll get very detailed comments from Snohomish County Solid Waste Management Division sometime tonight, because I'm going on vacation. But basically, I'd like to say (yeah, getting out a week early). I very much concur with the comments you heard from Jeff Gaisford in King County and we've been working very closely with King County in developing our analysis of the rules and our comments.

I do want to use this opportunity to highlight our concern about the premium service definition. The proposed definition of premium service has been changed from the definition in the legislation to add the phrase "or any handling imposed by the CEP owner or collector in excess of those required in this chapter. We need to do more analysis on this, but it appears to us that this phrase really creates a potentially unworkable situation for collectors and could undermine service relationships between various parties. There are numerous reasons, logistical, legal and to avoid liability in which collectors could reasonably need to handle CEPs in a way that are not specifically required and described in the rules and the legislation. So, I'll give you some more details on that in writing, but it is a concern. Based upon what I've heard today, and heard from the Yakima conversation that happened that people were there for that hearing, perhaps it does work to include the language or any handling requirements imposed by the CEP owner (period). And drop the rest of it. But, again, we're not really sure of what all the implications are, and are concerned.

Ecology Response:
Ecology will delete "or collector" from the definition as this addition does not improve clarification of "premium service." However, "…CEP owner …in excess…" will remain. This clarifies that added services outside of basic collection are not included as a free service and must be paid for by the covered entity. Ecology will also change "CEP owner" to "covered entity" for consistency.

Comment #459

The other thing, as you know, you've heard from Snohomish County repeatedly and we'll say again here and in our write-up and will continue through the establishment of the system, is we're extremely concerned about the processing standards and how materials are handled all the way through the process. And, we really want the state to do anything possible through the rules and through the legislation to be protective of human health and the environment here and anywhere else where these materials go.

Ecology Response:
The rule requires that collectors post information telling covered entities "how and where" CEPs are recycled and where residuals – wastes – are disposed. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #460

And, we strongly urge you to do due diligence required by the plans, not only for their primary processors but for all the downstream processors as well.

Ecology Response:
Ecology has determined that this element is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred performance standards.

Comment #461

So, I'll conclude with that, and thank you again for this opportunity.

Ecology Response:
Thank you for your comment!

Commenter: Charles Brennick, InterConnections

Comment #462

My name is Charles Brennick. I'm the Director of Interconnection. Some of the people who were here today were some of Interconnection's volunteers and some of the students who volunteer at our center. First, I realize that this law wasn't set up to pay for reuse, nor should it pay for reuse. However, the law could have provided more incentive for reuse or could have required reuse. Since it does not require reuse or provided adequate incentive for reuse, the law does not do as much as it could to protect the environment and natural resources. And, it'll also decrease the number of computers available for reuse, especially to charitable organizations like Interconnection, and I believe that the law does not provide incentive nor requirements for reuse is a serious flaw.

Regarding environmental impact of this law not requiring reuse – for example, one computer with a CRT monitor saves 147 pounds of water from being polluted, 32 tons from being polluted, 1300 pounds of CO2 being emitted, and 7000 kilowatts of energy, according to the EPA, Environmental Protection Agency. Interconnection reuses about 1000 computers a month, so just imagine the green aspect of reuse if more reuse was incentivized. Because this law basically facilitates recycling and makes it easier for people to recycle rather than reuse, first it will take a lot more used computers off the market and consumers will be encouraged to basically buy more equipment, which will result in the use of more natural resources and also obviously create more electronic waste, continuing the electronic waste circle. The law should include incentives and requirements for reuse, to be more environmentally friendly.

Ecology Response:
RCW 70.95N.200 provided an incentive for reuse by non-profit organizations that sold donations at retail. It gave those plans that used the non-profits as collectors a 5% credit over the amount that was collected by the non-profits. That is the extent of the incentive provided in the law. Ecology can not go beyond the authority it was provided in the law when writing the rule.

Comment #463

The second issue related to not requiring reuse or providing appropriate incentive for reuse is the fact that there will be less computers for reuse to organizations like Interconnection, which rely on donations and donations from businesses and individuals. As stated by Jay, this is basically a market driven law. Non-profits are – the actions of non profits are not market driven. And, donations of computers are not market driven. So, led to economics, manufacturers will set the price for computers – for the processing of computers, which is obviously going to be a lot less than what the processors make now for their material, so they'll have to make up for the loss of that by processing more equipment. The more equipment they process, the more aggressive they'll be about getting material, the less will be available for computer reuse organization.

You can take for example, in California, where they've had a law similar but not the same on the books for a couple of years, the law down there, the fact that material – whether it's a Pentium 1, a Pentium 3, new monitor, old monitor, are all valued the same, just as it is here. It's all given the same value. Down there, there's various non profit organizations dealing in reuse that have stated that the law's been a disaster for reuse, such as Compumentor, which is the nation's computer reuse organization. And I foresee a similar situation here in Washington State, where this law will basically be a disaster for charitable reuse.

Also, regarding the percent share, as Jay put it, once again, this will be something that will encourage the processors to grab as much material as possible. Each – as you know – each plan will have to meet certain quotas. If they don't meet those quotas, they'll have to pay

another plan. So this will be another situation where there will be this aggressive environment where processors will be out there trying to get as much material as possible. Again, they won't care if it's working or not, whether it's good, reusable material or not. They'll just want to get it, once again, to meet their certain quotas to keep their business profitable. So, if the law provided more incentive for reuse, it would do something to help ensure that there'll be more computers available for charitable organizations. Thank you.

Ecology Response:
Please see previous comment.

Commenter: Viki Sonntag

Comment #464

Good Afternoon. My name is Viki Sonntag and I'm a PhD Economist focusing on the development of sustainable production and consumption system.

Thank you for this opportunity to comment on the proposed rules. I, too appreciate the time and effort that Ecology is putting in to developing strong rules that will serve to protect workers, communities and environment. I am here to testify today because I believe it's imperative to care for the health and safety of the people of the planet by making sustainability the first principle in the organization of our production and consumption systems. Washington State's groundbreaking electronic product recycling system is an opportunity to show what we can do to exercise this care as responsible citizens and policy makers. As an economist, I can also say that a program that assures responsibility for the proper recycling and, I would add, reuse of discarded electronic products makes abundant economic sense, as well. For these reasons, I strongly encourage you to consider strengthening the proposed rules to make sure that the system provides for the following:

…in its environmental and health protections is ours. Transparency is a must for making informed choices. Without such information, product price rules with all the negative consequences that come from recycling as cheaply as possible. Manufacturers should be required to provide consumers information on where and how their products are recycled or reused, and this information should be disseminated. In a number of ways beyond the posting of the facilities where the recycling is done.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #465

Secondly, there should be strong performance standards for recycling of toxic materials, and I think this point has been made a number of times. And, I would say that the inclusion of such standards should the case regardless of where the processor is located. Effective management is by far the most economic way to ensure health and safety.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #466

And, the third point I would like to make has also been made before, but I would speak to it as system accountability. I don't believe that the responsibility ends when you pay someone else to do the recycling for you. We need system accountability so that the problems we are trying to solve here in Washington State are not displaced someplace else. The rules should mandate that manufacturers and direct processors perform due diligence in choosing their recyclers for materials of concern. The existence of minimum requirements implies that the state can impose requirements of processors, and I believe that doing due diligence should be a part of those minimum requirements.

Thank you for taking these comments into consideration. Washington citizens and the recycling industry workers wherever they live deserve the protection that stronger rules will provide.

Thanks.

Ecology Response:
Ecology has determined that requiring due diligence is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Commenter: Eimear O'Neill, InterConnection

Comment #467

Hi. My name is Eimear O'Neill. I'm a development specialist at Interconnection. Today I just want to thank you for your good work that you are doing to make sure that electronics in Washington State are being properly recycled at the END of their life stage. And, I feel strongly that this law should provide attractive and significant incentives to collectors and processors who separate non end of life Pentium 3s and 4s that are fit for reuse. There is no reason to recycle computers instead of reusing it in this instance when there is a real need for reuse computers among our most needy in this community and in communities abroad. Especially in the underserved communities in developing countries that are served by non-profit organizations, non-government organizations and the like. My question today is that since reuse is on a higher level, as we now know on the waste management hierarchy, than recycling, why is reuse not a requirement as opposed to passive requests in this law? I impeach *(Note: verbal comment difficult to understand)* that it is strengthened in this law and given some incentive to the collectors or processors or at least give the person who is donating the computer or giving the computer to the collectors more educated choice. So they know – or

they're given a choice if they can reuse it, put it to reuse, or put it to recycle. So, I impeach *(Note: verbal comment difficult to understand)* that there is a great awareness campaign to enforce this law.
Thank you for taking these comments into consideration as you strengthen our new electronic – great electronic products recycling program. Thank you very much.

Ecology Response:
RCW 70.95N.200 provided an incentive for reuse by non-profit organizations that sold donations at retail. It gave those plans that used the non-profits as collectors a 5% credit over the amount that was collected by the non-profits. That is the extent of the incentive provided in the law. Ecology can not go beyond the authority it was provided in the law when writing the rule.

Commenter: Paul Stern

Comment #468

Thank you.

My name is Paul Stern. I am a private citizen and I'm also a volunteer with Interconnection. And, my purpose in coming here is to encourage you to provide incentives to organizations like Interconnections, which are essentially non profit organizations who are devoted to reusing material prior to recycling. I think I can draw a connection between what goes on at the reusable organization like that and what's going on in the building industry right now. We find that instead of bulldozing buildings to the ground and sending them off to the dump, we're taking them apart piece by piece and salvaging the materials that are in there, the wood, the nails, the bricks…for possible reuse. My perspective on this process is somewhat limited, because, as I say, I am a private citizen, I'm a volunteer, and I haven't had the opportunity to get all of the technical details that I've heard today, which I appreciate. And, I commend you on the thoroughness with which you've done all this, but in our zeal to save the environment, it would be very sad if, in doing that, we disincentivized the idea of reuse of these electronic products. And, my personal observation of what has been done is that rather than taking the material and dumping it into some furnace, or whatever other process is used, prior to doing that it is disassembled into its various components. So that the copper that's in the wire is separated from the steel that's in the case and from the gold that's in the processor and from the plastic that's in the case and so that doing this piecemeal separation is much better than trying to dump it all at once and send it up in smoke. Additionally, there is the social implications that an organization that can provide in my observation has been…and I've been volunteering for three years now…is that the people who come in here and do that are given an opportunity that they would not have anywhere else. In my own experience, I was an engineer, and for 40 years I've been using machines and never had the opportunity to get inside until I did that. And what I've learned has been of immense value to me. I see students coming in from the schools who have had an opportunity for the first time to get hands on opportunities to take a machine apart and find out how it works. I've seen people coming in with disabilities, who've been given an opportunity to do this sort of work. In addition, when the machines are reused, they go abroad to virtually every third world country. And that, since it goes to non-profit organizations there, it buys good will for the United States. And so, while I understand that you are dealing with trying to obtain the most efficient and low cost processes of recycling, there are other considerations here and there should be some consideration in the law to provide incentives for people who are getting rid of their machines and as well as the manufacturers to keep organizations – the non-profit organizations- that stress reuse and provide them with some incentive to keep that going. Thank you for the opportunity to make this statement.

Ecology Response:
RCW 70.95N.200 provided an incentive for reuse by non-profit organizations that sold donations at retail. It gave those plans that used the non-profits as collectors a 5% credit over the amount that was collected by the non-profits. That is the extent of the incentive provided in the law. Ecology can not go beyond the authority it was provided in the law when writing the rule.

Commenter: Suellen Mele, Washington Citizens for Resource Conservation

Comment #469

Good Afternoon. I'm Suellen Mele, and I'm with Washington Citizens for Resource Conservation. And, I also want to start my comments by thanking the Department of Ecology for how much attention and hard work you've put into these rules. When I look back on the process Jay, I counted 5 opportunities to write written comments, not just 4 over the last number of months on the advisory panel. And, each time, the rules came out improved, listening to those comments. So, I really thank you for what you've done so far. And, also need to ask you to stay diligent this one last round and to make additional improvements, because the processing standards are so different in this round than what we've seen the last time around. There are a number of improvements that I think need to be made so that they are stronger. You've heard many of them so far.

The standards themselves, the minimum standards need to be higher so that they provide at least the protections that are in the current dangerous waste regs here in the state, also applied to any direct processors that are out of state, and they also need to keep toxic substances from being disposed in solid waste facilities. Again, whether that's here or out of the state.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #470

And, we really believe that the manufacturers and direct processors perform due diligence in choosing their vendors for toxic materials of concern, and that those vendors protect the health of the environment and of human health when they're doing their work with the toxic material. And, I totally understand that there are gray areas in this in terms of Ecology's authority and reach, and I would like to suggest that this is an area that needs further exploration with the AG's office and to figure out how to make it happen, how to get the right language so that we can ensure that we are not hurting people downstream. We really ask that Ecology step forward on this and figure this one out.

Ecology Response:
Ecology has determined that requiring due diligence is outside the scope of Ecology's authority to enforce and therefore must remain voluntary within the preferred standards.

Comment #471

And, finally, the transparency is a really important piece, which you've heard from a number of other people.

I have one specific comment I want to make. I realized in the Q&A section that the rules talk about confirming that the direct processor meets each of the standards as the audit report is happening. The law says documentation that they're meeting those standards. I think that there could be a big difference in the word document and confirm. I think Ecology needs more than just a checklist of yes or no….were the standards met via the audit, and more documentation that they really are being met. I think you need that information to know whether processors are meeting the minimum or the preferred standards.

Ecology Response:
"Confirmation" will be deleted and "documentation" will be added in order to match the requirement in the law. The rule now requires that the audit include "Documentation that the direct processor meets each of the performance standards including a list of all applicable national, state, and local laws, rules, and ordinances related to processing activities". However, if a plan is submitted with proprietary and financial information, and the procedures for submitting proprietary and financial information are met, then that information will not be available for public disclosure. Please see WAC 173-900-365(9).

Comment #472

I'll be sending more detailed comments on that, but I wanted to end – I really wanted to step back to why we are all doing this. And, that is why I brought that photo of a young woman who is dismantling equipment in really a very dangerous and unsafe way. I started doing this work about 4 years ago and I was at a press conference and I looked up and I saw that photo. I was sitting in the middle of that press conference thinking "this is why I'm doing this work…it's for her, it's for her community, it's for the environment that she's living in." Which is also my environment. And, I'm connected with her, because any of the equipment, the computers and TVs that I'm using in my house and my work could end up going to her if the standards and the regulations are not strong enough. And, I don't want my toxics hurting her or her kids or her water system. I don't want my toxics hurting myself or my family or my water system, either. So, wherever the processor is located, we really want to make sure that the standards are strong and protective. Ecology, I think, has a responsibility to do that, but I also think you have this great opportunity. The law is progressive and groundbreaking and I think we have the opportunity to make the rules also very progressive here, and ask that you do that. I thank you again for all your work, and will submit more detailed comments.

Ecology Response:
Thank you for your comment!

Commenter: Margaret Shield, Toxic Free Legacy Coalition of Washington State

Comment #473

Good afternoon. My name is Margaret Shield. I'm the coordinator of the Toxic Free Legacy Coalition of Washington State. And, I would also like to add my thanks to all of the Ecology staff who've worked so hard on this complex issue for so many months. The Toxic Free Legacy

Coalition is an alliance of health, environmental, faith, civic and community organizations in Washington who work together to eliminate our exposure to toxic chemicals and promote safer alternatives. Many of the organizations in our coalition work to enact our e-waste law and we're following this rules development process closely to ensure that the many toxic components of electronics are handled responsibly.

I'd like to take a minute today to describe a letter that we will be submitting by the end of the August 30th comment period that describes some key safeguards that we feel need to be included in the proposed mandatory minimum standards to truly protect our health and our environment and to achieve the intent of this law. Many of these points have been reiterated by other members of these organizations who've spoken already today, so I'll be brief. But, we do feel strongly that there need to be mandatory performance standards for handling the toxics that must be at least as strong as Washington's dangerous waste regulations. And that those strong standards need to apply to any vendor, any processor, any contractor in this program.
We also want to ensure that materials such as plastics are handled appropriately and that recycling is not sidestepped. It is really critical that plastics, which contain a complex chemical mixture are not sent directly to smelters or incinerators, not even for the purposes of energy utilization or recovery. The potential harm to our public health and environment from burning plastics is just too high. It's critical, too, to meet the intent of the law and the goal of the citizens who supported this law that we ensure that the language is tightened so that all manufacturers and processors comply with the standards and with import laws of other countries.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Comment #474

And then finally, transparency is critical. Consumers need to know and have a right to know how they're computers, monitors and TVs are being recycled and handled. And again, this is critical to achieving the intent of the law. So, we'll be submitting this letter by the end of the comment period, and I'd just like to read the list of the 17 organizations that have signed on thus far in support of strengthening these mandatory standards.

Ecology Response:
Ecology believes that in WAC 173-900-300(2)(c) "how and where" includes this and therefore it is not necessary to change the language. Materials of concern would be included in the information about CEPs that are recycled. All residuals must be disposed of at compliant facilities as required in the performance standards section for processors WAC 173-900-650. It is unnecessary to require posting of those locations at collection facilities. Additionally, this information will be available to the public when annual reports are published on the Ecology website.

Comment #475

The Washington Toxics Coalition
Earth Ministry
Washington Environmental Council

Washington Physicians for Social Responsibility
Resources for Sustainable Communities
Basel Action Network
Coalition for Environmentally Safe Schools
Cattle Range Conservation Group
League of Women Voters of Washington
People for Puget Sound
Washington Citizens for Resource Conservation
The Lutheran Public Policy Office of Washington State
Sightline
Environment Washington
WashPirg
The Washington State Nurses' Association
The Washington State Association of Occupational Health Nurses
The Breast Cancer Fund

Thank you for this time.

Ecology Response:
Thank you for your comment!

Commenter: Heather Trim, People for Puget Sound

Comment #476

Thank you. My name is Heather Trim. I'm with People for Puget Sound
And, we are one of the groups that is a member of the Toxic Free Legacy Coalition, which Margaret was just discussing, and we're also one of the groups that signed on to the letter. The one that you're receiving now…you're going to receive another letter. I am not going to reiterate all of the points that people have made, because I basically agree with almost every comment that's been made before. But, I do want to talk about two specific things and ask that two things be considered.

One is the issue of plastics going to incinerators and smelters. I have done some work with the mining industry and I know that the technology exists to do incredible separation of materials, both chemically and physically in terms of separation. And so, I agree with Mo that that word "economically" feasible could be removed for that particular issue, because the technology really is so far advanced in terms of being able to separate plastics out and ensure the plastics are not being basically incinerated or smelted.

Ecology Response:
Agree. The language has been changed. Please see edits. RCW 70.95N is a recycling law. The rule requires that all materials derived from CEPs be recycled. Only "residuals" – by-pass wastes – may be disposed. Incineration and energy recovery are not recycling. Only metal bearing materials derived from CEPs should be sent to smelters.

Not until a material becomes a waste and is then designated as hazardous does it come under the purview of the hazardous waste regulations. When a material designates as a hazardous waste, the full force of the state's dangerous waste regulations and national hazardous waste regulations come into effect.

Comment #477

The second thing I wanted to discuss is this issue of the exporting of our problem to other folks, and the due diligence for the direct processor. In the clean water act, in the water world, you have the pre-treatment program, which is where a third party is having to enforce the law. And, I'm sure there is lots of angst in terms of working that out in the first place, and they probably said no, no, we can't enforce that law. Why are you making us do this? Now, it's a little bit of a different situation, because that's going into their own facility. However, it is a third party enforcing the clean water act. And, it seems like there should be a way to make the wording work so you can have some responsibility there on their part. Thank you very much.

Ecology Response:
RCW 70.95N.250 requires that Ecology establish performance standards for direct processors. The authority and each authorized party are required to ensure that each processor is used directly to fulfill the requirements of the plans. The processors must provide the authority or the authorized party a written statement of compliance with the direct processor's performance standards. The performance standards are the minimum standards that processors must meet and are within the authority of Ecology to enforce. Ecology has established preferred performance standards that include due diligence be exercised in selecting downstream processors. These standards will ensure that all materials generated from recycling of CEPs are handled in an environmentally sound manner.

Commenter: Scott Ballantine, Microsoft

Comment #478

My name is Scott Ballantine and I work at Microsoft. And, I'm a packaging engineer there. And, I coincidentally found out about this from a recycler whom I met down in Oregon who happened to come up here for this event and told me about it. I'm glad that I came here, 'cause it was encouraging to listen to the people and their comments about the law and the work you're doing. I'm encouraged that the law that you're working on and the laws that Oregon has done show leadership in this area, on the environmental impacts. I wanted to share a few things on some of the things that I've been working on on behalf of Microsoft with organizations like the Sustainable Packaging Coalition, which is made up of several companies throughout the whole value chain on all types of products and we're all working collectively. We've developed a common vision of how to approach sustainability and try to drive incentives on getting the most value out of materials, following the cradle to cradle concept of things. And, bringing that into this world for electronic products, I see that there's a lot of opportunities, there's a lot of talk about how do we get the most value out of a PC for the most amount of time, by re-deploying it, reusing it and then eventually recycling that material in a positive way to get it back into the stream. We have programs like the commercial refurbisher programs that we do to partner up refurbished materials and I would encourage you guys to develop incentives or processes to streamline the movement of materials from end users to people that can redeploy, reuse these things or to recyclers that can bring that material back into the channel for us to make more things out of them in some way or do positive things with those materials as opposed to generating waste with them. When talking about plastics, I saw a lot of people talking about the encouragement of the use of recycled plastics and things. I think that goes a little further in that having the people that make the stuff drive recycled content into their products. I developed a package for Microsoft made out of recycled Coke bottles, for example. Perhaps there's a day where we'll make computers out of used computers more in the plastics side. The other part is also not to forget about the use of biodegradable plastics. And, finding the right place for those. We're working on that in some of our software packaging. There could be opportunities in products, also. So, remember that in the laws. If there would be an incentive for that or not. Obviously we want to do that in a way that doesn't negatively impact the recyclers and the end

of lifers or the beginning of lifers, as the way I like to look at it in the cradle to cradle world. I would encourage us all to leverage technology. Microsoft is all about…our mission is to help people and businesses realize their potential and with the Sustainable Packaging Coalition I've helped use our tools to get people to collaborate around the world. I've worked with people in Vienna all the way to China about some of these issues and perhaps we can work with you guys in the collecting streams and transport streams around here in the same way...share what we know here and work together within the state and share between states and extend beyond that, because this is not a regional or local issue. This is a global matter, and I think we're all working together on it. As far as the infrastructure of the collectors and the transporters, I would encourage everyone to work together to effectively recover and minimize negative impacts of things when they are collected and extend the value of them, collaborate to drive positive ways to get this stuff moved in an expedient way where it makes sense and have traceability. I heard a lot of talk today from people concerned about things going from point A to point B and they seem to disappear. We've talked a lot about in the Packaging Coalition, trying to map how can I turn a shampoo bottle into a DVD case which turns into something else. Type LifeCycle Flowing – the paper industry's done a lot of that work, and maybe we can learn from that in the electronics industry. And, again, I'd just like to say Thank You for what you guys are doing, and we're here to help. I'd like to let you know that we're part of the solution and we're here to help. Thank you.

Ecology Response:
Thank you for your comments!

Ecology also received 47 emails that made the same points as the comments 225 – 229 above with some slight rewording and additional content. Below are comments from three of those emails.

For the portions of these comments where the content is identical to the comments in 225 – 229 please see the response to comments 225-229.

Commenter: Sue Danver

Comment #479

-I am chemically sensitive to computers. I believe it is the flame retardants. I advocate for recycling.

Ecology Response:
Thank you for your comment!

Commenter: James Boone

Comment # 480

Please make sure that when I drop off a computer or TV for recycling that it's not going to cause more pollution in the world.

Ecology Response:
Thank you for your comment!

Comment #481

Thank you for considering my comments.

Ecology Response:
Thank you for your comment!

Commenter: Annalee F. Cobbett, J.D.

Comment #482

Thank you for making sure that electronics in Washington State are recycled in a way that protects the environment and human health.

Going forward, I want to drop off a computer or TV for so that it does not cause more pollution anywhere else: in my neighborhood, outside of the state, or another country.

Ecology Response:
Thank you for your comment!

Comment #483

I appreciate your diligent efforts on behalf of electronics recycling so far. I am proud to live in a State that is taking leadership and ownership of recycling cradle-to-grave products.

Ecology Response:
Thank you for your comment!

IV. Summary of Public Involvement Opportunities

Appendix B contains copies of public notices and newspaper announcements.

The Electronic Product Recycling Advisory Panel was established in May 2006 for phase one of this rule development. The purpose of the panel was to provide an opportunity for stakeholders to provide informal input on the rule language. Two meetings of the advisory panel were held on June 6 and June 22, 2006. Members represented manufacturers, retailers, local government, the environmental community and the recycling industry. This panel was expanded adding new members for phase two of the rule development process.

The phase two rule development panel met five times; September 27, 2006, November 15, 2006, December 13, 2006, January 16, 2007 and May 15, 2007. The panel reviewed five versions of draft rule language and provided input to each.

All meetings were open to interested parties.

A listserv was established to provide interested parties current information on rule development.

Frequent e-mail updates were sent.

- Multiple presentations were made to the State Solid Waste Advisory Committee and to local government recycling coordinators and to other interested parties.

A web site was established and regularly updated providing current information on the rule-making process and electronics recycling in Washington, in general.

The draft rule was published in the Washington State Register on July 12, 2007.

Public hearings were held as follows:

August 21, 2007 in Yakima, Washington
August 23, 2007 in Bellevue, Washington

Hearings notices were sent out to about 800 mailing addresses and to 1,900 email addresses.

A news release was sent out at the beginning of the public comment period to all new media within the state. Another news release will be issued after adoption.

Public notices were placed in the following newspapers:

The Seattle Times, Seattle, Washington
The Daily Journal of Commerce, Seattle, Washington
The Yakima Herald Republic, Yakima, Washington

Appendix A

Ecology received 458 comment emails with identical content. This appendix contains a list of the people who submitted this comment.

RECYCLE ELECTRONICS RESPONSIBLY
Email Commenters

Ecology received 458 comment emails with identical content.
Below is the list of the people who submitted this comment.

FIRST	LAST NAME
Margaret	Allman
Thomas	Wettengel
Marguerite	Winkel
Michael	Shook
Goldie	Caughlan
Chris	Stay
Patricia	Murphy
Nisha	Dawson
Gail	Alexander
John	Reinke
John	Lange
Robert	Kayl
Bernadette	Henzi
Deven	Murti
June	MacArthur
Laura	Huddleston
David H.	Jones
Nancy	Horman
Nancy	Dahlberg
Linda	Johnson
Stonewall	Bird
Susan	Kraber
Melodie	Martin
Pam	Jenkins
Bobbi	Hickox
Beverly	Brown
Gideon	Rosenblatt
Lora	Mason
Jo	Yount
Julie Ann	Dakin
Stephanie	Austin
Stephanie	Colony
Steve	Aslanian
Gerry	Milliken
Raymond	Philen
Quentin	Kreuter
Melissa	Teppo
Peter	Chiu
Bill	DeMartini
Sara	Rosenbloom
Zandra	Saez
Tina	Peterson

Andrea	Faste
Michael	Campbell
Sandra	Thompson
Robert	Masonis
Kim	Pendergrass
Susanne	Ohrvik
Megan	Zusne
William	Peters
Carol	Watts
Ranell	Nystrom
Mary	Miller
Elizabeth	Davis
Hal B.	Larson
Dance	Smith
Genevieve	Vayda
Linda	York
Scott	Otterson
Thomas	Cox
Carol	Poole
Marilyn	Stoknes
Sheri	Feld
Anna	Larimore
Gary	Bailey
Sam	Garst
Michael	Lummio
Rebecca	Wolfe
Diane	Shaughnessy
David	Griffin
Patricia	Warden
Caitlin	Collins
Donna	Show
Penny	Lorenz
Diane	Anderson
John	Lytle
Margot	Blacker
Gayle	Lange
Joe	Evans
Richard	Wertz
Peter	Roth
Antonia	Potter
Susan	Riedel
David	Habib
Patricia	Simon
MaryLou	Spence
David	Gackenbach
Monica	Johnson
Patricia	Tomlin
Kevin	Head
Darlene	Schanfald
Nancy	Cleminshaw
Kim	Plumis
Jeanne	Ryan

Karen	Uffelman
Gerald	Steel
Laila	Atallah
Leonard	Rifas
William	Howald
Gena	DiLabio
Walter	Jorgensen
Annapoorne	Colangelo
Anne	Rosenfeld
Janet	Colli
Brooke	Bell
Laura and Paul	Spehar
Angie	Johnson
Victoria	Davis
Richard	Kost
Paula Kathleen	Dawson
Steve and Sybil	Kohl
Larry	Franks
Luanne	Pasik
Scott	Highleyman
George	Heidorn
Jon	Morgan
Irene	Besinger
Ashley	Harris
John	Warner
Shawna	Sherman
Janet	Hansen
Marie	Weis
Nikki	Nichols
Catherine	Muller
Sarah	Blum
Dorothy	Swarts
Terri	Lovins
Loren	Bliss
David	Bailey
Karol	Franz
John	Petersen
Seth	Snapp
Lorraine	Hartmann
Todd	Jacobs
Mike	Levreault
Stephen	Matera
Desmond	Machuca
Linda	Johnson
Tracy	Ouellette
Shelley	Aitoro
Kelly	Powers
Elaine	Willey
A.E.	White
Jennifer	Ahina
Darlene	Lang
Laura	Livingston

Jeanne	Snell
Gene	Baker
Robert B.	Kaplan
Charles	Schamberg
Anne	Hankins
Susan	Brett
Jennifer	Eveskcige
Richard	Smith
Karen	Barrett
Karen	Wible
Pat	Collier
Constance	Miller
Gwen	Sarandrea
Kristi	Waddell
Michael	Kostis
Kylie	Loynd
Lynn	Ledgerwood
L.	Golds
L.	Sherwood
Connie	Gallant
F. Virginia	Cowling
Susan	Marett
Tom	Geiger
Laura	Veasey
Sandra	Elder
Valerie	Sammons
Kathryn	Piland
Rita	Moore
Ron and Janet	Nelson
James	Paine
Wendy	Mathews
J.	Harrison
Elizabeth	Gray
Richard	Low
Patricia	Parsley
Kristen	Ragain
Rita	Weikal
Thomas	Proehl
Renee	Such
Michael	O'Brien
Jonathan	Pasley
Arlene	Mikelsons
Seana	Blake
Gary	Blanchard
Linda	Schmid
Anne	Dulfer
JoAnn	Whited
Kerri	Cechovic
Megan	Bott
Erin	Libby
Ruth	Pickering
Irana	Hawkins

Suzanne	Grant
Robert	Meyer
Laura	Ramon
Maria	Butler
Judy	Butler
Vafa	Ghazi
Linda	Thorson
Carol	Beard
Larry L.	Fox
Charles	Bronson
Sarah	Samnick
Patricia	Rodgers
Nathan	Clement
Corina	Logan
Heather	Pearce
Barbara	Wood
KaisaGarr L.	Tavai-Fiatoa Sr.
Kathryn	Dickinson
Dave	Ahlers
Terry B.	Hall
Jeanette	Redmond
Elizabeth	Gross
Douglas	Keller
Larry L.	Brennis
Deb	Blaha
Lori	Carter
Barbara	Bleakley
Kaye	Walker
Julie	Whitacre
Lura	Irish
Marian	Larson
Sarah	Doherty
Linda	Bainbridge
Katherine	Haven
Chris	Meder
Kirk	Heim
Anne Foster	Angelou
Desmond	Machuca
Paula	Grieb
Jean	Downing
Jeffrey	Martin
Brenda	Biernat
Edna J.	Glenn
Diane	Kunkel
Cal	Roberts
Karen	Kelly
Thomas S.	Bayley
Mimi	Maloney
Carmela	Michelil
Brian	Weatherby
Julie	Stormes
Kit	Robinson

Linda	Swan
Nancy	Dean
Peggy	Slider
Susan	Hobbs
Richard	Francisco
Scott	Dungan
Fred	Teixeira
Judith	Carter
Richard	Ellison
Janelle	Olvey
Brendon	Cechovic
Diane	Muir
Deborah	Stuart
Jeremy	Yates
Jeri	Childs
Leah	Eister-Hargrave
Anthony	Draye
Le'ene	Sherwood
John	Ballard
Conrad	Kornmann
Cornell	Amaya
Betsy	Pendergast
John	Schmied
Robert and Elizabeth	Burns
Anne	Mack
Cameron	Karsten
Pennie	O'Grady
Robert and Julia	Kenny Glover
Amber	Stately
Kate	Miller
Rebecca	Buell-Silsbee
Chelsey	DiPasquale-Hunton
Joan	Lawson
Julie	Laidlaw
Diana	Smith
K Louise	Cook
Janna	Rolland
James	McClure
Kara	Whittaker
Pat	Maxwell
Marilyn	Melcher
Allyson	Schrier
Ruth	Tiger
Catherine	Carter
Heather	Grube
Lindsay	Taylor
Daphne	Cuizon
Forest	Shomer
Laurie	Cooper
Ellyn	Sutton
Justin	Taylor
David	Luxem

Angie	Dierdorff
Edward	Hueneke
Paulette	Doulatshahi
Jamie	Jones
BJ	hedahl
Keith	Houser
JoAnne	Gray
Julie	Strandquist
Harrison	Grathwohl
Heidi	Watters
Bob	Bowman
Janet	Allen
Susan	Berta
Ken	Benoit
Stephanie	Belanger
Jennifer	Clark
Kathryn	Drinkard
Richard W	Alexander
Rebecca	Teeters
Vera	Backstrom
Robert	Von Tobel
Mary	Solum
Alex	Lockard
Trina	Blake
Jabe	Blumenthal
Mary	McLoone
Michel	Bellamy
Alicia	Faires
Liane	Newman
Marita	Graube
Myka	Sigrist
Ian	Cox
John	Watson
Gordon	Wood
Sue	Forker
Eric	Madis
Ruth	Lorenz
Katie	Saylor
Melody	Winkle
Paulita	Bernuy
Annette	Seubert
Miyabi	Gladstein
Janice	Ryan
John	Vinson
Cherie	Guzman
Aimee	Erickson
Scott	Fortman
Pam	White
Jean	Pauley
Eldon	Ball
Dung	Nguy
Helen	Mason

Carol	Peterson
Jean	Tapper
Ruth	Wilson
Kimberly	Hallahan
Jim	Dawson
Kim	Figlar-Barnes
Kaija	Compos
Eldon	Francis
Maureen	Newman
Anna	Kramer
Caryn	Woodward
Jerry	Liszak
Mara	Price
Earl	Olsen
Sharol	Hofstedt
Stephanie	Smith
Joe	Ginsburg
Owen	Mir
Margaret	Iuro
Ryan	Misley
Analiese	Burns
Renee	Bourgea
Laura	Geiger
Noel	Angell
Mary	Rausch
Leslie	Geller
James	Montgomery
Ida Mae	Marceau
Susan	Eidenschink
Daniel	Moore
Carolyn	Gregg
Mary	Keeler
Nancy A	Hogan
Jackie	Andrewjeski
Corine	Johnson
Sharon	Parshall
Charlene	Hudon
Marie	Hartford
Bruce	Reed
Dale	Benjamin
Richard	Kennon
Margie	Borchers
Stephanie	Develle
Earlene	Benefield
Melissa	McKay
Bonnie	Sharpe
Nancy	Wickward
Judy	Tralnes
Randall	Post
Louise	Stonington
Nancy	Snow
George	Guenther

Julie	Mayer
Seth	Rolland
Tory	Schram
Dina	Kovarik
Linda	Sheperd
Chris	Chapin
Sally	Vogel
Valeria	Davis
Terry	Triplet
Michelle	Pertl
Julia	Burwell
Debra	Feay
Carla	Saulter
Richard	Sweezey
Sandra	Emerson
Julie	Alaimo
Judith	George
Val	Schroeder
Meggan	Uecker
LeeAnn	Hal
James	Roberts
Carolyn	Morillo
Rich	Bergner
George	Lawrence
Cynthia	Creel
Sandra	Paine
Richard	Nevels
Jeanna	Swanson
Leslie	Ott
Sara	McKenzie
Anne	Woodley
Robin	Loor
Barbara	Temple
Sally	Lider
Therese	Cushing
Janet	Chalupnik Chalupnik
Andy	Bury
Mary	Weathers
JC	Bower
Terry	Stella
Mardi	Solomon
jOni	Panciera
Carol	von borstel
Robert	Wood
Jenny	Hayes
John	Nantz
Maureen	Canny
Alice	St. Hilaire
Lisa	Wong
Paul	Reavley
Jerolyn	Coen
Jennifer	Pickering

Appendix B

This appendix contains copies of public notices sent to interested papers and copies of newspaper adds.

Rule Proposal Notice

Electronic Product Recycling Program, WAC 173-900
Dangerous Waste Regulations, WAC 173-303

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Comment Period

Ecology is seeking comments on the rule proposal for the Electronic Product Recycling Program:

By 5:00 PM August 30, 2007

Rule Proposal filed:

July 12, 2007

Contact Information

About the rule proposal:
Jay Shepard
(360) 407-7040
wa-recycles-electronics@ecy.wa.gov

About the Electronic Product Recycling Program:

Miles Kuntz (360) 407-7157
miku461@ecy.wa.gov

Rule language is now available for comment.

Starting July 12, 2007, the Department of Ecology is accepting comments on a rule proposal affecting the Electronic Product Recycling Program WAC 173-900 and Dangerous Waste Regulations WAC 173-303. The formal comment period ends August 30, 2007.

A SEPA Determination of Nonsignificance (DNS), a Small Business Economic Impact Statement (SBEIS), and a preliminary cost-benefit analysis on this proposal are also available for comment at this time. Comments are also due by 5:00 PM on August 30, 2007.

To download a copy of the rule and other related documents go to http://www.ecy.wa.gov/laws-rules/activity/wac173900.html.

Summary of the proposed rule amendments:

The rule proposal includes the following amendments to WAC 173-900:

- Electronic Product Recycling Plan content and submission requirements.
- Performance standards for electronic product processors used directly by plan operators, collectors, and transporters.
- Recycling service-level standards.
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors, and transporters.
- Registration process and requirements for processors;
- Collector standards.
- Process for establishing return share and equivalent share of responsibility for manufacturers.
- A sampling methodology to be used by all plan operators to provide Ecology data to establish return shares.
- Requirements for the Materials Management and Finance Authority.
- Warnings, penalties, and violations associated with these requirements.
- Other requirements necessary to implement Chapter 70.95N RCW.

The rule proposal includes the following amendment to WAC 173-303:

- An exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

Original printed on recycled paper

When are the public hearings?

August 21, 2007
1:30 PM
WA State Dept. of Labor and Industries
15 West Yakima Ave. Suite 100
Yakima, WA

August 23, 2007
1:30 PM
WA State Dept. of Ecology
Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA

Prior to the public hearing Ecology staff will hold a question-and-answer session about the rule proposal and the Electronic Product Recycling Program.

When is the comment period, and how can I submit comments?

Ecology is accepting comments on this rule proposal through **5:00 PM on August 30, 2007.**
Please submit written comments to the following address:

Jay Shepard,
Department of Ecology,
PO Box 47600,
Olympia, WA 98504-7600
Email: wa-recycles-electronics@ecy.wa.gov

Electronic comment form: http://www.ecy.wa.gov/programs/swfa/eproductrecycle/rul_commentsFORM.html

You may also submit comments, both verbal and written, at one of the public hearings.

For more information online visit:

Electronic Product Recycling Program information:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/

Email Updates: Sign up to receive updates on the Electronic Product Recycling Program.
http://listserv.wa.gov/archives/wa-recycles-electronics.html

If you require special accommodations or need this document in an alternate format, please contact The Solid Waste and Financial Assistance Program at (360) 407-6900. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

WASHINGTON STATE DEPARTMENT OF ECOLOGY
Department of Ecology
Solid Waste & Financial Assistance Program
PO Box 47600
Olympia, WA 98504-7600

FIRST CLASS
U.S. POSTAGE PAID
WASHINGTON STATE
DEPT. OF PRINTING

Schreiner, Bari (ECY)

From: Schreiner, Bari (ECY)
Sent: Thursday, July 19, 2007 12:38 PM
To: Schreiner, Bari (ECY)
Subject: Electronic Product Recycling and Dangerous Waste Regulation rule proposal now available.

Rule language is now available for comment.

Starting July 12, 2007, the Department of Ecology is accepting comments on a rule proposal affecting the Electronic Product Recycling Program WAC 173-900 and Dangerous Waste Regulations WAC 173-303. The formal comment period ends August 30, 2007.

A SEPA Determination of Nonsignificance (DNS), a Small Business Economic Impact Statement (SBEIS), and a preliminary cost-benefit analysis on this proposal are also available for comment at this time. Comments are also due by 5:00 PM on August 30, 2007.

To download a copy of the rule and other related documents go to http://www.ecy.wa.gov/laws-rules/activity/wac173900.html.

Summary of the proposed rule amendments:

The rule proposal includes the following amendments to WAC 173-900:

- Electronic Product Recycling Plan content and submission requirements.
- Performance standards for electronic product processors used directly by plan operators, collectors, and transporters.
- Recycling service-level standards.
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors, and transporters.
- Registration process and requirements for processors;
- Collector standards.
- Process for establishing return share and equivalent share of responsibility for manufacturers.
- A sampling methodology to be used by all plan operators to provide Ecology data to establish return shares.
- Requirements for the Materials Management and Finance Authority.
- Warnings, penalties, and violations associated with these requirements.
- Other requirements necessary to implement Chapter 70.95N RCW.

The rule proposal includes the following amendment to WAC 173-303:

- An exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

When are the public hearings?

August 21, 2007
1:30 PM
WA State Dept. of Labor and Industries
15 West Yakima Ave. Suite 100
Yakima, WA

August 23, 2007
1:30 PM
WA State Dept. of Ecology Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA

Prior to the public hearing Ecology staff will hold a question-and-answer session about the rule proposal and the Electronic Product Recycling Program.

When is the comment period, and how can I submit comments?

Ecology is accepting comments on this rule proposal through 5:00 PM on August 30, 2007.
Please submit written comments to the following address:

Jay Shepard,
Department of Ecology,
PO Box 47600,
Olympia, WA 98504-7600

Email: wa-recycles-electronics@ecy.wa.gov

Electronic comment form: http://www.ecy.wa.gov/programs/swfa/eproductrecycle/rul_commentsFORM.html
You may also submit comments, both verbal and written, at one of the public hearings.

For more information online visit:

Electronic Product Recycling Program information:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/

Email Updates: Sign up to receive updates on the Electronic Product Recycling Program.
http://listserv.wa.gov/archives/wa-recycles-electronics.html

Schreiner, Bari (ECY)

From: Campbell, Karen (ECY) [KCAM461@ECY.WA.GOV]
Sent: Wednesday, August 15, 2007 9:17 AM
To: ECOLOGY-NEWS@LISTSERV.WA.GOV
Subject: Ecology News Release: Washington's electronics recycling management program progressing

FOR IMMEDIATE RELEASE - August 15, 2007
07-230

Washington's electronics recycling management program progressing

OLYMPIA - Washington state continues to make progress toward creating a program that will allow consumers to recycle electronic products, such as computers and TVs, at no charge beginning January 1, 2009. The Washington Department of Ecology (Ecology) is seeking public comment on a second set of proposed rules setting up the program.

The rule proposals include requirements for all manufacturers, including the Materials Management and Finance Authority. This body, established in the electronics recycling legislation passed in 2006, is made up primarily of representatives of manufacturers.

The authority board was appointed in February. At its June meeting, the board adopted bylaws and signed an agreement for a $500,000 loan from Ecology to help with start-up costs. The loan is due to be paid back by June 30, 2009. The authority must submit a plan for the collection, transportation and recycling program to Ecology by February 1, 2008.

"This legislation is unique in that it reflects the concept of product stewardship-it puts the responsibility for running the waste recycling program on the makers of the products and gives consumers the responsibility for returning their products at end-of-life," said Cullen Stephenson, manager of Ecology's Solid Waste Program. "Ecology's role is to assure that the environment and human health will be protected in the process."

Among the other proposed rules are: requirements for manufacturer recycling plans; performance standards for operators, product collectors and transporters; and reporting processes.

Two public hearings will be held on these rules:
* Yakima: Aug. 21, 1:30 p.m. at Washington Department of Labor and Industries, 15 W. Yakima Ave., Suite 100.
* Bellevue: Aug. 23, 1:30 p.m. at the Ecology Northwest Regional office, 3190 - 160th Ave. SE.

Ecology is accepting public comments on the rule proposal through 5 p.m. Aug. 30, 2007. Please submit written comments to: Jay Shepard, Department of Ecology, PO Box 47600, Olympia, WA 98504-7600. Email comments to:
wa-recycles-electronics@ecy.wa.gov

Since Ecology adopted a rule requiring all covered electronics manufacturers to register with the department and pay an administrative fee, nearly 200 manufacturers have registered and nearly 100 percent of fees have been collected.

Electronic products contain heavy metals and other chemicals at hazardous levels that make them difficult to dispose of safely. For example, every cathode ray picture tube contains an estimated four to eight pounds of lead. By recycling televisions and computers, Washington's residents contribute to a safer, cleaner environment.

For information on recyclers that accept electronics, call toll free 1-800-RECYCLE (800-732-9253) or go online to http://1800recycle.wa.gov/. Most services currently available do have a cost.

# # #

Media Contact: Kathy Davis, 360-407-6149
Program Contact: Jay Shepard, 360-407-7040

For more information: Electronic Products Recycling Webpage:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/
Reducing Toxic Threats: http://www.ecy.wa.gov/toxics.html

Ecology's Web site: http://www.ecy.wa.gov

Broadcast version: Washington state continues to make progress toward creating a program that will allow consumers to recycle electronic products, such as computers and TVs, at no charge beginning January 1, 2009. The Washington Department of Ecology is seeking public comment on a second set of proposed rules setting up the program.

The rule proposals include requirements for all manufacturers, including the Materials Management and Finance Authority, made up primarily of representatives of manufacturers

Public hearings will be held on these rules in Yakima on August 21st at 1:30 at the Labor and Industries building and in Bellevue on August 23rd on August 23rd at Ecology's Northwest Regional office.

Office of Communication and Education Ecology's Home Page:
http://www.ecy.wa.gov

To unsubscribe to Econews, point your browser to
http://listserv.wa.gov/cgi-bin/wa?SUBED1=ecology-news&A=1, or send a "SIGNOFF
ECONEWS" command to LISTSERV@LISTSERV.WA.GOV

Rule Pre-proposal Notice – Information Workshops

Electronic Product Recycling Program Draft Rule, WAC 173-900

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Information Workshop

February 27, 2007 1:30 PM
Lacey Community Center
Woodland Creek Comm. Park
6729 Pacific Avenue, SE
Lacey, WA

March 1, 2007 1:30 PM
Central Washington University
400 East University Way
Student Union, Room 146
Ellensburg, WA

Contact information:
Jay Shepard,
Department of Ecology,
PO Box 47600,
Olympia, WA 98504-7600
(360) 407-7040
wa-recycles-electronics@ecy.wa.gov

On January 31, 2007, the Department of Ecology filed a pre-proposal for rule making on the Electronic Product Recycling Program WAC 173-900 (phase 2). Ecology adopted WAC 173-900 (phase 1) in 2006.

This rule requires computer and television manufacturers to provide consumer-convenient recycling of their covered electronic products (CEPs) throughout our state. CEPs are computers, televisions, computer monitors, portable computers, or laptop computers that households, small governments, small businesses, and charities use. The current rule includes requirements for manufacturers, retailers, collectors, and transporters.

Phase 2 will focus on writing rules to carry out portions of the law (RCW 70.05N) that phase 1 did not address. Phase 2 will include more details on recycling plans; requirements for manufacturers, retailers, collectors, transporters, local governments, and those who carry out plans; performance standards for processors; and warnings, penalties, and violations associated with these requirements; and any housekeeping changes necessary to ensure consistency between phase 1 and 2, as well as WAC 173-303 and 173-350.

Information Workshops:
Attend one of the information workshops to ask questions about the existing rules or the current rule making. Ecology wants your feedback now while it is drafting the formal rule proposal. Ecology will hold a formal comment period on the proposed rule in spring 2007.

Email Updates
Sign up for email notices to receive rule updates, including draft language and information.
http://listserv.wa.gov/archives/wa-recycles-electronics.html

Rule Preproposal Notice – Information Workshops

Electronic Product Recycling Program Draft Rule, WAC 173-900

Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

For more information online visit:

http://www.ecy.wa.gov/programs/swfa/eproductrecycle/Phase2.html

Rule Proposal Notice
Electronic Product Recycling
Public Comment Period Open

The Department of Ecology has proposed amendments to WAC 173-900 Electronic Product Recycling and WAC 173-303 Hazardous Waste.

Requirements of the rules:
The rule proposal includes the following amendments to WAC 173-900:

- Electronic Product Recycling Plan content and submission requirements;
- Performance standards for electronic product processors used directly by plan operators, collectors and transporters;
- Recycling service level standards;
- Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors and transporters;
- Registration requirements and process for processors;
- Collector standards;
- Process for establishing return share and equivalent share of responsibility for manufacturers;
- A sampling methodology to be used by all plan operators to provide Ecology data to establish return shares;
- Requirements for the Materials Management and Finance Authority;
- Warnings, penalties, and violations, associated with these requirements; and
- Other requirements necessary to implement Chapter 70.95N RCW.

The rule proposal includes the following amendments to WAC 173-303:

- Amendments to include an exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

Effective Date
Ecology plans to adopt this rule on September 26, 2007, the effective date will be October 26, 2007.

For more information online:

Rule language, associated economic or SEPA documents:
http://www.ecy.wa.gov/laws-rules/activity/wac173900.html

Electronic Product Recycling Program information:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/

Email Updates: Sign up to receive updates on the Electronic Product Recycling Program.
http://listserv.wa.gov/archives/wa-recycles-electronics.html

To provide comments on the rule language, or associated economic or SEPA documents, you may submit written comments until 5:00 PM August 30, 2007 to:

Jay Shepard, Department of Ecology, PO Box 47600,
Olympia, WA 98504-7600
fax: (360) 407-6102
E-mail: wa-recycles-electronics@ecy.wa.gov
Electronic comment form:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/rul_commentsFORM.html

Or, you may attend one of the following public hearings and provide verbal comments:

August 21, 2007
1:30 PM
WA State Dept. of Labor and Industries
15 West Yakima Ave. Suite 100
Yakima, WA

August 23, 2007
1:30 PM
WA State Dept. of Ecology Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA

**Covered electronic products are personal computers, laptop and portable computers, computer monitors and televisions*

(09543976) August 19 and 20, 2007

AFFIDAVIT OF PUBLICATION

STATE OF WASHINGTON,)
)
COUNTY OF YAKIMA)

LYNDA BUSCH, being first duly sworn on oath deposes and says that she/he is the Accountant of Yakima Herald-Republic, Inc., a daily newspaper. Said newspaper is a legal newspaper approved by the Superior Court of the State of Washington for Yakima County under an order made and entered on the 13th day of February, 1968, and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continually as a daily newpaper in Yakima, Yakima County, Washington. Said newspaper is now and has been during all of said time printed in an office maintained at the aforesaid place of publication of said newspaper.

That the annexed is a true copy of a:

Rule Proposal Notice,

it was published in regular issues (and not in supplement form) of said newspaper once each DAY and for a period of 2 DAY(S) to-wit; on

the 19th day of AUGUST, 2007
the 20th day of AUGUST, 2007

and the such newspaper was regularly distributed to its subscribers during all of said period. That the full amount of the fee charged for the foregoing publication is the sum of $591.94

Lynda Busch

Accountant

SUBSCRIBED AND SWORN to before me this 20th day of August, 2007

Lorene L. Morgan-Pero

NOTARY PUBLIC in and for the
State of Washington,
residing at Yakima.

LORENE L. MORGAN-PERO NOTARY PUBLIC STATE OF WASHINGTON My Comm. Expires July 01, 2011

The Seattle Times

REPRESENTING THE Seattle Post-Intelligencer
PO Box 70, Seattle, WA 98111

WA ST DEPT OF ECOLOGY
JAY SHEPARD
PO BOX 47600
OLYMPIA, WA 98504

Re: Advertiser Account #32600901
Ad #: 750069300

Affidavit of Publication

3777051 / 1

STATE OF WASHINGTON
Counties of King and Snohomish

The undersigned, on oath states that he/she is an authorized representative of The Seattle Times Company, publisher of The Seattle Times and representing the Seattle Post-Intelligencer, separate newspapers of general circulation published daily in King and Snohomish Counties, State of Washington. The Seattle Times and the Seattle Post-Intelligencer have been approved as legal newspapers by orders of the Superior Court of King and Snohomish Counties.

The notice, in the exact form annexed, was published in the regular and entire issue of said paper or papers and distributed to its subscribers during all of the said period.

Newspaper	Publication Date
The Seattle Times	08/19/07

Agent Marilyn Peredo Signature Marilyn Peredo

Subscribed and sworn to before me on 21 August 2007
(DATE)

Diane L. Chernis
(NOTARY SIGNATURE) Notary Public in and for the State of Washington, residing at Seattle

DIANE L. CHERNIS
NOTARY PUBLIC
COMMISSION EXPIRES
02-24-08
STATE OF WASHINGTON

The Seattle Times

REPRESENTING THE Seattle Post-Intelligencer

Re Advertiser Account #32600901 **Ad # 750069300**

Ad TEXT: Rule Proposal Notice
Electronic Product Recycling
Public Comment Period Open

The Department of Ecology has proposed amendments to WAC 173-900 Electronic Product Recycling and WAC 173-303 Hazardous Waste.

Requirements of the rules:
The rule proposal includes the following amendments to WAC 173-900:
Electronic Product Recycling Plan content and submission requirements;
Performance standards for electronic product processors used directly by plan operators, collectors and transporters;
Recycling service level standards;
Reporting processes and requirements for plan operators, local governments, local communities, processors, collectors and transporters;
Registration requirements and process for processors;
Collector standards;
Process for establishing return share and equivalent share of responsibility for manufacturers;
A sampling methodology to be used by all plan operators to provide Ecology data to establish return shares;
Requirements for the Materials Management and Finance Authority;
Warnings, penalties, and violations, associated with these requirements; and
Other requirements necessary to implement Chapter 70.95N RCW.

The rule proposal includes the following amendments to WAC 173-303:
Amendments to include an exemption for cathode ray tubes (CRTs) in televisions and monitors from chapter 173-303 WAC if the requirements are met.

Effective Date: Ecology plans to adopt this rule on September 26, 2007, the effective date will be October 26, 2007.

For more information online:
Rule language, associated economic or SEPA documents:
http://www.ecy.wa.gov/laws-rules/activity/wac173900.html

Electronic Product Recycling Program information:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/

Email Updates: Sign up to receive updates on the Electronic Product Recycling Program.
http://listserv.wa.gov/archives/wa-recycles-electronics.html

on the rule language, or associated economic or SEPA documents, you may submit written comments until 5:00 PM August 30, 2007 to:

Jay Shepard, Department of Ecology, PO Box 47600, Olympia, WA 98504-7600

fax: (360) 407-6102
E-mail: wa-recycles-electronics@ecy.wa.gov
Electronic comment form:
http://www.ecy.wa.gov/programs/swfa/eproductrecycle/rul_commentsFORM.html

Or, you may attend one of the following public hearings and rovide verbal comments:
August 21, 2007 - 1:30 PM
WA State Dept. of Labor and Industries
15 West Yakima Ave. Suite 100
Yakima, WA

August 23, 2007 - 1:30 PM
WA State Dept. of Ecology
Northwest Regional Office
3190 - 160th Ave. SE
Bellevue, WA

*Covered electronic products are personal computers, laptop and portable computers, computer monitors and televisions

STATE OF WASHINGTON – KING COUNTY

--ss.

214517
DEPT OF ECOLOGY

No. PUBLIC COMMENT

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

PN:ELEC.PRODUCT RECYCLING

was published on

08/17/07 08/20/07

The amount of the fee charged for the foregoing publication is the sum of $ 402.50, which amount has been paid in full.

Pamela Oglesby

Subscribed and sworn to before me on

08/20/07

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

State of Washington

Rule Proposal Notice
Electronic Product Recycling
Public Comment Period Open

The Department of Ecology

*Covered electronic products are personal computers, laptop and portable computers, computer monitors and televisions

Dates of publication in the Seattle Daily Journal of Commerce, August 17 and 20, 2007.

8/20(214517)

of this act and RCW 11.40.060. 11.
is bar is effective as to claims
inst both the decedent's pro-
e and nonprobate assets.
Date of First Publication: clai
gust 20, 2007. befo
ILAN L. CHRISTIE, bar
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DAVID M. CHRISTIE, clai
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Attorney for Co-Personal Repre- or m
tatives: CODD LAW OFFICES. Exec
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LAW, 15401 First Ave. S., with
Seattle, WA 98148. 206-246- be p
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NOTICE OF SALE
Estate of
ARBARA ANNE FULLEN

N THE SUPERIOR COURT of
State of Washington in and for
County of King:
n re the Estate of Barbara
e Fullen, Deceased. No. **06-**
6098-6 SEA. Notice of Sale bat

the claim in the manner as pro-
vided in RCW 11.40.070 by serv-
ing on or mailing to the Personal
Representative or the Personal
Representative's attorney at the
address stated below a copy of
the claim and filing the origi-

8/20(214517)

Appendix C

This appendix contains the adopted rule language as filed with the Office of the Code Reviser on Friday October 5, 2007. The rule becomes effective November 5, 2007.

PART I
GENERAL REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

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

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

(2) The authority or authorized party for a covered electronic product (CEP) recycling plan.

(3) Any person who collects ((~~or transports~~)) covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

((~~(3)~~)) (4) Any person who transports covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.

(5) Any person who directly processes covered electronic products (CEPs) for a CEP recycling plan approved under this chapter.

(6) Any retailer that offers for sale or sells electronic products and covered electronic products (CEPs) in or into Washington state.

(7) Any local government in Washington state.

(8) Any nonprofit charitable organization that collects covered electronic products (CEPs) in Washington state.

(9) Any household, charity, school district, small business, or small government (covered entities) in Washington state that wants to recycle unwanted covered electronic products (CEPs).

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

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

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

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

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

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

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

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

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

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

"Collector" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets ((~~minimum standards that may be developed by ecology~~)) the registration and collector performance standard requirements in Part IV, WAC 173-900-400 through 173-900-490.

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

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

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

(b) Computer servers marketed to professional users; or

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

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

"Covered electronic product" or **"CEP"** includes any one of the following four types of products that has been used in Washington

state by any covered entity, regardless of original point of purchase:

(a) Any monitor having a viewable area greater than four inches when measured diagonally;

(b) A desktop computer;

(c) A laptop or a portable computer; or

(d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

(a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;

(b) Monitoring and control instruments or systems;

(c) Medical devices;

(d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;

(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

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

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

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

"Desktop" is a computer designed for nonportable use.

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

"Ecology" means the department of ecology.

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

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

"Existing manufacturers" are those entities whose covered electronic products are offered for sale or sold in or into

Washington state, through any sales method, as of ((~~the effective date of this chapter~~)) December 8, 2006.

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

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

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

"Laptop" is a computer.

"Manufacturer" means the person who:

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

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

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

((~~(d) A retailer may elect to register, in lieu of the importer, as the manufacturer when the manufacturer does not have a physical presence in the United States.~~)) (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer.

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

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

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

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

"Materials of concern" are any of the following:

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

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

"Monitor" is a video display device without a tuner that can

display pictures and sound and is used with a computer.

"New entrant" means:

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

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

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

"New manufacturers to Washington state" are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after ((~~the effective date of this chapter~~)) December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

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

"Offering for sale" means providing electronic products for purchase, in or into Washington state, regardless of sales method.

"Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

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

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

"Plan" means a CEP recycling plan.

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

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

"Portable computer" is a computer.

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

"Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling requirements imposed by the covered entity in excess of those required in this chapter.

"Premium service" does not include curbside service.

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

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

"Processor" means an entity:

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

(b) That may salvage ((~~parts~~)) CEPs, components, and parts to be used in new products.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

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

"White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

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

PART II
MANUFACTURER REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-200 Manufacturers ((~~registration~~)) who must register and participate in a CEP recycling plan. ((~~**Registration:**~~

~~(1) A manufacturer is registered under this chapter when:~~

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

~~(b) The manufacturer has paid their required administrative fee.~~

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

~~(3) **The following manufacturers must register with ecology:**~~

~~**Type of Manufacturer**~~		~~**Initial Registration Due Date**~~
~~**Existing manufacturers**~~	~~Those entities whose CEPs are offered for sale or sold in or into Washington state, as of the effective date of this chapter.~~	~~On or before January 1, 2007.~~
~~**New manufacturers to Washington state**~~	~~Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after the effective date of this chapter.~~	~~Prior to the offering for sale of their CEPs for sale in/into WA.~~
~~**Manufacturers who have never sold CEPs**~~	~~Those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose brand names of covered electronic products are represented in the Washington state return share.~~	~~Within sixty days of ecology sending notice that their brand names were found in the return share.~~

~~Type of Manufacturer~~		~~Initial Registration Due Date~~
~~Manufacturers who previously manufactured~~	~~Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are represented in the Washington state return share.~~	~~Within sixty days of ecology sending notice that their brand names were found in the return share.~~

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

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

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

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

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

~~(iii) All brand names the manufacturer manufactures but does not have legal ownership of the brand;~~

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

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

~~(e) The method or methods of sale used in or into Washington state;~~

~~(f) Recycling plan participation information; and~~

~~(g) Signature of the responsible individual. The registration form must be signed by the individual responsible for implementing the manufacturer's requirements under this chapter. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.~~

~~(5) **Submitting the registration form:** The manufacturer must either submit the:~~

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

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

~~For U.S. Postal Service:~~
~~Department of Ecology~~

~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~P.O. Box 47600~~
~~Olympia, WA 98504-7600~~
~~Or~~
~~For Courier:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~300 Desmond Drive~~
~~Lacey, WA 98503~~

~~(6) **Administrative fee:**~~

~~(a) All manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-210 Administrative fee).~~

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

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

~~(7) **Submitting the administrative fee:**~~

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

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

~~Department of Ecology~~
~~Electronic Product Recycling Program~~
~~P.O. Box 5128~~
~~Lacey, WA 98509-5128~~

~~(8) **Registration review and status:** Within five business days of receiving a manufacturer registration form and the required administrative fee, ecology will post the manufacturer's name on a list called "Manufacturer Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of manufacturers, their brand names and their registration status. Each manufacturer on the list will be assigned to one of the following registration status categories:~~

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

~~(i) If the form is complete and accurate, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(ii) If the form is not complete and accurate, ecology will send notice, via certified mail, to the manufacturer identifying what corrections and additional information is needed, and requesting a revised form. The manufacturer will have thirty days from receipt of the notice to submit to ecology a revised~~

~~registration form. If the form is corrected and the required additional information is submitted, ecology will change the manufacturer's status from "pending" to "in compliance."~~

~~(iii) If the form is not corrected, or the required additional information is not submitted, within thirty days, ecology will change the manufacturer's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology has reviewed the manufacturer registration form and determined the form is complete and accurate and the manufacturer has paid the required administrative fee. The manufacturer's CEPs are allowed to be sold or offered for sale in or into Washington state.~~

~~(c) **In violation** means the manufacturer is in violation of this chapter.~~

~~(9) **Annual registration**: Manufacturers must submit their annual registration renewal form and required administrative fee to ecology no later than January 1 of each calendar year.~~

~~(10) **Registration updates**: A manufacturer must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(11) **Registration violation**: As of January 1, 2007, it is a manufacturer violation if either a manufacturer or retailer offers for sale or sells the manufacturer's CEPs in or into Washington state and the manufacturer is not registered as required above. When a manufacturer registration violation occurs:~~

~~(a) Ecology will assign the manufacturer to the "in violation" category on the "Manufacturer Registration List for the Electronic Product Recycling Program";~~

~~(b) The manufacturer's CEPs cannot be sold or offered for sale in Washington state; and~~

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

~~(12) **Corrective actions:**~~

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

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

~~(i) Submit their registration form and ecology must determine the form is complete and accurate;~~

~~(ii) Pay their appropriate administrative fee;~~

~~(iii) Correct any other violations; and~~

~~(iv) Pay or settle any penalties due to ecology (WAC 173-900-600).~~

~~(13) **Notification to retailers**: A manufacturer may notify retailers, in writing, if the manufacturer's CEPs cannot be offered for sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~)) (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:

Table 200
Type of Manufacturer

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

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

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

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

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

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

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

NEW SECTION

WAC 173-900-205 Manufacturer's brands of CEPs that can be offered for sale or sold in or into Washington state. (1) In order for a manufacturer's brands of CEPs to be offered for sale or sold in or into Washington state, the manufacturer's name and brand names must be listed on the "manufacturer registration list" as "in compliance" or "pending" status.

(2) To be in "in compliance" status a manufacturer must:

(a) **As of January 1, 2007:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the manufacturer's CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information.

(b) **As of February 1, 2008:**

(i) Register annually with ecology;

(ii) Update registration information if it changes;

(iii) Label the CEPs with the manufacturer's brand name(s) included in the manufacturer's registration information; and

(iv) Participate in a CEP recycling plan approved, or submitted for approval, by ecology.

Table 205
Manufacturer Status

Manufacturer Status	Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state?	Explanation
Pending	Yes	"Pending" means ecology has received the manufacturer's registration form and administrative fee and ecology is reviewing the form.

Manufacturer Status	Can the manufacturer's brands of CEPs be offered for sale or sold in or into Washington state?	Explanation
In compliance	Yes	"In compliance" means ecology has approved the manufacturer's registration, the manufacturer is participating in a plan, and is complying with the requirements in this chapter.
In violation	No	"In violation" means the manufacturer is in violation of the requirements in this chapter.
Manufacturer's **brand name** is not on the "manufacturer registration list"	No	If a manufacturer's brand name is not on the "manufacturer registration list," that brand must not be offered for sale or sold in or into Washington state.
Manufacturer's name is not on the "manufacturer registration list"	No	If a manufacturer's name is not on the "manufacturer registration list," none of the manufacturer's brands of CEPs can be offered for sale or sold in or into Washington.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-210 ((~~Administrative fee.~~)) Required brand labeling for manufacturers. (1) ((~~**Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.~~

~~(2) **Data.**~~

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

~~(i) Generally available market research data;~~

~~(ii) CEP unit data supplied by manufacturers about brands they manufacture or sell; or~~

~~(iii) CEP unit data supplied by retailers about brands they sell.~~

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

~~(3) **Distribution:**~~

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

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

~~(c) Tier 7 will have no fee amount associated with it, but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-200).~~

~~Tiers~~	~~Manufacturer's Market Share~~
~~Tier 1~~	~~5% or greater~~
~~Tier 2~~	~~1% to < 5%~~
~~Tier 3~~	~~0.1% to < 1%~~
~~Tier 4~~	~~0.03% to < 0.1%~~
~~Tier 5~~	~~0.01% to < 0.03%~~
~~Tier 6~~	~~0% but < 0.01%~~
~~Tier 7~~	~~Manufacturers who previously manufactured~~

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

~~(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one~~

~~includes start-up costs and funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.~~

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

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

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

~~(5) **Tier placement:**~~

~~(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received by ecology. If ecology has no data, ecology will place the manufacturer in Tier 4.~~

~~(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. Ecology will assign these manufacturers to Tier 4 for the second and future program years unless ecology has CEP unit data.~~

~~(c) **Manufacturers who have never sold CEPs:** Ecology will assign these manufacturers to Tier 6.~~

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

~~(6) **Publication of tier assignment:**~~

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

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

~~(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.~~

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

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

~~(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)~~

~~(ii) **Final tier schedule:** Ecology will publish the agency's final decision on the final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will~~

~~reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.~~

~~(7) **Tier reassignment requests:**~~

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

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

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

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

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

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

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

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

~~(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.~~

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

~~(iii) **Manufacturers who have never sold CEPs** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.~~

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

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

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

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

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

~~(iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.~~)) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in or into Washington state unless the electronic product is labeled with the manufacturer's brand.

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

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

NEW SECTION

WAC 173-900-215 Initial CEP manufacturer registration.

Step 1: Complete the manufacturer registration form.

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

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

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

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

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

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

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

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

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

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

(g) CEP recycling plan participation information.

Step 2: Submit the manufacturer registration form.

(3) The individual responsible for implementing the

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

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

(a) The on-line registration form;

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

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

(c) The original paper version through a courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

Step 3: Pay the administrative fee.

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

(a) Existing manufacturers;

(b) New manufacturers.

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

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

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

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

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling Program
P.O. Box 5128
Lacey, WA 98509-5128

For Courier to:

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

NEW SECTION

WAC 173-900-220 How manufacturers know if they are registered.

Step 1: Ecology review of the manufacturer registration form.

(1) Within five business days of ecology receiving a manufacturer registration form and the required administrative fee (see WAC 173-900-280), ecology will:

(a) Place the manufacturer in "pending" status on the "manufacturer registration list"; and

(b) Place the manufacturer's "currently owned and manufactured" brand names included on the form on the "manufacturer registration list."

(2) The manufacturer's brands of CEPs included on the "manufacturer registration list" can be sold or offered for sale in or into Washington state.

(3) Ecology will review the form to determine if the form is complete and accurate.

(4) If the form is not complete and accurate, or the manufacturer has not paid the required administrative fee, ecology will contact the manufacturer to request one or both of the following:

(a) A revised form that contains the complete and missing information;

(b) The unpaid administrative fee.

(5) The manufacturer must submit the administrative fee and all requested information within thirty days from the day ecology contacted the manufacturer.

Step 2: Approval or denial of manufacturer registration.

(6) **Approval.**

(a) Approval means that ecology has received the manufacturer's administrative fee and has determined the registration form is complete and accurate.

(b) If ecology approves the manufacturer's registration:

(i) Ecology will change the manufacturer's status from "pending" to "in compliance" on the "manufacturer registration list"; and

(ii) The manufacturer's registered brands of CEPs can continue to be offered for sale or sold in or into Washington state.

(7) **Denial.**

(a) Denial means that ecology either did not receive the administrative fee or ecology has determined the form is not complete and accurate and the manufacturer has not submitted the revised information as requested.

(b) If ecology denies a manufacturer's registration:

(i) Ecology will either change the manufacturer's status from "pending" to "in violation" on the "manufacturer registration list" or remove the manufacturer's name from the list;

(ii) Ecology will notify the manufacturer of the denial; and

(iii) The manufacturer's brands of CEPs are not allowed to be offered for sale or sold in or into Washington state.

(c) For initial manufacturer registration, if ecology denies a registration, the manufacturer may resubmit an initial registration form.

NEW SECTION

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

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

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

(a) Submit the manufacturer's on-line registration form;

(b) Submitting a paper version through:

U.S. Postal Service:

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

NEW SECTION

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

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

(a) Updating the manufacturer's registration information using the on-line form;

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

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

NEW SECTION

WAC 173-900-250 Ecology determination of manufacturer compliance. (1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 (for manufacturers) and Part VII, WAC 173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-210 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 (for manufacturers) and Part VII, WAC

173-900-730, 173-900-740, and 173-900-750 (for retailers) of this chapter.

NEW SECTION

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

(a) Registration violation;

(b) Labeling violation;

(c) Plan violation; or

(d) Return share violation.

Manufacturer registration violations:

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

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

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

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

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

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

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

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

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

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

Manufacturer labeling violation:

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

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

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

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

Manufacturer plan violation:

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

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

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

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

Return share violation:

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

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

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

NEW SECTION

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

Table 260
Manufacturer Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Labeling Violation	Warning Letter	Up to $1,000	Up to $2,000
Plan Violation	Warning Letter	Up to $10,000	Up to $10,000

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Return Share Violation	Warning Letter	Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan.	Up to $10,000 plus the percentage of their return share of the costs of operating the standard plan.

Warning letter:

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

Penalties:

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 260 above and do one of the following:

(a) Change the manufacturer's status to "in violation";

(b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."

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

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

Appeals:

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

NEW SECTION

WAC 173-900-270 Corrective actions for manufacturer violations. (1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

Corrective actions for manufacturer registration violations:

(2) To correct a registration violation the manufacturer must:

(a) Provide evidence that the violation has been corrected;

and

(b) Pay or settle any penalties to ecology.

Corrective actions for manufacturer labeling violations:

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

Corrective actions for plan violations:

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

Corrective actions for return share violations:

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

NEW SECTION

WAC 173-900-280 Administrative fee. (1) **Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.

(2) **Data.**

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

(i) Generally available market research data;

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

(iii) CEP unit sales data supplied by retailers for brands they sell.

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

(3) **Distribution:**

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

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

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

Table 280
Market Share Tiers

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

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

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

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

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

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

(5) **Tier placement:**

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

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

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

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

(6) **Publication of tier assignment:**

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

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

(i) **Preliminary tier schedule:** Ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year.

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

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

(C) Manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.)

(ii) **Final tier schedule:** Ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) **Tier reassignment requests:**

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

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

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

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

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

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

(iii) In addition to submitting information about CEP unit

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

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

(i) **Existing manufacturers** must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection.

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

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

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

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

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

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

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

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

NEW SECTION

WAC 173-900-290 Successor duties. Any person acquiring a manufacturer, or brand, or who has acquired a manufacturer, or brand, shall have all responsibility for the acquired company's CEPs, including CEPs manufactured prior to July 1, 2006, unless that responsibility remains with another entity per the purchase

agreement and the acquiring manufacturer provides ecology with a letter from the other entity accepting responsibility for the CEPs. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify ecology of the results of their negotiations.

PART III
((~~TRANSPORTERS AND COLLECTORS~~)) THE AUTHORITY, AUTHORIZED PARTIES, AND COVERED ELECTRONIC PRODUCT (CEP) RECYCLING PLANS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-300 ((~~Transporter and/or collector registration.~~)) Covered electronic product (CEP) recycling plans. ((~~(1) As of September 1, 2007, all transporters and collectors must be registered with ecology in order to transport or collect CEPs.~~

~~(2) To confirm the registration status of a transporter and/or collector, a person must check the "Transporter/Collector Registration List for the Electronic Product Recycling Program" displayed on ecology's web site.~~

~~(3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.~~

~~(4) **Transporter and/or collector registration:** Each transporter and/or collector must submit an annual registration form to ecology.~~

~~(a) **Existing transporters and/or collectors:** Transporters and/or collectors who transport or collect CEPs in Washington state on the effective date of this chapter and who plan to continue doing so, must register with ecology no later than September 1, 2007.~~

~~(b) **New transporter and/or collector registration:** Transporters and/or collectors who begin to transport or collect CEPs in Washington state after September 1, 2007, may submit their registration form to ecology at any time prior to beginning to transport or collect CEPs.~~

~~(5) **Transporter and/or collector annual registration:** Transporters and/or collectors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year.~~

~~(6) **Registration updates:** A transporter and/or collector must submit any changes to the information provided in the registration form to ecology within fourteen days of such change.~~

~~(7) **Transporter and/or collector registration form:** Each transporter and/or collector must use the registration form provided by ecology and must include all of the following:~~

~~(a) Contact and location information;~~

~~(b) Business license information;~~

~~(c) Permit information;~~

~~(d) Description of services provided;~~

~~(e) Geographic areas where services are provided; and~~

~~(f) Signature of responsible individual.~~

~~The registration form must be signed by the individual responsible for implementing the requirements under this chapter for the transporter and/or collector. Signing the form means the company has provided accurate and complete information on the form.~~

~~(8) **Submitting the transporter and/or collector registration form:** The transporter and/or collector must either submit the:~~

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

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

~~For U.S. Postal Service:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~P.O. Box 47600~~
~~Olympia, WA 98504-7600~~
~~Or~~
~~For Courier:~~
~~Department of Ecology~~
~~Electronic Product Recycling~~
~~Solid Waste and Financial Assistance Program~~
~~300 Desmond Drive~~
~~Lacey, WA 98503~~

~~(9) **Registration review and status:** After receiving a registration form, ecology will post the transporter's and/or collector's name on a list called "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site. This list will contain the names of transporters and collectors and their registration status. Each transporter/collector on the list will be assigned to a registration status category:~~

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

~~(i) If ecology determines the registration form is complete and accurate, ecology will change the transporter's/collector's status from "pending" to "in compliance."~~

~~(ii) If ecology determines the form is not complete or accurate or additional information is needed, ecology will send notice, via certified mail, to the transporter and/or collector identifying what corrections and additional information is needed, and request a revised form. The transporter and/or collector will~~

~~have thirty days from receipt of the notice to submit to ecology a revised registration form.~~

~~(iii) If the corrections are not made, or additional information is not provided within thirty days, ecology will change the transporter and/or collector's status from "pending" to "in violation."~~

~~(b) **Registered** or "in compliance" means ecology determined the registration form was complete and accurate. The transporter and/or collector is allowed to transport or collect CEPs in Washington state while in "in compliance" status.~~

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

~~(10) **Registration violation**: If a transporter and/or collector does not submit their registration form as required above:~~

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

~~(b) A transporter must not transport CEPs in Washington state;~~

~~(c) A collector must not collect CEPs in Washington state;~~

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

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

~~(11) **Corrective action**: In order for ecology to change a transporter and/or collector from the "in violation" status to "in compliance" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" the transporter and/or collector must:~~

~~(a) Submit their registration form and ecology must determine the form is complete and accurate; and~~

~~(b) Pay or settle any penalties to ecology.~~)) (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs from covered entities in Washington state.

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

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

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

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

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

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

"in compliance" status.

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

(i) Meets the requirements of this chapter; and

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

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

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

NEW SECTION

WAC 173-900-305 The standard plan. A manufacturer must participate in the standard plan administered by the authority unless the manufacturer has approval to participate in an ecology approved independent plan.

(1) The authority is responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the standard plan.

(2) The "authority" is the Washington materials management and financing authority and is authorized to submit the standard plan for the participating manufacturers.

NEW SECTION

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

(a) The manufacturers participating in the proposed plan represent at least five percent return share of CEPs; and

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

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

(3) **Individual independent plan:** A single manufacturer submitting an independent plan to ecology is responsible for

collecting, transporting, processing, and recycling its equivalent share of CEPs.

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

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

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

NEW SECTION

WAC 173-900-320 CEP recycling plan content. (1) All plans must contain all of the following sections and required information:

(a) Binding agreement;

(b) Standard plan participant assessment of charges or apportionment of costs (standard plan only);

(c) Letter of certification (independent plan only);

(d) Use of Washington businesses;

(e) Collection services;

(f) Collectors;

(g) Transporters;

(h) Direct processors;

(i) Direct processor audit reports;

(j) Design for recycling;

(k) Direct processor contract face sheet;

(l) Recordkeeping;

(m) Implementation timeline;

(n) Public outreach and marketing requirements; and

(o) Fair compensation.

(2) **A binding agreement:** Each plan must include a written statement binding the authority or authorized party to the use of the plan.

(a) The binding agreement must be signed by:

(i) The person(s) designated by the board of the standard plan to sign such agreements on behalf of the authority; or

(ii) The person(s) designated by the authorized party for independent plans to sign such agreements on behalf of the authorized party.

(b) The binding agreement must include:

(i) Contact information for the authority or authorized party, including name, address, and phone number;

(ii) A list of all manufacturers participating in the plan, manufacturer electronic product registration (EPR) numbers issued by ecology, and their contact information of the responsible official, including their location address, mailing address (if different), phone number and e-mail address;

(iii) A statement that the plan members will comply with the terms and conditions of their ecology approved plan; and

(iv) A statement that in the event the plan fails to meet the manufacturers' obligations under this chapter, the manufacturers retain responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of their equivalent share of CEPs as described in this chapter.

(3) **Standard plan participant assessment of charges or apportionment of costs:** For the standard plan only, the plan must include the proposal for assessing charges and apportioning costs for manufacturers participating in the standard plan. This must include a description of what information or data the authority used to determine the charge or cost. This section of the plan may be submitted separate from the rest of the plan (see WAC 173-900-325).

(4) **Letter of certification:** For independent plans only, the plan must include a sworn letter from each of the manufacturers participating in the independent plan designating the authorized party.

(5) **Use of Washington state businesses:** A description of how the authority or authorized party has sought the use of businesses within the state, including retailers, charities, processors, and collection and transportation services.

(6) **Collection services:** A description of how the plan will meet the collection service requirements in WAC 173-900-355. At a minimum the authority or authorized party for each plan must work with the local government entities responsible for preparing local solid waste management plans.

(7) **Collectors:** Information about collectors providing collection services in subsection (6) of this section must include:

(a) Collector names and collector electronic product registration (EPR) numbers issued by ecology;

(b) Collection sites: Location and contact number for collection sites;

(c) Days and hours of operation for each site; and

(d) Types of CEPs collected.

(8) **Transporters:** Information about transporters providing transportation services for CEPs and components for the plan including:

(a) Transporter names and transporter electronic product registration (EPR) numbers issued by ecology;

(b) Counties and cities where the transporter provides service for the plan; and

(c) Types of CEPs transported.

(9) **Direct processors:** Information about direct processors of

CEPs participating in the plan including:

(a) Direct processor names;

(b) Physical location of processing facilities;

(c) Contact information and mailing addresses for the processing facilities;

(d) Types of CEPs processed at each facility;

(e) A description of the processes and methods that each processor will use to recycle CEPs; and

(f) A written statement from the direct processor ensuring that the direct processor will comply with the performance standards for direct processors in WAC 173-900-650.

(10) **Direct processor compliance audit reports:** For each direct processor used by the plan include a compliance audit report that meets the requirements in WAC 173-900-365.

(11) **Design for recycling:** A description of how the plan participants will communicate and work with processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(12) **Direct processor contract face sheet:**

(a) Copies of the contract face sheet and signature sheet for each direct processor used by the plan; and

(b) If not included on the face sheet and signature sheet, the date of the start of the contract and the date of the conclusion of the contract.

(13) **Recordkeeping:** Procedures for how the authority or authorized party will collect and maintain records to meet and demonstrate compliance with the requirements of this chapter. Recordkeeping must include a description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share.

(14) **Implementation timeline:** A timeline describing start-up, implementation, and progress toward milestones with anticipated results.

(15) **Public outreach and marketing requirements:** A description of how the plan will meet the public outreach requirements in WAC 173-900-980.

(16) **Fair compensation:** Substantiate that fair compensation is paid to collectors, transporters and direct processors for all services provided to a plan and that payments to service providers will be made within thirty days net from date of shipment or other time frame defined in contractual arrangements.

NEW SECTION

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

Step 1: Format of the CEP recycling plan.

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

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

Step 2: Submit the CEP recycling plan.

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

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

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

For U.S. Postal Service:

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

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

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

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

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

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

Step 3: Approval process.

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

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

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

(i) The authority or authorized party must submit a new or

revised plan within sixty days after receipt of the disapproval letter.

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

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

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

(a) The plan submittal dates were met;

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

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

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

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

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

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

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

NEW SECTION

WAC 173-900-330 Implementation of the CEP recycling plan. (1) The authority or authorized party of each plan approved for program year 2009 must implement the plan no later than January 1, 2009.

(2) All manufacturers registered as of January 1, 2009, must be participating in a fully operational, ecology approved, plan as of January 1, 2009.

(3) The authority or authorized party must notify ecology if any of the manufacturers listed as a participant in the plan are not meeting the requirements described in the ecology approved plan (see WAC 173-900-350).

(4) If the authority or authorized party of a plan, through implementation of the plan, fails to provide service in each county in Washington state or meet other plan requirements, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

NEW SECTION

WAC 173-900-335 Updates and revisions to CEP recycling plans. (1) The authority or authorized party must update or revise the plan in the following situations:

(a) For five-year renewal;

(b) The plan has failed to provide services; and

(c) Plan updates or revisions are required.

(2) **Five-year renewal:** The authority or authorized party must:

(a) Review and update their plan every five years;

(b) Submit the plan to ecology at least one hundred twenty days prior to the expiration date on the plan approval letter.

(3) **Failure to provide service:**

(a) Failure to provide service means implementation of the plan fails to do any of the following:

(i) Provide service in each county in the state;

(ii) Provide service in each city or town with a population of ten thousand or greater; or

(iii) Meet other plan requirements.

(b) If the authority or authorized party of a plan, through implementation of the plan fails to provide services, the authority or authorized party must submit an updated plan to ecology within sixty days of failing to provide service.

(i) The updated plan must address how the program will be adjusted to meet the program geographic coverage and collection service requirements established in WAC 173-900-355.

(ii) When determining if the authority or authorized party fails to provide service, ecology will consider the collection services requirements in WAC 173-900-355 and the local government and community satisfaction reports if submitted under Part VIII, WAC 173-900-810.

(4) **Revisions or updates to the plan:** The authority or authorized party must submit a plan revision, including nonsignificant and significant plan revisions, to ecology within sixty days of any changes to the plan or receiving notice from ecology that an update is required.

(a) When submitting a plan revision, the authority or authorized party may submit only the sections or chapters related to the revision.

(b) **Nonsignificant revisions submitted but ecology approval is not required:** Nonsignificant revisions to CEP recycling plans are identified in Table 335 below. Ecology does not need to approve the nonsignificant revision prior to implementation.

(c) **Significant revisions submitted and ecology approval is required:** Significant revisions to CEP recycling plans are identified in Table 335 below. Ecology must approve the significant revisions prior to implementation.

Table 335
CEP Recycling Plan Revisions

Plan Content	Nonsignificant Revisions Submitted but no approval required to implement	Significant Revisions Submitted and approval is required to implement
Binding agreement	Changes to manufacturers participating in the plan or changes to contact information for manufacturers already included in the plan.	No revisions requiring approval.
Standard plan participant assessment of charges or apportionment of costs	No nonsignificant revisions.	Any changes to the assessment of charges or apportionment of costs.
Letter of certification	Changes to the contact information included for manufacturers already participating in the plan.	Addition or withdrawal of manufacturers participating in an independent plan.
Use of Washington businesses	Any changes to the use of Washington state businesses.	No changes requiring approval.
Collection services	Addition of collection site(s) or services without eliminating or changing existing services.	Changes to the level of services provided by the plan other than additional services.
Collectors	Any addition or change to registered collectors used by the plan.	No changes requiring approval.
Transporters	Adding, changing or removing registered transporters used by the plan.	No revisions requiring approval.

Plan Content	Nonsignificant Revisions Submitted but no approval required to implement	Significant Revisions Submitted and approval is required to implement
Direct processors	Any additions or changes to direct processors already used by an approved plan.	Use of a direct processor not already registered under this chapter.
Direct processor compliance audit report	Submission of copies of audit reports for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
Design for recycling	Any changes to the description of design for recycling included in the plan.	No revisions requiring approval.
Direct processor contract face sheet	Submission of copies of the contract face sheet as required in WAC 173-900-320(12) for any direct processor the plan uses after the plan was last approved or the plan's annual report was last submitted.	No revisions requiring approval.
Recordkeeping	Any changes to recordkeeping.	No revisions requiring approval.
Implementation timeline	No nonsignificant revisions.	Any changes to the implementation timeline.

Plan Content	Nonsignificant Revisions Submitted but no approval required to implement	Significant Revisions Submitted and approval is required to implement
Public outreach and marketing requirements	Additional public outreach and marketing efforts.	Any changes to the public outreach plan, other than additional public outreach and marketing.
Fair compensation	Any changes to fair compensation.	No changes requiring approval.

(5) **Approval process:** Within sixty days after receipt of a plan revision or update requiring approval, ecology will determine whether the plan complies with this chapter. Ecology will determine if the revision or update is:

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

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

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

(ii) Ecology then has an additional sixty days to review the revised revision or plan update.

(6) **Approval criteria:** Ecology will consider the following when reviewing a plan revision or update for approval:

(a) The updated plan submittal dates were met;

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

(c) The updated plan contains all of the information required in WAC 173-900-320 and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) The updated plan, when implemented, would meet or exceed required service levels; and

(e) Additional information or clarification needed by ecology during the review of a revised or updated plan to determine if the plan is compliant with these rules and chapter 70.95N RCW.

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

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

NEW SECTION

WAC 173-900-340 CEP recycling plan review fee. (1) Ecology shall review and approve plans. The authority or authorized party will pay ecology's plan review and approval costs.

(2) Plan review and approval includes ecology's costs for:

(a) Review;

(b) Approval; and

(c) Update and plan revision review and approval.

(3) Ecology shall base the plan review fee on actual costs as follows:

Plan Review Fee = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff hourly time and other costs related to accomplishing the activities identified in subsection (2) of this section for each plan. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working on the plan including, for example, costs of: Travel related to plan review, printing and publishing of documents about the plan, and other work, contracted or otherwise, associated with plan review and approval, as necessary.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Plan review fee invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the date that ecology has issued the invoice. Ecology will grant final approval of plans and post approved plans on ecology's web site, when all outstanding invoices have been paid by the authority or authorized party for the activities delineated in subsection (2) of this section.

NEW SECTION

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

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

The following is the process for changing plan participation:

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

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

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

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

(a) The manufacturer requesting the change; and

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

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

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

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

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

NEW SECTION

WAC 173-900-350 CEP recycling plan compliance. (1) **Financial obligations of manufacturers:**

(a) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology within sixty days that the manufacturer is no longer participating in the standard plan.

(b) Manufacturers who do not meet their financial obligations in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260.

(2) **Noncompliance with plan responsibilities:**

(a) It is the responsibility of the authority or the authorized party to notify ecology within sixty days if a manufacturer, who is participating in their plan, is not complying with the manufacturer's responsibilities as described in the ecology approved plan.

(b) Manufacturers who do not comply with the responsibilities

identified and agreed to in their plan are in plan violation. Ecology will follow the violations, warning and penalty procedures in Part III, WAC 173-900-255 and 173-900-260.

(3) **Notifications to ecology:**

(a) The notification to ecology about manufacturers in the plan must include:

(i) Name of manufacturer and EPR number issued by ecology;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

(b) The notification to ecology about direct processors in the plan must include:

(i) Name of direct processor and facility address;

(ii) Description of noncompliance; and

(iii) Date of notice submittal.

NEW SECTION

WAC 173-900-355 Collection services. (1) Each plan must include a description of the method(s) for the reasonably convenient collection of all CEPs in rural and urban areas throughout the state at no cost to the covered entities according to the requirements in this section.

(2) **County:** The plan must provide collection services of CEPs in each county of the state.

(3) **Urban, city or towns with a population greater than ten thousand:** The plan must provide at least:

(a) One collection site; or

(b) Alternative collection service; or

(c) A combination of sites and alternative service(s).

Together, these sites and/or alternative services must provide at least one collection opportunity for all CEPs for every city or town in the state with a population of greater than ten thousand. A county's collection site may be the same as a collection site for a city or town in the county.

(4) **Rural areas:** For rural areas without commercial centers, or areas with widely dispersed population, a plan may provide collection at:

(a) The nearest commercial centers or solid waste sites;

(b) Collection events;

(c) Mail-back systems; or

(d) A combination of these options.

(5) **Collectors:** The plan must use only registered collectors that are listed as being in "in compliance" status on the "collector registration list."

(6) **Standard plan:** The standard plan must accept CEPs from any collector that is listed on the "collector registration list" as in "in compliance" status.

(7) **Limiting CEPs collected:** A plan may limit the number of

CEPs that will be accepted.

(a) CEPs may be limited by:

(i) Number of a product type accepted per a covered entity per day; or

(ii) Number of product type accepted per delivery at a collection site; or

(iii) Number of a product type accepted by an alternative collection service.

(b) All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the approved plans.

(8) **Large quantities:** If a plan provides specific collection services or has restrictions for large quantities of CEPs, the plan must include a definition of "large quantity."

(9) **Providing joint services:** A plan may provide collection sites and services jointly with another plan or plans.

(10) **Collection sites:**

(a) Collection sites must be:

(i) Staffed during operating hours;

(ii) Open to the public at a frequency adequate to meet the needs of the area being served; and

(iii) Open regularly scheduled hours and on an ongoing basis.

(b) Collection sites may include:

(i) Electronics recyclers and repair shops;

(ii) Recyclers of other commodities;

(iii) Reuse organizations;

(iv) Charities;

(v) Retailers;

(vi) Government recycling sites; or

(vii) Other suitable locations.

(11) **Alternatives to collection sites:**

(a) A plan may provide alternative collection services to covered entities if those alternative collection services provide:

(i) Equal or better convenience than a collection site; and

(ii) Equal or increased collection of unwanted CEPs than would be achieved through a collection site.

(b) If a plan provides alternative services at a cost, the plan must also provide free collection service to covered entities in that county and for cities or towns with a population greater than ten thousand.

(c) These alternatives must be included in the plan as required under Part III, WAC 173-900-320.

(d) To use an alternative collection service instead of a collection site, a plan must provide ecology documentation that demonstrates the alternative service meets (a)(i) and (ii) of this subsection.

(e) Alternative services may include curbside collection services and premium services:

(i) Curbside collection services may be used to collect CEPs from households and other covered entities in small quantities. Those providing curbside collection services may charge an additional fee to the covered entity using the service. The fee

will cover the costs not paid by the standard or independent plans.

(ii) Premium services are services that are in addition to simple collection and are provided on-site.

(A) Examples are:

- At-location system upgrade or replacement services provided to covered entities; or
- At-home pickup services offered to households.

(B) Those providing premium services may charge an additional fee to the covered entity to cover the costs not paid by the standard or independent plans.

(12) **Alternatives for collecting large quantities of CEPs:**

(a) A plan may provide alternative collection services to small businesses, small governments, charities, and school districts that may have large quantities of CEPs that cannot be handled at collection sites or through curbside services.

(b) The plan must include a description of alternative collection services for large quantities of CEPs.

(13) **Approval criteria for collection services:** Ecology will determine approval of a plan's collection services based on the following criteria. Collection services are:

(a) Reasonably convenient;

(b) Available to all citizens of Washington state;

(c) Provided in both rural and urban areas;

(d) Provided in every county of the state; and

(e) Provided for each city or town with a population of greater than ten thousand.

NEW SECTION

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

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

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

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

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

NEW SECTION

WAC 173-900-365 Annual compliance audit reports for direct processors. (1) For each direct processor used by the plan, the authority or authorized party must provide an annual compliance audit report to ecology. These reports must demonstrate and certify that the direct processors meet either the minimum performance standards in WAC 173-900-650 or are in conformance with ecology's "*Environmentally Sound Management and Performance Standards for Direct Processors*."

(2) The authority or authorized party must submit the compliance audit report with their plan submittal (WAC 173-900-320), plan updates or revisions when there are additions or changes to direct processors used by the plan (WAC 173-900-335), and as part of the annual report (WAC 173-900-800).

Minimum performance standards.

(3) For demonstration of compliance with the minimum standards in WAC 173-900-650, the compliance audit must be conducted by an auditor not employed by the processor.

(4) Each annual compliance audit report submitted to ecology to demonstrate compliance with the minimum standards must include:

(a) A list of all the minimum performance standards;

(b) Documentation that the direct processor meets each of the performance standards, including a list of all applicable national, state, and local laws, rules, and ordinances, related to processing activities;

(c) Documentation of noncompliance with a performance standard: A direct processor may not comply with a specific minimum performance standard in WAC 173-900-650 when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists, the audit report must include:

(i) Identification of which performance standard(s) is in conflict.

(ii) Document the conflict and the processor's compliance with the corresponding national, state, or local laws or rules that apply at that location;

(d) Documentation of the auditor's qualifications as described in subsection (5) of this section for the auditor signing the report;

(e) Certification from the auditor certifying whether or not the processor meets the standards in this section;

(f) Signature of the auditor certifying the accuracy of the report.

(5) This annual compliance audit must be completed by an auditor who through professional training, work experience and

certification has appropriate knowledge to evaluate the environmental compliance of the processing facility.

Voluntary preferred performance standards.

(6) For demonstration of voluntary conformity with the "*Environmentally Sound Management and Performance Standards for Direct Processors*," the annual compliance audit report must meet the requirements in the environmentally sound management and performance standards document. The audit report required for the voluntary program for preferred performance standards may substitute for the audit report required in this section.

(7) Ecology will not list a direct processor in "preferred status" if:

(a) Ecology does not receive an audit report as required in "*Environmentally Sound Management and Performance Standards for Direct Processors*"; or

(b) The direct processor is not meeting all of the voluntary preferred performance standards.

(8) If a direct processor loses preferred status, and still is providing services to a CEP recycling plan, the direct processor must still be in compliance with the minimum performance standards in WAC 173-900-650. If the direct processor is not meeting the minimum standards, ecology will follow the warning, penalty, and violation procedures in WAC 173-900-370, 173-900-380, and 173-900-390.

Proprietary information.

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

NEW SECTION

WAC 173-900-370 Authority or authorized party violations. (1) The authority or authorized party is in violation of this chapter when there is:

(a) A plan violation; or

(b) An annual report violation; or

(c) A performance standards violation.

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

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

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

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

(d) Does not implement return share sampling as required in

WAC 173-900-900.

(3) **Annual report violation.**

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

(4) **Performance standards violation.**

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

NEW SECTION

WAC 173-900-380 Authority and authorized party violation notice and penalties.

Table 380
Authority and Authorized Party Penalties

Type of Violation	Written Notice	First Penalty	Second and Subsequent Penalties
Plan Violation	Penalty Notice	Up to $5,000	Up to $10,000
Annual Report Violation	Warning Letter	Up to $1,000	Up to $2,000
Performance Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Penalty notice for plan violations.

(1) When ecology issues a penalty notice for a "plan violation," ecology will send the penalty notice to the authority or authorized party by certified mail, with a copy to each manufacturer listed as a plan participant. The penalty notice will include:

(a) A first penalty assessment as defined in Table 380;

(b) The requirements that need to be corrected; and

(c) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the notice or the plan may no longer be approved.

(2) If after thirty days, the authority or authorized party fails to make the required corrections and implement the plan or submit a plan update as described in WAC 173-900-335, ecology:

(a) Must then assess a second penalty as defined in Table 380; and

(b) May inform the authority or authorized party that the plan is no longer approved; and

(c) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(3) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

Warning letter for annual report violations.

(4) When ecology issues a warning letter for an "annual report violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The requirements that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(5) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(6) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

Warning letter for performance standards violations.

(7) When ecology issues a warning letter for a "performance standards violation," ecology will send the letter to the authority or authorized party by certified mail, with a copy to each manufacturer listed in the plan. The warning letter will include:

(a) The violations that need to be corrected; and

(b) A statement that the authority or authorized party must correct the violation within thirty days of receipt of the warning letter.

(8) If after thirty days, the authority or authorized party fails to make the required corrections, ecology must:

(a) Then assess a first penalty as defined in Table 380; and

(b) Send a "manufacturer plan violation" warning letter to each manufacturer in the plan (see WAC 173-900-255).

(9) If the authority or authorized party does not correct the violation, ecology must assess subsequent penalties no more often than every thirty days.

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

Appeals.

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

NEW SECTION

WAC 173-900-390 Corrective actions for authority or authorized party.

Corrective actions for plan violations.

(1) The authority or authorized party must:

(a) Meet the plan requirements in Part III of this chapter;

(b) Ensure that all direct processors used by the plan are registered and have updated their registration as required in this chapter;

(c) Correct any other violations; and

(d) Pay or settle any penalties due to ecology.

Corrective actions for annual report violations.

(2) The authority or authorized party must:

(a) Submit their annual report to ecology or correct any deficiencies in the report and submit to ecology;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

Corrective actions for performance standards violations.

(3) The authority or authorized party must:

(a) Update information in the plan about direct processors by either:

(i) Discontinuing use of the direct processor and submitting a plan update. The plan update must remove the direct processor from the plan and explain how the plan will replace the processing services previously provided by that direct processor; or

(ii) Submitting a plan update including a new audit report for the direct processor documenting how the direct processor now meets all of the minimum performance standards in WAC 173-900-650.

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

PART IV
((~~WARNING, VIOLATIONS, AND PENALTIES~~)) COLLECTORS FOR CEP RECYCLING PLANS

NEW SECTION

WAC 173-900-400 What collectors need to know to collect CEPs for a CEP recycling plan. (1) To collect CEPs for a plan under this chapter the collector must:

(a) Submit an initial registration;
(b) Update the registration information if it changes;
(c) Renew registration annually;
(d) Meet the collector performance standards; and
(e) Be in "in compliance" status on the "collector registration list" on ecology's web site.

Table 400
Collector Status

Collector's Status	Can a collector collect CEPs for a plan?	Definition
In compliance	Yes	**"In compliance"** means the collector is registered and meets the collector performance standards in this chapter.
In violation	No	**"In violation"** means the collector is in violation of the requirements in this chapter.
Collector's name is not on the "collector registration list"	No	Collectors who collect CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. If a collector is not registered, the collector must not receive payment for CEPs from a plan.

(2) **Collection services:**
(a) Plans are not required to compensate collectors for any products other than CEPs submitted for recycling by covered entities (households, charities, school districts, small businesses, and/or small governments located in Washington state).
(b) Plans are not required to compensate collectors for CEPs collected prior to January 1, 2009.
(3) Registration under this chapter is only for purposes of

administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

(4) The authority of the standard plan must accept CEPs from registered collectors in "in compliance" status.

(5) The authority must compensate registered collectors, in "in compliance" status for the reasonable costs associated with collection of CEPs submitted by a collector to the plan.

(6) The standard plan will not pay for additional costs associated with premium or curbside services, unless a prior written agreement has been made between the authority and the service provider.

NEW SECTION

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

Step 1: Complete the collector registration form.

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

(a) Name of individual responsible for implementing the collector requirements;

(b) Contact and location information;

(c) Business license information;

(d) Permit information, when applicable;

(e) Description of services provided; and

(f) Geographic areas where services are provided.

Step 2: Submit the collector registration form.

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

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

(a) On-line registration;

(b) Submitting the original paper version through:

U.S. Postal Service to:

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

Courier Service to:

Department of Ecology

Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-900-420 How collectors know if their registration is approved.

Step 1: Ecology review of collector registration forms.

(1) After receiving a form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the collector to:

(a) Tell the collector what information is missing or inaccurate; and

(b) Request a revised form.

(3) The collector must submit a revised form within thirty days from the day ecology contacted the collector.

Step 2: Approval or denial of collector registration forms.

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the collector's registration, ecology will post the collector's name on the "collector registration list" and place the collector in "in compliance" status. The collector is allowed to collect CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the collector did not revise information as requested.

(b) If ecology denies a collector's registration, ecology will remove the collector's name from the "collector registration list" if listed, and will notify the collector of the denial.

(c) The collector must not collect CEPs for a plan.

(d) For initial collector registration, if ecology denies a registration, the collector may resubmit an initial registration form.

NEW SECTION

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

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

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

(a) Submit the on-line registration form;

(b) Submit a paper version of a form through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review collector registration forms submitted for annual registration under the process described in WAC 173-900-420.

(5) For annual registrations, if ecology denies the collector's registration form, ecology will remove the collector from the "collector registration list." In order to resume collecting CEPs for a plan, the collector must resubmit an initial registration (WAC 173-900-410) and receive registration approval from ecology.

NEW SECTION

WAC 173-900-440 Updates to collector registration. (1) A registered collector must submit an updated registration form to ecology within fourteen days of any change to the information provided in its registration form.

(2) The collector must submit updates to its registration form by using one of the options below:

(a) Updating the collector's registration information using the on-line form;

(b) Submitting a paper version of the form with updated

information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review collector updated registration forms under the process described in WAC 173-900-420.

NEW SECTION

WAC 173-900-450 Performance standards for collectors. (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:

(a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;

(b) Curbside collection services to cover the costs not paid by the standard or independent plans; or

(c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

(2) A registered collector must not process CEPs, or components, for purposes of recycling or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(4) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

(b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.

(c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.

(d) Provide enclosed storage areas with impervious floors so that the CEPs and components collected are protected from the

weather.

(e) Collectors must post, in a readily visible location, information that can be shared with covered entities about how and where CEPs received into the program are recycled. Recycling information is provided by the plan(s) for which the collector is providing services.

(f) If a registered collector also gleans CEPs or components for reuse, they must notify the covered entity.

(5) A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(6) A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

(7) No entity shall claim to be collecting CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan. Except fully functional CEPs and components may be gleaned for reuse. Collectors shall not include gleaned CEPs and components for reuse in the weight totals for plan compensation.

(8) A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if the collector's days/hours of operations change or the collector changes the CEPs collected.

NEW SECTION

WAC 173-900-460 Ecology determination of collector compliance. (1) Beginning January 1, 2009, ecology may inspect any collector used by a plan for compliance with this chapter.

(2) If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-470, 173-900-480, and 173-900-490.

NEW SECTION

WAC 173-900-470 Collector violations. Collector violations are described in Table 470.

Table 470
Collector Violations

Starting	If	Then	and Ecology Will
September 1, 2007	A collector has collected CEPs for a plan and is not registered under this chapter.	It is a **collector registration violation.**	Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490.
Effective date of this chapter	A collector does not update its registration information within fourteen days of a change.	It is a **collector registration violation.**	Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490.
January 1, 2009	A collector collecting CEPs for a plan is out of compliance with the collector standards in WAC 173-900-450.	It is a **collector standards violation.**	Follow the warning, violation, and penalties procedures in Part IV, WAC 173-900-480 and 173-900-490.

NEW SECTION

WAC 173-900-480 Warnings and penalties for collector violations.

Table 480
Collector Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Collector Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Collector Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

(1) When ecology issues a written warning letter via certified mail to a collector, for any collector violation the warning will include a copy of the requirements to let the collector know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

Penalties:

(3) **First penalties:** If the collector does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 480 above and ecology will:

(a) Either change the collector's status to "in violation" or add the collector to the "collector registration list" and put them

in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the collector (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 480 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

Appeals:

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

WAC 173-900-490 Corrective action for collector violations. For ecology to change a collector from the "in violation" status to "in compliance" status on the "collector registration list," the collector must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

PART V
TRANSPORTERS FOR CEP RECYCLING PLANS

NEW SECTION

WAC 173-900-500 What transporters need to know to collect CEPs for a CEP recycling plan. (1) To transport CEPs for a plan under this chapter a transporter must:

(a) Submit an initial registration;

(b) Update the registration information if it changes;

(c) Renew registration annually;

(d) Meet the transporter performance standards in WAC 173-900-550; and

(e) Be in "in compliance" status on the "transporter registration list" on ecology's web site.

Table 500
Transporter Status

Transporter's Status	Can a transporter transport CEPs for a plan?	Definition
In compliance	Yes	**"In compliance"** means the transporter is registered and meets the transporter performance standards in this chapter.
In violation	No	**"In violation"** means the transporter is in violation of the requirements in this chapter.
Transporter's name is not on the "transporter registration list"	No	Transporters who transport CEPs or other electronic products and do not want to participate in this program do not need to register to continue doing business. If a transporter is not registered, the transporter must not receive payment for CEPs from a plan.

(2) Registration under this chapter is only for purposes of administering the electronic product recycling program and does not constitute endorsement by ecology of a particular registrant.

NEW SECTION

WAC 173-900-510 Initial registration as a CEP transporter.

Step 1: Complete the transporter registration form.

(1) Each transporter must use the form provided by ecology and must include all of the following:

(a) Contact and location information;

(b) Business license information;

(c) Permit information;

(d) Description of services provided; and

(e) Geographic areas where services are provided.

Step 2: Submit the registration form.

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.

(3) The transporter must submit the form using one of the options below:

(a) On-line registration;

(b) The original paper version through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-900-520 How transporters know if their registration is approved.

Step 1: Ecology review of transporter registration form.

(1) After receiving a form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the transporters to:

(a) Tell the transporter what information is missing or inaccurate; and

(b) Request a revised form.

(3) The transporter must submit a revised form within thirty days from the day ecology contacted the transporter.

Step 2: Approval or denial of transporter registration forms.

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the transporter's registration, ecology will post the transporter's name on the "transporter registration list" and place the transporter in "in compliance" status. The transporter is allowed to transport CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the transporter did not revise information as requested.

(b) If ecology denies a transporter's registration, ecology will remove the transporter's name from the "transporter registration list" if listed, and will notify the transporter of the denial.

(c) The transporter must not transport CEPs for a plan.

(d) For initial transporter registration, if ecology denies a registration, the transporter may resubmit an initial registration form.

NEW SECTION

WAC 173-900-530 Annual renewal of transporter registration. (1) A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a transporter does not submit a renewal registration form, ecology will remove the transporter from the "transporter registration list."

(3) The transporter must submit its annual registration form using one of the options below:

(a) Submit the on-line registration form;

(b) Submit a paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive

Lacey, WA 98503

(4) Ecology will review transporter registration forms submitted for annual registration under the process described in WAC 173-900-520.

(5) For annual registrations, if ecology denies the transporter's registration form, ecology will remove the transporter from the "transporter registration list." In order to resume transporting CEPs for a plan, the transporter must resubmit an initial registration (WAC 173-900-510) and receive registration approval from ecology.

NEW SECTION

WAC 173-900-540 Updates to transporter registration. (1) A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

(2) The transporter must submit updates to its registration form by using one of the options below:

(a) Updating the transporter's registration information using the on-line form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review transporter updated registration forms under the process described in WAC 173-900-520.

NEW SECTION

WAC 173-900-550 Performance standards for transporters. (1) All registered transporters must comply with all applicable laws, rules, and local ordinances.

(2) A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.

(3) A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

(4) Transporters must deliver CEPs for a plan to registered direct processors.

NEW SECTION

WAC 173-900-560 Ecology determination of transporter compliance. (1) Beginning January 1, 2009, ecology may inspect any transporter used by a plan for compliance with this chapter.

(2) If ecology determines a violation occurred, ecology will document each violation and follow the warning, violation, and penalties procedures in Part V, WAC 173-900-570, 173-900-580, and 173-900-590.

NEW SECTION

WAC 173-900-570 Transporter violations. Transporter violations are described in Table 570.

Table 570
Transporter Violations

Starting	If	Then	and Ecology Will
September 1, 2007	A transporter has transported CEPs for a plan and is not registered under this chapter.	It is a **transporter registration violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590.
Effective date of this chapter	A transporter does not update its registration information within fourteen days of a change.	It is a **transporter registration violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590.

Starting	If	Then	and Ecology Will
January 1, 2009	A transporter transporting CEPs for a plan is out of compliance with the transporter standards in WAC 173-900-550.	It is a **transporter standards violation.**	Follow the warning, violation, and penalties procedures in Part V, WAC 173-900-580 and 173-900-590.

NEW SECTION

WAC 173-900-580 Warnings and penalties for transporters.

Table 580
Transporter Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Transporter Registration Violation	Warning Letter	Up to $1,000	Up to $2,000
Transporter Standards Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

(1) When ecology issues a written warning letter via certified mail to a transporter, for any transporter violation the warning will include a copy of the requirements to let the transporter know what must be done to be in compliance.

(2) Ecology will send a copy of the warning letter to the authority and authorized party of each plan.

Penalties:

(3) **First penalties:** If the transporter does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 580 above and ecology will:

(a) Either change the transporter's status to "in violation" or add the transporter to the "transporter registration list" and put them in "in violation" status; and

(b) Send a penalty notice for a "plan violation" to the authority and authorized party of each plan that uses the transporter (see WAC 173-900-380).

(4) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 580 no more often than every thirty days for the same violation.

(5) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

Appeals:

(6) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

WAC 173-900-590 Corrective actions for transporter violations. For ecology to change a transporter from the "in violation" status to "in compliance" status on the "transporter registration list," the transporter must:

(1) Provide evidence that the violation has been corrected; and

(2) Pay or settle any penalties to ecology.

PART VI
DIRECT PROCESSOR REQUIREMENTS

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-600 ((~~Manufacturer--Warning, violations, and penalties.~~)) What direct processors need to know to process CEPs for a CEP recycling plan. ((~~(1) As of January 1, 2007, all manufacturers of CEPs must register with ecology in order to offer for sale or sell, or have a retailer offer for sale or sell, their products in or into Washington state.~~

~~(2) Ecology will place a manufacturer in "in violation" status if a violation, as described in this chapter, is committed by the manufacturer.~~

~~(3) **Types of violations:**~~

~~(a) **Registration violation:** As of January 1, 2007:~~

~~(i) It is a manufacturer violation if a manufacturer offers for sale or sells CEPs in or into Washington state and is not registered under this chapter.~~

~~(ii) It is also a manufacturer violation if, on the date the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status and the retailer offers for sale or sells those CEPs.~~

~~**Notification to retailers:** A manufacturer may notify, in writing, retailers if the manufacturer's CEPs cannot be offered for~~

~~sale or sold in or into Washington state. A copy of this notice must be supplied to ecology to avoid the registration violation.~~

~~(iii) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, each unit offered for sale or sold is a separate violation for the manufacturer.~~

~~(b) **Unlabeled electronic products violations:** As of January 1, 2007, it is a manufacturer violation if a manufacturer, or a retailer, offers for sale or sells the manufacturer's electronic product in or into Washington state that is not labeled with the manufacturer's brand name. Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation for the manufacturer.~~

~~(4) **Warnings and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, for the first violation of subsection (3) of this section. The written warning will include a copy of the requirements to let the manufacturer know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for the same violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) To be a direct processor and process CEPs for a plan under this chapter the direct processor must:

(a) Submit an initial registration form;

(b) Update registration information if it changes;

(c) Renew registration annually;

(d) Be identified as a direct processor in an ecology approved plan;

(e) Be in "in compliance" status on the "direct processor registration list" on ecology's web site; and

(f) Meet the minimum or preferred performance standards, throughout the program year, assigned to the direct processor on the "direct processor registration list."

(2) At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

Table 600
Direct Processor Status

Direct Processor's Status	Can a direct processor process CEPs for a plan?	Definition
In compliance	Yes	**"In compliance"** means the direct processor is registered and complies with the requirements in WAC 173-900-650.
In violation	No	**"In violation"** means the direct processor is in violation of the requirements in this chapter and the plan cannot use the services of the direct processor until compliance is achieved.
Processor's name is not on the "processor registration list"	No	If the direct processor's name is not on the "direct processor registration list," that processor must not provide processing services to a plan or receive compensation from a plan for processing services.

(3) The authority shall contract with any processor that meets the direct processor performance standards in this chapter and meets any requirements described in the authority's operating plan or through contractual arrangements with the authority.

(a) Processors used by the standard plan shall:

(i) Provide documentation to the authority at least annually regarding how they are meeting the performance standards in WAC 173-900-650, including enough detail to allow the standard plan to meet the plan's annual reporting requirements (see annual reporting in WAC 173-900-800); and

(ii) Submit to annual compliance audits meeting the audit requirements in WAC 173-900-365 conducted by or for the authority.

(b) The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products.

(c) Such processors must demonstrate that the unwanted

electronic products have been received from registered collectors or transporters and provide other documentation, as may be required by the authority.

(4) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-610 ((~~Retailer--Warning, violations, and penalties.~~)) Initial registration for direct processors. ((~~(1) Types of violations:~~

~~(a) **Registration violation:** As of January 1, 2007, it is a retailer violation if a retailer "offers for sale" or "sells" CEPs if, at the time the products are ordered from the manufacturer or their agent, the manufacturer was not in "in compliance" or "pending" status.~~

~~(i) When the violation consists of the sale or offering for sale of a CEP, manufactured by an unregistered manufacturer, or a manufacturer in "in violation" status, each unit offered for sale or sold is a separate violation for the retailer.~~

~~(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a violation even if the manufacturer fails to register.~~

~~(b) **Unlabeled electronic products violations:** As of January 1, 2007, a retailer must not "offer for sale" or "sell" an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.~~

~~(i) Each unlabeled unit offered for sale or sold is a separate violation for the retailer.~~

~~(ii) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the "offering for sale" or "sale" of these electronic products is not a violation.~~

~~(2) **Warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the retailer for the first violation for either subsection (1)(a) or (b) of this section. The written warning will include a copy of the requirements to let the retailer know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each~~

~~subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~))

Table 610
Direct Processor Registration Types

Type of Registration	Definition	Due Date
Initial registration	Direct processor is not currently registered with ecology under this chapter.	Submit registration form to ecology at any time.
Annual renewal	Direct processor is currently registered with ecology under this chapter.	Submit renewal form to ecology between June 1 and September 1 of each year.

At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

Step 1: Complete a direct processor registration form.

(1) Each direct processor must complete a registration form which includes all the following:

(a) Contact and location information;

(b) Business license information;

(c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;

(d) Description of services provided;

(e) Geographic areas from which electronic products are accepted; and

(f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

Step 2: Submit the direct processor registration form.

(2) The person responsible for implementing the direct processor requirements under this chapter must sign the registration form. The signature certifies the company has provided accurate and complete information on the form and is complying with all applicable state, local, and national laws and regulations.

(3) The person must submit the form to ecology. When mailing in an original paper copy, the person must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-620 ((~~Collector--Warning, violations, and penalties.~~)) How direct processors know if their registration is approved. ((~~(1) Ecology will place a collector in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the collector. For a collector, "in violation" status means the collector must not collect CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Collection of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for collectors to collect CEPs in Washington state if the collector is not registered with ecology.~~

~~(3) **Collector warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the collector for the first violation of this section. The written warning will include a copy of the requirements to let the collector know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~))

Step 1: Ecology review of direct processor registration forms.

(1) After receiving a registration form, ecology will review the form to determine if the form is complete and accurate.

(2) If the form is not complete and accurate, ecology will contact the direct processor to:

(a) Tell the direct processor what information is missing or inaccurate; and

(b) Request a revised form.

(3) The direct processor must submit the revised form within thirty days from the day ecology contacted the direct processor.

Step 2: Approval or denial of direct processor registration.

(4) **Approval.**

(a) Approval means that ecology has determined the form is complete and accurate.

(b) If ecology approves the direct processor's registration, ecology will:

(i) Place the direct processor's name on the "direct processor registration list"; and

(ii) Place the direct processor in "in compliance" status.

(c) The direct processor may process CEPs for a plan.

(5) **Denial.**

(a) Denial means that ecology has determined the form is not complete and accurate and the direct processor did not revise information as requested.

(b) If ecology denies a direct processor's registration, ecology will notify the direct processor of the denial and either:

(i) Remove the direct processor's name from the "direct processor registration list"; or

(ii) For renewals and updates, change the direct processor's status to "in violation" on the "direct processor registration list."

(iii) For initial direct processor registration, if ecology denies a registration, the direct processor may resubmit an initial registration form.

AMENDATORY SECTION (Amending Order 06-07, filed 11/7/06, effective 12/8/06)

WAC 173-900-630 ((~~Transporter--Warning, violations, and penalties.~~)) Annual renewal of direct processor registration.

((~~(1) Ecology will place a transporter in "in violation" status on the "Transporter/Collector Registration List for the Electronic Product Recycling Program" on ecology's web site if a violation is committed by the transporter.~~

~~For a transporter, "in violation" status means the transporter~~

~~must not transport CEPs in Washington state and violations are subject to the warning and penalties in subsection (3) of this section.~~

~~(2) **Transportation of CEPs without being registered with ecology violation:** As of September 1, 2007, it is a violation for transporters to transport CEPs in Washington state if the transporter is not registered with ecology.~~

~~(3) **Transporter warning and penalties:**~~

~~(a) Notice of violation: Ecology will issue a written warning, via certified mail, to the transporter for the first violation of this section. The written warning will include a copy of the requirements to let the transporter know what is needed for them to be in compliance.~~

~~(b) If the compliance requirements in the written warning are not met within thirty days of receipt of the warning, ecology will assess a penalty starting on the date of receipt of the written warning:~~

~~(i) Of up to one thousand dollars for the first violation; and~~

~~(ii) Of up to two thousand dollars for the second and each subsequent violation.~~

~~(iii) Ecology will issue a penalty no more often than every thirty days for each violation.~~

~~(c) Ecology will deposit all penalties levied under this section into the electronic products recycling account created under RCW 70.95N.130.~~)) (1) Direct processors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If an annual renewal registration form is not received during this time period, and subsequently approved by ecology, the direct processor will be removed from the "direct processor registration list" and must not process CEPs for a plan until a registration form is submitted and approved.

(3) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review direct processor registration forms submitted for annual renewal under the process described in WAC 173-900-620.

(5) For annual registrations, if ecology denies the direct

processor's registration form, ecology will remove the direct processor from the "direct processor registration list." In order to resume processing services for a plan, the processor must resubmit an initial registration (WAC 173-900-610) and receive registration approval from ecology.

NEW SECTION

WAC 173-900-640 Updates to direct processor registration. (1) A direct processor must submit an updated registration form to ecology thirty days prior to providing new, additional, or reducing processing services for a plan.

(2) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review direct processor updated registration forms under the process described in WAC 173-900-620.

NEW SECTION

WAC 173-900-650 Performance standards for direct processors. (1) This section includes performance standards for environmentally sound handling and management of CEPs by direct processors to protect human health and the environment. There are two levels of performance standards:

(a) Minimum standards (required);

(b) Preferred standards (voluntary program).

(2) Ecology will list all registered direct processors on the agency web site and indicate which level of performance standards, minimum or preferred, the processor meets.

(3) Each registered direct processor used by a plan must meet

the minimum performance levels in this section to provide processing services for a plan.

Minimum performance standards for direct processors.

(4) Minimum performance standards for direct processors include the following requirements:

Responsible management priorities.

Legal requirements.

Environmental, health, and safety, management systems (EHSMS).

Recordkeeping.

On-site requirements.

Materials of concern.

Recycling, reuse, and disposal.

Transport.

Prison labor.

Facility access.

Notification of penalties and violations.

Noncompliance with minimum performance standards.

(5) **Responsible management priorities.**

A direct processor must periodically evaluate its management strategies to assure it takes advantage of new more effective technologies and is otherwise continuously improving its practices and processes.

(6) **Legal requirements.**

(a) A direct processor must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of CEPs, components, parts, and materials and disposal of residuals. These include but are not limited to applicable legal requirements relating to:

(i) Waste and recyclables processing, storage, handling, and shipping; and

(ii) Air emissions and waste water discharge, including storm water discharges; and

(iii) Worker health and safety; and

(iv) Transboundary movement of electronic equipment, components, materials, waste, or scrap for reuse, recycling, or disposal.

(b) Upon request by a covered entity, a direct processor must make available information to that covered entity about any financial penalties, regulatory orders, or violations the direct processor received in the previous three years. If the direct processor receives subsequent penalties or regulatory orders, the direct processor must make that information available within sixty days after any subsequent penalties or regulatory orders are issued.

(7) **Environmental, health, and safety management systems (EHSMS).**

(a) A direct processor must develop, document, fully implement, and update at least annually a written EHSMS that includes all of the following:

(i) Written goals and procedures that require the direct processor to systematically manage its environmental, health, and safety matters.

(ii) Utilization of a "plan, do, check, act" model that identifies environmental aspects, implements operational controls, and provides corrective action procedures. Elements of this model must include:

(A) **Plan**

(I) Identification of environmental impacts, and legal and regulatory requirements;

(II) Establishment of environmental goals, objectives and targets;

(III) Plan actions that work toward achieving identified goals;

(IV) Plan for emergency preparedness and response; and

(V) Commitment of management support.

(B) **Do**

(I) Establish roles and responsibilities for the EHSMS and provide adequate resources;

(II) Assure that staff are trained and capable of carrying out responsibilities; and

(III) Establish a process for communicating about the EHSMS within the business.

(C) **Check**

(I) Monitor key activities and track performance;

(II) Identify and correct problems and prevent recurrence; and

(III) Provide a measurement system that quantifies the application of the model.

(D) **Act**

(I) Conduct annual progress reviews;

(II) Act to make necessary changes to the EHSMS; and

(III) Create and implement an action plan for continual improvement.

(iii) A worker safety and health management plan that conforms to a consensus-based standard covering worker health and safety such as ANSI Z10 or to a similarly rigorous in-house standard.

(iv) A plan for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment. Such releases include emergencies such as accidents, spills, fires, and explosions. The direct processor must submit this plan to all appropriate emergency responders, e.g., police, fire department, hospitals.

(v) A plan is conformable with ISO 14001, Institute of Scrap Recycling Industries' Recycling Industry Operating Standards ("RIOS"), the International Association of Electronic Recyclers' ("IAERs'") standard, or other standards designed at a level appropriate for processing at the facility.

(b) A direct processor must ensure all employees understand and follow the portions of the EHSMS relevant to the activities they perform.

(8) **Recordkeeping.**

(a) A direct processor must maintain documentation such as

commercial contracts, bills of lading, or other commercially accepted documentation for all transfers of CEPs, components, parts, materials, and residual into and out of its facilities.

(b) A direct processor must retain the documents required in this subsection (8) for at least three years.

(9) **On-site requirements.**

(a) **General**

(i) Direct processors must take all practicable steps to maximize recycling.

(ii) A direct processor must have the expertise and technical capability to process each type of CEP and component it accepts in a manner protective of worker safety, public health, and the environment.

(iii) A direct processor must use materials handling, storage and management practices, that assure that all work and storage areas are kept clean and orderly.

(iv) Speculative accumulation:

(A) "Speculative accumulation" means holding, storing or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days.

(B) Generators and facilities holding, storing, or accumulating CEPs, components, parts, materials, or residual derived therefrom for more than one hundred eighty days will be considered holding, storing, accumulating solid or hazardous waste and subject to applicable treatment, storage or disposal regulations or equivalent.

(v) A direct processor must use a certified scale to weigh CEPs and components counted towards a plan's equivalent share.

(b) **Storage**

A direct processor must store materials of concern removed from CEPs, components, parts, materials, or residuals in accordance with subsection (11) of this section in a manner that:

(i) Protects them from adverse atmospheric conditions and floods and, as warranted, includes a catchment system;

(ii) Is secure from unauthorized entrance; and

(iii) Is in clearly labeled containers and/or storage areas.

(c) **Exceptional releases posing risks**

A direct processor must be prepared to immediately implement the practices set forth in its EHSMS for responding to and reporting exceptional releases that could pose a risk to worker safety, public health, or the environment, including emergencies such as accidents, spills, fires, and explosions.

(10) **Materials of concern.**

Materials of concern must be handled according to the standards in this section. "Materials of concern" are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

(11) **Recycling, reuse, and disposal.**

(a) **Recycling**

(i) A direct processor must remove from CEPs and components destined for recycling any parts that contain materials of concern that would pose a risk to worker safety, public health, or the environment during subsequent processing.

(ii) A direct processor must remove any parts that contain materials of concern prior to mechanical or thermal processing and handle them in a manner consistent with the regulatory requirements that apply to the items, or any substances contained therein. Circuit boards and materials derived therefrom will be allowed to be shredded prior to separating.

(b) **Reuse**

(i) "Reuse" means any operation by which an electronic product or component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

(ii) For a CEP, component or part to be put to reuse it must be fully functioning.

(iii) CEPs, components and parts gleaned for reuse shall not be included in the weight totals submitted to a plan for compensation.

(c) **Disposal of residuals**

(i) "Residuals" are leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

(ii) Residuals must be properly designated and managed under applicable solid waste and hazardous waste laws at the location where disposal occurs.

(iii) A direct processor must not send residuals containing materials of concern to incinerators or solid waste landfills if doing so will pose a higher risk to worker safety, public health, or the environment than alternative management strategies.

(iv) Residuals from processing of materials of concern must not be mixed with other residuals for the purpose of disposal.

(12) **Transport.**

A direct processor must ensure that all CEPs, CEP components and materials to be transported are packaged in compliance with all applicable transport laws and rules.

(13) **Prison labor.**

Direct processors may not use federal or state prison labor for processing.

(14) **Facility access.**

Direct processors must allow access to the facility and the documentation required in this section for the purposes of assessing compliance with the requirements in this chapter and for sampling to:

(a) Ecology and ecology's designee(s);

(b) Third-party observers for the purposes of sampling;

(c) For processors used by the standard plan:

(i) The authority;

(ii) The authority's designee(s);

(d) For processors used by an independent plan:

(i) That plan's authorized party;

(ii) The authorized party's designee(s) for that plan.

(15) **Notification of penalties and violations.**

Each direct processor must notify ecology within thirty days if the direct processor receives any penalties, violations or regulatory orders related to processing activities.

(16) **Noncompliance with minimum performance standards.**

A direct processor may not comply with a specific minimum performance standard in this section when the national, state, or local laws or rules where the processor is located and a performance standard conflict. When a conflict exists, the processor's audit report must document the conflict and processor's compliance with the corresponding laws or rules (see WAC 173-900-365).

Voluntary preferred performance standards.

(17) In addition to meeting the minimum performance standards in this section, a processor may receive preferred status from ecology if the processor conforms with the voluntary performance standards in ecology's "*Environmentally Sound Management and Performance Standards for Direct Processors*."

PART VII
RETAILER REQUIREMENTS

NEW SECTION

WAC 173-900-700 Retailer--Offering for sale or selling CEPs in or into Washington state. In order for a retailer to offer for sale or sell a CEP in or into Washington state, on the date the product was ordered:

(1) The brand name on the CEP must be on the "manufacturer registration list" posted on ecology's web site; and

(2) The manufacturer must be in "pending" or "in compliance" status.

NEW SECTION

WAC 173-900-710 CEP required brand labeling. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in Washington state unless the electronic product is labeled with the manufacturer's brand.

(2) The label must be permanently affixed and readily visible.

(3) In-state retailers in possession of unlabeled, or white box, electronic products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION

WAC 173-900-720 Ecology determination of compliance for retailers. Retailers:

(1) Beginning January 1, 2007, ecology may inspect any retailer's CEP inventory offered for sale in or into Washington state to determine if the requirements in this chapter are met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740 and 173-900-750.

(2) Beginning January 1, 2007, ecology may check any retailer's CEP inventory offered for sale in or into Washington state to determine if brand labeling requirements in WAC 173-900-710 have been met. If ecology determines a violation has occurred, ecology will document each violation and follow the warning, violations, and penalties procedures in WAC 173-900-730, 173-900-740 and 173-900-750.

NEW SECTION

WAC 173-900-730 Retailer violations. (1) A retailer is "in violation" of this chapter when one or more of the following retailer violations occurs:

(a) Offering for sale or selling violation;

(b) Labeling violation; or

(c) Public outreach violation.

(2) **Retailer offering for sale or selling violation.**

A retailer is in "offering for sale or selling violation" of this chapter when a retailer offers for sale or sells CEPs and:

(a) On the date the electronic products are ordered from the manufacturer or their agent, the manufacturer's name or brand name does not appear on ecology's "manufacturer registration list."

(i) This means that brand of the manufacturer's electronic

products must not be sold in or into Washington state.

(ii) Each unit offered for sale or sold is a separate violation by the retailer.

(iii) If the retailer can prove that the retailer ordered the electronic products from the manufacturer or their agent prior to January 1, 2007, the offering for sale, or selling, of those products is not a retailer violation.

(b) On the date the electronic products were ordered from the manufacturer or their agent, the manufacturer was in "in violation" status on ecology's "manufacturer registration list."

(i) Each unit offered for sale or sold is a separate violation for the retailer.

(ii) If the retailer can prove that the products were ordered from the manufacturer or their agent when the brand and manufacturer name was on ecology's "manufacturer registration list" and was in "in compliance" or "pending" status, the offering for sale, or selling, of those products is not a violation.

(3) **Retailer labeling violations.**

(a) It is a retailer "labeling violation" when a retailer offers for sale or sells an electronic product in or into Washington state that is not labeled with the manufacturer's brand name.

(b) Each unlabeled unit offered for sale or sold is a separate violation by the retailer.

(c) If the retailer can demonstrate to ecology that the retailer was in possession of the unlabeled electronic products prior to January 1, 2007, the offering for sale or selling of these electronic products is not a violation.

(4) **Retailer public outreach violation.**

It is a retailer violation if the retailer does not meet the public outreach requirements in WAC 173-900-980.

NEW SECTION

WAC 173-900-740 Warning, penalties, and corrective action for all retailer violations.

Table 740
Retailer Warning and Penalties

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Offering for Sale or Selling Violation	Warning Letter	Up to $1,000	Up to $2,000
Labeling Violation	Warning Letter	Up to $1,000	Up to $2,000

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Public Outreach Violation	Warning Letter	Up to $1,000	Up to $2,000

Warning letter:

(1) When ecology issues a written warning letter via certified mail to a retailer, for any violation, the warning will include a copy of the requirements to let the retailer know what the retailer must do to be in compliance.

Penalties:

(2) **First penalties:** If the retailer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 740 above.

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table 740 no more often than every thirty days for the same violation.

(4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

Appeals:

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

NEW SECTION

WAC 173-900-750 Corrective action for all retailer violations. (1) For offering for sale and selling violations, the retailer must stop offering for sale or selling CEPs until the manufacturer is listed as "pending" or "in compliance" status on ecology's "manufacturer registration list."

(2) For a labeling violation, the retailer must meet the requirements in WAC 173-900-710;

(3) For a public outreach violation, the retailer must meet the requirements in WAC 173-900-980; and

(4) The retailer must pay or settle any penalties.

PART VIII
REPORTING REQUIREMENTS

NEW SECTION

WAC 173-900-800 CEP recycling plan annual reports. (1) By March 1, 2010, and each program year thereafter, the authority and each authorized party must file an annual report with ecology for the preceding year's program. Ecology will review the report and notify the authority or authorized party of any deficiencies that need to be addressed.

(2) **Annual report content:** The annual report must include the following information:

(a) The total weight in pounds of CEPs, including orphans, for the preceding program year including documentation verifying collection and processing of that material for:

(i) CEPs collected, reported by county, not including CEPs gleaned for reuse;

(ii) CEPs recycled;

(iii) Nonrecycled residual from CEPs; and

(iv) Final destination for the processing of CEPs and components and final destination for disposal of residuals.

(b) The total weight in pounds of CEPs received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan;

(c) The total weight in pounds of CEPs that were received in large quantities from small businesses, small governments, charities and school districts;

(d) The collection services provided in each county and for each city with a population greater than ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(e) Processor information:

(i) A list of all direct processors used;

(ii) The weight of CEPs processed by each direct processor;

(iii) A description of the processes and methods used by each direct processor to recycle the CEPs including a description of the processing and facility locations; and

(iv) A compliance audit report meeting the requirements in WAC 173-900-365 for each direct processor listed in the authority or authorized party's ecology approved plan;

(f) A list of subcontractors used by the direct processor including their facility addresses;

(g) Educational and promotional efforts that were undertaken to inform covered entities about where and how to reuse and recycle their CEPs;

(h) The results of sampling as required in WAC 173-900-900;

(i) The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the organization for economic cooperation and development or the European Union;

(j) The list of manufacturers that are participating in the plan;

(k) Signature of the authority or the authorized party;

(l) Any other clarifying information deemed necessary by ecology to determine compliance with this chapter; and

(m) Documentation of work done with the processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(3) **Submittal:** The authority or authorized party must submit:

(a) One electronic copy in a format usable by ecology that allows electronic editing and commenting; and

(b) Two paper copies to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(c) Faxes are not accepted.

(4) All reports must use the "CEP recycling report template" provided by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program or the report.

(a) Within five business days of receipt of the report, ecology will notify the authority or authorized party that the report has been received and it is under review.

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent via certified mail.

(c) If ecology determines that additional information is needed, the authority or authorized party must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If ecology determines that there are deficiencies in the authority's or authorized party's program, the authority or authorized party must submit an updated plan to ecology following the process in WAC 173-900-335.

(6) Ecology will post all reports on the agency web site.

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION

WAC 173-900-810 Local government and community satisfaction reports. (1) Starting January 1, 2010, local governments and local communities are encouraged to submit an annual satisfaction report to ecology by March 1 of each calendar year.

(2) The entity responsible for preparing the solid waste management plan for an area is responsible for submitting the satisfaction report to ecology.

(3) **Report content:** If submitting a report to ecology, the report must include information about local government and community satisfaction with the services provided by plans in their community including:

(a) Accessibility and convenience of services;

(b) How services are working in their community;

(c) What services are not working and why;

(d) Suggestions for improvements to the services being provided by plans;

(e) Description of public outreach and education; and

(f) Any other information the local government determines is important to include.

(4) **Submittal:** If submitting a report, the submitting entity must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(5) All reports must use the "local government satisfaction report template" prescribed by ecology.

(6) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the submitting entity of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the submitting entity that the satisfaction report has been received and it is under review.

(b) If ecology determines that no additional information is

needed, ecology will send a written notice of approval to the submitting entity.

(c) If ecology determines that additional information is needed, the submitting entity must submit the additional information to ecology within thirty days of receipt of the notice.

(7) If a report is submitted, ecology will use the information provided in these reports when reviewing plan updates and revisions.

(a) Reports indicating dissatisfaction will be sent to the authority or authorized party.

(b) The authority or authorized party has sixty days to respond to the report submittee(s) and ecology addressing issues raised in the report.

(c) If based on this response, ecology determines that the plan is failing to provide service in a community, ecology will send written notice, via certified mail, to the authority or authorized party.

(d) The authority or authorized party will have sixty days from receipt of the notice to submit an updated plan to ecology (see WAC 173-900-335).

(8) At any time, communities may submit comments to ecology about the CEP recycling programs in their area.

NEW SECTION

WAC 173-900-820 Nonprofit charitable organization collection reports. (1) Starting in 2010, and every calendar year thereafter, nonprofit charitable organizations that are primarily engaged in the business of reuse and resale that collect CEPs for a plan must submit an annual report to ecology by March 1.

(2) The report must indicate and document the weight of CEPs sent for recycling during the previous program year attributed to each plan that the nonprofit charitable organization is participating in.

(3) **Submittal:** The nonprofit charitable organization must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; and

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503

(4) All reports must use the "nonprofit charitable organization report template" prescribed by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the nonprofit charitable organization of any need for additional information or documentation.

(a) Within five business days of receipt of the report, ecology will notify the nonprofit charitable organization that the collection report has been received and it is under review.

(b) If ecology determines no additional information is needed, ecology will send written notice to the nonprofit charitable organization.

(c) If ecology determines that additional information is needed, the nonprofit charitable organization must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If a nonprofit charitable organization used by a plan does not submit an annual collection report, that is approved by ecology, the plan cannot receive the five percent credit for using that organization as a collector.

PART IX
SAMPLING, RETURN SHARE, AND EQUIVALENT SHARE

NEW SECTION

WAC 173-900-900 Return share sampling. (1) Each plan must implement and finance an auditable, statistically significant sampling of CEPs entering its program every program year using the method described in this section.

(2) CEPs reclaimed for reuse, or use in new products shall not be included in the sampling data collected under this section.

(3) Sampling data collected must include:

(a) The data as required by the return share sampling program for each CEP unit;

(b) A list of the brand names of CEPs by product type (computer, laptop or portable computer, monitor, or television);

(c) The number of CEPs by product type;

(d) The weight of CEPs that are identified for each brand name;

(e) The weight of CEPs that lack a manufacturer's brand; and

(f) The total weight of the sample by product type.

(4) **Third-party observer.**

(a) The sampling must be conducted in the presence of a third-party observer approved by ecology. Ecology will create a list of approved third-parties that a plan must use when conducting sampling to meet the requirements in this section. Ecology will post a list of approved third-party observers on the agency web site.

(b) The third-party observer will:

(i) Receive the sampling instructions from ecology;

(ii) Keep a sampling log for each day the third-party observed sampling;

(iii) Notify the direct processor twenty-four hours, not including Saturdays, Sundays or holidays, prior to the day when sampling will occur at the processor's facility;

(iv) Verify that the sampling method in this section and the sampling instructions provided by ecology are followed during the sampling event;

(v) Certify the sampling data collected; and

(vi) Submit the data and sampling log to ecology.

(c) If the third-party observer notices that sampling is not conducted in accordance with the methods in this section or the sampling instructions provided by ecology, the third-party observer must follow the procedures in subsection (6)(a) of this section.

(d) The third-party observer must not share the sampling instructions with the direct processor or the plan prior to the sampling day.

(e) The third-party observer must make a sampling log for each day the third-party observes sampling. The sampling log must include:

(i) Date and time of sampling;

(ii) Location of sampling;

(iii) Name of the manager operating the facility on that day;

(iv) Names of the members of the sampling team and role of each team member in the sampling process;

(v) A general timeline of activities throughout the day including start time for CEP sampling process, breaks taken, changes in sampling team personnel or roles, unusual events, and time when sampling process ended;

(vi) Any deviation from the sampling method in this section or sampling instructions provided by ecology including but not limited to the functioning of sampling equipment and return share sampling program;

(vii) An approximate percentage of the types of CEPs present in deliveries coming from different collectors;

(viii) Changes in rate and volume of CEPs coming into the facility;

(ix) Observations or concerns about the procedures used by the

sampling team and the CEPs sampled;

(x) When sampling is stopped, a description of why and what steps were taken to try and fix the problem;

(xi) Suggestions for improving future sampling events.

(f) If a third party fails to meet these protocols, ecology may remove the third party from the list of approved observers.

(g) A plan cannot end a contract with a third-party observer for reporting errors, concerns or discrepancies with sampling to ecology.

(5) **Observation of sampling by ecology.** Ecology may, at its discretion, observe sampling and audit the method and the results in addition to the third-party observer.

(6) **Incorrect sampling.**

(a) If the third-party observer sees that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, the third-party observer must note which samples were taken incorrectly in the sampling log and work with the sampling team to correct the problem for future samples. If the problem cannot be corrected for the next sampled unit, the third-party observer must:

(i) Stop the sampling for that day;

(ii) Notify ecology of the problem; and

(iii) Notify the authority or authorized party.

(b) If ecology observes, or is notified by a third-party observer, that the sampling is not implemented according to the method set forth in this section or the sampling instructions provided by ecology, ecology may:

(i) Notify the plan of the problem;

(ii) Stop sampling for that day; or

(iii) Eliminate the data about the CEPs sampled for that entire sampling day.

(c) Ecology may also use data analysis, inspections, sworn reports or complaints from individuals to determine incorrect sampling.

(d) If any plan has data from more than one sampling day eliminated for any reason, ecology may estimate that plan's equivalent share based on samples collected by other plans in order to ensure that bias in that plan's sample does not reduce its own return share. This adjustment may be used for three years (see subsection (7) of this section).

(e) If ecology or the third-party observer stops sampling, no alternative sampling date will be assigned to the plan.

(7) **Three year rolling average to be used to construct the statistics needed for the return share.**

(a) Ecology will construct the final average results for each plan using the most recent three years of sample data.

(b) For the first two years of sampling only the years available will be used.

(8) **Review of the sampling method.**

(a) After the fifth program year, ecology may reassess the sampling methods required in this section. Ecology may adjust:

(i) Who will do the sampling;

(ii) The sample size;
(iii) The frequency of sampling;
(iv) The distribution of the sampling places;
(v) Information collected during sampling; and
(vi) The method for collecting the sample.
(b) Prior to making any changes, ecology must notify the public and provide a public comment period.
(9) **Method for sampling.**

Steps in the sampling method	
Step 1:	Ecology creates a third-party observer list.
Step 2:	Selection and payment of third party by the plans.
Step 3:	Ecology determines the sample size for a program year.
Step 4:	Ecology assigns a sample allocation to each plan.
Step 5:	Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.
Step 6:	The plan conducts and records the sampling.
Step 7:	Reporting the sample.
Step 8:	Ecology must adjust for over sampling or under sampling.
Step 9:	Ecology tabulates sampling results quarterly.
Step 10:	Ecology uses sampling results to calculate return share.

Step 1: Ecology creates a third-party observer list.

(a) Ecology will list approved third-party observers on the agency web site.
(b) By December 1 of every other year ecology will announce:
(i) The third-party qualifications; and
(ii) The process for a third party to seek approval to be listed as a third-party observer.
(c) A third party may submit a request to be listed at any time during the year.

Step 2: Selection and payment of a third party by a plan.

(d) Each plan must select a third party from ecology's list to observe sampling conducted for the plan and notify ecology of the third-party observer with which they have contracted.
(e) The plans must cover the costs, including travel, of any third-party observer used by the plan to observe its sampling activities.
(f) The authority or authorized party must remit payment to the third-party observer for sampling in and outside of Washington state.

Step 3: Ecology determines the sample size for a program year.

(g) **Sample size.**
(i) The sample size will be statistically determined by applying the formula below:

$$\text{Sample Size } n = \left[\frac{\pi(1-\pi)z^2}{d^2}\right](m)$$

Where

π = Maximum brand return share in the population, in the form of a fraction. For the first year this number is estimated from data collected by the National Center for Electronics Recycling from other jurisdictions where brand returns were tallied

z = Standardized statistical critical value associated with the confidence level of ninety-five percent is 1.96

d = The maximum margin of error which is .005 at the ninety-five percent confidence level

m = Sample size increase due to unidentifiable brands. In consideration of the fact that the brand names of some units are not identifiable (e.g., white box units with no brand, or returned units where the brand is no longer legible), the sample sizes taken must be larger than those determined purely by statistical techniques. Across all product categories the incident rate for nonidentifiable samples is equal to the orphan share of CEPs sampled.

(ii) Sample size is expressed as a number of individual units of CEPs, and each unit to be sampled will be individually weighed.

Step 4: Ecology assigns a sample allocation to each plan.

(h) Ecology will assign the minimum sample size annually on the basis of each plan's return share.

(i) Starting in 2008, ecology will announce the total sample size and the proportionate plan share for sampling for each plan by December 1st of each year.

Step 5: Ecology provides quarterly sampling instructions to each third-party observer identified by the plans.

(j) Ecology will provide the contracted third-party observers with quarterly sampling instructions. Quarters begin in January, April, July, and October.

(k) The sampling instructions will include the dates for sampling, the processing facility(ies) where sampling will take place, instructions for random selection of units for sampling, and the hours of sampling.

(l) Each plan must conduct sampling for each date listed in the third-party observer's sampling instructions provided by ecology.

Step 6: The plan conducts and records the sampling.

(m) **Field sampling.**

(i) Once the third-party observer arrives at the processing facility, the plan or direct processor must introduce the observer to the members of the sampling team that will be conducting sampling for that day and let the third-party observer know the role of each member of the sampling team.

(ii) The third-party observer must inform the sampling team how to select CEP units based on the sampling instructions provided by ecology for that sampling day.

(iii) The sampling team must place a unique bar code sticker on every CEP entering the processing facility during the assigned sampling period, whether by truckload, walk-in, or other method. Prior to placing the bar code on the CEP, no sorting of CEPs can occur at the processing facility.

(iv) Before any CEP is sent for processing the sampling team must use a hand held bar code reader to scan the bar code sticker placed on that unit by the sampling team.

(v) The return share sampling computer program provided by ecology will identify whether a particular unit should be sampled.

(vi) Units identified as requiring sampling must be set aside for sampling, and units identified as not requiring sampling would be available for processing immediately.

(vii) Units identified as requiring sampling become part of the sample for that day and the sampling team must record the required data for each of those units even if it takes more than one day.

(viii) The sampling team must record all the data for the sample using the return share sampling computer program provided by ecology.

(n) If a brand name is not listed in the computer program, the sampling team must record a minimum of three digital images. The images must be of sufficient clarity that ecology can identify any printed information on the CEP.

(i) The first image will be of the entire front of the CEP.

(ii) The second image will be focused on the brand identification logo (if available).

(iii) The third image will be of the label on the back or bottom of the CEP (if available).

(iv) The photographs must be attached to the appropriate electronic record in the return share sampling computer program in a jpeg format.

Step 7: Reporting the sample.

(o) At the end of the sampling day the plan must provide the results to the third-party observer. The results must include all of the data required in subsection (3) of this section.

(p) The third-party observer will certify the results and submit one paper and one electronic copy of the results to ecology and the authority or authorized party.

Step 8: Ecology must adjust for over sampling or under sampling.

(q) If ecology determines that over or under sampling has occurred, ecology must adjust such over or under sampling as follows:

Vi = Si x Sample size assigned/Sample size taken

Pi = Wi x Sample size assigned/Sample size taken

Where:
Si is the total number of units weighed for brand i
Wi is the total weight of units for brand i.

(r) Ecology may adjust the extrapolation of under sampling data to account for outliers that may over estimate small manufacturer returns.

Step 9: Ecology tabulates sampling results quarterly.

(s) Quarterly, ecology will combine the sampling results required in Step 7 from all plans. If ecology observes discrepancies, ecology will follow the method in subsection (4) of this section.

Step 10: Ecology uses sampling results to calculate return share.

(t) Ecology will combine the sampling results from each quarter and use this data when calculating return share as described in WAC 173-900-910.

NEW SECTION

WAC 173-900-910 Calculating return share. (1) In order for a CEP to be counted in a plan's return share, the CEP or CEP components must go to a direct processor that meets the requirements in Part VI of this chapter.

(2) **Return shares issued in 2007 through 2009:**

(a) Ecology must determine return shares for all manufacturers in the standard plan or an independent plan by using all reasonable means and base those determinations on the best available information regarding return share data from other states and other pertinent data.

(b) If ecology does not have any return data on a particular manufacturer, ecology will assign that manufacturer to the lowest represented percentage of return share on the preliminary return list.

(c) Ecology will use the first return share to:

(i) Appoint five board members for the first term of appointments to the materials management and financing authority board of directors from the top ten manufacturers holding the highest return share; and

(ii) Establish the first program year return share for

manufacturers in a plan.

(3) **Return shares issued 2010 and later:** For the second and all subsequent program years, ecology will determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of CEPs identified for each manufacturer through the sampling methodology and protocol in WAC 173-900-900 by the total sampled weight of CEPs identified for all manufacturers in the plans. That quotient will then be multiplied by one hundred to establish a percentage share for each manufacturer.

NEW SECTION

WAC 173-900-920 Use and publication of CEP return shares. Return shares for program year 2009:

(1) Ecology will announce the preliminary return share for each manufacturer and each plan by June 1 of each year.

(2) Ecology will publish the preliminary return shares on the agency web site.

(3) Ecology will notify each registered manufacturer by June 1 of each year.

(4) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary return shares.

(5) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(6) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(7) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(8) By August 1, 2007, ecology shall publish the final return shares for the first program year.

Return shares announced for program year 2010 and thereafter:

(9) Ecology will announce the preliminary return share and notify each registered manufacturer by June 1 of each year.

(10) Manufacturers may challenge their preliminary return share by written petition to ecology. The petition must be

received by ecology within thirty days of the date of publication of the preliminary return shares.

(11) The petition must contain:

(a) A detailed explanation of the grounds for the challenge;

(b) An alternative calculation, and the basis for such a calculation;

(c) Documentary evidence supporting the challenge; and

(d) Complete contact information for requests for additional information or clarification.

(12) Sixty days after the publication of the preliminary return share, ecology will make a final decision on return shares, having fully taken into consideration any and all challenges to its preliminary calculations.

(13) A written record of challenges received and a summary of the basis for the challenges, as well as ecology's response, must be published at the same time as the publication of the final return shares.

(14) By August 1 of each program year, ecology shall publish the final return shares for use in the coming program year.

(15) Ecology will publish the final return shares on the agency web site.

NEW SECTION

WAC 173-900-930 Calculating the total equivalent share.

Step 1: Calculating individual manufacturer equivalent share.

(1) Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total weight in pounds of CEPs collected, not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC 173-900-940.

(2) The manufacturer is responsible for distributing responsibility for equivalent share among its past and present licensees.

Step 2: Calculating a plan's equivalent share.

(3) A plan's equivalent share is equal to the total of the equivalent shares for all manufacturers participating in the plan.

NEW SECTION

WAC 173-900-940 Equivalent share credits. Plans that use the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. Ecology may adjust the percentage of credit annually.

NEW SECTION

WAC 173-900-950 Notification of equivalent share. By June 1 of each program year starting in 2010, ecology will notify each:

(1) Manufacturer of the manufacturer's equivalent share of CEPs to be applied to the previous program year;

(2) Plan of the plan's equivalent share of CEPs to be applied to the previous program year;

(3) Manufacturer and plan of how its equivalent share was determined.

NEW SECTION

WAC 173-900-960 Share payments. (1) For a CEP recycling plan, if the total weight in pounds of CEPs collected by the plan and processed by a processor during a program year is less than the plan's equivalent share of CEPs for that year, then the authority or authorized party must submit to ecology a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs and an administrative fee.

(2) Moneys collected by ecology must be deposited in the electronic products recycling account created under RCW 70.95N.130.

(3) For a plan, if the total weight in pounds of CEPs collected during a program year is more than the plan's equivalent share of CEPs for that year, then ecology shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, processing, and recycling cost for CEPs.

(4) For purposes of this section, the initial reasonable collection, transportation, processing, and recycling cost for CEPs is forty-five cents per pound and the administrative fee is five

cents per pound.

(5) Ecology may annually adjust the reasonable collection, transportation, processing, and recycling cost for CEPs and the administrative fee described in this section. Prior to making any changes ecology will:

(a) Post the proposed new amounts on the agency web site;

(b) Send notice to all registered manufacturers;

(c) Provide a thirty-day comment period;

(d) Evaluate comments and make revisions to the amounts if appropriate; and

(e) Post the new amounts on the agency web site.

(6) Ecology will notify all registered manufacturers of any changes to the reasonable collection, transportation, processing, and recycling cost or the administrative fee by January 1 of the program year in which the change is to take place.

NEW SECTION

WAC 173-900-970 Collecting and paying share payments.

Billing share payments.

(1) By June 1 of each program year, ecology will bill any authorized party or authority that has not attained its plan's equivalent share as determined in WAC 173-900-930 share payments. The authorized party or authority must remit payment to ecology within sixty days from the billing date.

Ecology payment of share payments.

(2) By September 1 of each program year, ecology must pay any authorized party or authority that exceeded its plan's equivalent share.

PART X
PUBLIC OUTREACH

NEW SECTION

WAC 173-900-980 Public outreach.

Independent and standard plans:

(1) Public outreach and marketing requirements: An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

(a) Include a web site or a toll-free number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for recycling;

(b) Describe the method or methods used to provide outreach to covered entities; and

(c) Ensure outreach throughout the state.

Ecology:

(2) Ecology will promote CEP recycling by:

(a) Posting information describing where to recycle unwanted CEPs on its web site;

(b) Providing information about recycling CEPs through a toll-free telephone service; and

(c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.

(3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

Local governments:

(4) Local governments must promote CEP recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

Retailers:

(5) A retailer who sells new CEPs must provide information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(b) Providing ecology's toll-free telephone number and web site.

(c) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging;

(6) Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

Collaboration:

(7) Manufacturers, state government, local governments, retailers, and collection sites and services must collaborate in the development and implementation of the public information campaign.

PART XI
THE MATERIALS MANAGEMENT AND FINANCE AUTHORITY (THE AUTHORITY)

NEW SECTION

WAC 173-900-990 Ecology's relationship to the authority. (1) The director of the department of ecology, or the director's designee, will serve as an ex officio member of the materials management and finance authority board of directors.

(a) Ex officio designations must be made in writing and communicated to the authority director.

(b) The function of ecology's membership is advisory only and carries no voting privileges on matters brought before the board.

(2) Ecology must provide staff to assist in the creation of the authority.

(a) If requested by the authority, ecology will also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority.

(b) Staff expenses incurred by ecology must be paid back to ecology through funds collected by the authority and must be reimbursed to ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

WAC 173-900-993 Appointing the board of the authority. The board of directors of the authority is comprised of eleven participating manufacturers:

(1) Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products.

(2) Six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.

(3) The board must have representation from both television and computer manufacturers.

(4) The board of directors is appointed by the director of the department of ecology.

(a) Manufacturers will indicate their interest in serving on the board of directors to ecology.

(b) Manufacturers expressing interest will be asked to submit the name of their representative.

(c) Ecology will select board members from the candidates that have expressed interest using the following criteria:

(i) Five from the top ten brand owners by return share of CEPs willing to participate on the board;

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

(iv) Representation from small, in-state manufacturers;

(v) Balance between manufacturers whose business is primarily that of television manufacturing and those whose business is primarily that of computer manufacturing; and

(vi) At least one manufacturer that is a new market entrant.

(5) The first board will be appointed from those manufacturers expressing interest in serving on the board in the first registration of manufacturers.

(6) The first board of directors will serve a term of one year.

(7) Subsequent appointments to the board of directors will be made on intervals established in the authority by-laws created by the board.

NEW SECTION

WAC 173-900-995 Board reimbursement for use of ecology support staff. (1) The costs collected under this section are only for support provided during the start-up and the first twelve months of operation for the board.

(2) The board must reimburse all costs to ecology within twenty-four months of beginning operation.

(3) Ecology will calculate reimbursements based on actual costs:

Reimbursement Amount = Direct Costs + Indirect Costs

Where:

(a) **Direct costs** include ecology staff time and other costs related to accomplishing the activities identified in subsection (1) of this section. Direct staff costs are the costs of hours worked, including salaries and benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of ecology staff working with the board including, for example, costs of: Travel, printing and publishing of documents, and other work, contracted or otherwise, associated with the board.

(b) **Indirect costs** are those general management and support costs of ecology. Ecology applies them using the agency's approved federal indirect cost rate.

(4) **Cost reimbursement invoicing and payment.** Invoices are generally sent about the last week of the month, for the previous month's activity. Payment is expected within thirty days after the

date that ecology has issued the invoice. If the board uses ecology support staff, the authority must reimburse ecology from the authority's financial resources within the first twenty-four months of operation.

NEW SECTION

WAC 173-900-997 The standard plan's assessment of charges and apportionment of costs. (1) Manufacturers participating in the standard plan must pay the authority to cover all administrative and operational costs associated with the collection, transportation, processing, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation.

(2) The authority must assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section.

(a) Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.

(b) The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state.

(c) Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states.

(d) The authority must adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

(6) The authority must submit its plan for assessing charges and apportioning cost on manufacturers as part of the standard plan (see Part III, WAC 173-900-320).

(7) **Appeals:** Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of cost as collected by the authority.

(a) The manufacturer must pay their charges or apportionment to the authority and submit a written petition to the director of the department of ecology within fourteen calendar days of receipt of notification of charges or apportionment. The written petition must include proof that:

(i) The authority's assessments or apportionment of costs were an arbitrary administrative decision;

(ii) An abuse of administrative discretions is proven; or

(iii) It is not an equitable assessment of apportionment of costs.

(b) Within thirty calendar days of receipt of the written petition, the director or the director's designee will review the appeal.

(c) The director will reverse any assessments of charges or apportionment of costs if the appeal is determined to be correct.

(d) If the director reverses an assessment of charges, the authority must:

(i) Redetermine the assessment or apportionment of costs and submit a plan revision as described in WAC 173-900-335, CEP recycling plan update; and

(ii) Once the revision is approved by ecology, send refunds or assess additional charges to standard plan participants per the revision.

(8) **Arbitration:** Disputes regarding the final decision by the director or the director's designee may be challenged through arbitration.

(a) The director shall appoint one member to serve on the arbitration panel.

(b) The challenging party shall appoint one member to serve on the arbitration panel.

(c) These two members shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person.

(d) The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-900-040	Required brand labeling.
WAC 173-900-050	Offering for sale or selling covered electronic products (CEPs) in or into Washington.

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

WAC 173-303-040 Definitions. When used in this chapter, the following terms have the meanings given below.

"Aboveground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Active life" of a facility means the period from the initial receipt of dangerous waste at the facility until the department receives certification of final closure.

"Active portion" means that portion of a facility which is not a closed portion, and where dangerous waste recycling, reuse, reclamation, transfer, treatment, storage or disposal operations are being or have been conducted after:

The effective date of the waste's designation by 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. (See also "closed portion" and "inactive portion.")

"Active range" means a military range that is currently in service and is being regularly used for range activities.

"Acute hazardous waste" means dangerous waste sources (listed in WAC 173-303-9904) F020, F021, F022, F023, F026, or F027, and discarded chemical products (listed in WAC 173-303-9903) that are identified with a dangerous waste number beginning with a "P", including those wastes mixed with source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954. The abbreviation "AHW" will be used in this chapter to refer to those dangerous and mixed wastes which are acute hazardous wastes. Note - the terms acute and acutely are used interchangeably.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of dangerous waste from its point of generation to a storage or treatment tank(s), between dangerous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Batch" means any waste which is generated less frequently than once a month.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to

receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Berm" means the shoulder of a dike.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: Process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit will be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

The unit is one which the department has determined, on a case-by-case basis, to be a boiler, after considering the standards in WAC 173-303-017(6).

"By-product" means a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Carcinogenic" means a material known to contain a substance which has sufficient or limited evidence as a human or animal carcinogen as listed in both IARC and either IRIS or HEAST.

<u>"Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component</u>

of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Chemical agents and chemical munitions" are defined as in 50 U.S.C. section 1521 (j)(1).

"Cleanup-only facility" means a site, including any contiguous property owned or under the control of the owner or operator of the site, where the owner or operator is or will be treating, storing, or disposing of remediation waste, including dangerous remediation waste, and is not, has not and will not be treating, storing or disposing of dangerous waste that is not remediation waste. A cleanup-only facility is not a "facility" for purposes of corrective action under WAC 173-303-646.

"Closed portion" means that portion of a facility which an owner or operator has closed, in accordance with the approved facility closure plan and all applicable closure requirements.

"Closure" means the requirements placed upon all TSD facilities to ensure that all such facilities are closed in an acceptable manner (see also "post-closure").

"Commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

"Commercial fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use or claimed to have value in promoting plant growth, and includes, but is not limited to, limes, gypsum, and manipulated animal manures and vegetable compost. The commercial fertilizer must be registered with the state or local agency regulating the fertilizer in the locale in which the fertilizer is being sold or applied.

"Compliance procedure" means any proceedings instituted pursuant to the Hazardous Waste Management Act as amended in 1980 and 1983, and chapter 70.105A RCW, or regulations issued under authority of state law, which seeks to require compliance, or which is in the nature of an enforcement action or an action to cure a violation. A compliance procedure includes a notice of intention to terminate a permit pursuant to WAC 173-303-830(5), or an application in the state superior court for appropriate relief under the Hazardous Waste Management Act. A compliance procedure is considered to be pending from the time a notice of violation or of intent to terminate a permit is issued or judicial proceedings are begun, until the department notifies the owner or operator in writing that the violation has been corrected or that the procedure has been withdrawn or discontinued.

"Component" means either the tank or ancillary equipment of a tank system.

"Constituent" or "dangerous waste constituent" means a chemically distinct component of a dangerous waste stream or mixture.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of WAC 173-303-695.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of dangerous waste or dangerous waste constituents which could threaten human health or environment.

"Contract" means the written agreement signed by the department and the state operator.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"CRT collector" means a person who receives CRTs for recycling, repair, resale, or donation.

"CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

"CRT processing" means conducting all of the following activities:

- Receiving broken or intact CRTs; and
- Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- Sorting or otherwise managing glass removed from CRT monitors.

"Dangerous waste constituents" means those constituents listed in WAC 173-303-9905 and any other constituents that have caused a waste to be a dangerous waste under this chapter.

"Dangerous waste management unit" is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area. Examples of dangerous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Dangerous wastes" means those solid wastes designated in WAC 173-303-070 through 173-303-100 as dangerous, or extremely hazardous or mixed waste. As used in this chapter, the words "dangerous waste" will refer to the full universe of wastes regulated by this chapter. The abbreviation "DW" will refer only to that part of the regulated universe which is not extremely

hazardous waste. (See also "extremely hazardous waste," "hazardous waste," and "mixed waste" definitions.)

"Debris" means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in 40 CFR Part 268 Subpart D (incorporated by reference in WAC 173-303-140 (2)(a)); process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and intact containers of hazardous waste that are not ruptured and that retain at least seventy-five percent of their original volume. A mixture of debris that has not been treated to the standards provided by 40 CFR 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

"Department" means the department of ecology.

"Dermal LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight which, when dermally (skin) applied for 24 hours, within 14 days kills half of a group of ten rabbits each weighing between 2.0 and 3.0 kilograms.

"Designated facility" means a dangerous waste treatment, storage, or disposal facility that has received a permit (or interim status) in accordance with the requirements of this chapter, has received a permit (or interim status) from another state authorized in accordance with 40 CFR Part 271, has received a permit (or interim status) from EPA in accordance with 40 CFR Part 270, has a permit by rule under WAC 173-303-802(5), or is regulated under WAC 173-303-120 (4)(c) or 173-303-525 when the dangerous waste is to be recycled, and that has been designated on the manifest pursuant to WAC 173-303-180(1). If a waste is destined to a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as dangerous, then the designated facility must be a facility allowed by the receiving state to accept such waste. The following are designated facilities only for receipt of state-only waste; they cannot receive federal hazardous waste from off-site: Facilities operating under WAC 173-303-500 (2)(c).

"Designation" is the process of determining whether a waste is regulated under the dangerous waste lists, WAC 173-303-080 through 173-303-082; or characteristics, WAC 173-303-090; or criteria, WAC 173-303-100. The procedures for designating wastes are in WAC 173-303-070. A waste that has been designated as a dangerous waste may be either DW or EHW.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in WAC 173-303-573 (9)(a), (b) and (c) and 173-303-573 (20)(a), (b) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of natural or man-made

materials used to prevent the movement of liquids, sludges, solids, or other substances.

"*Dioxins and furans (D/F)*" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the director of the department of ecology or his designee.

"Discharge" or "dangerous waste discharge" means the accidental or intentional release of hazardous substances, dangerous waste or dangerous waste constituents such that the substance, waste or a waste constituent may enter or be emitted into the environment.

"Disposal" means the discharging, discarding, or abandoning of dangerous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned. This includes the discharge of any dangerous wastes into or on any land, air, or water.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment.

"Draft permit" means a document prepared under WAC 173-303-840 indicating the department's tentative decision to issue or deny, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate or deny a permit are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination as discussed in WAC 173-303-830 is not a draft permit.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary neutralization unit" means a device which:

Is used for neutralizing wastes which are dangerous wastes only because they exhibit the corrosivity characteristics defined in WAC 173-303-090 or are listed in WAC 173-303-081, or in 173-303-082 only for this reason; and

Meets the definition of tank, tank system, container, transport vehicle, or vessel.

"Enforceable document" means an order, consent decree, plan or other document that meets the requirements of 40 CFR 271.16(e) and is issued by the director to apply alternative requirements for closure, post-closure, ground water monitoring, corrective action or financial assurance under WAC 173-303-610 (1)(d), 173-303-645 (1)(e), or 173-303-620 (8)(d) or, as incorporated by reference at WAC 173-303-400, 40 CFR 265.90(f), 265.110(d), or 265.140(d). Enforceable documents include, but are not limited to, closure plans and post-closure plans, permits issued under chapter 70.105 RCW, orders issued under chapter 70.105 RCW and orders and consent decrees issued under chapter 70.105D RCW.

"Environment" means any air, land, water, or ground water.

"EPA/state identification number" or "EPA/state ID#" means the number assigned by EPA or by the department of ecology to each

generator, transporter, and TSD facility.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of dangerous waste and that is in operation, or for which installation has commenced on or prior to February 3, 1989. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

A continuous on-site physical construction or installation program has begun; or

The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

"Existing TSD facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261. A facility has commenced construction if the owner or operator has obtained permits and approvals necessary under federal, state, and local statutes, regulations, and ordinances and either:

A continuous on-site, physical construction program has begun; or

The owner or operator has entered into contractual obligation, which cannot be ((~~cancelled~~)) canceled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or

destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Extremely hazardous waste" means those dangerous and mixed wastes designated in WAC 173-303-100 as extremely hazardous. The abbreviation "EHW" will be used in this chapter to refer to those dangerous and mixed wastes which are extremely hazardous. (See also "dangerous waste" and "hazardous waste" definitions.)

"Facility" means:

- All contiguous land, and structures, other appurtenances, and improvements on the land used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them). Unless otherwise specified in this chapter, the terms "facility," "treatment, storage, disposal facility," "TSD facility," "dangerous waste facility" or "waste management facility" are used interchangeably.
- For purposes of implementing corrective action under WAC 173-303-64620 or 173-303-64630, "facility" also means all contiguous property under the control of an owner or operator seeking a permit under chapter 70.105 RCW or chapter 173-303 WAC and includes the definition of facility at RCW 70.105D.020(4).

"Facility mailing list" means the mailing list for a facility maintained by the department in accordance with WAC 173-303-840 (3)(e)(I)(D).

"Final closure" means the closure of all dangerous waste management units at the facility in accordance with all applicable closure requirements so that dangerous waste management activities under WAC 173-303-400 and 173-303-600 through 173-303-670 are no longer conducted at the facility. Areas only subject to generator standards WAC 173-303-170 through 173-303-230 need not be included in final closure.

"Fish LC50" means the concentration that will kill fifty percent of the exposed fish in a specified time period. For book designation, LC50 data must be derived from an exposure period greater than or equal to twenty-four hours. A hierarchy of species LC50 data should be used that includes (in decreasing order of preference) salmonids, fathead minnows (Pimephales promelas), and

other fish species. For the ninety-six-hour static acute fish toxicity test, described in WAC 173-303-110 (3)(b)(i), coho salmon (Oncorhynchus kisutch), rainbow trout (Oncorhynchus mykiss), or brook trout (Salvelinus fontinalis) must be used.

"Food chain crops" means tobacco, crops grown for human consumption, and crops grown to feed animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Fugitive emissions" means the emission of contaminants from sources other than the control system exit point. Material handling, storage piles, doors, windows and vents are typical sources of fugitive emissions.

"Generator" means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation.

"Genetic properties" means those properties which cause or significantly contribute to mutagenic, teratogenic, or carcinogenic effects in man or wildlife.

"Ground water" means water which fills voids below the land surface and in the earth's crust.

"Halogenated organic compounds" (HOC) means any organic compounds which, as part of their composition, include one or more atoms of fluorine, chlorine, bromine, or iodine which is/are bonded directly to a carbon atom. This definition does not apply to the federal land disposal restrictions of 40 CFR Part 268 which are incorporated by reference at WAC 173-303-140 (2)(a). Note: Additional information on HOCs may be found in *Chemical Testing Methods for Designating Dangerous Waste*, Ecology Publication #97-407.

"Hazardous debris" means debris that contains a hazardous waste listed in WAC 173-303-9903 or 173-303-9904, or that exhibits a characteristic of hazardous waste identified in WAC 173-303-090.

"Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

"Hazardous wastes" means those solid wastes designated by 40 CFR Part 261, and regulated as hazardous and/or mixed waste by the United States EPA. This term will never be abbreviated in this chapter to avoid confusion with the abbreviations "DW" and "EHW." (See also "dangerous waste" and "extremely hazardous waste" definitions.)

"Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

"Ignitable waste" means a dangerous waste that exhibits the characteristic of ignitability described in WAC 173-303-090(5).

"Inactive portion" means that portion of a facility which has not recycled, treated, stored, or disposed dangerous waste after:

The effective date of the waste's designation, for wastes designated under 40 CFR Part 261; and

March 10, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"Inactive range" means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

"Incinerator" means any enclosed device that:

Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a dangerous waste which is unsuitable for placement in a particular device or facility because it may corrode or decay the containment materials, or is unsuitable for mixing with another waste or material because the mixture might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, fumes, mists, or gases, or flammable fumes or gases.

"Independent qualified registered professional engineer" means a person who is licensed by the state of Washington, or a state which has reciprocity with the state of Washington as defined in RCW 18.43.100, and who is not an employee of the owner or operator of the facility for which construction or modification certification is required. A qualified professional engineer is an engineer with expertise in the specific area for which a certification is given.

"Industrial-furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy: Cement kilns; lime kilns; aggregate kilns; phosphate kilns; blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces); titanium dioxide chloride process oxidation reactors; coke ovens; methane reforming furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; pulping liquor recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and halogen acid furnaces (HAFs) for the production of acid from halogenated dangerous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for dangerous waste burned as fuel, dangerous waste fed to the furnace has a minimum halogen content of 20% as-generated. The department may decide to add devices to this list on the basis of one or more of the following factors:

The device is designed and used primarily to accomplish recovery of material products;

The device burns or reduces secondary materials as ingredients

in an industrial process to make a material product;

The device burns or reduces secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;

The device burns or reduces raw materials to make a material product;

The device is in common industrial use to produce a material product; and

Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of "tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"Interim status permit" means a temporary permit given to TSD facilities which qualify under WAC 173-303-805.

"Knowledge" means sufficient information about a waste to reliably substitute for direct testing of the waste. To be sufficient and reliable, the "knowledge" used must provide information necessary to manage the waste in accordance with the requirements of this chapter.

Note: "Knowledge" may be used by itself or in combination with testing to designate a waste pursuant to WAC 173-303-070 (3)(c), or to obtain a detailed chemical, physical, and/or biological analysis of a waste as required in WAC 173-303-300(2).

"Lamp," also referred to as "universal waste lamp" means any type of high or low pressure bulb or tube portion of an electric lighting device that generates light through the discharge of electricity either directly or indirectly as radiant energy. Universal waste lamps include, but are not limited to, fluorescent, mercury vapor, metal halide, high-pressure sodium and neon. As a reference, it may be assumed that four, four-foot, one-inch diameter unbroken fluorescent tubes are equal to 2.2 pounds in weight.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Landfill" means a disposal facility, or part of a facility, where dangerous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, or an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Land treatment" means the practice of applying dangerous waste onto or incorporating dangerous waste into the soil surface so that it will degrade or decompose. If the waste will remain after the facility is closed, this practice is disposal.

"Large quantity handler of universal waste" means a universal waste handler (as defined in this section) who accumulates 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps calculated collectively) and/or who accumulates more than 2,200 pounds of lamps at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 11,000 pounds or more total of universal waste and/or 2,200 pounds of lamps is accumulated.

"Leachable inorganic waste" means solid dangerous waste (i.e., passes paint filter test) that is not an organic/carbonaceous waste and exhibits the toxicity characteristic (dangerous waste numbers D004 to D011, only) under WAC 173-303-090(8).

"Leachate" means any liquid, including any components suspended in the liquid, that has percolated through or drained from dangerous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of dangerous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of dangerous waste into the secondary containment structure.

"Legal defense costs" means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

"Liner" means a continuous layer of man-made or natural materials which restrict the escape of dangerous waste, dangerous waste constituents, or leachate through the sides, bottom, or berms of a surface impoundment, waste pile, or landfill.

"Major facility" means a facility or activity classified by the department as major.

"Manifest" means the shipping document, prepared in accordance with the requirements of WAC 173-303-180, which is used to identify the quantity, composition, origin, routing, and destination of a dangerous waste while it is being transported to a point of transfer, disposal, treatment, or storage.

"Manufacturing process unit" means a unit which is an integral

and inseparable portion of a manufacturing operation, processing a raw material into a manufacturing intermediate or finished product, reclaiming spent materials or reconditioning components.

"Marine terminal operator" means a person engaged in the business of furnishing wharfage, dock, pier, warehouse, covered and/or open storage spaces, cranes, forklifts, bulk loading and/or unloading structures and landings in connection with a highway or rail carrier and a water carrier. A marine terminal operator includes, but is not limited to, terminals owned by states and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen and stevedores who operate port terminal facilities.

"Mercury-containing equipment" means a device or part of a device (excluding batteries, thermostats, and lamps) that contains elemental mercury necessary for its operation. Examples of mercury-containing equipment include thermometers, manometers, and electrical switches.

"Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorous, potash, calcium, magnesium, or sulfur. Micronutrients are boron, chlorine, cobalt, copper, iron, manganese, molybdenum, sodium, and zinc.

"Military" means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: Confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include nonnuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Military range" means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or

weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

"Miscellaneous unit" means a dangerous waste management unit where dangerous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, temporary unit, staging pile, or unit eligible for a research, development, and demonstration permit under WAC 173-303-809.

"Mixed waste" means a dangerous, extremely hazardous, or acutely hazardous waste that contains both a nonradioactive hazardous component and, as defined by 10 CFR 20.1003, source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of dangerous waste and for which installation has commenced after February 3, 1989; except, however, for purposes of WAC 173-303-640 (4)(g)(ii) and 40 CFR 265.193 (g)(2) as adopted by reference in WAC 173-303-400(3), a new tank system is one for which construction commences after February 3, 1989. (See also "existing tank system.")

"New TSD facility" means a facility which began operation or for which construction commenced after November 19, 1980, for wastes designated by 40 CFR Part 261, or August 9, 1982, for wastes designated only by this chapter and not designated by 40 CFR Part 261.

"NIOSH registry" means the registry of toxic effects of chemical substances which is published by the National Institute for Occupational Safety and Health.

"Nonsudden accident" or "nonsudden accidental occurrence" means an unforeseen and unexpected occurrence which takes place over time and involves continuous or repeated exposure.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage which the owner or operator neither expected nor intended to occur.

"Off-specification used oil fuel" means used oil fuel that exceeds any specification level described in Table 1 in WAC 173-303-515.

"Onground tank" means a device meeting the definition of "tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right of way, provided that the entrance and exit between the properties is at a cross-

roads intersection, and access is by crossing as opposed to going along the right of way. Noncontiguous properties owned by the same person but connected by a right of way which they control and to which the public does not have access, are also considered on-site property.

"Operator" means the person responsible for the overall operation of a facility. (See also "state operator.")

"Oral LD_{50}" means the single dosage in milligrams per kilogram (mg/kg) body weight, when orally administered, which, within 14 days, kills half a group of ten or more white rats each weighing between 200 and 300 grams.

"Organic/carbonaceous waste" means a dangerous waste that contains combined concentrations of greater than ten percent organic/carbonaceous constituents in the waste; organic/carbonaceous constituents are those substances that contain carbon-hydrogen, carbon-halogen, or carbon-carbon chemical bonding.

"Partial closure" means the closure of a dangerous waste management unit in accordance with the applicable closure requirements of WAC 173-303-400 and 173-303-600 through 173-303-695 at a facility that contains other active dangerous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other dangerous waste management unit, while other units of the same facility continue to operate.

"Permit" means an authorization which allows a person to perform dangerous waste transfer, storage, treatment, or disposal operations, and which typically will include specific conditions for such facility operations. Permits must be issued by one of the following:

The department, pursuant to this chapter;

United States EPA, pursuant to 40 CFR Part 270; or

Another state authorized by EPA, pursuant to 40 CFR Part 271.

"Permit-by-rule" means a provision of this chapter stating that a facility or activity is deemed to have a dangerous waste permit if it meets the requirements of the provision.

"Persistence" means the quality of a material that retains more than half of its initial activity after one year (365 days) in either a dark anaerobic or dark aerobic environment at ambient conditions. Persistent compounds are either halogenated organic compounds (HOC) or polycyclic aromatic hydrocarbons (PAH) as defined in this section.

"Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

"Pesticide" means but is not limited to: Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life, or virus (except virus on or in living man or other animal) which is normally considered to be a pest or which the department of agriculture may declare to be a pest; any substance or mixture of substances intended to be

used as a plant regulator, defoliant, or desiccant; any substance or mixture of substances intended to be used as spray adjuvant; and, any other substance intended for such use as may be named by the department of agriculture by regulation. Herbicides, fungicides, insecticides, and rodenticides are pesticides for the purposes of this chapter.

"Pile" means any noncontainerized accumulation of solid, nonflowing dangerous waste that is used for treatment or storage.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any confined and discrete conveyance from which pollutants are or may be discharged. This term includes, but is not limited to, pipes, ditches, channels, tunnels, wells, cracks, containers, rolling stock, concentrated animal feeding operations, or watercraft, but does not include return flows from irrigated agriculture.

"Polycyclic aromatic hydrocarbons" (PAH) means those hydrocarbon molecules composed of two or more fused benzene rings. For purposes of this chapter, the PAHs of concern for designation are: Acenaphthene, acenaphthylene, fluorene, anthracene, fluoranthene, phenanthrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, pyrene, chrysene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-c,d)pyrene, benzo(g,h,i)perylene, dibenzo [(a,e), (a,h), (a,i), and (a,1)] pyrenes, and dibenzo(a,j) acridine.

"Post-closure" means the requirements placed upon disposal facilities (e.g., landfills, impoundments closed as disposal facilities, etc.) after closure to ensure their environmental safety for a number of years after closure. (See also "closure.")

"Processed scrap metal" is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (that is, sorted), and fines, drosses and related materials that have been agglomerated. Note: Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (WAC 173-303-071 (3)(gg)).

"Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

"Publicly owned treatment works" or "POTW" means any device or system, owned by the state or a municipality, which is used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes. This term includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

"Qualified ground water scientist" means a scientist or

engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground water hydrology and related fields to make sound professional judgments regarding ground water monitoring and contaminant fate and transport. Sufficient training and experience may be demonstrated by state registration, professional certifications, or completion of accredited university courses.

"Reactive waste" means a dangerous waste that exhibits the characteristic of reactivity described in WAC 173-303-090(7).

"Reclaim" means to process a material in order to recover useable products, or to regenerate the material. Reclamation is the process of reclaiming.

"Recover" means extract a useable material from a solid or dangerous waste through a physical, chemical, biological, or thermal process. Recovery is the process of recovering.

"Recycle" means to use, reuse, or reclaim a material.

"Recycling unit" is a contiguous area of land, structures and equipment where materials designated as dangerous waste or used oil are placed or processed in order to recover useable products or regenerate the original materials. For the purposes of this definition, "placement" does not mean "storage" when conducted within the provisions of WAC 173-303-120(4). A container, tank, or processing equipment alone does not constitute a unit; the unit includes containers, tanks or other processing equipment, their ancillary equipment and secondary containment system, and the land upon which they are placed.

"Registration number" means the number assigned by the department of ecology to a transporter who owns or leases and operates a ten-day transfer facility within Washington state.

"Regulated unit" means any new or existing surface impoundment, landfill, land treatment area or waste pile that receives any dangerous waste after:

July 26, 1982, for wastes regulated by 40 CFR Part 261;

October 31, 1984 for wastes designated only by this chapter and not regulated by 40 CFR Part 261; or

The date six months after a waste is newly identified by amendments to 40 CFR Part 261 or this chapter which cause the waste to be regulated.

"Release" means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous wastes, or dangerous constituents as defined at WAC 173-303-64610(4), into the environment and includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous wastes or dangerous constituents and includes the definition of release at RCW 70.105D.020(20).

"Remediation waste" means all solid and dangerous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit from which all or substantially all of the waste is removed, and that is subsequently reused to treat, store, or

dispose of dangerous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

"Representative sample" means a sample which can be expected to exhibit the average properties of the sample source.

"Reuse or use" means to employ a material either:

As an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

In a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

"Runoff" means any rainwater, leachate, or other liquid which drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid which drains over land onto any part of a facility.

"Satellite accumulation area" means a location at or near any point of generation where hazardous waste is initially accumulated in containers (during routine operations) prior to consolidation at a designated ninety-day accumulation area or storage area. The area must be under the control of the operator of the process generating the waste or secured at all times to prevent improper additions of wastes into the satellite containers.

"Schedule of compliance" means a schedule of remedial measures in a permit including an enforceable sequence of interim requirements leading to compliance with this chapter.

"Scrap metal" means bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. This term does not include the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small quantity handler of universal waste" means a universal waste handler (as defined in this section) who does not accumulate 11,000 pounds or more total of universal waste (batteries, thermostats, mercury-containing equipment, and lamps, calculated

collectively) and/or who does not accumulate more than 2,200 pounds of lamps at any time.

"Solid acid waste" means a dangerous waste that exhibits the characteristic of low pH under the corrosivity tests of WAC 173-303-090 (6)(a)(iii).

"Solid waste management unit" or "SWMU" means any discernible location at a facility, as defined for the purposes of corrective action, where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at a facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by chapter 173-303 WAC.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. *Sorb* means to either adsorb or absorb, or both.

"Special incinerator ash" means ash residues resulting from the operation of incineration or energy recovery facilities managing municipal solid waste from residential, commercial and industrial establishments, if the ash residues are designated as dangerous waste only by this chapter and not designated as hazardous waste by 40 CFR Part 261.

"Special waste" means any state-only dangerous waste that is solid only (nonliquid, nonaqueous, nongaseous), that is: Corrosive waste (WAC 173-303-090 (6)(b)(ii)), toxic waste that has Category D toxicity (WAC 173-303-100(5)), PCB waste (WAC 173-303-9904 under State Sources), or persistent waste that is not EHW (WAC 173-303-100(6)). Any solid waste that is regulated by the United States EPA as hazardous waste cannot be a special waste.

"Spent material" means any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

"Stabilization" and "solidification" means a technique that limits the solubility and mobility of dangerous waste constituents. Solidification immobilizes a waste through physical means and stabilization immobilizes the waste by bonding or chemically reacting with the stabilizing material.

"Staging pile" means an accumulation of solid, nonflowing, remediation waste that is not a containment building or a corrective action management unit and that is used for temporary storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"State-only dangerous waste" means a waste designated only by this chapter, chapter 173-303 WAC, and is not regulated as a hazardous waste under 40 CFR Part 261.

"State operator" means the person responsible for the overall operation of the state's extremely hazardous waste facility on the Hanford Reservation.

"Storage" means the holding of dangerous waste for a temporary period. "Accumulation" of dangerous waste, by the generator on the site of generation, is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and

173-303-201.

"Sudden accident" means an unforeseen and unexpected occurrence which is not continuous or repeated in nature.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect dangerous waste for transport to dangerous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquid dangerous wastes or dangerous wastes containing free liquids. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Tank" means a stationary device designed to contain an accumulation of dangerous waste, and which is constructed primarily of nonearthen materials to provide structural support.

"Tank system" means a dangerous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Temporary unit" means a tank or container that is not an accumulation unit under WAC 173-303-200 and that is used for temporary treatment or storage of remediation waste for implementing corrective action under WAC 173-303-646 or other clean up activities.

"*TEQ*" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"Thermal treatment" means the treatment of dangerous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the dangerous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of WAC 173-303-573 (9)(b)(ii) or (20)(b)(ii).

"TLm_{96}" means the same as "Aquatic LC_{50}."

"Totally enclosed treatment facility" means a facility for treating dangerous waste which is directly connected to a production process and which prevents the release of dangerous waste or dangerous waste constituents into the environment during treatment.

"Toxic" means having the properties to cause or to significantly contribute to death, injury, or illness of man or wildlife.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, buildings, piers, and other similar areas where shipments of dangerous waste are held, consolidated, or transferred within a period of ten days or less during the normal course of transportation.

"Transport vehicle" means a motor vehicle, water vessel, or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, steamship, etc.) is a separate transport vehicle.

"Transportation" means the movement of dangerous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of dangerous waste.

"Travel time" means the period of time necessary for a dangerous waste constituent released to the soil (either by accident or intent) to enter any on-site or off-site aquifer or water supply system.

"Treatability study" means a study in which a dangerous waste is subjected to a treatment process to determine: Whether the waste is amenable to the treatment process; what pretreatment (if any) is required; the optimal process conditions needed to achieve the desired treatment; the efficiency of a treatment process for a specific waste or wastes; or the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions contained in WAC 173-303-071 (3)(r) and (s), are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of dangerous waste.

"Treatment" means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume, with the exception of compacting, repackaging, and sorting as allowed under WAC 173-303-400(2) and 173-303-600(3).

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which dangerous wastes are degraded, transformed or immobilized.

"Triple rinsing" means the cleaning of containers in accordance with the requirements of WAC 173-303-160 (2)(b), containers.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled, or driven well, or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

"Underground tank" means a device meeting the definition of "tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

"Unexploded ordnance (UXO)" means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation,

personnel, or material and remain unexploded either by malfunction, design, or any other cause.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating dangerous waste without posing a threat of release of dangerous waste to the environment.

"Universal waste" means any of the following dangerous wastes that are subject to the universal waste requirements of WAC 173-303-573:

Batteries as described in WAC 173-303-573(2);

Thermostats as described in WAC 173-303-573(3);

Lamps as described in WAC 173-303-573(5); and

Mercury-containing equipment as described in WAC 173-303-573(4).

"Universal waste handler":

Means:

A generator (as defined in this section) of universal waste; or

The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

Does not mean:

A person who treats (except under the provisions of WAC 173-303-573 (9)(a), (b), or (c) or (20)(a), (b), or (c)) disposes of, or recycles universal waste; or

A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geological formation nearest the natural ground surface that is capable of yielding ground water to wells or springs. It includes lower aquifers that are hydraulically interconnected with this aquifer within the facility property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in

chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolid products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

"Wastewater treatment unit" means a device that:

Is part of a wastewater treatment facility which is subject to regulation under either:

Section 402 or section 307(b) of the Federal Clean Water Act; or

Chapter 90.48 RCW, State Water Pollution Control Act, provided that the waste treated at the facility is a state-only dangerous waste; and

Handles dangerous waste in the following manner:

Receives and treats or stores an influent wastewater; or

Generates and accumulates or treats or stores a wastewater treatment sludge; and

Meets the definition of tank or tank system in this section.

"Water or rail (bulk shipment)" means the bulk transportation of dangerous waste which is loaded or carried on board a vessel or railcar without containers or labels.

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a dangerous waste release, can be readily cleaned up prior to the release of dangerous waste or dangerous constituents to ground water or surface water.

Any terms used in this chapter which have not been defined in this section have either the same meaning as set forth in Title 40 CFR Parts 260, 264, 270, and 124 or else have their standard, technical meaning.

As used in this chapter, words in the masculine gender also include the feminine and neuter genders, words in the singular include the plural, and words in the plural include the singular.

AMENDATORY SECTION (Amending Order 03-10, filed 11/30/04, effective 1/1/05)

WAC 173-303-071 Excluded categories of waste. (1) Purpose. Certain categories of waste have been excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, because they generally are not dangerous waste, are regulated under other state and federal programs, or are recycled in ways which do not threaten public health or the environment. WAC 173-303-071 describes these excluded categories of waste.

(2) Excluding wastes. Any persons who generate a common class of wastes and who seek to categorically exclude such class of wastes from the requirements of this chapter must comply with the applicable requirements of WAC 173-303-072. No waste class will be excluded if any of the wastes in the class are regulated as

hazardous waste under 40 CFR Part 261.

(3) Exclusions. The following categories of waste are excluded from the requirements of chapter 173-303 WAC, except for WAC 173-303-050, 173-303-145, and 173-303-960, and as otherwise specified:

(a)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works (POTW) for treatment provided:

(A) The generator or owner/operator has obtained a state waste discharge permit issued by the department, a temporary permit obtained pursuant to RCW 90.48.200, or pretreatment permit (or written discharge authorization) from a local sewage utility delegated pretreatment program responsibilities pursuant to RCW 90.48.165;

(B) The waste discharge is specifically authorized in a state waste discharge permit, pretreatment permit or written discharge authorization, or in the case of a temporary permit the waste is accurately described in the permit application;

(C) The waste discharge is not prohibited under 40 CFR Part 403.5; and

(D) The waste prior to mixing with domestic sewage must not exhibit dangerous waste characteristics for ignitability, corrosivity, reactivity, or toxicity as defined in WAC 173-303-090, and must not meet the dangerous waste criteria for toxic dangerous waste or persistent dangerous waste under WAC 173-303-100, unless the waste is treatable in the publicly owned treatment works (POTW) where it will be received. This exclusion does not apply to the generation, treatment, storage, recycling, or other management of dangerous wastes prior to discharge into the sanitary sewage system;

(b) Industrial wastewater discharges that are point-source discharges subject to regulation under Section 402 of the Clean Water Act. This exclusion does not apply to the collection, storage, or treatment of industrial waste-waters prior to discharge, nor to sludges that are generated during industrial wastewater treatment. Owners or operators of certain wastewater treatment facilities managing dangerous wastes may qualify for a permit-by-rule pursuant to WAC 173-303-802(5);

(c) Household wastes, including household waste that has been collected, transported, stored, or disposed. Wastes that are residues from or are generated by the management of household wastes (e.g., leachate, ash from burning of refuse-derived fuel) are not excluded by this provision. "Household wastes" means any waste material (including, but not limited to, garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A resource recovery facility managing municipal solid waste will not be deemed to be treating, storing, disposing of, or otherwise managing dangerous wastes for the purposes of regulation under this chapter, if such facility:

(i) Receives and burns only:

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(B) Solid waste from commercial or industrial sources that does not contain dangerous waste; and

(ii) Such facility does not accept dangerous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that dangerous wastes are not received at or burned in such facility;

(d) Agricultural crops and animal manures which are returned to the soil as fertilizers;

(e) Asphaltic materials designated only for the presence of PAHs by WAC 173-303-100(6). For the purposes of this exclusion, asphaltic materials means materials that have been used for structural and construction purposes (e.g., roads, dikes, paving) that were produced from mixtures of oil and sand, gravel, ash or similar substances;

(f) Roofing tars and shingles, except that these wastes are not excluded if mixed with wastes listed in WAC 173-303-081 or 173-303-082, or if they exhibit any of the characteristics specified in WAC 173-303-090;

(g) Treated wood waste and wood products including:

(i) Arsenical-treated wood that fails the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D004 through D017 only) or that fails any state criteria, if the waste is generated by persons who utilize the arsenical-treated wood for the materials' intended end use. Intended end use means the wood product must have been used in typical treated wood applications (for example, fence posts, decking, poles, and timbers).

(ii) Wood treated with other preservatives provided such treated wood and wood waste (for example, sawdust and shavings) are, within one hundred eighty days after becoming waste:

(A) Disposed of at a landfill that is permitted in accordance with chapter 173-350 WAC, Solid waste handling standards, or chapter 173-351 WAC, criteria for municipal solid waste landfills, and provided that such wood is neither a listed waste under WAC 173-303-9903 and 173-303-9904 nor a TCLP waste under WAC 173-303-090(8); or

(B) Sent to a facility that will legitimately treat or recycle the treated wood waste, and manage any residue in accordance with that state's dangerous waste regulations; or

(C) Sent off-site to a permitted TSD facility or placed in an on-site facility which is permitted by the department under WAC 173-303-800 through 173-303-845. In addition, creosote-treated wood is excluded when burned for energy recovery in an industrial furnace or boiler that has an order of approval issued pursuant to RCW 70.94.152 by ecology or a local air pollution control authority to burn creosote treated wood.

(h) Irrigation return flows;

(i) Reserve;

(j) Mining overburden returned to the mining site;

(k) Polychlorinated biphenyl (PCB) wastes:

(i) PCB wastes whose disposal is regulated by EPA under 40 CFR 761.60 (Toxic Substances Control Act) and that are dangerous either because:

(A) They fail the test for toxicity characteristic (WAC 173-303-090(8), Dangerous waste codes D018 through D043 only); or

(B) Because they are designated only by this chapter and not designated by 40 CFR Part 261, are exempt from regulation under this chapter except for WAC 173-303-505 through 173-303-525, 173-303-960, those sections specified in subsection (3) of this section, and 40 CFR Part 266;

(ii) Wastes that would be designated as dangerous waste under this chapter solely because they are listed as WPCB under WAC 173-303-9904 when such wastes are stored and disposed in a manner equivalent to the requirements of 40 CFR Part 761 Subpart D for PCB concentrations of 50 ppm or greater.

(l) Samples:

(i) Except as provided in (l)(ii) of this subsection, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(A) The sample is being transported to a lab for testing or being transported to the sample collector after testing; or

(B) The sample is being stored by the sample collector before transport, by the laboratory before testing, or by the laboratory after testing prior to return to the sample collector; or

(C) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action).

(ii) In order to qualify for the exemptions in (l)(i) of this subsection, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(A) Comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) Comply with the following requirements if the sample collector determines that DOT or USPS, or other shipping requirements do not apply:

(I) Assure that the following information accompanies the sample:

(AA) The sample collector's name, mailing address, and telephone number;

(BB) The laboratory's name, mailing address, and telephone number;

(CC) The quantity of the sample;

(DD) The date of shipment;

(EE) A description of the sample; and

(II) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory

determines that the waste is dangerous but the laboratory is no longer meeting any of the conditions stated in (l)(i) of this subsection;

(m) Reserve;

(n) Dangerous waste generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste-treatment-manufacturing unit until it exits the unit in which it was generated. This exclusion does not apply to surface impoundments, nor does it apply if the dangerous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials;

(o) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (NAICS codes 331111 and 332111), except that these wastes are not excluded if they exhibit one or more of the dangerous waste criteria (WAC 173-303-100) or characteristics (WAC 173-303-090);

(p) Wastes from burning any of the materials exempted from regulation by WAC 173-303-120 (2)(a)(vii) and (viii). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria;

(q) As of January 1, 1987, secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal; and

(v) A generator complies with the requirements of chapter 173-303 WAC for any residues (e.g., sludges, filters, etc.) produced from the collection, reclamation, and reuse of the secondary materials.

(r) Treatability study samples.

(i) Except as provided in (r)(ii) of this subsection, persons who generate or collect samples for the purpose of conducting treatability studies as defined in WAC 173-303-040 are not subject to the requirements of WAC 173-303-180, 173-303-190, and 173-303-200 (1)(a), nor are such samples included in the quantity determinations of WAC 173-303-070 (7) and (8) and 173-303-201 when:

(A) The sample is being collected and prepared for transportation by the generator or sample collector; or

(B) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or

testing facility; or

(C) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study; or

(D) The sample or waste residue is being transported back to the original generator from the laboratory or testing facility.

(ii) The exemption in (r)(i) of this subsection is applicable to samples of dangerous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(A) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute dangerous waste, 1000 kg of nonacute dangerous waste other than contaminated media, 1 kg of acutely hazardous waste, 2500 kg of media contaminated with acutely hazardous waste for each process being evaluated for each generated waste stream; and

(B) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute dangerous waste or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of dangerous waste, and 1 kg of acutely hazardous waste; and

(C) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of (r)(ii)(C)(I) or (II) of this subsection are met.

(I) The transportation of each sample shipment complies with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(II) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(AA) The name, mailing address, and telephone number of the originator of the sample;

(BB) The name, address, and telephone number of the laboratory or testing facility that will perform the treatability study;

(CC) The quantity of the sample;

(DD) The date of shipment; and

(EE) A description of the sample, including its dangerous waste number.

(D) The sample is shipped, within ninety days of being generated or of being taken from a stream of previously generated waste, to a laboratory or testing facility which is exempt under (s) of this subsection or has an appropriate final facility permit or interim status; and

(E) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(I) Copies of the shipping documents;

(II) A copy of the contract with the facility conducting the treatability study;

(III) Documentation showing:

(AA) The amount of waste shipped under this exemption;

(BB) The name, address, and EPA/state identification number of

the laboratory or testing facility that received the waste;

(CC) The date the shipment was made; and

(DD) Whether or not unused samples and residues were returned to the generator.

(F) The generator reports the information required under (r)(ii)(E)(III) of this subsection in its annual report.

(iii) The department may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The department may grant requests on a case-by-case basis for quantity limits in excess of those specified in (r)(ii)(A) and (B) of this subsection and (s)(iv) of this subsection, for up to an additional 5000 kg of media contaminated with nonacute dangerous waste, 500 kg of nonacute dangerous waste, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste or for up to an additional 10,000 kg of wastes regulated only by this chapter and not regulated by 40 CFR Part 261, to conduct further treatability study evaluation:

(A) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(B) In response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(C) The additional quantities and time frames allowed in (r)(iii)(A) and (B) of this subsection are subject to all the provisions in (r)(i) and (r)(ii)(C) through (F) of this subsection. The generator or sample collector must apply to the department where the sample is collected and provide in writing the following information:

(I) The reason the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(II) Documentation accounting for all samples of dangerous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability

study;

(III) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(IV) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(V) Such other information that the department considers necessary.

(s) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to chapter 70.105 RCW) are not subject to the requirements of this chapter, except WAC 173-303-050, 173-303-145, and 173-303-960 provided that the conditions of (s)(i) through (xiii) of this subsection are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to (s)(i) through (xiii) of this subsection. Where a group of MTUs are located at the same site, the limitations specified in (s)(i) through (xiii) of this subsection apply to the entire group of MTUs collectively as if the group were one MTU.

(i) No less than forty-five days before conducting treatability studies the laboratory or testing facility notifies the department in writing that it intends to conduct treatability studies under this subsection.

(ii) The laboratory or testing facility conducting the treatability study has an EPA/state identification number.

(iii) No more than a total of 10,000 kg of "as received" media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" dangerous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(iv) The quantity of "as received" dangerous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute dangerous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of nonacute dangerous wastes other than contaminated media, and 1 kg of acutely hazardous waste. This quantity limitation does not include treatment materials (including nondangerous solid waste) added to "as received" dangerous waste.

(v) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived

for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(vi) The treatability study does not involve the placement of dangerous waste on the land or open burning of dangerous waste.

(vii) The laboratory or testing facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(A) The name, address, and EPA/state identification number of the generator or sample collector of each waste sample;

(B) The date the shipment was received;

(C) The quantity of waste accepted;

(D) The quantity of "as received" waste in storage each day;

(E) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(F) The date the treatability study was concluded;

(G) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated TSD facility, the name of the TSD facility and its EPA/state identification number.

(viii) The laboratory or testing facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(ix) The laboratory or testing facility prepares and submits a report to the department by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(A) The name, address, and EPA/state identification number of the laboratory or testing facility conducting the treatability studies;

(B) The types (by process) of treatability studies conducted;

(C) The names and addresses of persons for whom studies have been conducted (including their EPA/state identification numbers);

(D) The total quantity of waste in storage each day;

(E) The quantity and types of waste subjected to treatability studies;

(F) When each treatability study was conducted;

(G) The final disposition of residues and unused sample from each treatability study.

(x) The laboratory or testing facility determines whether any unused sample or residues generated by the treatability study are dangerous waste under WAC 173-303-070 and if so, are subject to the requirements of this chapter, unless the residues and unused samples are returned to the sample originator under the exemption in (r) of this subsection.

(xi) The laboratory or testing facility notifies the department by letter when it is no longer planning to conduct any

treatability studies at the site.

(xii) The date the sample was received, or if the treatability study has been completed, the date of the treatability study, is marked and clearly visible for inspection on each container.

(xiii) While being held on site, each container and tank is labeled or marked clearly with the words "dangerous waste" or "hazardous waste." Each container or tank must also be marked with a label or sign which identifies the major risk(s) associated with the waste in the container or tank for employees, emergency response personnel and the public.

Note: If there is already a system in use that performs this function in accordance with local, state, or federal regulations, then such system will be adequate.

(t) Petroleum-contaminated media and debris that fail the test for the toxicity characteristic of WAC 173-303-090(8) (dangerous waste numbers D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280.

(u) Special incinerator ash (as defined in WAC 173-303-040).

(v) Wood ash that would designate solely for corrosivity by WAC 173-303-090 (6)(a)(iii). For the purpose of this exclusion, wood ash means ash residue and emission control dust generated from the combustion of untreated wood, wood treated solely with creosote, and untreated wood fiber materials including, but not limited to, wood chips, saw dust, tree stumps, paper, cardboard, residuals from waste fiber recycling, deinking rejects, and associated wastewater treatment solids. This exclusion allows for the use of auxiliary fuels including, but not limited to, oils, gas, coal, and other fossil fuels in the combustion process.

(w)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (w)(i) and (ii) of this subsection, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or ground water or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W which is incorporated by reference at WAC 173-303-400 (3)(a), regardless of whether the plant generates a total of less than 220 pounds/month of dangerous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the department a one-time notification

stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the department for reinstatement. The department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(F) Additional reports.

(I) Upon determination by the department that the storage of wood preserving wastewaters and spent wood preserving solutions in tanks and/or containers poses a threat to public health or the environment, the department may require the owner/operator to provide additional information regarding the integrity of structures and equipment used to store wood preserving wastewaters and spent wood preserving solutions. This authority applies to tanks and secondary containment systems used to store wood preserving wastewaters and spent wood preserving solutions in tanks and containers. The department's determination of a threat to public health or the environment may be based upon observations of factors that would contribute to spills or releases of wood preserving wastewaters and spent wood preserving solutions or the generation of hazardous by-products. Such observations may include, but are not limited to, leaks, severe corrosion, structural defects or deterioration (cracks, gaps, separation of joints), inability to completely inspect tanks or structures, or concerns about the age or design specification of tanks.

(II) When required by the department, a qualified, independent professional engineer registered to practice in Washington state must perform the assessment of the integrity of tanks or secondary containment systems.

(III) Requirement for facility repairs and improvements. If, upon evaluation of information obtained by the department under (w)(iii)(F)(I) of this subsection, it is determined that repairs or structural improvements are necessary in order to eliminate threats, the department may require the owner/operator to discontinue the use of the tank system or container storage unit and remove the wood preserving wastewaters and spent wood preserving solutions until such repairs or improvements are completed and approved by the department.

(x) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(y) Used oil filters that are recycled in accordance with WAC 173-303-120, as used oil and scrap metal.

(z) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(aa) Wastes that fail the test for the toxicity characteristic in WAC 173-303-090 because chromium is present or are listed in WAC 173-303-081 or 173-303-082 due to the presence of chromium. The waste must not designate for any other characteristic under WAC 173-303-090, for any of the criteria specified in WAC 173-303-100, and must not be listed in WAC 173-303-081 or 173-303-082 due to the presence of any constituent from WAC 173-303-9905 other than chromium. The waste generator must be able to demonstrate that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process that uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in nonoxidizing environments.

(bb)(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in WAC 173-303-040 - blast furnaces, smelting, melting and refining furnaces, and other devices the department may add to the list - of the definition for "industrial furnace"), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of dangerous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
(2)Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the dangerous waste number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of dangerous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment." These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics (WAC 173-303-090) or criteria (WAC 173-303-100).

(cc)(i) Oil-bearing hazardous secondary materials (that is, sludges, by-products, or spent materials) that are generated at a petroleum refinery (NAICS code 324110) and are inserted into the petroleum refining process (NAICS code 324110 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (that is, cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph: Provided, That the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to

another petroleum refinery, and still be excluded under this provision. Except as provided in (cc)(ii) of this subsection, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (that is, from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under WAC 173-303-081 and 173-303-082, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in (cc)(i) of this subsection. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (NAICS codes 211111, 211112, 213111, 213112, 541360, 237120, 238910, 324110, 486110, 486910, 486210, 221210, 486210, 487110, 488210, 488999, 722310, 424710, 454311, 454312, 424720, 425110, 425120). Recovered oil does not include oil-bearing hazardous wastes listed in WAC 173-303-081 and 173-303-082; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in WAC 173-303-040.

(dd) Dangerous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are dangerous only because they exhibit the toxicity characteristic (TC) specified in WAC 173-303-090(8) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(ee) Biological treatment sludge from the treatment of one of the following wastes listed in WAC 173-303-9904 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K156), and wastewaters from the production of carbamates and carbamoyl oximes (Dangerous Waste No. K157) unless it exhibits one or more of the characteristics or criteria of dangerous waste.

(ff) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(gg) Shredded circuit boards being recycled: Provided, That they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(hh) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (NAICS code 324110) along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in WAC 173-303-090(5) and/or toxicity for benzene (WAC 173-303-090(8), waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process.

An "associated organic chemical manufacturing facility" is a facility where the primary NAICS code is 325110, 325120, 325188, 325192, 325193, or 325199, but where operations may also include NAICS codes 325211, 325212, 325110, 325132, 325192; and is physically colocated with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (that is, sludges, by-products, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(ii) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in WAC 173-303-016(5).

(jj) Catalyst inert support media separated from one of the following wastes listed in WAC 173-303-9904 Specific Sources - Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172). These wastes are not excluded if they exhibit one or more of the dangerous waste characteristics or criteria.

(kk) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed: Provided, That:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in (kk)(i) of this subsection were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic or criteria of dangerous waste nor is derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176,

K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: If the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (for example, shutdown of wastewater treatment system): Provided, That the impoundment has a double liner, and: Provided further, That the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(ll) Dredged material. Dredged material as defined in 40 CFR 232.2 that is subject to:

(i) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers or an approved state under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) The requirements of a permit that has been issued by the U.S. Army Corps of Engineers under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of a U.S. Army Corps of Engineers civil works project, the administrative equivalent of the permits referred to in (ll)(i) and (ii) of this subsection, as provided for in U.S. Army Corps of Engineers regulations, including, for example, 33 CFR 336.1, 336.2 and 337.3.

(mm) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(nn)(i) Controlled substances, legend drugs, and over-the-counter drugs that are state-only dangerous wastes.

(A) Controlled substances as defined and regulated by chapter 69.50 RCW (Schedule I through V);

(B) Legend drugs as defined and regulated by chapter 69.41 RCW; and

(C) Over-the-counter drugs as defined and regulated by chapter 69.60 RCW.

(ii) Controlled substances, legend drugs, and over-the-counter drugs that are held in the custody of law enforcement agencies or possessed by any licensee as defined and regulated by chapter 69.50 RCW or Title 18 RCW and authorized to possess drugs within the state of Washington are excluded, provided the drugs are disposed of by incineration in a controlled combustion unit with a heat input rate greater than 250 million British thermal units/hour, a combustion zone temperature greater than 1500 degrees Fahrenheit, or a facility permitted to incinerate municipal solid waste.

(iii) For the purposes of this exclusion the term "drugs" means:

(A) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(B) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) Substances (other than food) intended to affect the structure or any function of the body of man or other animals, as defined in RCW 18.64.011(3). (Note: RCW 18.64.011 (3)(d) is intentionally not included in the definition of drugs for this exclusion.)

(iv) When possessed by any licensee the term drugs used in this exclusion means finished drug products.

(oo) ((~~Reserve.~~)) Cathode ray tubes (CRTs) and glass removed from CRTs:

(i) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(A) Storage. CRTs must be either:

(I) Stored in a building with a roof, floor, and walls; or

(II) Placed in a container (that is, a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials).

(B) Labeling. Each container in which the CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) - contains leaded glass" or "leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(C) Transportation. CRTs must be transported in a container meeting the requirements of (oo)(i)(A)(II) and (B) of this subsection.

(D) Speculative accumulation and use constituting disposal. CRTs are subject to the limitations on speculative accumulation as defined in WAC 173-303-016 (5)(d). If they are used in a manner constituting disposal, they must comply with the applicable requirements of WAC 173-303-505 instead of the requirements of this section.

(E) Exports. In addition to the applicable conditions specified in (oo)(i)(A) through (D) of this subsection, exporters of CRTs must comply with the following requirements:

(I) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve-month or lesser period. The notification must be in writing, signed by the exporter, and include the following information:

- Name, mailing address, telephone number and EPA/state ID number (if applicable) of the exporter of the CRTs.
- The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.
- The estimated total quantity of CRTs specified in kilograms.
- All points of entry to and departure from each foreign country through which the CRTs will pass.
- A description of the means by which each shipment of the CRTs will be transported (for example, mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.)).

● The name and address of the recycler and any alternate recycler.

● A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

● The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(II) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., N.W., Washington, D.C. In both cases, the following must be prominently displayed on the front of the envelope: "Attention: Notification of intent to export CRTs."

(III) Upon request by EPA, the exporter must furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(IV) EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of (oo)(i)(E)(I) of this subsection. Where a claim of confidentiality is asserted with respect to any notification information required by (oo)(i)(E)(I) of this subsection, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(V) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA will forward an "Acknowledgment of Consent" to export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA will notify the exporter in writing. EPA will also notify the exporter of any responses from transit countries.

(VI) When the conditions specified on the original notification change, the exporter must provide EPA with a written renotification of the change, except for changes to the telephone number in (oo)(i)(E)(I)(first bullet) of this subsection and decreases in the quantity indicated pursuant to (oo)(i)(E)(I)(third bullet) of this subsection. The shipment cannot take place until consent of the receiving country to the changes has been obtained (except for changes to information about points of entry and departure and transit countries pursuant to (oo)(i)(E)(I)(fourth bullet) and (i)(E)(I)(eighth bullet) of this section) and the exporter of CRTs receives from EPA a copy of the "Acknowledgment of Consent" to export CRTs reflecting the receiving country's consent to the changes.

(VII) A copy of the "Acknowledgment of Consent" to export CRTs must accompany the shipment of CRTs. The shipment must conform to the terms of the Acknowledgment.

(VIII) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs must renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with (oo)(i)(E)(VI) of this subsection and obtain another "Acknowledgment of Consent" to export CRTs.

(IX) Exporters must keep copies of notifications and "Acknowledgments of Consent" to export CRTs for a period of five years following receipt of the "Acknowledgment."

(ii) Requirements for used CRT processing: CRTs undergoing CRT processing as defined in WAC 173-303-040 are not solid wastes if they meet the following requirements:

(A) Storage. CRTs undergoing processing are subject to the requirement of (oo)(i)(D) of this subsection.

(B) Processing.

(I) All activities specified in the second and third bullets of the definition of "CRT processing" in WAC 173-303-040 must be performed within a building with a roof, floor, and walls; and

(II) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(iii) Processed CRT glass sent to CRT glass making or lead smelting: Glass from CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in WAC 173-303-016 (5)(d).

(iv) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of WAC 173-303-505.

(v) Notification and recordkeeping for cathode ray tubes (CRTs) exported for reuse.

(A) Persons who export CRTs for reuse must send a one-time notification to the U.S. EPA Regional Administrator. The notification must include a statement that the notifier plans to export CRTs for reuse, the notifier's name, address, and EPA/state ID number (if applicable) and the name and phone number of a contact person.

(B) Persons who export CRTs for reuse must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least five years from the date the CRTs were exported.

(pp) Zinc fertilizers made from hazardous wastes provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

	Maximum Allowable Total Concentration Constituent in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4

Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (pp)(ii) of this subsection. Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subsection (3)(pp).

(qq) Debris. Provided the debris does not exhibit a characteristic identified in WAC 173-303-090, the following materials are not subject to regulation under this chapter:

(i) Hazardous debris that has been treated using one of the required extraction or destruction technologies specified in Table 1 of 40 CFR section 268.45, which is incorporated by reference at WAC 173-303-140 (2)(a); persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) Debris that the department, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.