
NEW YORK STATE

REGISTER

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

- the 60-day period expires on August 29, 2021
- the 45-day period expires on August 14, 2021
- the 30-day period expires on July 30, 2021

Commissioner's regulations to extend the 2019-20 home instruction annual assessment and alternative evaluation requirements exemption to the 2020-21 school year to provide additional flexibility during the COVID-19 crisis and to provide parity to students receiving home instruction.

- Annual Instructional Hour Waiver
 - The Department proposes to amend section 175.5(n) of the Commissioner's regulations to remove the requirement that, in order to receive the annual instructional hour waiver described in such section, school districts must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district. Additionally, the Department proposes to make a technical correction to such section to replace the reference to Education Law § 3604(8) with a reference to Education Law § 3604(7).

- Grade 8 acceleration for diploma credit
 - The Department proposes to amend section 100.4(d) of the Commissioner's regulations to provide that credit for an accelerated course in grade 8 may be awarded where a student passes the course and has been exempted from the associated Regents examination and/or checkpoint A locally developed world language test. Additionally, section 100.4(d) is amended to remove outdated assessment references.

The proposed amendment provides flexibility for certain regulatory requirements during the COVID-19 crisis. Thus, the proposed amendment does not adversely impact entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The purpose of the proposed amendments is to provide flexibility for certain regulatory requirements in response to the COVID-19 crisis. The proposed amendment provides flexibility related to the following:

- Annual Home Instruction Assessment
 - o The Department proposes to amend section 100.10(h)(2-a) of the Commissioner's regulations to extend the 2019-20 home instruction annual assessment and alternative evaluation requirements exemption to the 2020-21 school year to provide additional flexibility during the COVID-19 crisis and to provide parity to students receiving home instruction.

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Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Product Stewardship and Product Labeling

I.D. No. ENV-26-21-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Repeal of Part 368; addition of new Part 368 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 27-0717, 27-2103, 27-2111, 27-2615, art. 27

Subject: Product Stewardship and Product Labeling.

Purpose: Expand, strengthen and clarify existing regulations to establish consistency with Federal and State requirements.

Public hearing(s) will be held at: 10:00 a.m. and 2:00 p.m., on Wednesday, September 8, 2021, via electronic webinar.

Instructions on how to "join" the hearing webinar and provide an oral statement will be published on the Department's proposed regulations webpage for 6 NYCRR Part 368 by June 30, 2021. The proposed regulations webpage for 6 NYCRR Part 368 may be accessed at: <https://www.dec.ny.gov/regulations/propregulations.html>

Persons who wish to receive the instructions by mail or telephone may call the Department at (518) 402-9003. Please provide your first and last name, address, and telephone number and reference the Part 368 public comment hearing.

The Department will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than Wednesday, August 18, 2021. The written request must be addressed to ALJ Olivieri, DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Fl., Albany, NY 12233-1550 or emailed to ALJ Olivieri at ohms@dec.ny.gov

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html>): The proposed rulemaking repeals and replaces the State's existing Part 368 Recycling Emblems regulations and creates new Part 368 Product Stewardship and Product Labeling regulations, that will: (i) modify the existing regulations for recycling labeling (Subpart 368-1); (ii) develop new regulations for mercury-added consumer product labeling (Subpart 368-2); and (iii) develop new regulations for the registration and reporting of covered electronic equipment (CEE) manufacturers and collective electronic waste acceptance programs, as well as the operation of electronic waste acceptance programs (Subpart 368-3). The proposed Subpart 368-3 rulemaking also regulates the registration, collection, recycling, reuse, reporting, and closure (if applicable) of electronic waste recycling facilities, consolidation facilities, collection sites, collectors, and collection events. Clarification of the requirements for retailers is addressed as well.

Subpart 368-1 Recycling Labeling

A new Subpart 368-1 is proposed to establish consistency with existing federal and state guidance and requirements, as well as to better inform consumers about proper end-of-life management of their products. The proposed Subpart 368-1 puts forth new definitions in Section 368-1.2 for package, person and product, to provide clarity and specificity to this Subpart. Standards for "recyclables", "recycled" and "reusable" are each identified and specify that a person may only use these terms on a product or package that is in conformance with sections 260.12, 260.13 and 260.14 of the Federal Trade Commission's "Guides for the Use of Environmental Marketing Claims" published in 16 CFR Part 260. This will provide consistency with federal guidelines.

Subpart 368-2 Mercury-Added Consumer Products Labeling

A new Subpart 368-2 is proposed to establish consistency with existing federal and state guidance and requirements, as well as to inform consumers about the content of their products. The proposed Subpart 368-2 puts forth new definitions in Section 368-2.2 for consumer, distributor, manufacturer, mercury-added consumer product, package, person and retailer, to provide clarity and specificity to this Subpart. Section 368-2.3 of the proposed regulations requires mercury-added consumer products sold or offered for sale in New York State by a distributor or retailer to be labeled by the manufacturer and must clearly and conspicuously inform the consumer that mercury is present in the product and that the product cannot be disposed of or placed with waste destined for disposal as municipal solid waste until the mercury is removed and reused, recycled or otherwise managed to ensure that mercury does not become part of solid waste, contaminate waste water or is released to the environment unless an alternative label has been approved by the Department. The proposed regulations also establish a procedure for department-approval of alternative labeling upon request by a manufacturer.

Subpart 368-3 Electronic Waste Collection, Recycling and Reuse

A new Subpart 368-3 is proposed to clarify and strengthen the existing provisions of the NYS Electronic Equipment Recycling and Reuse Act (EERRA) for all participating stakeholders, to improve overall program performance, to increase consumer recycling opportunities, and to empha-

size CEE manufacturers' responsibility for all costs associated with the implementation of their electronic waste acceptance programs.

The proposed Subpart 368-3 puts forth new definitions in Section 368-3.2 for business consumer, collective, ECL, electronic waste acceptance program, electronic waste collection event, material change, and premium service; all of which the EERRA referred to, but did not define. A new definition for an electronic waste collector, and subsequent registration and reporting requirements (Section 368-3.11), are also introduced in an effort to address weight collected in the State that is received from NYS consumers, yet unreported to the department and does not contribute to the statewide goal. The definitions of computer, computer peripheral, and small electronic equipment have been updated to include a listing of products on the market (such as an e-readers, external hard drives, digital picture frames, and internet streaming devices, etc.) that have been determined by the department to meet the definition of those types of CEE, but were not expressly stated in statute. The addition of new definitions and updates to existing definitions provide clarity to all stakeholders.

CEE manufacturer requirements are strengthened in Section 368-3.3 of this proposed Subpart, to clarify program policies and procedures, as well as to improve compliance with the intent of the EERRA. The proposed regulations: set a clear procedure outlining manufacturers' responsibility and obligations in the event of brand sales or transfers; add a requirement for a manufacturer to notify retailers of its brand registration at least annually; clarify to manufacturers under which circumstances they may request withdrawal, how to submit the request for withdrawal from the program, and outline the reporting and program requirements for subsequent years; reiterate the department's authority to revoke a registration for non-compliance and outline the manufacturer's subsequent years' reporting and program requirements for a manufacturer that has had its registration revoked. The proposed regulations also strengthen the requirement for all costs associated with the collection, handling and recycling and reuse of electronic waste to be covered by the manufacturer, by expressly prohibiting charges to all persons involved in the implementation of the acceptance program's methods of acceptance.

Section 368-3.6 of the proposed regulations establish rules for credit transactions, including use, purchase, sale and transfer; provide guidance to manufacturers regarding the procedure and general requirements for requesting a surcharge waiver; and establish an invoice procedure for payment within 30 days of receipt of a recycling surcharge invoice, if applicable. Cathode ray tubes (CRTs) continue to be a large portion of the residential electronic waste stream, are costly to recycle, and their collection is often discouraged by manufacturer/collective programs. The proposed regulations help ensure effective acceptance of CRT-containing electronic waste by setting minimum percentage collection requirements of televisions/monitors for television/monitor manufacturers, and establish a surcharge for any television/monitor collection shortfall, which will apply even if the manufacturer meets its acceptance standard.

Section 368-3.4 of the proposed regulations establish specific requirements for collectives, where the EERRA provided little information, to clarify existing program policies and procedures. The proposed regulations detail a collective's responsibility for meeting the same requirements as a CEE manufacturer in the provision of its electronic waste acceptance program as well. The process for collective registration withdrawal and revocation has been clarified, and a requirement for a collective to notify its participating manufacturers of its request to withdraw from the program has been proposed.

Whether offered individually by a manufacturer, or on multiple manufacturers' behalves by a collective, electronic waste acceptance programs must meet the same requirements. Acceptance methods provided are required to be free and convenient to consumers. Section 368-3.5 of the proposed regulations establishes convenience criteria for manufacturer and collective acceptance program acceptance methods to maximize consumer participation. For example, mailback programs must be completely free to consumers, including the provision of free packaging material, shipping and handling. Also, if there are restrictions on a mailback program such as weight/size, etc., the program must offer an additional convenient method. If the program's mailback carrier drop-off location is not convenient as defined in the EERRA or if no other free and convenient acceptance method is offered, then the mailback program must offer free pick-up at the consumer's location. Permanent collection locations will be required to accept electronic waste from consumers during normal business hours, and collection events will be required to accept electronic waste from consumers at a time, date, and for a duration appropriate to the location held. The proposed regulations require acceptance programs to notify its program partners of their participation in its program and its acceptance methods, as well as of their responsibilities under the EERRA.

The proposed regulations further improve the operation of acceptance methods offered to consumers in several ways. Electronic waste acceptance programs' requirement to provide same-type acceptance, whereby

all acceptance methods offered by an acceptance program must collect all types of a manufacturer's or its participating manufacturers' (in the case of collectives) CEE is clarified, as is the meaning of collection at no charge. A manufacturer or collective is responsible for all costs, including, but not limited to, costs for the collection, handling, transportation, and recycling or reuse of electronic waste, including incidentally broken or damaged electronic waste, incurred by all persons involved in the implementation of its acceptance program. In addition, the proposed regulations outline the requirement for operating a continuous program, rather than a pounds-purchasing program, and expressly state that a manufacturer or its representing collective may not stop acceptance once its minimum standard has been achieved. Acceptance programs will require monitoring and tracking for effectiveness, and if underperforming, modification to the program or the provision of additional methods of acceptance will be required under Section 368-3.5.

The EERRA's public education program requirements are minimal, which has resulted in inadequate consumer awareness. The proposed regulations expand the acceptance program's public education program requirements to encourage program use by: requiring websites to be easily accessible and regularly updated; requiring the program to provide resolution to telephone inquiries within 72 hours; and to deliver a minimum of two public service announcements to consumers about the program annually.

Requirements for retailers of CEE selling into the State are expanded in Section 368-3.7 of the proposed regulations to require the retailer to provide a current list of CEE brands offered for sale in the State to the department upon request. This will assist the department in determining if, and where unregistered or non-compliant brands are being sold.

The proposed regulations outline and clarify the registration, operational, annual reporting, withdrawal and revocation requirements for electronic waste collection sites (Section 368-3.8), consolidation facilities (Section 368-3.9), and recycling facilities (Section 368-3.10). For collection sites, the proposed regulations expand the security requirements of providing a means to control entry to the site, as well as provide training to employees on the proper handling procedures for potentially hazardous material similarly to the current requirements for consolidation and recycling facilities under the EERRA. For recycling facilities, the regulations add tracking and labeling requirements for electronic waste, which will aid both the department and facility in determining if waste has been removed from the site within a year as required by the EERRA. The proposed regulations add closure requirements for both sites and facilities, and require recycling facilities to maintain a closure plan, including a closure cost estimate provided by an independent third-party. The recycling facility must also provide financial assurance sufficient to cover the closure cost estimate provided in the facility's closure plan under the proposed regulations.

Section 368-3.12 of the proposed regulations adds a requirement for any entity holding an electronic waste collection event, whether the entity is registered or not, to notify the department and the involved municipality of the activity in advance. Advanced notification to the department and municipality will result in increased awareness of the recycling/reuse opportunities available to consumers that may or may not be offered and advertised as part of a manufacturer's or collective's electronic waste acceptance program.

Lastly, proposed Section 368-3.13 requires electronic waste transporters and waste disposal facilities to annually notify its users of the proper management of electronic waste to improve consumer awareness. EERRA currently allows only a one-time notification.

Text of proposed rule and any required statements and analyses may be obtained from: Katie Kidalowski, Division of Materials Management, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7253, (518) 402-8706, email: katie.kidalowski@dec.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: September 15, 2021.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>): The proposed rulemaking repeals and replaces the existing regulations for Recycling Emblems, develops new regulations for mercury-added consumer product labeling and develops new regulations for the existing Electronic Equipment Recycling and Reuse Act (EERRA). The proposed regulations will apply statewide.

The Department of Environmental Conservation's (Department) statutory authority to undertake development of regulations concerning recycling labeling, mercury-added consumer product labeling and electronic waste management is found in the Environmental Conservation

Law (ECL) sections 1-0101, 3-0301, 27-0717, 27-2103, 27-2111, and 27-2615.

LEGISLATIVE OBJECTIVES

The objective of this proposal as it pertains to recycling labeling and labeling mercury-added consumer products is to be consistent with existing federal and state guidance and industry standards.

The objectives of the electronic waste portion of rulemaking are to:

- provide clarity to the existing provisions of the EERRA for all participating stakeholders, to improve overall program performance, and increase recycling opportunities;
- strengthen key provisions of the EERRA to address the challenges faced by stakeholders; and
- emphasize the manufacturer’s responsibility for all costs associated with the implementation of its acceptance program.

NEEDS AND BENEFITS

Existing recycling labeling regulations are outdated and require replacement to provide for consistent labeling of packaging and products as “recycled,” “recyclable” and “reusable”. Additionally, there is a need to create regulations that clarify and provide specific requirements in compliance with the Mercury-Added Consumer Products Law, section 27-2103 of the ECL. The recycling labeling changes and additional mercury-added consumer products labeling provisions should help manufacturers, as well as federal regulators, ensure that standards and guidance are consistent with federal guidelines. For both recycling labeling and mercury-added consumer products labeling, there is a benefit to properly labeling products, informing consumers about the content of the product and the proper end-of-life management. This will avoid disposal of mercury-added consumer products.

Challenges faced by stakeholders necessitate the need to promulgate regulations for a consistent and clear electronic waste recycling program. The goal of promulgating regulations is to provide consistent labeling terms and requirements for manufacturers as well as ensure that consumers are provided a free and convenient electronic waste management program.

The following outlines the significant provisions of regulations organized by newly assigned Subparts:

Subpart 368-1

Recycling Labeling Standards

- Terms for “recyclables”, “recycled” and “reusable” are identified and the standards specify that a person may only use these terms on a product or package that is in conformance with sections 260.12, 260.13 and 260.14 of the Federal Trade Commission’s “Guides for the Use of Environmental Marketing Claims” published in 16 CFR Part 260. This will provide consistency with federal guidelines.

Subpart 368-2

Mercury-Added Consumer Product Labeling Standards

- Mercury-added consumer products sold or offered for sale in the State by a distributor or retailer must be labeled by the manufacturer and must clearly and conspicuously inform the consumer that mercury is present in the product and that the product cannot be disposed of or placed with waste destined for disposal as municipal solid waste until the mercury is removed and reused, recycled or otherwise managed to ensure that mercury does not become part of solid waste, contaminate waste water or is released to the environment unless an alternative label has been approved by the Department.

Alternative Labeling Approval

- The Department may approve alternative labeling, including package labeling, for mercury-added consumer products, upon the manufacturer’s submission of approval of the label in another state, a written request for alternative labeling documenting that a product or class of products cannot reasonably be labeled to comply with these requirements; and an alternative labeling plan that describes how the proposed alternative labeling will address the intent of the regulations. Approvals are valid for four years and may be renewed by the department upon request of the manufacturer.

Subpart 368-3

Electronic Waste Collection, Recycling, and Reuse

Definitions were introduced or expanded within the proposed regulations for clarity.

Manufacturer requirements

The proposed regulations:

- strengthen the requirements for manufacturers’ responsibility for all costs associated with the implementation of their acceptance programs.
 - set a procedure outlining manufacturers’ responsibility regarding brand sale/transfer.
 - require retailer notification of brand registration annually, as well as each time a manufacturer offers a new brand of CEE for sale with that retailer.
 - clarify the registration withdrawal process.
 - reiterate the department’s authority to revoke a registration.
- Collective Requirements**

The proposed regulations:

- add requirements for registration, annual reporting and management of a compliant acceptance program.
- clarify the registration withdrawal process.
- reiterate the department’s authority to revoke a registration.

The proposed regulations:

- require that acceptance programs accept the same type of a manufacturer’s or manufacturers’ CEE through all acceptance methods offered by an acceptance program.
- establish criteria for convenient acceptance methods.
- expand the requirements for a manufacturer’s public education program.
- ensure effective acceptance of CRT-containing electronic waste by setting minimum collection requirements for television/monitor manufacturers and establish a surcharge for under-collection.

Credits and Surcharges

The proposed regulations:

- establish rules for credit transactions.
- provide guidance regarding the procedure and general requirements for requesting a surcharge waiver.

Retailer requirements

- The proposed regulations require retailers to provide a current list of CEE manufacturers and brands offered for sale in the State to the department or its authorized agents upon request.

Electronic waste collection site, consolidation and recycling facility requirements

The proposed regulations:

- outline and clarify the registration, operational, annual reporting, withdrawal and revocation, and closure requirements.
- expand the training and security requirements for collection sites similarly to those of facilities.

- require recycling facilities to test and certify within one year of receipt that CEE removed from the waste stream for reuse is in good working condition for the same purpose it was manufactured. CEE tested and certified to be in good working order, must be sold or donated within one year of certification.

- detail the steps a site or facility has to take before its registration with the department is formally withdrawn. A requirement for recycling facilities to obtain financial assurance has been added to the proposed regulations as well to address potential facility abandonment.

- clarify the registration withdrawal process.

- reiterate the department’s authority to revoke a registration.

Electronic waste collector

- The proposed regulations add a new regulated entity, electronic waste collector, and establish a reporting requirement for electronic waste collected from State consumers. Electronic waste from State consumers may be accepted for recycling by a collector that is not a registered entity. The department is aware of weight reported through acceptance programs. This omits a potentially significant amount of electronic waste collected from State consumers, that is unreported to the department, and therefore, the weight does not contribute to the Statewide Goal.

Electronic waste collection event

- The proposed regulations add a requirement for entities holding an electronic waste collection event, whether the entity is registered or not, to notify the department and the applicable municipality of the activity in advance. Advanced notification to the department and municipality will result in increased awareness of the recycling/reuse opportunities available to consumers that may or may not be offered and advertised as part of an acceptance program.

Waste transporter and waste management facility requirements

- The EERRA currently allows electronic waste transporters and waste disposal facilities to notify its users of the proper management of electronic waste once. The proposed regulations require annual notification.

COSTS

The proposed repeal and replacement of the regulation for recycling labeling and addition of regulation for mercury-added consumer product labeling are not expected to cause any increased costs to manufacturers since they should already be complying with these requirements either through existing federal guidelines or other industry standards.

Under the proposed electronic waste regulations, collection sites will be required to train staff on the proper handling of electronic waste and control entry to the active portion of the site. Costs should be negligible.

The proposed regulations add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment. Financial assurance costs will vary. The proposed regulations require facilities to implement an electronic waste tracking system as well as label electronic waste with the date received. Costs for these activities are expected to be minimal and might already be part of a facility’s standard operating procedure.

The proposed regulations clarify and strengthen requirements for the provision of a free and convenient acceptance program to consumers as originally intended by the Act, which may result in increased cost to manufacturers. Manufacturers and collectives will be required to enhance their acceptance programs in all the following areas: mail-back, television/monitor acceptance, public education and outreach.

The cost to the State lies within the department, for implementation and administration of the regulatory program. The primary cost impact will be with initial increased staff time needed to provide technical assistance to the regulated communities.

LOCAL GOVERNMENT MANDATES

This proposal does not directly mandate the expenditure of funds by local government.

PAPERWORK

The proposed rulemaking does not establish additional paperwork for manufacturers regarding the use of recycling labeling.

For mercury-added consumer product labeling, a simple process for seeking approval from the Department for alternate labeling has been established and would require minimal paperwork for anyone seeking that approval.

The proposed rulemaking for the electronic waste program will establish additional paperwork requirements for regulated entities in the areas of registration withdrawal requests and collection event notifications. It imposes additional paperwork requirements on manufacturers, related to requests for waivers of recycling surcharges and retailer notification. Electronic waste facilities implementing new electronic waste tracking systems as a result of the proposed regulations will see additional paperwork as well.

DUPLICATION

The proposed regulations are not intended to duplicate any other federal or state regulations or statutes. The proposed regulations for recycling labeling and mercury-added consumer product labeling are consistent with existing federal guidelines and industry standards. The electronic waste recycling and reuse proposed regulations are intended to clarify the requirements of ECL Article 27, Title 26.

ALTERNATIVES

For recycling labeling, the no action alternative would continue to allow outdated requirements for recycling labeling to remain in place causing confusion for existing manufacturers and a lack of consistency with federal guidelines.

For mercury-added consumer product labeling, the no-action alternative would continue causing confusion or lack of knowledge of the legal requirements for existing manufacturers.

For electronic waste, the no-action alternative was rejected because manufacturers are not absorbing all costs as the EERRA intended, and consequently, costs for managing electronic waste are passed on to recyclers, municipalities and consumers. Another reason the no-action alternative was rejected was to address shortcomings in the EERRA such as electronic waste leaving the State not currently being reported.

FEDERAL STANDARDS

For recycling labeling, there are Federal Trade Commission guidelines for the use of Environmental Marketing Claims. The existing regulations were not completely consistent with these guidelines. This proposal creates consistency between the State requirements and these federal guidelines.

For mercury-added consumer product labeling, there are no current federal regulations that address mercury-added consumer product labeling.

For electronic waste management, there are no federal regulations for most of the regulated entities contained in the proposed rulemaking. However, facilities are required to meet the requirements of the "CRT Rule" promulgated by the United States Environmental Protection Agency (USEPA) at 40 Codes of Federal Regulation (CFR) 261.39 (71 Federal Register (FR) 42928-42949, July 28, 2006).

COMPLIANCE SCHEDULE

For Subparts 368-1 and 368-2, compliance will be required on the effective date of the proposed regulation.

For Subpart 368-3, existing registered entities, including manufacturers, collectives, and electronic waste collection sites, consolidation facilities, and recycling facilities will be required to comply one hundred and eighty (180) days after the effective date of the proposed regulation. For all other regulated entities, compliance will be required upon the effective date of the proposed regulation.

INITIAL REVIEW OF RULE

The department will conduct an initial review of the rule within three years as required by SAPA § 207.

Regulatory Flexibility Analysis

The proposed rulemaking repeals and replaces the existing regulations for recycling emblems, develops new regulations for mercury-added consumer product labeling and develops new regulations for registration, electronic waste acceptance programs, and reporting of covered electronic

equipment (CEE) collected by manufacturer and collective electronic waste acceptance programs. The proposed rulemaking for electronic waste also regulates the registration, collection, recycling, reuse, reporting, and closure (if applicable) of electronic waste recycling facilities, consolidation facilities, collection sites, collectors, and collection events. Additional clarification of the requirements for retailers are addressed as well.

1. EFFECT OF RULE:

The proposed rulemaking is not expected to significantly affect small business and local governments. The modifications to the requirements for recycling labeling will enhance the regulations to create consistency with existing Federal Trade Commission guidance. The addition of labeling requirements for mercury-added consumer products is proposed to implement the existing law and to create consistency with standards implemented in a number of other states.

For electronic waste, the proposed rulemaking clarifies and strengthens provisions of the Electronic Equipment Recycling and Reuse Act (EERRA) to help improve collection of electronic waste and overall program performance. The proposed regulations impose several new requirements affecting local governments providing electronic waste collection and/or consolidation, as well as regulated small businesses (e.g., collection sites, consolidation facilities, recycling facilities, collectors, retailers, etc.), which are outlined in the following section. The proposed electronic waste regulations also attempt to address some of the pressing issues identified by and impacting local governments and small businesses directly. For example, emphasis is placed on manufacturers' statutory responsibility for all costs associated with the implementation of their acceptance program. This includes the costs for the collection, handling, transportation, and recycling or reuse of electronic waste incurred by all persons involved in the implementation of a manufacturer's acceptance program.

2. COMPLIANCE REQUIREMENTS

There are no new compliance requirements proposed under the recycling labeling or mercury-added consumer product labeling sections that would be applicable to local businesses. In addition, any compliance requirements for small businesses under these two sections would be consistent with standards and guidance already in place.

There would be no additional paperwork requirements for regulated entities under the recycling labeling requirements.

For the mercury-added consumer product labeling requirements, a simple process for seeking approval from the Department for alternate labeling has been established and would require minimal paperwork for anyone seeking that approval.

The proposed electronic waste regulations applicable to local governments and small businesses include:

- Expand the security requirements of providing a means to control entry to collection sites similarly to those of consolidation and recycling facilities.
- Expand the training requirements to collection sites for the handling of potentially hazardous material similarly to those of consolidation and recycling facilities.
- Add a requirement for all entities holding an electronic waste collection event, whether the entity is registered or not, to notify the department of the activity in advance.
- Detail the steps a collection site, consolidation facility or recycling facility must take, including closure requirements, before its registration with the department is formally withdrawn.
- Add a requirement for recycling facilities to obtain financial assurance to address potential facility abandonment.
- Require recycling facilities to test and certify the equipment to be in good working order, and to offer the equipment for sale within one year of acceptance.
- Require consolidation and recycling facilities to label electronic waste upon receipt and have a tracking system in place.
- Add annual outreach requirements for haulers/transporters and solid/hazardous waste management facilities to educate users on the proper methods of recycling electronic waste.
- Require retailers to maintain an up-to-date list of the brands and types of CEE sold which must be made available to the Department upon request.

3. PROFESSIONAL SERVICES

The need for additional professional services for local governments is expected to be minimal. Most local governments are registered as collection sites; and will likely be able to train their own staff and perform the necessary adjustments to the site to comply with the proposed regulations' additional security requirements. Local governments operating consolidation facilities are already required to comply with the EERRA's security and employee training requirements. In addition, registered local governments may already be employing professional services to facilitate operation in compliance with the regulatory requirements.

Small businesses acting as recycling facilities will need to obtain additional professional services to calculate closure costs and acquire

financial assurance. Small businesses operating collection sites or consolidation facilities would require the same minimal additional professional services as any other collection site or consolidation facility.

4. COMPLIANCE COSTS

Since the recycling labeling standards are already addressed in Federal Trade Commission guidelines for the use of Environmental Marketing Claims, there should not be any additional compliance costs for that section of the proposal.

The mercury-added consumer products labeling standards are already commonly used in other states and there should not be any additional compliance costs for that section of the proposal.

The proposed electronic waste regulations attempt to relieve unintended costs that have resulted from the EERRA's implementation. Local governments and small businesses may experience lower costs as a result of improved performance of manufacturer and collective electronic waste acceptance programs which will remove more electronic waste from the waste stream. It is not anticipated that there will be any variation in potential costs for small businesses or local governments of different types and of differing sizes. Any potential increases in costs are addressed below:

- Both private and municipally-run collection sites will be required to minimally train staff on the proper handling of electronic waste and control entry to the active portion of the site. Costs for staff time as well as improvements to site security must be considered.
- Closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment have been added. Financial assurance costs will vary depending on each facility's volume and level of processing.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department has focused on proposing the regulations in a manner that is technically sound and economical. The proposed regulations are not expected to alter the costs associated with recycling terms and mercury labeling. The proposed regulations are consistent with the existing Federal Trade Commission guidelines for the use of Environmental Marketing Claims and should not have any adverse impact on local governments or small businesses.

The proposed electronic waste regulations are not expected to significantly alter costs for regulated entities, except for obtaining financial assurance for electronic waste recycling facilities, where it has not already been acquired.

Registered entities are already complying with the technological requirements of online registration and annual reporting required under the EERRA. In addition, the proposed regulations impose no additional operational requirements that would require technological innovation.

6. MINIMIZING ADVERSE IMPACT

The proposed rulemaking is not expected to have adverse impacts on local governments or small businesses in New York State. Federal Trade Commission guidelines for the use of Environmental Marketing Claims for the recycling labeling requirements are already in place. The proposed regulations for mercury-added consumer products are consistent with the industry standard and provide an alternative labeling procedure. It is not anticipated that the mercury-added consumer products requirements will have an adverse impact on local governments or small businesses.

In regard to the proposed electronic waste regulations, there should be minimal adverse impacts to local governments and small businesses operating as electronic waste collection sites or consolidation facilities. Costs for staff training as well as site security are expected to be minimal. Electronic waste tracking for consolidation and recycling facilities should also have little impact on costs. Small business electronic waste recycling facilities will have additional costs associated with the development of a closure plan and closure cost estimates, as well as financial assurance requirements for closure costs. Small business electronic waste recyclers typically store and process a lesser amount of electronic waste and therefore generally require less financial assurance for closure costs.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

In addition to comprehensive internal review, the Department has conducted informal informational workshops related to electronic waste management for manufacturers, collectives, retailers, collection sites, consolidation and recycling facilities. The Department has accepted and evaluated the feedback and comments for input into the proposed rulemaking.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

For existing regulated entities, compliance will be required within 180 days of adoption of the final rule. For newly regulated entities, compliance will be required upon adoption of the final rule.

Regarding electronic waste, for existing registered entities and electronic waste collectors, compliance will be required within 180 days of adoption of the final rule. For all other newly regulated entities, compliance will be required upon adoption of the final rule.

9. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

Rural Area Flexibility Analysis

The revised proposed rulemaking will repeal and replace the Department of Environmental Conservation's (Department) existing regulations governing recycling emblems, and will adopt new regulations governing mercury-added consumer product labeling, and electronic waste collection, recycling and reuse. The Department does not expect the new regulations to have a negative impact on rural areas.

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The proposed regulations apply statewide, including rural areas of the State. All areas of the State, including rural areas will be affected directly or indirectly by the proposed rulemaking.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

The proposed rulemaking does not impose any reporting, recordkeeping or other compliance requirements in rural areas with respect to recycling labeling or mercury-added consumer product labeling.

Regarding electronic waste collection, recycling and reuse, the proposed rulemaking will require minimal additional professional services for reporting, recordkeeping and other compliance requirements including site/facility operational services and implementing closure requirements for collection sites and consolidation facilities. Additionally, recycling facilities will be required to obtain third-party closure cost estimates, have a facility closure plan in place, and maintain financial assurance necessary to cover closure costs. Recycling facilities may be required to obtain additional professional services to address these compliance requirements.

The proposed rulemaking does not impose any significant additional reporting, recordkeeping or paperwork requirements for manufacturers or electronic waste collection sites, consolidation facilities and recycling facilities affected by this rulemaking, including those located in rural areas. The Electronic Equipment Recycling and Reuse Act ("EERRA") requires registration and annual reporting from all electronic waste collection sites and facilities, and these requirements continue under the proposed regulations. The Department continues to simplify and enhance electronic reporting to ease the existing paperwork requirements. The additional paperwork required of the regulation's withdrawal process and closure plan maintenance will be submitted via the same online registration and reporting mechanism or e-mail communication process already used by the EERRA's regulated site and facilities.

All electronic waste consolidation facilities and recycling facilities including those located in rural areas will be required to implement an electronic waste tracking system under the proposed regulations. While the requirement for a tracking system is not expressly stated in the EERRA, facilities likely have already established tracking procedures to comply with the EERRA's reporting requirements. Therefore, the time, effort and cost to comply with this new requirement are expected to be minimal.

If a person or local government chooses to own or operate an electronic waste site or facility in the State, the proposed regulations may require the additional expenditure of funds to comply with the requirements of Subpart 368-3, which govern those electronic waste sites and facilities.

3. COSTS

This proposal does not directly mandate the expenditure of funds by any sector of local government. The proposed regulations will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district or fire district in a rural area.

Part 368-1 Recycling Labeling:

The proposed changes and additions for the recycling labeling are not expected to cause any increased costs to any manufacturers, including those in rural areas of the State. The recycling labeling changes should help all manufacturers by ensuring that standards and guidance are consistent with federal guidelines thereby reducing costs for potentially multiple labeling requirements.

Part 368-2 Mercury-Added Consumer Labeling:

The proposed changes and additions for the mercury-added consumer product labeling are not expected to cause any increased costs to manufacturers. The mercury-added consumer product labeling changes should help manufacturers by ensuring that New York regulations are consistent with industry or other states' guidelines thereby reducing costs for potentially multiple labeling requirements.

Part 368-3 Electronic Waste Collection, Recycling and Reuse:

This proposal will not impose any significant costs on sites and facilities with the exception of new financial assurance requirements on electronic waste recycling facilities. If a person or local government chooses to own or operate an electronic waste collection site or facility, the costs associated with compliance with the proposed rulemaking are addressed below:

- Collection Sites

The proposed electronic waste regulations add a requirement for collection sites to control entry (e.g., lockable gates, fenced areas, etc.) to the active portion of the site at all times. Many collection sites already control access to the active portion of their site via locked doors, gates or containers. For some sites, the initial capital cost to comply with this requirement could be as little as \$20.00 for a padlock. Other sites that choose to enclose an outdoor area would encounter greater initial capital costs for fencing, gates, etc., upwards of \$4,000.00 depending on materials used. Annual costs of compliance for maintaining any site security improvements should be minimal.

Under the proposed electronic waste rulemaking, collection sites would also be required to provide training to all employees who handle or have responsibility for managing electronic waste, informing them of the proper handling and emergency procedures appropriate to the type of electronic waste handled at the site. Some sites may have already met this requirement, others may incur minimal costs for staff time for implementing a training process. The proposed regulations do not require annual training for compliance.

The proposed electronic waste regulations also require that collection sites meet certain closure requirements, including decontamination of the site, if necessary. While costs for site decontamination are difficult to estimate, the need for decontamination at a collection site where electronic waste activity is limited to acceptance, handling and sorting should be minimal.

- Consolidation Facilities

The proposed electronic waste regulations require that consolidation facilities meet certain closure requirements, including decontamination of the facility, if necessary. While costs for facility decontamination are difficult to estimate, the need for decontamination at a consolidation facility where electronic waste activity is limited to acceptance, consolidation, handling and sorting should be minimal.

- Recycling Facilities

The proposed regulations add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment. Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based on volume, square footage, and, type and level of processing.

- Collection Events

The proposed regulations add department notification and public service announcement requirements for persons holding electronic waste collection events. Costs for conducting public service announcements will vary depending upon the chosen method, but are not anticipated to be cost prohibitive.

4. MINIMIZING ADVERSE IMPACT

The proposed rulemaking is not expected to have adverse impacts on rural areas of New York State. As such, the Department did not consider the approaches set forth in the State Administrative Procedure Act § 220-bb(2). For electronic waste, the rural area residents and regulated entities located in rural areas will not see an increase in the cost of electronic waste management due to the rulemaking.

5. RURAL AREA PARTICIPATION

During the drafting of the regulations, the Department has accepted and evaluated public comments, given public presentations on draft criteria in numerous venues, and met with potentially affected parties. Those electronic waste facilities and other affected parties in rural areas have been solicited for input on the proposed revisions.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

Job Impact Statement

The New York State Department of Environmental Conservation (Department) proposes to repeal and replace the existing Part 368 regulations. The newly proposed regulations will update standards on the use of recycling emblems, add requirements for labeling mercury-added consumer products, and add requirements for the management, collection, recycling and reuse of electronic waste. The regulations will apply statewide.

The Department does not expect the proposed regulations to have a negative impact on jobs and employment opportunities in the State.

The proposal provides changes to existing regulations for recycling labeling that would be consistent with existing federal guidelines and adds mercury-added consumer product labeling that would be consistent with existing manufacturer requirements and national industry standards. These changes should have no impact on jobs within the impacted sectors.

The proposed new electronic waste regulations apply to manufacturers and retailers of covered electronic equipment; collective electronic waste acceptance programs; electronic waste collection sites, consolidation and recycling facilities; and electronic waste collectors and collection events. While the Electronic Equipment Recycling and Reuse Act (EERRA) has resulted in increased collection of electronic waste, there is a need to

provide clarity to and strengthen the existing provisions of the EERRA for all participating stakeholders to improve overall program performance.

The proposed regulations expand manufacturer and collective acceptance program responsibilities related to the provisions of their public education programs with the ultimate goal of increasing consumer awareness of electronic waste recycling or reuse opportunities available. Improved consumer awareness will result in increased collection of electronic waste and create a need for additional recycling infrastructure. The existing recycling infrastructure may expand to meet this need, thereby creating a small number of additional jobs related to the collection, transportation and recycling of electronic waste.

1. NATURE OF IMPACT

There should be no impact regarding the use of recycling labeling or mercury-added consumer product labeling. The recycling labeling changes and the addition of mercury-added consumer products labeling provisions should help manufacturers ensure that standards and guidance are consistent with federal guidelines and industry standards.

Manufacturers of covered electronic equipment located in the State are not expected to experience negative job impacts as a result of these proposed regulations. Any increased costs incurred by manufacturers would likely be reflected in product costs.

The proposed regulations should not inhibit the growth of, and employment in, the electronic waste recycling industry. Costs related to financial assurance requirements for recycling facilities should be offset by stronger manufacturer responsibilities, increased consumer awareness and the need for increased collection and recycler involvement in the overall electronic waste recycling program.

2. CATEGORIES AND NUMBERS AFFECTED

The implementation of the proposed electronic waste regulations is not expected to have an adverse effect on jobs or employment opportunities. Nothing being proposed is expected to result in diminished economic activity, which typically results in adverse impacts on employment opportunities. Although it is difficult to predict the impact of the regulations on employment, there is potential for a small number of jobs to be created due to the need for increased collection, recycling and reuse of electronic waste.

3. REGIONS OF ADVERSE IMPACT

There is no region of the State expected to be adversely impacted from the proposed electronic waste regulations more so than any other. All sites and facilities must adhere to the same requirements regardless of where they are located. The proposed electronic waste regulations are expected to increase the overall collection infrastructure, provide increased collection opportunities to under-served areas, and expand consumer awareness. These proposed regulations will not only increase the efficiency of the electronic waste recycling and reuse program, they will provide consistency across the State for the various stakeholders and will help ensure jobs will not be negatively impacted.

4. MINIMIZING ADVERSE IMPACT

The proposed regulations are not expected to have an adverse impact on jobs and employment opportunities. The Department already regulates much of the electronic waste management activities covered by the proposed rules.

For the proposed electronic waste regulations, although the Department is proposing some new site and facility requirements, many sites and facilities are already implementing these requirements. For example, approximately 50% of registered recycling facilities are currently third-party certified and are already required to have closure plans in place. Any additional electronic waste recycling facility requirements for financial assurance will be minimized based on the facility's volume of activity and the extent of processing.

In addition, the proposed regulations attempt to ease the financial burden of electronic waste collection sites, consolidation and recycling facilities participating in manufacturer and collective acceptance programs, by clarifying and strengthening the manufacturers' requirements for covering all costs associated with the implementation of their acceptance programs' methods of acceptance.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed regulations are not expected to negatively impact self-employment opportunities for and industry including electronic waste collection sites or consolidation facilities. The proposed requirement of financial assurance for recycling facilities in the electronic waste regulations may present an obstacle to small recyclers looking to enter the electronic waste recycling industry.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.