

Chapter 173-900 WAC

ELECTRONIC PRODUCTS RECYCLING PROGRAM

WAC

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173-900-040 Required brand labeling. [Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-040, filed 11/7/06, effective 12/8/06.] Repealed by WSR 07-21-013 (Order 07-05), filed 10/5/07, effective 11/5/07. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW.

- 173-900-050 Offering for sale or selling covered electronic products (CEPs) in or into Washington. [Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-050, filed 11/7/06, effective 12/8/06.] Repealed by WSR 07-21-013 (Order 07-05), filed 10/5/07, effective 11/5/07. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW.
- 173-900-900 Return share sampling. [Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-900, filed 10/5/07, effective 11/5/07.] Repealed by WSR 16-06-107 (Order 15-03), filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.95N.230.
- 173-900-910 Calculating return share. [Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-910, filed 10/5/07, effective 11/5/07.] Repealed by WSR 16-06-107 (Order 15-03), filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.95N.230.
- 173-900-920 Use and publication of CEP return shares. [Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-920, filed 10/5/07, effective 11/5/07.] Repealed by WSR 16-06-107 (Order 15-03), filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.95N.230.

PART I

GENERAL REQUIREMENTS

WAC 173-900-010 Purpose. (1) The Washington state legislature has required that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products (CEPs) be established throughout Washington state. The legislature determined that such a system must encourage the design of electronic products that are less toxic and more recyclable and that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.

(2) This chapter implements the Electronic Product Recycling Act, chapter 70.95N RCW. This chapter:

- (a) Defines the administrative and enforcement responsibilities delegated to the department of ecology; and
- (b) Describes the processes and procedures that ecology will use to carry out those responsibilities.

[Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-010, 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 covered electronic products (CEPs) in Washington state for a CEP recycling plan approved under this chapter.
- (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).

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-020, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-020, 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 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) Computer servers marketed to professional users; or
- (b) Retail store terminals or cash registers, used at customer checkout in the retail industry.

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

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

- (a) Any monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

- (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;
- (b) Monitoring and control instruments or systems;
- (c) Medical devices;
- (d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;
- (e) Equipment used in the delivery of patient care in a health care setting;
- (f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or
- (g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

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

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

"Desktop" is a computer designed for nonportable use.

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

"Ecology" means the department of ecology.

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

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

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

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

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

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

"Laptop" is a computer.

"Manufacturer" means the person who:

- (a) Has legal ownership of the brand, brand-name or cobrand of covered electronic products sold in or into Washington state;
- (b) Imports an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America;
- (c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer; or
- (d) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the entity that assumes responsibility fails to comply, the manufacturer as defined under (a) through (c) of this subsection remains fully responsible.

"Manufacturers whose CEPs are not directly sold in or into Washington state" are those entities who have never sold or offered for sale covered electronic products in or into Washington state.

"Manufacturers who previously manufactured" are those entities that previously manufactured covered electronic products but no longer do so.

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

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

"Materials of concern" are any of the following:

- (a) Any devices, including fluorescent tubes, containing mercury or PCBs;
- (b) Batteries;
- (c) CRTs and leaded glass; and
- (d) Whole circuit boards.

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

"New entrant" means:

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

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

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

"New manufacturers to Washington state" are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after December 8, 2006. These 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 market share" means the sum of the market shares of each manufacturer participating in that plan.

"Portable computer" is a computer.

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

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

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

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

"Processor" means an entity:

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

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

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

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

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

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

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

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

"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: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-030, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-030, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-030, filed 11/7/06, effective 12/8/06.]

PART II

MANUFACTURER REQUIREMENTS

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

**Table 200
Type of Manufacturer**

| Type of Manufacturer | | Initial Registration Due Date | Must be Listed as a Plan Participant By: |
|--|---|---|---|
| Existing manufacturers | Those entities whose CEPs are offered for sale or sold in or into Washington state, as of December 8, 2006. | On or before January 1, 2007. | No later than February 1, 2008. |
| New manufacturers to Washington state | Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after December 8, 2006. | Prior to the offering for sale of their CEPs in or into WA. | Within thirty days of ecology approving registration. |

- (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: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-200, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-200, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-200, filed 11/7/06, effective 12/8/06.]

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. |
| 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. |

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-205, filed 10/5/07, effective 11/5/07.]

WAC 173-900-210 Required brand labeling for manufacturers. (1) 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: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-210, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-210, filed 11/7/06, effective 12/8/06.]

WAC 173-900-215 Initial CEP manufacturer registration.

Step 1: Complete the manufacturer registration form.

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

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

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

(b) The manufacturer's brand names of CEPs, including:
(i) All brand names sold in Washington state in the past, including the years each brand was sold;

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

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

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

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

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

(g) CEP recycling plan participation information.

Step 2: Submit the manufacturer registration form.

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

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

(a) The online registration form;

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

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

(c) The original paper version through a courier:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

Step 3: Pay the administrative fee.

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

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

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

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

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

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

For U.S. Postal Service:

Department of Ecology
Cashiering Unit
P.O. Box 47611
Olympia, WA 98504-7611

For Courier to:

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

[Statutory Authority: RCW 70.95N.230, WSR 16-06-107 (Order 15-03), § 173-900-215, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-215, filed 10/5/07, effective 11/5/07.]

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."

(3/1/16)

(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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-220, filed 10/5/07, effective 11/5/07.]

WAC 173-900-230 Annual manufacturer registration.

(1) After initial registration, to remain registered, manufacturers must submit a registration form and required administrative fee to ecology each year.

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

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

(a) Submit the manufacturer's online registration form;

(b) Submitting a paper version through:

[Ch. 173-900 WAC p. 7]

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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."

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-230, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-230, filed 10/5/07, effective 11/5/07.]

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

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

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

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

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-240, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-240, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-250, filed 10/5/07, effective 11/5/07.]

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

- (a) Registration violation;
- (b) Labeling violation; or
- (c) Plan violation.

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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-255, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-255, filed 10/5/07, effective 11/5/07.]

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

**Table 260
Manufacturer Warning and Penalties**

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|------------------------|-----------------|----------------|---------------------------------|
| Registration Violation | Warning Letter | Up to \$1,000 | Up to \$2,000 |
| Labeling Violation | Warning Letter | Up to \$1,000 | Up to \$2,000 |
| Plan Violation | Warning Letter | Up to \$10,000 | Up to \$10,000 |

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.

(3/1/16)

(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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-260, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-260, filed 10/5/07, effective 11/5/07.]

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

Corrective actions for manufacturer registration violations:

(2) To correct a registration violation the manufacturer must:

(a) Provide evidence that the violation has been corrected; and

(b) Pay or settle any penalties to ecology.

Corrective actions for manufacturer labeling violations:

(3) To correct a labeling violation the manufacturer must:

(a) Meet the requirements in WAC 173-900-210;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

Corrective actions for plan violations:

(4) To correct a plan violation the manufacturer must:

(a) Join and participate in an approved plan or a plan currently under review for approval;

(b) Correct any other violations; and

(c) Pay or settle any penalties due to ecology.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-270, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-270, filed 10/5/07, effective 11/5/07.]

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 sales, either by unit or weight. Ecology will use market share and/or CEP 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 sales data, either by unit or weight, supplied by manufacturers for brands they manufacture or sell; or

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

(b) Ecology may put the data directly into the database. 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 sales, either by unit or weight, given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it.

**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 sales, either by unit or weight, of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product 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 biennially by the fiscal growth factor (FGF) as calculated under chapter 43.135 RCW (Fee_{FGF}).

(5) Tier placement:

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

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

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

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

(6) Publication of tier assignment:

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

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

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

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

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

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

(ii) **Final tier schedule:** For program years 2008 through 2015, ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. For program year 2016 and future years, ecology will publish the agency's final tier schedule on ecology's web site by August 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) Tier reassignment requests:

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

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

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

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

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

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

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

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

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

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

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

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

(c) Submitting tier reassignment requests: To request tier reassignment, the manufacturer must follow the steps in WAC 173-900-925 (5) and (6). If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-280, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-280, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-290, filed 10/5/07, effective 11/5/07.]

(3/1/16)

PART III

THE AUTHORITY, AUTHORIZED PARTIES, AND COVERED ELECTRONIC PRODUCT (CEP) RECYCLING PLANS

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

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

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

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

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

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

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

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

(i) Meets the requirements of this chapter; and

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-300, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-300, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-300, filed 11/7/06, effective 12/8/06.]

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.

[Ch. 173-900 WAC p. 11]

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-305, filed 10/5/07, effective 11/5/07.]

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-310, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-310, filed 10/5/07, effective 11/5/07.]

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 email 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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-320, filed 10/5/07, effective 11/5/07.]

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

Step 1: Format of the CEP recycling plan.

- (1) All plans must use the "CEP recycling plan template" provided by ecology.
- (2) The authority or authorized party must submit paper copies of their plan in a three-ring binder so that individual pages can be submitted and replaced when updates or revisions are required.

(3/1/16)

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
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

For Courier:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(b) The electronic copy may be submitted by email 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 market share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

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

- (a) The plan submittal dates were met;

- (b) The plan meets the requirements in this chapter;
- (c) The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;
- (d) When reviewing a plan for service level, ecology may contact the local government or community identified in the plan; and
- (e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-900-355).
- (8) Ecology may ask for additional information or clarification during the review of a plan.
- (9) Ecology will post all plans on the agency web site.
- (10) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

[Statutory Authority: RCW 70.95N.230, WSR 16-06-107 (Order 15-03), § 173-900-325, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW, WSR 07-21-013 (Order 07-05), § 173-900-325, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW, WSR 07-21-013 (Order 07-05), § 173-900-330, filed 10/5/07, effective 11/5/07.]

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 non-significant 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 | Significant Revisions |
|--|--|---|
| | Submitted but no approval required to implement | 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. |

| Plan Content | Nonsignificant Revisions | Significant Revisions |
|---|--|---|
| | Submitted but no approval required to implement | Submitted and approval is required to implement |
| 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. |
| 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. |

| Plan Content | Nonsignificant Revisions | Significant Revisions |
|---|---|---|
| | Submitted but no approval required to implement | Submitted and approval is required to implement |
| 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. |
| 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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-335, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-340, filed 10/5/07, effective 11/5/07.]

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

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

The following is the process for changing plan participation:

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

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

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

[Ch. 173-900 WAC p. 16]

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-345, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-345, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-350, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-355, filed 10/5/07, effective 11/5/07.]

WAC 173-900-360 Dissolving an independent plan.

(1) If an independent plan does not represent five percent market share for two consecutive program years, ecology will dissolve the independent plan.

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

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-360, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-360, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-365, filed 10/5/07, effective 11/5/07.]

WAC 173-900-370 Authority or authorized party violations.

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

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

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

- (a) Does not implement the plan so that the plan meets the requirements in this chapter (see Part III of this chapter);
- (b) Uses a collector or 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.

(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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-370, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-370, filed 10/5/07, effective 11/5/07.]

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.

(3/1/16)

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-380, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-390, filed 10/5/07, effective 11/5/07.]

PART IV

COLLECTORS FOR CEP RECYCLING PLANS

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 Status | Can a collector collect CEPs for a plan? | Definition |
|--|--|---|
| 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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-400, filed 10/5/07, effective 11/5/07.]

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

Step 1: Complete the collector registration form.

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

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

Step 2: Submit the collector registration form.

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

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

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

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-410, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-410, filed 10/5/07, effective 11/5/07.]

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.

(3/1/16)

(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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-420, filed 10/5/07, effective 11/5/07.]

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

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

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

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

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-430, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-430, filed 10/5/07, effective 11/5/07.]

WAC 173-900-440 Updates to collector registration.

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

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

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

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling

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Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
 Electronic Product Recycling
 Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-440, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-440, filed 10/5/07, effective 11/5/07.]

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

- (a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;
- (b) Curbside collection services to cover the costs not paid by the standard or independent plans; or
- (c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

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

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

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

- (a) Staff the site during operating hours.
- (b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs

accepted if the collection services provided are identified in an ecology approved plan.

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

(d) 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.

(e) 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 for inspections to determine compliance with the requirements in this chapter.

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-450, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-450, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-460, filed 10/5/07, effective 11/5/07.]

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. |

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-470, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-480, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-490, filed 10/5/07, effective 11/5/07.]

PART V

TRANSPORTERS FOR CEP RECYCLING PLANS

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-500, filed 10/5/07, effective 11/5/07.]

WAC 173-900-510 Initial registration as a CEP transporter.**Step 1: Complete the transporter registration form.**

(1) Each transporter must use the form provided by ecology and must include all of the following:

- (a) Contact and location information;
- (b) Business license information;
- (c) Permit information;
- (d) Description of services provided; and
- (e) Geographic areas where services are provided.

Step 2: Submit the registration form.

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

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

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

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-510, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-510, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-520, filed 10/5/07, effective 11/5/07.]

WAC 173-900-530 Annual renewal of transporter registration.

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

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

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

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

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-530, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-530, filed 10/5/07, effective 11/5/07.]

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

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

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

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

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-540, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-540, filed 10/5/07, effective 11/5/07.]

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-550, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-550, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-560, filed 10/5/07, effective 11/5/07.]

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. |
| 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. |

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-570, filed 10/5/07, effective 11/5/07.]

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 |

| Type of Violation | Written Warning | First Penalty | Second and Subsequent Penalties |
|---------------------------------|-----------------|---------------|---------------------------------|
| 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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-580, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-590, filed 10/5/07, effective 11/5/07.]

PART VI

DIRECT PROCESSOR REQUIREMENTS

WAC 173-900-600 What direct processors need to know to process CEPs for a CEP recycling plan. (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

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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 col-

lectors 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: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-600, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-600, filed 11/7/06, effective 12/8/06.]

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

**Table 610
Direct Processor Registration Types**

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

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

Step 1: Complete a direct processor registration form.

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

Step 2: Submit the direct processor registration form.

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

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

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-610, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-610, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-610, filed 11/7/06, effective 12/8/06.]

WAC 173-900-620 How direct processors know if their registration is approved.

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-620, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-620, filed 11/7/06, effective 12/8/06.]

WAC 173-900-630 Annual renewal of direct processor registration. (1) Direct processors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

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

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

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-630, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-630, filed 10/5/07, effective 11/5/07. Statutory Authority: Chapter 70.95N RCW. WSR 06-23-040 (Order 06-07), § 173-900-630, filed 11/7/06, effective 12/8/06.]

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
Waste 2 Resources Program

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

Courier Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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.

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-640, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-640, filed 10/5/07, effective 11/5/07.]

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 dis-

posal 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 stormwater 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.*"

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-650, filed 10/5/07, effective 11/5/07.]

PART VII

RETAILER REQUIREMENTS

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-700, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-710, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-720, filed 10/5/07, effective 11/5/07.]

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 prod-

ucts 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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-730, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-740, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-750, filed 10/5/07, effective 11/5/07.]

PART VIII

REPORTING REQUIREMENTS

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

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

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

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

(ii) CEPs recycled;

(iii) Nonrecycled residuals from CEPs; and

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

(b) The total weight in pounds of CEPs received from each 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) An estimate of the weight of each type of material recovered as a result of the processing of recycled CEPs including, at a minimum:

(i) Cathode ray tube glass;

(ii) Circuit boards;

(iii) Batteries;

(iv) Mercury containing devices;

(v) Plastics; and

(vi) Metals;

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

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

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

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

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

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

(i) The total cost of the program; and

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

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

(i) Program delivery, including:

(A) Education and promotional efforts;

(B) Collection;

(C) Transportation;

(D) Processing and labor; and

(ii) Program administration;

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

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

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

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

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

(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 electronically or by U.S. Postal Service.

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

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-800, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-800, filed 10/5/07, effective 11/5/07.]

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

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

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

- (a) Accessibility and convenience of services;
- (b) How services are working in their community;
- (c) What services are not working and why;
- (d) Suggestions for improvements to the services being provided by plans;
- (e) Description of public outreach and education; and
- (f) Any other information the local government determines is important to include.

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

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

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

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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.

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, electronically or by U.S. Postal Service, to the authority or authorized party.

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-810, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-810, filed 10/5/07, effective 11/5/07.]

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

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

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

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

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

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
Waste 2 Resources 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 non-

profit charitable organization of any need for additional information or documentation.

(a) 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.

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-820, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-820, filed 10/5/07, effective 11/5/07.]

PART IX

CALCULATION MARKET SHARE AND EQUIVALENT SHARE

WAC 173-900-925 Calculation of market shares. (1)

For program year 2016, and all subsequent program years, ecology will determine market share by weight for all manufacturers using any combination of the following data:

- (a) Generally available market research data;
- (b) CEP sales data supplied by manufacturers for brands they manufacture or sell; or
- (c) CEP sales data provided by retailers for brands they sell.

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

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

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

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

(6) The petition must contain:

- (a) A detailed explanation of the grounds for the challenge;
- (b) Detailed CEP sales data supporting the challenge; and
- (c) Complete contact information for requests for additional information or clarification.

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-925, filed 3/1/16, effective 4/1/16.]

[Ch. 173-900 WAC p. 34]

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

Step 1: Calculating individual manufacturer equivalent share.

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

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

Step 2: Calculating a plan's equivalent share.

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-930, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-930, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-940, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-950, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-960, filed 10/5/07, effective 11/5/07.]

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

Billing share payments.

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

Ecology payment of share payments.

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-970, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-970, filed 10/5/07, effective 11/5/07.]

PART X

PUBLIC OUTREACH

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

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entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

- (a) Include a web site or a toll-free number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for recycling;
- (b) Describe the method or methods used to provide outreach to covered entities; and
- (c) Ensure outreach throughout the state.

Ecology:

(2) Ecology will promote CEP recycling by:

- (a) Posting information describing where to recycle unwanted CEPs on its web site;
 - (b) Providing information about recycling CEPs through a toll-free telephone service; and
 - (c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.
- (3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

Local governments:

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

Retailers:

(5) A retailer who sells new CEPs must provide take-home information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. Providing ecology's toll-free telephone number and web site will fulfill this requirement. This may include:

- (a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, stickers, or brochures for this program; and
- (b) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging, or on sales receipts.

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

Collaboration:

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-980, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-980, filed 10/5/07, effective 11/5/07.]

PART XI

THE MATERIALS MANAGEMENT AND FINANCE
AUTHORITY

(THE AUTHORITY)

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-990, filed 10/5/07, effective 11/5/07.]

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

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

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

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

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

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

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

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

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

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

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

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

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-993, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-993, filed 10/5/07, effective 11/5/07.]

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.

[Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-995, filed 10/5/07, effective 11/5/07.]

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

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

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(a) For program years 2016 and beyond, such apportionment must be based on market share.

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

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

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

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

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

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 70.95N.230. WSR 16-06-107 (Order 15-03), § 173-900-997, filed 3/1/16, effective 4/1/16. Statutory Authority: Chapters 70.95N, 70.105, and 70.105D RCW. WSR 07-21-013 (Order 07-05), § 173-900-997, filed 10/5/07, effective 11/5/07.]