

ENVIROMENTAL CONSERVATION LAW ARTICLE 27 TITLE 26

ELECTRONIC EQUIPMENT RECYCLING AND REUSE

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§ 27-2601. Definitions.

As used in this title:

1. "Cathode ray tube" means a vacuum tube or picture tube used to convert an electronic signal into a visual image.

2. "Computer" means an electronic, magnetic, optical, electrochemical or other high-speed data processing device performing a logical, arithmetic or storage function, including a laptop computer and desktop computer, and includes any cable, cord, or wiring permanently affixed to or incorporated into such product, and may include both a computer central processing unit and a monitor; but such term shall not include an automated typewriter or typesetter, a portable hand-held calculator, a portable digital assistant, server, or other similar device.

3. "Computer peripheral" means a monitor; electronic keyboard; electronic mouse or similar pointing device; facsimile machine, document scanner, or printer intended for use with a computer; and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product. Computer peripheral shall not include any document scanner or printer which weighs one hundred pounds or more.

4. "Consumer" means a person located in the state who owns or uses covered electronic equipment, including but not limited to an individual, a business, corporation, limited partnership, not-for-profit corporation, the state, a public corporation, public school, school district, private or parochial school or board of cooperative educational services or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.

5. "Covered electronic equipment" means: a computer; computer peripheral; small electronic equipment; small-scale server; cathode ray tube; or television, as defined in this section. "Covered electronic equipment" does not include any motor vehicle or any part thereof; camera or video camera; portable or stationary radio; household appliances such as clothes washers, clothes dryers, refrigerators, freezers, microwave ovens, ovens, ranges or dishwashers; equipment that is functionally or physically part of a larger piece of equipment intended for use in an industrial, research and development or commercial setting; security or anti-terrorism equipment; monitoring and control instrument or system; thermostat; hand-held transceiver; telephone of any type; portable digital assistant or similar device; calculator; global positioning

system (GPS) receiver or similar navigation device; a server other than a small-scale server; a cash register or retail self checkout system; a stand-alone storage product intended for use in industrial, research and development or commercial settings; commercial medical equipment that contains within it a cathode ray tube, a flat panel display or similar video display device, and is not separate from the larger piece of equipment; or other medical devices as that term is defined under the Federal Food, Drug and Cosmetic Act.

6. "Electronic waste" means covered electronic equipment that has been discarded or is no longer wanted by its owner, or for any other reason enters the waste collection, recovery, treatment, processing, or recycling system. For purposes of section 27-2611 of this title, "electronic waste" does not include the case, shell, or other enclosure of covered electronic equipment from which incorporated assemblies, sub-assemblies, components, materials, wiring, circuitry and commodities have been removed.

7. "Electronic waste collection site" means a facility at a fixed or temporary site at which electronic waste is accepted from consumers and temporarily stored for more than five days in a calendar year before such waste is transported to an electronic waste consolidation facility or electronic waste recycling facility. Electronic waste collection sites include, but are not limited to, dedicated sites and facilities for the acceptance of electronic waste, and retail stores and outlets, municipal or private electronic waste collection sites and not-for-profit donation sites that have agreed to accept electronic waste.

8. "Electronic waste consolidation facility" means a facility that receives and stores electronic waste for the purpose of organizing, categorizing or consolidating items of electronic waste before such waste is transported to an electronic waste recycling facility. Electronic waste consolidation facilities include, but are not limited to, facilities of brokers acting as intermediaries between electronic waste buyers and sellers, and regional centers at which electronic waste is organized, categorized or consolidated after being transported to such centers from electronic waste collection sites or other electronic waste consolidation facilities.

9. "Electronic waste recycling facility" means a facility at which electronic waste is recycled.

10. "Label" means a marker on the surface of covered electronic equipment conveying information; for the purposes of this title, labels must be permanent and can be attached, printed, engraved or incorporated in any other permanent way that is obvious and visible to users of the product.

11. "Manufacturer" means a person who: (a) assembles or substantially assembles covered electronic equipment for sale in the state; (b) manufactures covered electronic equipment under its own brand name or under any other brand name for sale in the state; (c) sells, under its own brand name, covered electronic equipment sold in the state; (d) owns a brand name that it licenses to another person for use on covered electronic equipment sold in the state; (e) imports covered electronic equipment for sale in the state; or (f) manufactures covered electronic equipment for sale in the state without affixing a brand name. "Manufacturer" does not mean a person who assembles or substantially assembles, and sells less than one thousand units of covered electronic equipment annually in this state, or whose primary business is the sale of covered electronic equipment which is comprised primarily of rebuilt, refurbished or used components. If more than one person is a manufacturer of a brand of covered electronic equipment, any such person may assume

responsibility for obligations of a manufacturer of that brand under this title. If none of those persons assumes responsibility for the obligations of a manufacturer under this title, any and all such persons jointly and severally may be considered to be the responsible manufacturer of that brand for purposes of this title.

12. "Manufacturer's brands" means a manufacturer's name, brand name or brand label, and all manufacturer's names, brand names and brand labels for which the manufacturer has a legal right or interest, including those names, brand names, and brand labels of companies that have been acquired by the manufacturer or in which the manufacturer asserts a legal interest such as trademark, license, service mark, or patent.

13. "Monitor" means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing or other image projection technology, greater than four inches when measured diagonally, and its case, interior wires and circuitry, and any cable cord or wiring permanently affixed thereto or incorporated into such product.

14. "Person" means any individual, business entity, partnership, company, corporation, not-for-profit corporation, association, governmental entity, public benefit corporation, public authority, firm, organization, or any other group of individuals, or any officer or employee or agent thereof.

15. "Recycle" means to separate, dismantle or process the materials, components or commodities contained in electronic waste for the purpose of preparing the materials, components or commodities for use or reuse in new products or components thereof, but not for energy recovery or energy generation by means of combustion, gasification, pyrolysis or other means. Recycling includes the manual and mechanical separation of electronic waste to recover materials, components or commodities contained therein for the purpose of reuse or recycling, and changing the physical or chemical composition of electronic waste to segregate components for purposes of recycling those components.

16. "Retailer" means a person who sells covered electronic equipment to a person in the state through any means, including, but not limited to, transactions conducted through retail sales outlets, mail, catalogs, the telephone or the internet, or any electronic means. "Retailer" does not include a person who sells or offers for sale fewer than ten items of covered electronic equipment during a calendar year.

17. "Reuse" means the use of electronic waste that is tested and certified to be in good working order and which was removed from the waste stream for use for the same purpose for which it was manufactured, including the continued use of whole systems or components.

18. "Sell" or "sale" means any transfer for consideration of title or the right to use, from a manufacturer or retailer to a person, including, but not limited to, transactions conducted through retail sales outlets, catalogs, mail, the telephone, the internet, or any electronic means; this includes transfer of new products or used products that may have been refurbished by their manufacturer or manufacturer-approved party and that are offered for sale by a manufacturer or retailer, but does not include consumer-to-consumer second-hand transfer. "Sell or sale" does not include: (a) the transfer of used covered electronic equipment or a lease of covered electronic equipment; or (b) wholesale transactions among a manufacturer, wholesaler and retailer.

19. "Small electronic equipment" means any portable digital music player that has memory capability and is battery-powered, video cassette recorder, a digital video disc player, digital video recorder, digital

converter box, cable or satellite receiver, or electronic or video game console, and includes any cable, cord, or wiring permanently affixed to or incorporated into any such product.

20. "Small-scale server" means a computer that typically uses desktop components in a desktop form factor, but is designed primarily to be a storage host for other computers. To be considered a small-scale server, a computer must have the following characteristics: designed in a pedestal, tower, or other form factor similar to those of desktop computers such that all data processing, storage, and network interfacing is contained within one box or product; intended to be operational twenty-four hours per day and seven days a week, and unscheduled downtime is extremely low, such as on the order of hours per year; is capable of operating in a simultaneous multi-user environment serving several users through networked client units; and designed for an industry accepted operating system for home or low-end server applications.

21. "Television" means a display system containing a cathode ray tube or any other type of display primarily intended to receive video programming via broadcast, cable or satellite transmission, having a viewable area greater than four inches when measured diagonally.

§ 27-2603. Manufacturer collection; recycling surcharge.

1. (a) Beginning April first, two thousand eleven, a manufacturer of covered electronic equipment must accept for collection, handling and recycling or reuse electronic waste for which it is the manufacturer. Such waste shall count toward the amount of electronic waste required to be accepted pursuant to subdivision four of this section.

(b) Beginning April first, two thousand eleven, a manufacturer of covered electronic equipment must accept for collection, handling and recycling or reuse one piece of electronic waste of any manufacturer's brand if offered by a consumer with the purchase of covered electronic equipment of the same type by a consumer. Such waste shall count toward the amount of the electronic waste required to be accepted pursuant to subdivision four of this section.

2. Beginning April first, two thousand eleven, each manufacturer must accept for collection, handling and recycling or reuse the manufacturer's acceptance standard as specified in subdivision four of this section.

3. Statewide recycling or reuse goal. (a) For the period from April first, two thousand eleven through December thirty-first, two thousand eleven, the statewide recycling or reuse goal for electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by three pounds multiplied by three-quarters.

(b) For calendar year two thousand twelve, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by four pounds.

(c) For calendar year two thousand thirteen, the statewide recycling or reuse goal for all electronic waste shall be the product of the latest population estimate for the state, as published by the U.S. Census bureau multiplied by five pounds.

(d) For calendar year two thousand fourteen and annually thereafter, the statewide recycling or reuse goal for all electronic waste is the product of the base weight multiplied by the goal attainment percentage. For the purposes of this paragraph, "base weight" means the greater of:

(i) the average weight of all electronic waste collected for recycling or reuse during the previous three calendar years as reported to the department pursuant to paragraph (b) of subdivision one of section 27-2617 of this title; or (ii) the three year average of the sum of all electronic waste collected for recycling or reuse during the previous three calendar years based on information reported to the department pursuant to paragraph (b) of subdivision one, paragraph (b) of subdivision two and paragraph (b) of subdivision three of section 27-2613 of this title.

(e) The "goal attainment percentage" means:

(i) ninety percent if the base weight is less than ninety percent of the statewide recycling or reuse goal for the previous calendar year;

(ii) ninety-five percent if the base weight is ninety percent or greater, but does not exceed ninety-five percent of the statewide recycling or reuse goal for the previous calendar year;

(iii) one hundred percent if the base weight is ninety-five percent or greater, but does not exceed one hundred five percent of the statewide recycling or reuse goal for the previous calendar year;

(iv) one hundred five percent if the base weight is one hundred five percent or greater, but does not exceed one hundred ten percent of the statewide recycling or reuse goal for the previous calendar year; and

(v) one hundred ten percent if the base weight is one hundred ten percent or greater of the statewide recycling or reuse goal for the previous calendar year.

4. Manufacturer acceptance standard. (a) For the period April first, two thousand eleven through December thirty-first, two thousand eleven and annually thereafter, each manufacturer's acceptance standard is the product of the statewide recycling or reuse goal under paragraph (a), (b), (c) or (d) of subdivision three of this section, as appropriate, multiplied by that manufacturer's market share pursuant to paragraph (b) of this subdivision.

(b) Each manufacturer's market share of electronic waste shall be determined by the department based on the manufacturer's percentage share of the total weight of covered electronic equipment sold as determined by the best available information, including, but not limited to, state sales data reported by weight. Beginning April first, two thousand eleven, and every calendar year thereafter, the department shall provide each manufacturer with a determination of its market share of electronic waste which shall be the quotient of the total weight of the manufacturer's covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title divided by the total weight of all manufacturers covered electronic equipment sold to persons in this state based on the average annual retail sales during the preceding three calendar years, as reported under sections 27-2605 and 27-2617 of this title.

5. In the absence of a waiver by the department pursuant to subdivision three of section 27-2615 of this title, beginning in calendar year two thousand thirteen, a manufacturer that fails to meet its manufacturer's acceptance standard for the previous calendar year as required by subdivision four of this section shall be subject to a recycling surcharge, determined as follows:

(a) If a manufacturer accepts at least ninety percent but less than one hundred percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be thirty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(b) If a manufacturer accepts at least fifty percent but less than ninety percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be forty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

(c) If a manufacturer accepts less than fifty percent of its manufacturer's acceptance standard as required by subdivision four of this section, the surcharge shall be fifty cents multiplied by the number of additional pounds of electronic waste that should have been accepted by such manufacturer.

6. The recycling surcharge shall be paid to the department with the annual report required pursuant to section 27-2617 of this title.

7. Beginning with calendar year two thousand fourteen, if a manufacturer accepts more than its manufacturer's acceptance standard as required by subdivision four of this section, the excess weight may be used as electronic waste acceptance credits and may be sold, traded, or banked for a period no longer than three calendar years succeeding the year in which the credits were earned; provided, however, that no more than twenty-five percent of a manufacturer's obligation for any calendar year may be met with recycling credits generated in a prior calendar year.

§ 27-2605. Manufacturer electronic waste registration and responsibilities.

1. A manufacturer shall submit a registration on a form prescribed by the department to the department by January first, two thousand eleven, along with a registration fee of five thousand dollars. The department may require such form to be filed electronically. Such registration shall include:

(a) the manufacturer's name, address, and telephone number;

(b) the name and title of an officer, director, or other individual designated as the manufacturer's contact for purposes of this title;

(c) a list identifying the manufacturer's brands;

(d) a general description of the manner in which the manufacturer will comply with section 27-2603 of this title, including specific information on the manufacturer's electronic waste acceptance program in the state, and a current list of locations within the state where consumers may return electronic waste;

(e) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;

(f) a statement disclosing whether: (i) any covered electronic device sold in this state exceeds the maximum concentration values established for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs) under the restriction of hazardous substances directive (RoHS) pursuant to 2002/95/EC of the European Parliament and Council and any amendments thereto and if so, a listing of any covered electronic equipment that is not in compliance with such directive; or (ii) the manufacturer has received an exemption from one or more of those maximum concentration

values under the RoHS directive that has been approved and published by the European Commission; and

(g) any other information as the department may require.

2. A manufacturer's registration is effective upon acceptance by the department and must be updated within thirty days of any material change to the information required by subdivision one of this section.

3. Any person who becomes a manufacturer on or after January first, two thousand eleven shall register with the department prior to selling or offering for sale in the state any covered electronic equipment, and must comply with the requirements of this title.

4. No later than April first, two thousand eleven, a manufacturer shall not sell or offer for sale electronic equipment in the state unless the manufacturer has registered with the department and maintains an electronic waste acceptance program through which the manufacturer, either directly or through an agent or designee, accepts electronic waste from consumers in the state for recycling. The manufacturer shall ensure that retailers are notified of such registration.

5. The electronic waste acceptance program shall include, at a minimum:

(a) collection, handling and recycling or reuse of electronic waste pursuant to section 27-2603 of this title in a manner convenient to consumers. The following acceptance methods shall be considered reasonably convenient: (i) mail or ship back return programs; (ii) collection or acceptance events conducted by the manufacturer or the manufacturer's agent or designee, including events conducted through local governments or private parties; (iii) fixed acceptance locations such as dedicated acceptance sites operated by the manufacturer or its agent or designee; (iv) agreements with local governments, retail stores, sales outlets and not-for-profit organizations which have agreed to provide facilities for the collection of electronic waste; (v) community collection events; and (vi) any combination of these or other acceptance methods which effectively provide for the acceptance of electronic waste for recycling or reuse through means that are available and reasonably convenient to consumers in the state. At a minimum, the manufacturer shall ensure that all counties of the state, and all municipalities which have a population of ten thousand or greater, have at least one method of acceptance that is available within such county or municipality. The department may establish additional requirements to ensure convenient collection from consumers;

(b) information on how consumers can destroy all data on any electronic waste, either through physical destruction of the hard drive or through data wiping;

(c) a public education program to inform consumers about the manufacturer's electronic waste acceptance program, including at a minimum: (i) an internet website and a toll-free telephone number and written information included in the product manual for, or at the time of sale of, covered electronic equipment that provides sufficient information to allow a consumer of covered electronic equipment to learn how to return the covered equipment for recycling or reuse, and in the case of manufacturers of computers, hard drives and other covered electronic equipment that have internal memory on which personal or other confidential data can be stored, such website shall provide instructions for how consumers can destroy such data before surrendering the products for recycling or reuse; (ii) advertisements and press releases if any; and

(d) any other information as required by the department in accordance with regulations promulgated pursuant to this article.

6. A manufacturer shall maintain records demonstrating compliance with

this title and make them available for audit and inspection by the department for a period of three years.

7. A manufacturer may satisfy the electronic waste collection requirements of this section by agreeing to participate in a collective electronic waste acceptance program with other manufacturers. Any such collective electronic waste acceptance program must meet the same requirements as an individual manufacturer. Any collective electronic waste acceptance program must include a list of manufacturers that are participating in such program along with other identifying information as may be required by the department. Such program shall submit a registration to the department along with a registration fee of ten thousand dollars.

8. A manufacturer shall be responsible for all costs associated with the implementation of the electronic waste acceptance program. The manufacturer shall not charge consumers for the collection, handling and recycling and reuse of electronic waste, provided that such prohibition shall not apply to a charge on business consumers or to charges for premium services. This prohibition shall not apply to a manufacturer's contract with a consumer for the collection, handling, recycling or reuse of electronic waste that was entered into prior to the effective date of this section. For purposes of this subdivision, "business consumer" means a for-profit entity which has fifty or more full time employees or a not-for-profit corporation with seventy-five or more full time employees, but not a not-for-profit corporation designated under section 501(c)(3) of the internal revenue code. For purposes of this subdivision, "premium services" means equipment and data security services, refurbishment for reuse by the consumer, and other custom services as may be determined by the department.

§ 27-2607. Retailer requirements.

1. At the location of sale of covered electronic equipment, a retailer shall provide purchasers of covered electronic equipment with information, if any, about opportunities for the return of electronic waste that has been provided to the retailer by a manufacturer.

2. Beginning April first, two thousand eleven, no retailer shall sell or offer for sale in the state any covered electronic equipment unless the manufacturer and the manufacturer's brands are registered with the department pursuant to section 27-2605 of this title. If the retailer purchased covered electronic equipment from a manufacturer who fails to register by January first, two thousand eleven, or prior to the date the manufacturer withdrew its registration or the registration was revoked by the department, the retailer may continue to sell the covered electronic equipment for one hundred eighty days after April first, two thousand eleven, or the date the registration was withdrawn or revoked.

§ 27-2609. Labeling.

Beginning April first, two thousand eleven, a manufacturer may not offer for sale in the state or deliver to retailers for subsequent sale covered electronic equipment unless it has a visible, permanent label clearly identifying the manufacturer of that equipment.



§ 27-2611. Disposal ban.

1. Beginning April first, two thousand eleven, no manufacturer, retailer, or owner or operator of an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility in the state shall dispose of electronic waste at a solid waste management facility or hazardous waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility.

2. Beginning January first, two thousand twelve, no person except for an individual or household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state. Persons engaged in the collection of solid waste for delivery to a solid waste management facility shall provide written information to users of such facility on the proper methods for the recycling of electronic waste.

3. Beginning January first, two thousand fifteen, no individual or household shall place or dispose of any electronic waste in any solid waste management facility, or place electronic waste for collection which is intended for disposal at a solid waste management facility or hazardous waste management facility in this state.

4. Beginning January first, two thousand twelve, an owner or operator of a solid waste management facility or hazardous waste management facility shall educate users of such facility on the proper methods for the management of electronic waste. Such education shall include:

(a) providing written information to users of such facility on the proper methods for recycling of electronic waste; and

(b) posting, in conspicuous locations at such facility, signs stating that electronic waste may not be disposed of at the facility.

§ 27-2613. Electronic waste collection, consolidation and recycling.

1. Electronic waste collection sites. No later than January first, two thousand eleven, each person who owns or operates an electronic waste collection site in the state shall:

(a) register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address, and telephone number of the owners and the operators of the electronic waste collection site; and (ii) the name, address, and telephone number of the electronic waste collection site. Any person who commences the operation of an electronic waste collection site on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste at such collection site. A registration is effective upon acceptance by the department. In the case of collection sites operated by a retailer, a single registration listing the name, address, and telephone number of the individual collection sites may be submitted covering all their collection sites;

(b) beginning March first, two thousand twelve, each person operating an electronic waste collection site shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall

include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each person to whom the electronic waste collection site sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; and (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period. All quantities of electronic waste reported by the collection site must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state;

(c) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(d) store electronic waste (i) in a fully enclosed building with a roof, floor and walls, or (ii) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(e) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement.

2. Electronic waste consolidation facilities. (a) No later than January first, two thousand eleven, each person who operates an electronic waste consolidation facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address and telephone number of the electronic waste consolidation facility. Any person who commences the operation of an electronic waste consolidation facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste consolidation facility shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the name and address of each electronic waste collection site from which the consolidation facility received electronic waste during the reporting period, along with the quantity, by weight, of electronic waste received from each collection site; (ii) the name and address of each person to whom the electronic waste consolidation facility sent electronic waste during the reporting period, along with the quantity, by weight, of electronic waste that was sent to each such person; (iii) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (iv) a certification by the owner or operator of the electronic waste consolidation facility that such a facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the consolidation facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste consolidation facility shall:

(i) manage electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for managing electronic waste about the proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste consolidation facility shall not engage in electronic waste recycling unless such person is also registered as an electronic waste recycling facility, and complies with the requirements of this section that are applicable to each type of facility.

(e) A person operating an electronic waste consolidation facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

3. Electronic waste recycling facilities. (a) No later than January first, two thousand eleven, each person operating an electronic waste recycling facility in the state shall register with the department on a form prescribed by the department. The department may require such form to be filed electronically. The registration shall include: (i) the name, address and telephone number of the owner and the operator of the facility; and (ii) the name, address, and telephone number of the electronic waste recycling facility. Any person who commences the operation of an electronic waste recycling facility on or after January first, two thousand eleven shall register with the department at least thirty days prior to receiving any electronic waste. A registration is effective upon acceptance by the department. Any registration required by this paragraph shall be accompanied by a registration fee of two hundred fifty dollars.

(b) Beginning March first, two thousand twelve, each person operating an electronic waste recycling facility shall submit to the department an annual report for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, on a form prescribed by the department. The department may require annual reports to be filed electronically. Annual reports shall include, but not be limited to, the following information: (i) the quantity, by weight, of electronic waste received from consumers in the state; (ii) the name and address of each electronic waste collection site and electronic waste consolidation facility from which electronic waste was received during the reporting period, along with the quantity,

by weight, of electronic waste received from each person; (iii) the name and address of each person to whom the facility sent electronic waste or component materials during the reporting period, along with the quantity, by weight, of electronic waste or component materials thereof sent to each such person; (iv) the weight of electronic waste collected on behalf of or pursuant to an agreement with each manufacturer during the reporting period; and (v) a certification by the owner or operator of the facility that such facility has complied with the requirements of this title and all other applicable laws, rules, and regulations. All quantities of electronic waste reported by the recycling facility must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state.

(c) Each person operating an electronic waste recycling facility shall:

(i) manage and recycle electronic waste in a manner that complies with all applicable laws, rules and regulations;

(ii) store electronic waste (A) in a fully enclosed building with a roof, floor and walls, or (B) in a secure container (e.g., package or vehicle), that is constructed and maintained to minimize breakage of electronic waste and to prevent releases of hazardous materials to the environment;

(iii) have a means to control entry, at all times, through gates or other entrances to the active portion of the facility;

(iv) inform all employees who handle or have responsibility for managing electronic waste about proper handling and emergency procedures appropriate to the type or types of electronic waste handled at the facility;

(v) remove electronic waste from the site within one year of the waste's receipt at the site, and maintain records demonstrating compliance with this requirement; and

(vi) maintain the records required by paragraphs (a) and (b) of this subdivision and by subparagraph (v) of this paragraph on site and make them available for audit and inspection by the department for a period of three years.

(d) A person operating an electronic waste recycling facility may also operate such facility as an electronic waste consolidation facility provided that such person complies with the requirements of this section that are applicable to each type of facility. Where a facility is operated for both purposes, only one registration fee must be paid.

(e) A person operating an electronic waste recycling facility may accept electronic waste in the same manner as an electronic waste collection site provided that such person complies with the requirements of this section that are applicable to electronic waste collection sites.

4. Except to the extent otherwise required by law, no manufacturer or person operating an electronic waste collection site, electronic waste consolidation facility or electronic waste recycling facility shall have any responsibility or liability for any data in any form stored on electronic waste surrendered for recycling or reuse, unless such person misuses or knowingly and intentionally, or with gross negligence, discloses the data. This provision shall not prohibit any such person from entering into agreements that provide for the destruction of data on covered electronic equipment.

§ 27-2615. Department responsibilities.

1. The department is authorized to promulgate rules and regulations necessary to implement and administer this title. At a minimum, the department shall promulgate rules and regulations on: standards for reuse; electronic waste acceptance credits; waivers of the recycling surcharge; and acceptable alternative methods for the determination of state sales data.

2. The department shall (a) maintain a list of manufacturers who are registered pursuant to section 27-2605 of this title, (b) maintain a list of each such manufacturer's brands, and (c) post such lists on the department's website.

3. The department may waive the recycling surcharge payable by a manufacturer under this title when the manufacturer demonstrates in an application to the department it was unable to accept the weight of electronic waste required by section 27-2603 of this title despite the manufacturer's best efforts. The application shall be made with the annual report required by section 27-2617 of this title. The application shall include such information as the department requires. A waiver provided pursuant to this subdivision shall not relieve a manufacturer from the obligation to comply with the provisions of this title not specifically addressed in such waiver.

§ 27-2617. Reporting requirements.

1. Beginning March first, two thousand twelve, for the period of April first, two thousand eleven through December thirty-first, two thousand eleven and each calendar year thereafter, a manufacturer that offers covered electronic equipment for sale in this state shall submit a report to the department on a form prescribed by the department that includes the following:

(a) sales data reported by weight for the manufacturer's covered electronic equipment sold in this state for the previous three calendar years, categorized by type to the extent known. If the manufacturer cannot provide accurate state sales data, it must explain why such data cannot be provided, and estimate state sales data by (i) dividing its national sales data by weight by the national population according to the most recent census and multiplying the result by the population of the state, or (ii) another method approved by the department;

(b) the quantity, by weight, of electronic waste collected for recycling or reuse in this state, categorized by the type of covered electronic equipment collected during the reporting period, the methods used to accept the electronic waste, and the approximate weight of electronic waste accepted by each method used to the extent known;

(c) all quantities of electronic waste reported by the manufacturer must separately include electronic waste generated by New York state consumers and electronic waste received from or shipped outside the state: (i) the quantity, by weight, of electronic waste received directly from consumers in the state through a mail back program; (ii) the name and address of each electronic waste collection site, electronic waste consolidation facility, and electronic waste recycling facility at which electronic waste from consumers was received on behalf of the manufacturer during the reporting period, along with the quantity, by weight, of electronic waste received; and (iii) the name and address of each person to whom the manufacturer sent electronic waste or component materials during the reporting period, along with the quantity, by

weight, of electronic waste or component materials thereof sent to each such person;

(d) the number of electronic waste acceptance credits purchased, sold, banked and traded during the reporting period, the number of electronic waste acceptance credits used to meet the requirements of section 27-2603 of this title, and from whom they were purchased and to whom they were sold or traded, and the number of electronic waste acceptance credits retained as of the date of the report;

(e) the amount of any recycling surcharge owed for the reporting period, with sufficient information to demonstrate the basis for the calculation of the surcharge;

(f) the names and locations of electronic waste recycling facilities utilized by the manufacturer and entities to which electronic waste is sent for reuse, whether in the state or outside the state, including details on the methods of recycling or reuse of electronic waste, any disassembly or physical recovery operation used, and the environmental management measures implemented by such recycling facility or entity;

(g) information detailing the acceptance methods made available to consumers in municipalities which have a population of greater than ten thousand and in each county of the state to meet the requirements of paragraph (a) of subdivision five of section 27-2605 of this title;

(h) a brief description of its public education program including the number of visits to the internet website and calls to the toll-free telephone number provided by the manufacturer as required by section 27-2605 of this title;

(i) any other information as required by the department; and

(j) a signature by an officer, director, or other individual affirming the accuracy of the report.

2. The department may require annual reports to be filed electronically.

3. The report shall be accompanied by an annual reporting fee of three thousand dollars, and any recycling surcharge due pursuant to section 27-2603 of this title.

4. The department shall submit a report on implementation of the title in this state to the governor and legislature by April first, two thousand twelve and every two years thereafter. The report must include, at a minimum, an evaluation of:

(a) the electronic waste stream in the state;

(b) recycling and reuse rates in the state for covered electronic equipment;

(c) a discussion of compliance and enforcement related to the requirements of this title;

(d) recommendations for any changes to this title; and

(e) a discussion of opportunities for business development in the state related to the acceptance, collection, handling and recycling or reuse of electronic equipment in this state.

#### § 27-2619. Preemption.

Jurisdiction in all matters pertaining to electronic waste recycling, including but not limited to the obligations of manufacturers, retailers, electronic waste collection sites, electronic waste consolidation facilities and electronic waste recycling facilities with respect to electronic waste recycling, is, by this title, vested exclusively in the state. Any provision of any local law or ordinance, or any rule or regulation promulgated thereto, governing covered electronic equipment and

the collection, reuse, or recycling of electronic waste shall upon the effective date of this title be preempted.

§ 27-2621. Disposition of fees.

All fees and charges collected pursuant to this title shall be deposited into the environmental protection fund established pursuant to section ninety-two-s of the state finance law.

§ 71-2729. Enforcement of title 26 of article 27 of this chapter.

1. a. Any consumer, as defined in title twenty-six of article twenty-seven of this chapter, who violates any provision of, or fails to perform any duty imposed by, section 27-2611 of this chapter, shall be liable for a civil penalty not to exceed one hundred dollars for each violation.

b. Any person, except a consumer, manufacturer, or an owner or operator of an electronic waste collection site, electronic waste consolidation facility, or electronic waste recycling facility as these terms are defined in title twenty-six of article twenty-seven of this chapter, who violates any provision, or fails to perform any duty imposed by section 27-2611 of this chapter, shall be liable for a civil penalty not to exceed two hundred fifty dollars for each violation.

c. Any manufacturer, or any person operating an electronic waste collection site, an electronic waste consolidation facility, or an electronic waste recycling facility as those terms are defined in title twenty-six of article twenty-seven of this chapter, who:

i. fails to submit any report, registration, fee, or surcharge to the department as required by title twenty-six of article twenty-seven of this chapter shall be liable for a civil penalty not to exceed one thousand dollars for each day such report, registration, fee, or surcharge is not submitted; and

ii. violates any other provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, except for subdivision four of section 27-2603 of this chapter, shall be liable for a civil penalty for each violation not to exceed one thousand dollars for the first violation, two thousand five hundred dollars for the second violation and five thousand dollars for the third and subsequent violations of this title within a twelve-month period.

d. Any retailer, as defined by section 27-2601 of this chapter, who violates any provision of title twenty-six of article twenty-seven of this chapter or fails to perform any duty imposed by such title, shall be liable for a civil penalty for each violation not to exceed two hundred fifty dollars for the first violation, five hundred dollars for the second violation and one thousand dollars for the third and subsequent violations of this title in a twelve-month period.

e. Civil penalties under this section shall be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to this section, and, in addition thereto, such person may by similar process be enjoined from continuing such violation.

2. All penalties collected pursuant to this section shall be paid over to the commissioner for deposit to the environmental protection fund established pursuant to section ninety-two-s of the state finance law.