

SUMMARY OF REVISED REGULATORY IMPACT STATEMENT

6 NYCRR Part 368 Product Stewardship and Product Labeling

This rulemaking repeals and replaces the existing regulations for Recycling Emblems, develops new regulations for mercury-added consumer product labeling and develops new regulations to provide clarity and improve implementation of the existing Electronic Equipment Recycling and Reuse Act (EERRA). The regulations will apply statewide.

The Department of Environmental Conservation's (Department) statutory authority to undertake development of regulations concerning recycling labeling, mercury-added consumer product labeling and electronic waste management is found in the Environmental Conservation Law (ECL) sections 1-0101, 3-0301, 27-0717, 27-2103, 27-2111, and 27-2615.

LEGISLATIVE OBJECTIVES

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

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

- provide clarity to the existing provisions of the EERRA for all participating stakeholders, to improve overall program performance, and increase recycling opportunities;

- strengthen key provisions of the EERRA to address the challenges faced by stakeholders;
and
- emphasize the manufacturer's responsibility for all costs associated with the implementation of its acceptance program.

NEEDS AND BENEFITS

Existing recycling labeling regulations are outdated and require replacement to provide for consistent labeling of packaging and products as “recycled,” “recyclable” and “reusable.”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

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

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

Subpart 368 – 1

Recycling Labeling Standards

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

Subpart 368 – 2

Mercury-Added Consumer Product Labeling Standards

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

Alternative Labeling Approval

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

Subpart 368 – 3

Electronic Waste Collection, Recycling, and Reuse

Definitions were introduced or expanded within the regulations for clarity.

Manufacturer requirements

The regulations:

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

Collective Requirements

The regulations:

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

Electronic Waste Acceptance Program

The regulations:

- require that acceptance programs accept the same type of a manufacturer's or manufacturers' CEE through all acceptance methods offered by an acceptance program.
- establish criteria for convenient acceptance methods.
- expand the requirements for a manufacturer's public education program.

Credits and Surcharges

The regulations:

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

Retailer requirements

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

Electronic waste collection site, consolidation and recycling facility requirements

The regulations:

- outline and clarify the registration, operational, annual reporting, withdrawal and revocation, and closure requirements.
- expand the training and security requirements for collection sites similarly to those of facilities.
- require recycling facilities to test and certify within one year of receipt that CEE removed from the waste stream for reuse is in good working condition for the same purpose it was manufactured. Any CEE that is tested and not certified to be in good working order must be recycled or sent for recycling within one year of its receipt by the recycling facility
- detail the steps a site or facility must take before its registration with the Department is formally withdrawn. A requirement for recycling facilities to obtain financial assurance has been added to the regulations to address potential facility abandonment.
- clarify the registration withdrawal process.
- reiterate the Department's authority to revoke a registration.

Electronic waste collector

The proposed regulations add a new regulated entity, electronic waste collector, and establish a reporting requirement for electronic waste collected from consumers in New York State. Electronic waste from consumers may be accepted for recycling by a collector that is not a registered entity.

The Department is aware of weight reported through acceptance programs. This omits a potentially

significant amount of electronic waste collected from consumers that is unreported to the Department, and therefore, the weight does not contribute to the statewide Goal.

Electronic waste collection event

The regulations add a requirement for entities holding an electronic waste collection event, when such event is being held outside of an acceptance program, to notify the Department and the applicable municipality of the activity in advance.

Waste transporter and waste management facility requirements

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

COSTS

The repeal and replacement of the provisions for recycling labeling in Subpart 368-1 and the addition of provisions for mercury-added consumer product labeling in Subpart 368-2 are not expected to cause any increased costs to manufacturers since they should already be complying with these requirements either through existing federal guidelines or other industry standards.

Under the adopted electronic waste regulations in Subpart 368-3, collection sites will be required to train staff on the proper handling of electronic waste and control entry to the active portion of the site. Costs should be negligible.

The regulations in Subpart 368-3 add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment. Financial assurance costs will vary. The regulations also require facilities to implement an electronic waste tracking system and label electronic waste with the date received. Costs for these activities are expected to be minimal and might already be part of a facility's standard operating procedure.

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

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

LOCAL GOVERNMENT MANDATES

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

PAPERWORK

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

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

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

DUPLICATION

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

ALTERNATIVE APPROACHES

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

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

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

FEDERAL STANDARDS

For recycling labeling, there are Federal Trade Commission guidelines for the use of Environmental Marketing Claims. This rulemaking does not exceed these federal guidelines and merely creates consistency between the State requirements and the most current version of these federal guidelines. For mercury-added consumer product labeling, there are no current federal regulations that address mercury-added consumer product labeling. The rulemaking does not exceed federal standards for electronic waste collection, recycling and reuse.

COMPLIANCE SCHEDULE

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

For Subpart 368-3, existing registered entities, including manufacturers, collectives, and electronic waste collection sites, consolidation facilities, and recycling facilities will be required to comply by January 1, 2023. For all other regulated entities, compliance will be required upon the effective date of the adopted regulation.

INITIAL REVIEW OF RULE

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

REVISED REGULATORY IMPACT STATEMENT

6 NYCRR Part 368 Product Stewardship and Product Labeling

INTRODUCTION

This rulemaking repeals and replaces existing Part 368, entitled “Recycling Emblems” of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR). It revises Part 368 to add a new Subpart 368-1 that incorporates the requirements in existing Part 368 and updates standards on the use of recycling terms. The rulemaking also adds two new subparts, Subpart 368-2 and Subpart 368-3, that provide the requirements for the labeling of mercury-added consumer products and recycling and reuse of electronic waste, respectively.

This rulemaking will reconfigure the existing Part 368 to include three specific areas that will (i) modify the existing regulations for recycling labeling (Subpart 368-1); (ii) develop new regulations for mercury-added consumer product labeling (Subpart 368-2); and (iii) develop new regulations for registration, electronic waste acceptance programs, and reporting of covered electronic equipment (CEE) manufacturers and collective electronic waste acceptance programs (Subpart 368-3). The rulemaking also includes requirements for the registration, collection, recycling, reuse, reporting, and closure (if applicable) of electronic waste recycling facilities, consolidation facilities, collection sites, collectors, and collection events. Additional clarification of the requirements for retailers will be addressed as well. The regulations will apply statewide.

The statutory authority of the New York State Department of Environmental Conservation (Department) associated with the regulations is outlined in Section 1 below. Section 2 summarizes relevant legislative objectives, and Section 3 discusses the needs and benefits of the regulations. An assessment of the potential costs associated with the regulations is found in Section 4. Mandates on local government are described in Section 5, while Sections 6 through 8 address the paperwork requirements, whether the regulations duplicate other federal and state programs, and alternatives to the rules. Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the regulations and the compliance schedule of the rules for the regulated community. Section 11 outlines the timeframe for the Department to conduct an initial review of this rule.

1. STATUTORY AUTHORITY

The Department’s statutory authority to establish and regulate the use of recycling labeling in New York State is identified under Title 7, Article 27, Solid Waste Management & Resource

Recovery Facilities, section 27-0717 of the Environmental Conservation Law (ECL). The most recent existing regulations for recycling terms have been in effect since August 7, 1995.

The Department's statutory authority to establish and regulate labeling standards for mercury-added consumer products is identified under the Title 21, Article 27, Mercury-Added Consumer Products Law, sections 27-2103 and 27-2111 of the ECL.

The Department's statutory authority to establish rules and regulations to set forth requirements for electronic waste recycling and reuse in New York State is identified under Title 26, Article 27, Electronic Equipment Recycling and Reuse, section 27-2615 of the ECL. The New York State Electronic Equipment Recycling and Reuse Act (EERRA) was signed into law on May 28, 2010 and has been in effect since April 1, 2011. These rules and regulations will provide clarity and strengthen the existing provisions of the EERRA for all participating stakeholders and to improve overall program performance.

More specifically, the Department's statutory authority for this rulemaking is found in the following provisions of the ECL:

- ECL section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social wellbeing.
- ECL section 3-0301 empowers the Department to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.
- ECL section 27-0717 gives the Department the authority to promulgate rules establishing an official "New York State" recycling emblem and specify standards for the use of the terms "recyclable," "recycled" and "reusable."
- ECL section 27-2103 gives the Department the authority to promulgate rules and regulations specifying labeling requirements for mercury-added consumer products.
- ECL section 27-2111 gives the Department the authority to promulgate rules necessary to implement the provisions of ECL Article 27, Title 21.
- ECL Article 27, Title 26, the EERRA, requires manufacturers of CEE to provide consumers free and convenient recycling or reuse of electronic waste through a continuous and compliant acceptance program. The EERRA establishes comprehensive convenience standards, performance goals and environmental standards for its regulated entities, as well as prohibits the improper disposal of electronic waste and includes the following provisions:

- Section 27-2601 defines terms used in ECL Article 27, Title 26.
- Section 27-2603 includes requirements for manufacturers of CEE to provide for and fund the collection, handling and recycling of electronic waste, and imposes surcharges for those manufacturers who do not meet their prescribed acceptance standards.
- Section 27-2605 delineates registration requirements and responsibilities for manufacturers of CEE.
- Section 27-2607 provides requirements for retailers of CEE.
- Section 27-2609 specifies labeling requirements for CEE.
- Section 27-2611 bans the disposal of electronic waste at a solid or hazardous waste management facility and prohibits the placing of electronic waste out for collection that is intended for disposal.
- Section 27-2613 delineates requirements for electronic waste collection, consolidation and recycling.
- Section 27-2615 includes the Department's responsibilities under ECL Article 27, Title 26 and authorizes the Department to promulgate rules and regulations necessary to implement ECL Article 27, Title 26.
- Section 27-2617 list reporting requirements.
- Section 27-2619 preempts local laws and regulations on all matters pertaining to electronic waste recycling.
- Section 27-2621 requires all fees and charges collected pursuant to Title 26 to be deposited into the environmental protection fund.

2. LEGISLATIVE OBJECTIVES

The objective of this rulemaking as it pertains to the Department's regulations for recycling labeling and labeling mercury-added consumer products is to establish consistency with existing federal and state guidance and industry standards.

Regarding the management of electronic waste, the goal of this rulemaking is to ensure that consumers of the State are provided ample opportunities for the recycling or reuse of their electronic waste in a free and convenient manner. The objectives of this rulemaking are as follows:

- provide clarity to the existing provisions of the EERRA for all participating stakeholders, to improve overall program performance, and to increase

recycling opportunities,

- strengthen key provisions of the EERRA to address the challenges faced by stakeholders; and
- emphasize the manufacturer's responsibility for all costs associated with the implementation of its acceptance program. This includes the costs for the collection, handling, transportation, and recycling or reuse of electronic waste incurred by all persons involved in the implementation of a manufacturer's acceptance program.

3. NEEDS AND BENEFITS

The Department proposes to repeal and replace the existing Part 368 regulation entitled "Recycling Emblems" with a new Part 368 entitled "Product Stewardship and Product Labeling" because the changes to Part 368 will include two new subparts that regulate product stewardship and product labeling. Consolidating these regulations under Part 368 will facilitate implementation of the Department's product stewardship and labeling responsibilities. The revised regulation will contain three subparts: Subpart 368-1 for "Recycling Labeling," Subpart 368-2 for "Mercury-Added Consumer Products Labeling," and Subpart 368-3 for "Electronic Waste Collection, Recycling and Reuse."

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

Consumers and other stakeholders face certain electronic waste recycling challenges which necessitates the need for greater program consistency and clarity. The goal of promulgating regulations is to ensure that electronic waste is recycled and not disposed of, and consumers in New York State are provided truly free and convenient opportunities to recycle or reuse electronic waste, while addressing the needs of other stakeholders.

All three of these Subparts and programs are consistent with the goals and objectives outlined in the State Solid Waste Management Plan entitled *Beyond Waste*.

The following discussion outlines the significant provisions of this rulemaking, organized by newly assigned Subparts:

6 NYCRR Subpart 368-1 Recycling Labeling

6 NYCRR section 368-1.2 Definitions

- Definitions for package, person and product are provided for clarity and specificity to this Subpart.

6 NYCRR section 368-1.3 Labeling Standards

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

6 NYCRR Subpart 368-2 Mercury-Added Consumer Product Labeling

6 NYCRR section 368-2.2 Definitions

- Definitions for consumer, distributor, manufacturer, mercury-added consumer product, package, person, and retailer are provided for clarity and specificity to this Subpart.

6 NYCRR section 368-2.3 Labeling Standards

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

6 NYCRR section 368-2.4 Alternative Labeling Approval

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

6 NYCRR Subpart 368-3 Electronic Waste Collection, Recycling, and Reuse

6 NYCRR section 368-3.2 Definitions

Definitions such as collective, electronic waste acceptance program, business consumer, electronic waste collector, electronic waste collection event, premium service, program partner, and visual display device were created or expanded within the regulations. The definitions of computer, computer peripheral, and small electronic equipment have been updated to include a listing of products on the market that have been determined by the Department to meet the definition of those types of CEE, but were not expressly stated in statute. The addition of new definitions and updates to existing definitions provide clarity to all stakeholders.

6 NYCRR section 368-3.3 Manufacturer requirements

- Manufacturers are not always responsible for all costs associated with implementing their electronic waste acceptance program. The regulations strengthen these requirements for all costs associated with the collection, handling and recycling and reuse of electronic waste by prohibiting charges to all persons involved in the implementation of the acceptance programs methods of acceptance, as well as all costs associated with municipal acceptance of electronic waste on behalf of residents and non-business consumers, where a municipality is part of a manufacturers' program.
- The EERRA does not currently address the handling of manufacturer brand obligations in the event of brand sale/transfer. The requirements set a clear procedure outlining manufacturers' responsibilities.
- Retailers are often unaware of what brands of CEE are registered with the Department and may be sold in the State. The regulations add a requirement for manufacturers to notify retailers of brand registration at least annually, as well as each time a manufacturer offers a new brand of CEE for sale with that retailer.
- There is a need for consistent procedures for processing registration withdrawal requests and revoking registrations as a result of non-compliance. The regulations clarify to manufacturers under which circumstances they may request withdrawal, how to submit the request for withdrawal, and outline the reporting and program requirements for subsequent years. The regulations reiterate the Department's authority to revoke a registration and outline the manufacturer's requirements for a manufacturer that has had its registration revoked.

6 NYCRR section 368-3.4 Collective Requirements

- A manufacturer may satisfy the electronic waste collection requirements of the EERRA by participating in a collective. A collective must meet the same requirements as a manufacturer. The EERRA provides little information regarding a collective's requirements and responsibilities. The requirements for collective registration, annual reporting and management of a compliant electronic waste acceptance program on behalf of participating manufacturers are included in the regulations.

- There is a need for consistent procedures for processing registration withdrawal requests and revoking registrations as a result of non-compliance. The regulations clarify to collectives under which circumstances they may request withdrawal, how to submit the request for withdrawal, and outline the reporting requirements after withdrawal from the program. The regulations reiterate the Department's authority to revoke a registration for non-compliance with the EERRA and outline the requirements for a collective that has had its registration revoked.

6 NYCRR section 368-3.5 Electronic waste acceptance program

- The regulations also require that a manufacturer's acceptance program accept the same type of a manufacturer's CEE through all acceptance methods offered by an acceptance program. This provision requires all manufacturers of televisions and monitors to accept CRT-containing devices.
- Mail-back has proven to be an inconvenient and ineffective acceptance method offered by acceptance programs, especially when offered as the sole acceptance method. The regulations establish maximum weight requirements and other effectiveness criteria for use of mail-back as an acceptance method and requires pick-up as an alternative if no other free and convenient method is provided to the consumer.
- Consumers are often unaware of their opportunities for recycling electronic waste. The regulations expand the requirements for a manufacturer's public education program including the provision of an easily accessible, up-to-date and informative website, responsiveness to phone or email requests for recycling and increased public service announcements educating consumers about its acceptance program.

6 NYCRR section 368-3.6 Manufacturer credits and surcharges

- Manufacturers have expressed confusion over the application of electronic waste acceptance credits. The regulations establish rules for credit transactions including use, purchase, sale and transfer.
- Although the EERRA provides manufacturers the opportunity to request a waiver from a recycling surcharge, no process is provided. The regulations provide guidance to manufacturers regarding the procedure and general requirements for requesting a surcharge waiver.

6 NYCRR section 368-3.7 Retailer requirements

- Retailer participation in the electronic waste recycling program is lacking and the Department is concerned some retailers may be selling unregistered brands. The regulations require the retailer to provide a current list of covered electronic equipment manufacturers and brands offered for sale in the State to the Department or its authorized agents upon request. This will not only increase retailer awareness but will provide the Department with information regarding potentially unregistered manufacturers.

6 NYCRR sections 368-3.8, 3.9 and 3.10 Electronic waste collection site, electronic waste consolidation facility, and electronic waste recycling facility requirements

- The activities performed by electronic waste collection sites, consolidation facilities and recycling facilities vary greatly and there is a need for clarity of the roles and responsibilities of these sites and facilities. The regulations outline and clarify the registration, operational, annual reporting, withdrawal and revocation, and closure requirements for these entities.
- Electronic waste collection sites must be secure to ensure electronic waste dropped off by consumers is not vandalized, stolen and that personal information is protected. The regulations expand the security requirements of providing a means to control entry to the site similar to those of consolidation and recycling facilities.
- Electronic waste collection site employees need training to handle potentially hazardous material similar to consolidation and recycling facilities. The regulations expand the training requirements to collection sites.
- There is the potential for recycling facilities to speculatively accumulate electronic waste awaiting testing and certification for reuse and sale. The regulations require recycling facilities to test and certify the equipment to be in good working order. Any CEE that is tested and not certified to be in good working order must be recycled or sent for recycling within one year of its receipt by the recycling facility.
- The EERRA does not specifically include site and facility closure requirements in the event the site or facility chooses to close voluntarily or through a compliance action. A requirement for recycling facilities to obtain financial assurance has also been added to the regulations to address potential facility abandonment.
- There is a need for consistent procedures for processing registration withdrawal requests and revoking registrations as a result of non-compliance. The regulations clarify how to submit the request for withdrawal and outline reporting requirements. The regulations reiterate the Department's authority to revoke a registration and outline the site's or facility's reporting requirements for a site or facility that has had its registration revoked.

6 NYCRR section 368-3.11 Electronic waste collector requirements

- Electronic waste from consumers in New York State may be accepted for recycling by a collector that is not registered as an electronic waste collection site, consolidation facility, or recycling facility. This is especially true in the New York City area and around the State's border communities. The Department is currently only aware of this weight if it is reported through manufacturer and collective acceptance programs. A potentially significant amount of electronic waste from consumers goes unreported to the Department and is not accurately reflected in a Statewide Goal, which is intended to capture all electronic waste weight. The larger the Statewide Goal, the more weight manufacturers must accept through their acceptance programs. The regulations add a new regulated

entity, electronic waste collector and establish a reporting requirement for electronic waste collected from consumers similar to the reporting requirement for registered entities.

6 NYCRR section 368-3.12 Electronic waste collection event requirements

- The department is often unaware of collection events held around the State by various municipalities, groups and organizations, when such events are held outside of an electronic waste acceptance program. The regulations add a requirement for all such entities holding an electronic waste collection event, to notify the Department and the applicable municipality of the activity in advance. Advanced notification to the Department and municipality will result in increased awareness of the recycling/reuse opportunities available to consumers that may be offered outside of a manufacturer or collective electronic waste acceptance program.

6 NYCRR section 368-3.13 Electronic waste transporter and waste disposal facility requirements

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

4. COSTS

Costs to Industry:

The repeal and replacement of Part 368 with Subparts 368-1 and 368-2 are not expected to cause any significant increased costs to manufacturers. The recycling labeling changes in Subpart 368-1 and the addition of mercury-added consumer products labeling provisions in Subpart 368-2 should help manufacturers ensure that standards and guidance are consistent with federal guidelines and industry standards.

The repeal and replacement of Part 368 with Subpart 368-3 electronic waste regulations are not anticipated to result in significant additional costs for most regulated entities. Any increased costs are addressed in detail below:

- Non-municipal Collection Sites

The electronic waste regulations add a requirement for collection sites to control entry (e.g., lockable gates, fenced areas, etc.) to the active portion of the site at all times. Many collection sites already control access to the active portion of their site via locked doors, gates or containers. For some sites, the cost to comply with this requirement could be as little as \$20.00 for a padlock. Other

sites that choose to enclose an outdoor area would encounter greater costs for fencing, gates, etc., upwards of \$4,000.00 depending on materials used.

Under this rulemaking, collection sites will also be required to provide training to all employees who handle or have responsibility for managing electronic waste, informing them of the proper handling and emergency procedures appropriate to the type of electronic waste handled at the site. Some sites may have already met this requirement, while others may incur minimal costs for staff time for implementing a training process.

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

- **Electronic Waste Consolidation Facilities**

The regulations add closure requirements for consolidation facilities, require consolidation facilities to implement an electronic waste tracking system, as well as label electronic waste with the date received. Costs for these activities are expected to be minimal and may already be part of a facility's standard operating procedures.

- **Electronic Waste Recycling Facilities**

The regulations add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment. Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based on volume, square footage, and type and level of processing. Facilities maintaining third-party certification may already have a closure plan in place and would incur no additional costs. Those facilities without third-party certification will need to develop a closure plan, the costs for which will vary based on the scope of facility operations.

The regulations require recycling facilities to implement an electronic waste tracking system as well as label electronic waste with the date received. Costs for these activities are expected to be minimal and may already be part of a facility's standard operating procedures.

- **Manufacturers and Collectives**

The regulations clarify and strengthen requirements for the provision of a free and convenient electronic waste acceptance program to consumers in New York State as originally intended by the EERRA. Acceptance programs run by manufacturers and collectives will be required to be enhanced in all the

following areas:

- When a mail-back acceptance program is not convenient to a consumer or has restrictions (e.g., weight, size, etc.), an additional acceptance method (e.g., pick-up, permanent collection site, collection events) will be required, which may increase costs significantly, depending on the additional method selected; and
- Required improvements to public education programs, in the form of public service announcements by manufacturers and collectives for their acceptance programs and collection event offerings, may result in marginal increases in cost.

Costs to the Department and the State:

The cost to the State lies within the Department for implementation and administration of the regulatory program. Since these are existing regulatory and statutory programs, it is not expected to be a significant increased cost to the Department. The primary impact will be the initial increased staff time needed to provide technical assistance to the regulated communities on how the regulations will impact their activities.

Costs to Local Governments:

There should be no costs to local government for the recycling labeling or mercury-added consumer product labeling aspects of this rulemaking.

Regarding the electronic waste requirements, this rulemaking attempts to relieve unintended costs that have resulted from the EERRA's implementation and will not impose any additional direct costs to local government, with the exception of the minimal costs associated with staff training and site security in the case of a municipal-run collection site where not already present, as detailed in the costs to non-municipal collection site section above. Local governments operating consolidation facilities may experience increased costs as outlined in the costs to electronic waste consolidation facilities section above.

5. LOCAL GOVERNMENT MANDATES

This rulemaking does not directly mandate the expenditure of funds by local government. The rulemaking is not expected to negatively affect a local government operating an electronic waste collection site or consolidation facility.

6. PAPERWORK

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

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

The standards for the electronic waste program will establish additional paperwork requirements for all regulated entities in the areas of registration, withdrawal requests and collection event notifications to the Department. It imposes additional paperwork requirements on manufacturers, related to requests for waivers of recycling surcharges. These requests and notifications may be submitted electronically. Any additions to the existing registration and reporting requirements are easily provided via the Department's online registration and reporting system. Electronic waste consolidation and recycling facilities implementing new electronic waste tracking systems as a result of the regulations will see additional paperwork as well.

7. DUPLICATION

The regulations are not intended to duplicate any other federal or state regulations or statutes. The recycling labeling requirements are specifically intended to be consistent with existing Federal Trade Commission guidance. Additionally, the mercury-added consumer product labeling regulations permit the Department, through its participation in the regional multi-state clearinghouse to approve alternate labels if such label is approved in another state, so long as the alternate label addresses the intent of the regulatory program. The electronic waste recycling and reuse regulations are intended to clarify the requirements of ECL Article 27, Title 26.

8. ALTERNATIVE APPROACHES

For recycling labeling, the no action alternative would continue to allow outdated requirements for recycling labeling to remain in place causing confusion for existing manufacturers and a lack of consistency with federal guidelines. The current circumstances render the current regulations ineffective. This alternative was rejected. Consideration was given to an enhanced New York State-specific regulation of recycling labeling; however, it was determined that consistency with current Federal Trade Commission labeling guidelines provides the most reasonable and cost-effective solution, so this alternative was rejected.

For mercury-added consumer product labeling, the no action alternative would continue with no specified regulatory requirements, causing confusion or lack of knowledge of the legal requirements for existing manufacturers. This alternative was rejected and developing regulations was selected.

Regarding the electronic waste recycling program, the Department examined the no-action alternative, which would be to continue its present method of administering the EERRA without promulgating rules and regulations. Regulations are necessary to clarify and strengthen some of the key provisions of the EERRA to improve overall

program performance and understanding, and to avoid any inconsistencies in the interpretation of the EERRA. Regulations are also necessary to address several areas that the EERRA does not expressly address, such as a gap in the reporting requirements for unregistered entities collecting e-waste weight from NYS consumers. For these reasons, the no-action alternative was rejected.

Because of the EERRA's comprehensive nature, certain specific requirements needing adjustment, are unable to be addressed in regulation. Another approach to addressing some of the EERRA's fundamental shortfalls, unintended consequences and new developments, may be through legislative changes to the EERRA.

9. FEDERAL STANDARDS

For recycling labeling, there are Federal Trade Commission guidelines for the use of Environmental Marketing Claims. This rulemaking does not exceed these federal guidelines and merely creates consistency between the State requirements and the most current version of these federal guidelines. For mercury-added consumer product labeling, there are no current federal regulations that address mercury-added consumer product labeling. The rulemaking does not exceed federal standards for electronic waste collection, recycling and reuse.

10. COMPLIANCE SCHEDULE

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

For Subpart 368-3, existing registered entities, including manufacturers, collectives, and electronic waste collection sites, consolidation facilities, and recycling facilities will be required to comply by January 1, 2023. For all other regulated entities, compliance will be required upon the effective date of the adopted regulation.

11. INITIAL REVIEW OF RULE

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

REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

6 NYCRR Part 368 Product Stewardship and Product Labeling

This rulemaking repeals and replaces the existing regulations for recycling emblems, develops new regulations for mercury-added consumer product labeling and develops new regulations for registration, electronic waste acceptance programs, and reporting of covered electronic equipment (CEE) collected by manufacturer and collective electronic waste acceptance programs. The proposed rulemaking for electronic waste also includes requirements for the registration, collection, recycling, reuse, reporting, and closure (if applicable) of electronic wasterecycling facilities, consolidation facilities, collection sites, collectors, and collection events. Additional clarification of the requirements for retailers are addressed as well.

1. EFFECT OF RULE:

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

For electronic waste, the rulemaking clarifies and strengthens provisions of the Electronic Equipment Recycling and Reuse Act (EERRA) to help improve collection of electronic waste and overall program performance. The regulations impose several new requirements affecting local

governments providing electronic waste collection and/or consolidation, as well as regulated small businesses (e.g., collection sites, consolidation facilities, recycling facilities, collectors, retailers, etc.), which are outlined in the following section. The electronic waste regulations also attempt to address some of the pressing issues identified by and impacting local governments and small businesses directly. For example, emphasis is placed on manufacturers' statutory responsibility for all costs associated with the implementation of their acceptance program. This includes the costs for the collection, handling, transportation, and recycling or reuse of electronic waste incurred by all persons involved in the implementation of a manufacturer's acceptance program.

2. COMPLIANCE REQUIREMENTS

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

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

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

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

- Expand the security requirements of providing a means to control entry to collection sites similarly to those of consolidation and recycling facilities.
- Expand the training requirements to collection sites for the handling of potentially hazardous material similarly to those of consolidation and recycling facilities.
- Add a requirement for entities holding an electronic waste collection event outside an electronic waste acceptance program to notify the Department of the activity in advance.
- Detail the steps a collection site, consolidation facility or recycling facility must take, including closure requirements, before its registration with the Department is formally withdrawn.
- Add a requirement for recycling facilities to obtain financial assurance to address potential facility abandonment.
- Require recycling facilities to test and certify the equipment to be in good working order.
- Require consolidation and recycling facilities to label electronic waste upon receipt and have a tracking system in place.
- Add annual outreach requirements for haulers/transporters and solid/hazardous waste management facilities to educate users on the proper methods of recycling electronic waste.
- Require retailers to maintain an up-to-date list of the brands and types of CEE sold which must be made available to the Department upon request.

3. PROFESSIONAL SERVICES

The need for additional professional services for local governments is expected to be minimal.

Most local governments are registered as collection sites; and will likely be able to train their own

staff and perform the necessary adjustments to the site to comply with the regulations' additional security requirements. Local governments operating consolidation facilities are already required to comply with the EERRA's security and employee training requirements. In addition, registered local governments may already be employing professional services to facilitate operation in compliance with the regulatory requirements.

Small businesses acting as recycling facilities will need to obtain additional professional services to calculate closure costs and acquire financial assurance. Small businesses operating collection sites or consolidation facilities would require the same minimal additional professional services as any other collection site or consolidation facility.

4. COMPLIANCE COSTS

Since the recycling labeling standards are already addressed in Federal Trade Commission regulations for the use of Environmental Marketing Claims, there should not be any additional compliance costs to meet the requirements in that Subpart.

The mercury-added consumer products labeling standards are already commonly used in other states and there should not be any additional compliance costs for regulated entities to comply with Subpart 368-2.

The electronic waste regulations attempt to relieve unintended costs that have resulted from the EERRA's implementation. Local governments and small businesses may experience lower costs as a result of improved performance of manufacturer and collective electronic waste acceptance

programs which will remove more electronic waste from the waste stream. It is not anticipated that there will be any variation in potential costs for small businesses or local governments of different types and of differing sizes. Any potential increases in costs are addressed below:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The regulations are not expected to alter the costs associated with recycling labeling and mercury labeling. The regulations are consistent with the existing Federal Trade Commission guidelines for the use of Environmental Marketing claims and should not have any adverse impact on local governments or small businesses.

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

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

6. MINIMIZING ADVERSE IMPACTS

The rulemaking is not expected to have adverse impacts on local governments or small businesses in New York State. Federal Trade Commission guidelines for the use of Environmental Marketing Claims for the recycling labeling requirements are already in place.

The regulations for mercury-added consumer products are consistent with the industry standard and provide an alternative labeling procedure. It is not anticipated that the mercury added consumer products requirements will have an adverse impact on local governments or small businesses.

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

In addition to comprehensive internal review, the Department has conducted informal informational

workshops related to electronic waste management for manufacturers, collectives, retailers, collection sites, consolidation and recycling facilities. The Department has accepted and evaluated the feedback and comments for input into the rulemaking.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

For existing regulated entities under Parts 368-1 and 368-2, compliance will be required within 180 days of adoption of the final rule. For newly regulated entities, compliance will be required upon adoption of the final rule.

Regarding electronic waste, for existing registered entities and electronic waste collectors, compliance will be required by January 1, 2023. For all other newly regulated entities, compliance will be required upon adoption of the final rule.

9. INITIAL REVIEW OF RULE

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

REVISED RURAL AREA FLEXIBILITY ANALYSIS

6 NYCRR Part 368 Product Stewardship and Product Labeling

This rulemaking repeals and replaces the Department of Environmental Conservation's (Department) existing Part 368 regulations governing recycling emblems and updates standards on the use of recycling emblems, adds requirements for labeling mercury-added consumer products, and adds requirements for the management, collection, recycling and reuse of electronic waste. The adopted regulations will apply statewide, and Department does not expect the new regulations to have a negative impact on rural areas.

1. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

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

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

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

With respect to electronic waste collection, recycling and reuse, the proposed rulemaking will require minimal additional professional services for reporting, recordkeeping and other compliance requirements, including site/facility operational services and implementing closure requirements for collection sites and consolidation facilities. Additionally, recycling facilities will be required to obtain

third-party closure cost estimates, have a facility closure plan in place, and maintain financial assurance necessary to cover closure costs. Recycling facilities may be required to obtain additional professional services to address these compliance requirements.

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

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

If a person or local government chooses to own or operate an electronic waste site or facility in the

State, the regulations may require the additional expenditure of funds to comply with the requirements of Subpart 368-3, which govern those electronic waste sites and facilities.

3. COSTS

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

Part 368-1 Recycling Labeling:

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

Part 368-2 Mercury-Added Consumer Labeling:

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

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

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

- Collection Sites

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

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

The adopted electronic waste regulations also require collection sites to meet certain closure

requirements, including decontamination of the site, if necessary. While costs for site decontamination are difficult to estimate, the need for decontamination at a collection site where electronic waste activity is limited to acceptance, handling and sorting should be minimal.

- Consolidation Facilities

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

- Recycling Facilities

The adopted regulations add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment.

Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based on volume, square footage, and type and level of processing.

- Collection Events

The regulations add Department notification requirements for persons holding electronic waste collection events outside an electronic waste acceptance program.

4. MINIMIZING ADVERSE IMPACTS

The rulemaking is not expected to have adverse impacts on rural areas of New York State. As such, the Department did not consider the approaches set forth in the State Administrative Procedure Act §202-bb(2). For electronic waste, the rural area residents and regulated entities located in rural areas will not see an increase in the cost of electronic waste management due to the rulemaking.

5. RURAL AREA PARTICIPATION

During the rulemaking process, the Department accepted and evaluated public comments, gave public presentations on draft criteria at numerous venues, and met with potentially affected parties. Those electronic waste facilities and other affected parties in rural areas have been solicited for input on the revisions.

6. INITIAL REVIEW OF RULE

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

REVISED JOB IMPACT STATEMENT

6 NYCRR PART 368 PRODUCT STEWARDSHIP AND PRODUCT LABELING

This rulemaking repeals and replaces the existing Part 368 regulations. It updates standards on the use of recycling emblems, adds requirements for labeling mercury-added consumer products, and adds requirements for the management, collection, recycling and reuse of electronic waste. The adopted regulations will apply statewide.

The New York State Department of Environmental Conservation (Department) does not expect the regulations to have a negative impact on jobs and employment opportunities in the State.

This rulemaking makes changes to existing regulations for recycling labeling that are consistent with existing federal guidelines and adds mercury-added consumer product labeling requirements that are consistent with existing manufacturer requirements and national industry standards.

These changes should have no impact on jobs within the impacted sectors.

The new electronic waste regulations apply to manufacturers and retailers of covered electronic equipment; collective electronic waste acceptance programs; electronic waste collection sites, consolidation and recycling facilities; and electronic waste collectors and collection events. While the Electronic Equipment Recycling and Reuse Act (EERRA) has resulted in increased collection of electronic waste, there is a need to provide clarity to and strengthen the existing provisions of the EERRA for all participating stakeholders to improve overall program performance.

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

1. NATURE OF IMPACT

There should be no impact regarding the use of recycling labeling or mercury-added consumer product labeling. The recycling labeling changes and the addition of mercury-added consumer products labeling provisions should help manufacturers ensure that standards and guidance are consistent with federal guidelines and industry standards. Manufacturers of covered electronic equipment located in the State are not expected to experience negative job impacts as a result of these regulations. Any increased costs incurred by manufacturers would likely be reflected in product costs.

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

2. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES

AFFECTED

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

3. REGIONS OF ADVERSE IMPACT

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

4. MINIMIZING ADVERSE IMPACT

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

Although the Department is proposing some new site and facility requirements in the electronic

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

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

5. SELF-EMPLOYMENT OPPORTUNITIES

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

6. INITIAL REVIEW OF RULE

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

Summary of Assessment of Public Comment

6 NYCRR Part 368, Product Stewardship and Product Labeling

The New York State Department of Environmental Conservation (Department) proposed regulations to repeal and replace Part 368 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR) in June of 2021. The rule repeals and replaces the existing regulations for Recycling Emblems, implements new regulations for mercury-added consumer product labeling and implements new regulations for the existing Electronic Equipment Recycling and Reuse Act. Notice of the proposed rulemaking appeared in the June 30, 2021, State Register as well as in the Department's Environmental Notice Bulletin. Public comments were received from June 30, 2021, through September 15, 2021. Two virtual public hearings were held on September 8, 2021. Comments received were compiled, reviewed, and categorized based on their content. The full Assessment of Public Comment provides a response to all substantive written and oral comments raised during the public comment period. This summary provides an overview of the major comments received and the Department's response. The Department made several non-substantive changes to address these comments and to clarify the proposed rule, as described below.

Subpart 368-1 involves the repeal and replacement of outdated recycling labeling regulations to provide for consistent labeling of packaging and products as "recycled," "recyclable," and "reusable." The changes to the recycling labeling provisions ensure that standards and guidance are consistent with federal guidelines, and so that consumers are aware how to properly manage products and packaging at end-of-life. Most comments on Subpart 368-1 supported adoption for labeling consistency. One commenter noted there is an upcoming review of the FTC Green Guides

slated for 2022 and recommended that there be an automatic adoption by the state to any Green Guides updates, however, this is not permissible under the State Administrative Procedures Act. Any revisions to Green Guides will be considered when adopted and a new rulemaking to update Subpart 368-1 may be initiated at that time. One commenter suggested the Department update the standards for use of the official recycling emblems in Part 368 instead of eliminating the current specific standards, and not adopt without substantial revisions. The existing recycling regulations are outdated by decades and the trademark on the NYS-specific recycling emblems has expired. Consideration was given to a repeal and replace option as the previous regulations were enacted over 30 years ago. However, the Department believes the Subpart 368 as adopted is consistent with the ECL and offers a more consistent and realistic emblem program for implementation.

Subpart 368-2 concerns the adoption of specific requirements that clarify compliance with the Mercury-Added Consumer Products Law, section 27-2103 of the ECL. Proper mercury-added consumer product labeling informs consumers about the content of their products and reduces improper disposal. Two commenters expressed concern that the labeling requirements in the proposed regulations were additional requirements to those already being met by the commenters through their labeling plans submitted to and approved by the Interstate Mercury Education and Reduction Clearinghouse (IMERC). Additional clarification was added to the regulations to explain that there is no need for manufacturers seeking alternative labeling to submit such a request to both IMERC and the Department. In response to another commenter's request for clarity, additional language was added to the regulation to explain that the whole vehicle door post label satisfies the labeling requirements for an automobile manufacturer who incorporates mercury-added consumer products as original equipment or service parts in the labeled vehicle, and that aftermarket

automotive parts manufacturers must meet the labeling requirements in Section 368-2.3(a) for mercury-added consumer products as well.

Most comments received on the proposed regulations expressed support for Subpart 368-3. A number of comments applauded the proposed regulations in their attempt to increase manufacturer engagement in and financial support for the state's e-waste recycling program. The same commenters also supported the anticipated removal of the municipal and consumer financial burden for managing the electronic waste (e-waste) stream, as was the original intention of the 2010 NYS Electronic Equipment Recycling and Reuse Act (Act). Several comments suggested the need remains to amend the Act to address program challenges unable to be addressed through regulation. A few commenters provided detailed recommendations for specific amendments to the legislation regarding the application and removal of credits, acceptance standard distribution dates, enforcement provisions, convenience standards, performance goals, free collection opportunities, third-party certification of facilities, outreach, and reporting requirements.

A couple commenters expressed concerns about the effectiveness and cost with both the mailback and pick-up acceptance methods. One commenter suggested that future convenience standards provide for alternatives to mail-back and drop-off programs when such programs are neither feasible nor convenient. While the Act requires only one reasonably convenient method of acceptance be provided in each county of the state and municipalities with a population of ten thousand or greater, the regulations establish criteria for each method of acceptance to be considered effective. The Department expects the regulation's effectiveness criteria to encourage acceptance programs to provide for additional convenient acceptance collection locations.

Several commenters requested clarification on various scenarios under which consumers were allowed to be charged for acceptance of e-waste. The regulations prohibit program partners from charging consumers for the acceptance of e-waste, with few exceptions. If the acceptance program in which the program partner participates has a free and reasonably convenient method of acceptance available to a consumer, then a premium service fee may be charged by the program partner. The Department has modified the regulations to clarify the definition of “premium services” in 368-3.2(x), to clearly indicate that the charge may occur at the point of collection or at another point in the recycling/reuse chain. The modification also clarifies that curbside service provided by a program partner is a premium service when another reasonably convenient acceptance method is available to the consumer, and that such premium service may be charged for. One commenter suggested the proposed regulations include language stating that non-program partners be allowed to charge consumers for the acceptance of e-waste. The Department does not believe further clarification in the final rule is necessary as there is no prohibition on charging consumers for the acceptance of e-waste by non-program partners.

A few commenters requested clarification on which costs a manufacturer is responsible for. Of particular concern to the commenters was whether a manufacturer or collective e-waste acceptance program is to be responsible for their program partners’ e-waste related staffing costs, supplies, illegal roadside dumping of covered electronic equipment, and incidental collection of non-covered electronic equipment. The Act and Subpart 368-3 require manufacturers and/or their collective e-waste acceptance programs to provide payment for all costs associated with the implementation of their acceptance programs. The regulations put forth examples of such costs, which were not

intended to be an exhaustive list. No entity is required to become a program partner of an e-waste acceptance program and no acceptance program is required to use a particular entity as a program partner. It is expected that e-waste acceptance programs will enter into agreements with program partners in advance of the program year, with such agreements outlining what is agreed upon and expected from all involved parties, including conditions of payment.

There were several comments related to clarity and consistency with existing regulations in 360 and 370 series. One commenter suggested the proposed regulation's general reference to compliance with the Part 370 Hazardous Waste regulations was unclear. The regulations have been revised to clarify that sites and facilities handling e-waste must determine whether material resulting from any release is hazardous waste, and, if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of Title 6 of the NYCRR. Another commenter stated that if an e-waste collection site is located at a Part 360 permitted or registered solid waste management facility, the site should not be required to separately register as an e-waste collection site. However, there is no exemption for Part 360 permitted or registered sites or facilities in statute. To address concerns related to waste transporter requirements, the Department has added language consistent with the Act's disposal ban to section 368-3.13(a).

Two commenters opposed the proposed regulation's financial assurance requirements to cover closure costs of recycling facilities, due to the added expense for obtaining the financial assurance instrument which may disadvantage smaller recyclers. The Department maintains that financial assurance is necessary to address potential cases of facility abandonment. Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based

on volume, square footage, and type and level of processing. One commenter expressed concern that the proposed regulation's financial assurance requirements for recycling facilities failed to set forth a time-period in which an instrument must be obtained following the Department's review and approval of a closure cost estimate. The commenter proposed 180 days for placement of the financial assurance mechanism, which it argued was consistent with market conditions in the insurance market. The Department acknowledges the omission and has modified section 368-3.10(a)(5) as the commenter suggested.

One commenter stated the requirement for manufacturers to continue to meet the requirements of the statute and regulations for three full calendar years following revocation or the manufacturer's request to withdraw is "legally dubious. The Department has removed the requirement of section 368-3.3(k)(2) for a program continuation following revocation. Manufacturers requesting to withdrawal from the program will still be required to maintain a program for three years as it is likely CEE is still being sold into the marketplace.

Four commenters strongly opposed the proposed regulation's inclusion of the "effective acceptance of televisions and monitors" acceptance standard and corresponding surcharge for under-collection requirements. The Department agrees with the commenters' arguments and has removed these two items (sections 368-3.5(b)(7) and 368-3.6(b)(2)), as the "Type Acceptance" requirement of the proposed regulations adequately ensures increased opportunities for the acceptance of televisions and monitors. In addition, and at the request of additional commenters concerned with storage space at retail, the "Type Acceptance" requirement of section 368-3.5(b)(3) has been modified to allow retail collection sites that are unable to accept all types of covered electronic equipment to operate as a

program partner, and the weight accepted by such sites able to be attributed to manufacturer acceptance standards.

One commenter argued that adding new products to the scope of covered electronic equipment should be a legislative action and not a regulatory one. The Department agrees and has removed the three products (i.e., modems, routers, and internet streaming devices) in section 368-3.2(dd) that were not already expressly included in statute. The regulations will still allow the Department to make determinations on including “similar products” to what is already covered.

The Department added additional language to the regulations, at the request of various commenters, to further define terms like downstream vendor, as well as procedures for manufacturer and program partner withdrawal notification, etc. Modifications were also made to the regulations at the request of commenters, to allow for reuse standards, collection event notification requirements, personal information collection, retailer provision of point-of-sale information, etc. to be less burdensome for regulated entities, while at the same time ensuring that overall program goals will be met.

Furthermore, to allow ample time for stakeholders to review and implement program modifications to meet the requirements of the proposed regulations, the Department has modified the date by which existing regulated entities must comply with Subpart 368-3 to January 1, 2023.

**Assessment of Public Comments Received from
June 30 to September 15, 2021 on the NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION’S
Proposed 6 NYCRR PART 368 Regulations**

In June of 2021, the New York State Department of Environmental Conservation (Department) proposed regulations to repeal and replace Part 368 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR). The proposed rule repeals and replaces the existing regulations for recycling emblems, develops new regulations for mercury-added consumer product labeling and develops new regulations for the existing Electronic Equipment Recycling and Reuse Act (Act) (ECL Article 27, Title 26). Notice of the proposed rulemaking appeared in the June 30, 2021, State Register as well as in the Department’s Environmental Notice Bulletin. Public comments were received from June 30, 2021, through September 15, 2021. Two virtual public hearings were held on September 8, 2021. This Assessment of Public Comments responds to all substantive comments received during the public comment period, including written comments as well as oral statements made during the public hearings. Comments received were compiled, reviewed, and categorized based on their content. All commenters were assigned a commenter number as represented in the table below.

Commenter	Commenter Number
CWM Chemical Services, LLC	1
New York City Department of Sanitation	2
American Chemistry Council	3
Mitchell Colbert	4
National Electrical Manufacturers Association	5
Cattaraugus County Department of Public Works	6
New York State Assemblymembers Englebright and Quart	7
Town of North Hempstead and the Town of North Hempstead Solid Waste Management Authority	8
ERI	9
Institute of Scrap Recycling Industries – Empire and New York Chapters	10
AMERIPEN	11
New York Product Stewardship Council	12
Alliance for Automotive Innovation	13
Ed Gottlieb	14
Rescue Mission Alliance	15
Retail Council of New York State	16
New York Chapter of the Solid Waste Association of North America	17
Electronic Manufacturers Recycling Management Co., LLC	18
VIZIO	19
SUNNKING	20
Casella Waste Systems, Inc.	21
New York State Association for Reduction, Reuse and Recycling Inc.	22
New York State Association for Solid Waste Management	23

Consumer Technology Association	24
Reverse Logistics Group Americas, Inc.	25
EWASTE+	26

Subpart 368-1 Recycling Labeling

Comment #1: The commenter expressed support of adoption for consistency with the Federal Trade Commission (FTC) Green Guides. The commenter also notes there is an upcoming review of the FTC Green Guides slated for 2022 and recommends that there be an automatic adoption by the state to any Green Guides updates.

(Commenter 3)

Response to comment #1: The comments support the proposed regulation and have been noted. An automatic adoption of updates to the FTC Green Guides is not possible in New York State regulations. The Department will consider updates to the FTC Green Guides when they are adopted and may initiate a new rulemaking to incorporate any revisions at that time.

Comment #2: The commenters state the Department should continue and update the standards for use of the official recycling emblems in the existing Part 368 program instead of eliminating the current specific standards, and the proposed regulations should not be adopted without substantial revisions.

(Commenter 7)

Response to comment #2: The existing recycling regulations are outdated by decades and the trademark on the NYS-specific recycling emblems has expired. Consideration was given to a repeal and replace option as the current regulations were enacted over 30 years ago. However, the Department believes the regulations are consistent with the Environmental Conservation Law and will offer a more consistent and realistic emblem program for implementation. The purpose of the Environmental Conservation Law (ECL) provisions, and Part 368 regulations, associated with recycling emblems is to avoid the use of claims that mislead consumers. The most effective way to avoid misleading claims is to leverage the standards the FTC has developed at the federal level. The FTC develops green guides, through regulation, in order to ensure marketers of products do not make claims that are unfair or deceptive. The ECL references the terms recyclable, recycled, and reusable since these terms have a high likelihood of being misused and offers that DEC can define these terms in regulation. Consistent with the ECL, the green guides have standards associated with these terms. As such the proposed Part 368 regulations reference the standards established in the FTC green guides to ensure New York is consistent with these federal standards.

Comment #3: The commenters expressed support for adoption for labeling consistency.

(Commenters 11, 13, 16 and 24)

Response to comment #3: The comments support the proposed regulation and have been noted.

Subpart 368-2 Mercury-Added Consumer Products Labeling

Comment #4: One commenter was concerned that the proposed mercury-added consumer products labeling requirements would impact personal vaporizer manufacturers since these products generally contain or are sold with batteries.

(Commenter 4)

Response to comment #4: The commenter expressed an erroneous concern that the batteries may be subject to mercury labeling requirements. Vaporizer devices use lithium-polymer batteries, which do not contain mercury, and therefore, would not be subject to mercury labeling requirements. The commenter's concern does not require any modification to the regulations.

Comment #5: ECL Article 27, Title 21 Mercury-Added Consumer Products authorizes the Department to participate in a regional, multi-state clearinghouse (the Interstate Mercury Education and Reduction Clearinghouse (IMERC)) to assist in carrying out the requirements of the title. Two commenters expressed concern that the labeling requirements in the proposed regulations in sections 368-2.3 and 368-2.4 were additional requirements to those already being met by the commenters through their labeling plans that were submitted to and approved by IMERC. Would manufacturers of mercury-added consumer products need to seek separate approval from New York State in addition to the approval they have received from IMERC?

(Commenters 5 and 13)

Response to comment #5: The requirements of sections 368-2.3 and 368-2.4 can be met through the Department's participation and approval provided to labeling plans submitted directly to IMERC, as has been the practice prior to this rule being promulgated. There is no need for manufacturers seeking alternative labeling to submit such a request to both IMERC and the Department. The Department has clarified the regulations to address this comment.

Comment #6: One commenter requested clarification that aftermarket service parts sold for vehicle repair are not required to have separate labeling distinct from the whole vehicle label, unless otherwise specified by federal or state law.

(Commenter 13)

Response to comment #6: The whole vehicle door post label satisfies the labeling requirements for an automobile manufacturer who incorporates mercury-added consumer products as original equipment or service parts in the labeled vehicle. Aftermarket automotive parts manufacturers must meet the labeling requirements in Section 368-2.3(a) for mercury-added consumer products.

Subpart 368-3 Electronic Waste Collection, Recycling, and Reuse

Comment #7: A number of comments supported the proposed regulations in their attempt to increase manufacturer engagement in, and financial support for New York's Electronic Waste

Recycling Program. The same commenters also supported the anticipated removal of the municipal and consumer burden for managing the electronic waste stream, as was an original intention of the 2010 NYS Electronic Equipment Recycling and Reuse Act (Act).

(Commenters 2, 6, 8, 12, 17, 22, 23)

Response to comment #7: These comments support the adoption of the proposed regulations and have been noted.

Comment #8: Several comments suggested the need remains for legislative amendments to the Act to address program challenges unable to be addressed through regulation. A few commenters provided detailed recommendations for specific amendments to the legislation regarding the application and removal of credits, enforcement provisions, convenience standards, performance goals, free collection opportunities, outreach, and reporting requirements.

(Commenters 10, 12, 17, 22, 23)

Response to comment #8: The Department acknowledges the commenters suggested legislative amendments. Suggested legislative amendments are outside the scope of these this rulemaking.

Comment #9: One commenter stated that future convenience standards should provide for alternatives to mail-back and drop-off programs when such programs are neither feasible nor truly convenient, particularly in areas like New York City with low rates of automobile ownership.

(Commenter 2)

Response to comment #9: The Department believes it has incorporated into section 368-3.5(5) parameters for each specified type of acceptance method to be considered truly convenient. For example, the Department has clarified section 368-3.5(5) so require an alternative method (e.g., pick up at the consumer's location) when no other method of acceptance is convenient to the consumer, as convenience is defined in the Act. Modification of the minimum convenience requirements of ECL § 27-2605(5) of the Act would require a legislative change.

Comment #10: Four commenters requested clarification regarding the scope of, and conditions under which charging for "premium services" is allowed.

(Commenters 1, 21, 24, 25)

Response to comment #10: The regulations prohibit program partners from charging consumers for the acceptance of electronic waste, with few exceptions. If the acceptance program in which the program partner participates has a free and reasonably convenient method of acceptance available to a consumer, then a premium service fee may be charged by the program partner. The Department has modified the definition of "premium services" in section 368-3.2(x) to

clearly indicate that the charge may occur at the point of collection or at another point in the recycling/reuse chain. The modifications also clarify that curbside service provided by a program partner is a premium service when another reasonably convenient acceptance method is available to the consumer.

Comment #11: One commenter requested clarification on whether charging program partners and consumers for the acceptance, recycling and reuse of non-covered electronic equipment is prohibited.

(Commenter 9)

Response to comment #11: No such prohibition exists in the regulations. The regulation of non-covered electronic equipment is outside of the scope of this rulemaking.

Comment #12: One commenter suggested the regulations include language stating that non-program partners be allowed to charge consumers for the acceptance of electronic waste.

(Commenter 21)

Response to comment #12: There is no prohibition on charging consumers for the acceptance of electronic waste by non-program partners in the regulations. The Department does not believe further clarification is necessary.

Comment #13: One commenter suggested the general reference to the Part 370 Hazardous Waste regulations was unclear.

(Commenter 1)

Response to comment #13: The Department acknowledges the need for clarity in the operational requirements portions (i.e., sections 368-3.8(b)(3), 368-3.9(b)(3) and 368-3.10(b)(3)) of the proposed regulations for electronic waste collection sites, consolidation facilities and recycling facilities. The regulations have been revised to clarify that sites and facilities handling electronic waste must determine whether material resulting from any release is hazardous waste, and, if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of Title 6 of the NYCRR. The handler is considered the generator of the material resulting from the release and is subject to Part 372 of Title 6 of the NYCRR.

Comment #14: One commenter sought clarification on a hazardous waste management facility's public education requirements and suggested the requirement to provide written information to "potential" facility users is too broad.

(Commenter 1)

Response to comment #14: The Department agrees and has removed the term “potential,” from section 368-3.13(c)(i).

Comment #15: One commenter suggested that cannabis and tobacco electronic waste (e.g., vape pens and other electronic smoking devices) should be considered covered electronic equipment, specifically in the “small electronic equipment” category.

(Commenter 4)

Response to comment #15: The current statutory definition of “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. While the regulations give the Department the ability to make determinations on “similar devices” to be regulated as “covered electronic equipment,” the Department does not consider vape pens or electronic smoking devices to be “similar devices” to any of those listed in the ECL or section 368-3.2 of the regulation.

Comment #16: A number of commenters took issue with the proposed requirement in section 368-3.8 to collect personal information from consumers bringing electronic waste to collection sites.

(Commenters 6, 8, 12, 16, 23, 24, 25)

Response to comment #16: The collection of personal information was never the Department’s intention. Section 368-3.8(b)(6) has been modified to remove the requirement to collect such information from consumers.

Comment #17: One commenter requested the Department clarify in the regulations that nothing in Subpart 368-3 applies to automotive manufacturers.

(Commenter 13)

Response to comment #17: The Department does not believe further clarification of the regulations is necessary as the Act clearly states the definition of “covered electronic equipment” does not apply to any motor vehicle or any part thereof.

Comment #18: A few commenters requested clarification on which costs a manufacturer is responsible for. Of particular concern to the commenters was whether a manufacturer or collective electronic waste acceptance program is to be responsible for their program partners’

electronic waste related staffing costs, supplies, illegal roadside dumping of covered electronic equipment, and incidental collection of non-covered electronic equipment.

(Commenters 2, 9, 12)

Response to comment #18: The ECL and regulations require manufacturers and/or their collective electronic waste acceptance programs to provide payment for all costs associated with the implementation of their acceptance programs. The regulations put forth examples of such costs, that were not intended to be an exhaustive list. No entity is required to become a program partner of an electronic waste acceptance program and no acceptance program is required to use a particular entity as a program partner. It is expected that electronic waste acceptance programs will enter into agreements with program partners in advance of the program year, with such agreements outlining what is agreed upon and expected from all involved parties, including conditions of payment.

Comment #19: Seven commenters took issue with a perceived rulemaking “effective date” of January 1, 2022, being unfeasible with only weeks remaining in 2021, and with contracts already in place for program year 2022. Two commenters suggested that once the final rule is published, regulated entities responsible for program implementation be allowed at least 12 months to prepare and come into compliance.

(Commenters 8, 9, 18, 19, 23, 24, 25)

Response to comment #19: The effective date of the rule is determined by ECL 3-0301(2)(a) which is 30 days after the rule is filed with the Secretary of State. To allow ample time for all stakeholders to review and implement program modifications to meet the requirements of the regulations, the Department has modified the date by which existing regulated entities must comply with Subpart 368-3 to January 1, 2023, in the transition statement of 368-3.1(b).

Comment #20: Two commenters were concerned about what they considered to be additional, unfunded operational (e.g., secure storage, recordkeeping, site security, training, withdrawal, and closure requirements) and staffing requirements they believed the regulations would impose upon electronic waste collection sites.

(Commenters 6, 23)

Response to comment #20: The Department expects the regulation’s clarified requirements for manufacturers to be financially responsible for the implementation of their electronic waste acceptance programs, to mostly remove the financial burden for the management of electronic waste from municipalities and other collection sites that choose to become program partners. Electronic waste collection sites are already required by the Act to provide secure storage for electronic waste and to maintain records of electronic waste received and sent off-site. The Department wishes to also stress the importance of shared responsibility in an effective product stewardship system. While not explicitly stated in the Act, it is expected that a collection site

would already be training staff on how to minimize breakage of electronic waste and what to do in the event of such an occurrence. The regulations do not prescribe any specialized training requirement. It is also expected that any collection site operating under the Act would already be providing site security that, at a minimum, prevents theft of surrendered electronic waste.

Comment #21: One commenter expressed support for the regulations' expanded scope of covered electronic equipment, stating that a larger scope of covered electronic equipment shares the cost across more manufacturers, improves the overall collection infrastructure, and ensures more products are responsibly recycled. Another commenter, however, stated that adding new products to the scope of covered electronic equipment should be a legislative action and not a regulatory one, and that the Department was stretching to bring "insignificant" products, weight-wise, under the scope of what's covered by the Act.

(Commenter 9, 24)

Response to comment #21: New electronic devices are continuously being introduced into the marketplace that contain similar components, or provide similar functionality, to the Act's existing scope of covered electronic equipment, that were not conceived of when the Act was written over eleven years ago. Many of these devices are appropriate for inclusion in the definition of covered electronic equipment, and the Department needs the ability to evaluate and add such products, so they are properly managed at end of life. The regulations allow the Department to make determinations on including "similar products" to what is already covered. However, the Department has removed the three products (i.e., modems, routers, and internet streaming devices) added in section 368-3.2(dd) that were not already expressly included in the Act.

Comment #22: One commenter stated that it was not feasible for each manufacturer of covered electronic equipment and each collective electronic waste acceptance program to have separate collection sites in all required localities to meet the regulations' convenience requirements.

(Commenter 9)

Response to comment #22: Nothing in the ECL or the regulations prohibits manufacturers and collective organizations from utilizing the same collection sites. In fact, the Department encourages manufacturers and collectives to work together to provide consumers of the state clear opportunities for free, convenient, and continuous acceptance of all types and all brands of covered electronic equipment. Furthermore, a permanent collection site location is not the only reasonably convenient acceptance method permitted to be utilized to meet the Act's convenience requirements.

Comment #23: Several commenters felt the requirements to submit a collection event notification to the Department 30 days prior to the event and provide for four public service

announcements for such event were onerous, especially for municipalities or organizations holding numerous events each year. One commenter felt such requirements would result in less events being held. A couple of commenters felt that some of the outreach methods (i.e., radio and print) for providing such public service announcements in the regulations were antiquated, costly and ineffective. One commenter suggested a better approach was to require a more robust public statewide public education program from manufacturer and collective electronic acceptance programs.

(Commenters 2, 8, 12, 14, 20, 23, 25, 26)

Response to comment #23: The Department agrees that the public service announcement requirements included in the proposed regulations for all persons holding collection events are excessive and has deleted section 368-3.12(d) in the final rule. Free and convenient collection events held by electronic waste acceptance programs would already be advertised through the manufacturer and collective electronic waste acceptance programs' public education programs. The Department has also modified the collection event notification requirement of section 368-3.12(a) to only apply toward non-program partners, as any event being held as part of an electronic waste acceptance program would already be known to the Department via the manufacturers' and collectives' required registration and annual report forms and any material change updates made to such forms.

Comment #24: Four commenters did not support the "Type Acceptance" requirement for acceptance of at least the same types of electronic waste as the manufacturer's covered electronic equipment, by all program partners and through all acceptance methods provided as part of an acceptance program. Commenters noted storage concerns, and that retail collection sites, specifically, often do not have the capacity to accept all types of covered electronic equipment, for example, bulkier televisions.

(Commenters 9, 18, 24, 25)

Response to comment #24: The Department acknowledges these concerns. The "Type Acceptance" requirement in section 368-3.5(b)(3) has been modified to allow retail collection sites that are unable to accept all types of covered electronic equipment to operate as a program partner and the weight accepted by such sites to be attributed to manufacturer acceptance standards. The acceptance program would still need to provide an additional effective method of acceptance that accepts all types of covered electronic equipment, if the retail collection site was the sole method meeting the convenience requirement in its particular locality.

Comment #25: Four commenters were strongly opposed to the proposed regulation's inclusion of the "effective acceptance of televisions and monitors" acceptance standard and corresponding surcharge for under-collection requirements. Commenters presented sound arguments, backed with current collection and proportionality data to support the elimination of these requirements. Comments received also questioned the legality of the Department's authority to treat manufacturers of different covered electronic equipment types differently.

(Commenters 9, 18, 19, 24)

Response to comment #25: The Department agrees and has removed these two items (sections 368-3.5(b)(7) and 368-3.6(b)(2)), as it feels the “Type Acceptance” requirement of the regulations adequately ensures increased opportunities for the acceptance of televisions and monitors.

Comment #26: One commenter expressed concern that the proposed regulations removed the ability for mailback, employed on its own, to meet the convenience requirements of the Act.

(Commenter 9)

Response to comment #26: While the collection data reported to the Department clearly indicates that the mailback acceptance method accounts for a minimal amount of weight collected in the state’s recycling program, and is the least utilized by consumers, a legislative amendment would be necessary to eliminate the use of mailback as the sole acceptance method, to meet the Act’s convenience requirements. The regulations have, however, establish criteria to ensure any mailback program provided is as effective as possible.

Comment #27: One commenter felt that a collective’s requirement to notify a program partner and the Department at least 30 days prior to its request to withdraw its registration was inadequate. The commenter instead suggested a 90-day minimum notification window.

(Commenter 12)

Response to comment #27: The Department agrees and has modified section 368-3.4(e)(1) to provide the Department, manufacturers, and program partners participating in a collective electronic waste acceptance program with 90 days' notice of a withdrawal request. The Department also added a requirement in section 368.3.3(k)(1)(iv) for manufacturers to notify program partners 90 days in advance of its electronic waste acceptance program’s ending following an approved withdrawal request and three years of additional acceptance program provision.

Comment #28: One commenter requested the second sentence of the proposed regulation’s definition of “electronic waste” be modified by adding the word “all” in front of “incorporated,” and state, “electronic waste includes broken or damaged CEE unless only the case, shell, or other enclosure of the CEE remains after all incorporated assemblies, sub-assemblies, components, materials, wiring, circuitry, and commodities have been completely removed.”

(Commenter 12)

Response to comment #28: The word “only” in front of “the case, shell, or...” accomplishes the same meaning as the commenter suggests. The definition will remain as is.

Comment #29: One commenter expressed its frustration with paying for the proper disposal of unwanted electronic waste being dropped off at its second-hand stores and donation centers.

(Commenter 15)

Response to comment #29: The Department notes the commenter's concerns, which support the regulation's strengthened emphasis on manufacturer responsibility for covering costs associated with the implementation of their electronic waste acceptance programs.

Comment #30: Two commenters requested an electronic waste collection site training standard or guidelines be set forth in the regulations detailing what level of electronic waste management training is appropriate and expected for collection site staff.

(Commenters 8, 23)

Response to comment #30: The adequate level of training appropriate to types of wastes handled at the site, will be left up to the discretion of a site's owner or operator. The Department will not be prescribing required training.

Comment #31: Two commenters suggested the proposed regulations allow retailers to satisfy their public education requirement by including recycling options on receipts or web and mobile platforms, rather than additional print material that will add to the waste stream.

(Commenters 9, 24)

Response to comment #31: Provision of proper recycling/reuse information or a web link to obtain such information, that is provided by the retailer on the consumer's receipt, would satisfy the requirements of section 368-3.7(a).

Comment #32: One commenter sought clarification on who would "police" and pay for the point-of-sale information required to be provided to consumers by retailers, as well as "police" manufacturers on their requirements for continuous acceptance of electronic waste.

(Commenter 20)

Response to comment #32: The Department has modified section 368-3.7(a), the retailer requirements, to require retailers to only provide point-of-sale information to consumers if it was provided to them by an acceptance program, consistent with the ECL. The Department is tasked with enforcement of both the Act and regulation, which include the monitoring of acceptance programs for continuity.

Comment #33: Two commenters stated the requirement for a retailer to provide the Department with a current list of manufacturers and brands offered for sale in the state was onerous and duplicative. Another commenter questioned how retailers are expected to “police” manufacturers to ensure the manufacturer’s brands are registered.

(Commenters 9, 20, 24)

Response to comment #33: The regulations only require the provision of brands offered for sale to the Department upon request. This is not a regular, or even annual reporting requirement for retailers. The Department cannot obtain retailer-specific sales offerings from a source other than the retailer itself. Under the ECL, a retailer has an obligation to sell only registered brands of equipment in the State, and the Department is tasked with ensuring retailers are compliant with this requirement.

Comment #34: One commenter suggested an appropriate mechanism be installed in regulations for program partners to contest any failure of manufacturers to compensate for costs associated with the implementation of their electronic waste acceptance programs.

(Commenter 12)

Response to comment #34: The enforcement provisions of the Act are sufficient to ensure manufacturers in violation of any statutory or corresponding regulatory requirements, are held accountable. Program partners may notify the Department of any potential violations and request assistance.

Comment #35: One commenter suggested the Department consider incorporating municipal grant program funding and a fee structure for per pound collection into the regulation’s requirements for an electronic waste acceptance program, which the commenter believed would provide collection sites the ability to offer free acceptance opportunities to consumers.

(Commenter 21)

Response to comment #35: The regulations clearly require manufacturers to pay for all costs associated with the implementation of their electronic waste acceptance programs incurred by program partners. An electronic waste collection site that is a program partner, will be required to offer consumers free acceptance of their electronic waste for recycling or reuse without a charge to the collection site for the provision of these services. Furthermore, the Department is not authorized by the Act to establish a reimbursement fee structure.

Comment #36: One commenter stated that if an electronic waste collection site is located at a Part 360 permitted or registered solid waste management facility, that the site should not be required to separately register as an e-waste collection site.

(Commenter 21)

Response to comment #36: Any person meeting the definition of an electronic waste collection site is required to register with, meet specific operational requirements, and report to the Department as prescribed in the Act. There is no exemption for Part 360 permitted or registered sites or facilities in the ECL.

Comment #37: One commenter expressed concerns about the effectiveness and cost with both the mailback and pick-up acceptance methods.

(Commenter 20)

Response to comment #37: The Department acknowledges the commenter's concerns regarding the cost effectiveness and true convenience of mailback and pick-up of electronic waste. While the Act requires only one reasonably convenient method of acceptance be provided to each county of the state and municipalities with a population of ten thousand or greater, the regulations establish criteria for each method of acceptance to be considered effective. The Department expects the regulation's effectiveness criteria to encourage acceptance programs to provide for additional brick and mortar collection locations.

Comment #38: One commenter suggested the recycling facility closure plan requirements were onerous, though already a requirement of the R2 standard. The commenter suggested the regulations require recycling facilities to be third party (e.g., R2 or e-Steward) certified.

(Commenter 20)

Response to comment #38: The comment is acknowledged, however, requiring third party certification of electronic waste recycling facilities would require a legislative amendment. It is likely the closure plan required by a facility's third-party certifier would be sufficient to satisfy the requirements of and would, therefore, not require a duplicative effort.

Comment #39: Two commenters were not in favor of the proposed regulation's financial assurance requirements to cover closure costs of recycling facilities, due to the added expense for obtaining the financial assurance instrument which may disadvantage smaller recyclers.

(Commenters 20, 25)

Response to comment #39: The Department maintains that financial assurance is necessary to address potential cases of facility abandonment. Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based on volume, square footage, and type and level of processing.

Comment #40: One commenter expressed concern that the proposed regulation's financial assurance requirements for recycling facilities failed to set forth a time-period in which an instrument must be obtained following the Department's review and approval of a closure cost estimate. The commenter proposed 180 days for placement of the financial assurance mechanism, which it argued was consistent with market conditions in the insurance market.

(Commenter 10)

Response to comment #40: The Department acknowledges the omission and has modified section 368-3.10(a)(5) as the commenter suggested.

Comment #41: One commenter expressed its belief that electronic waste collection sites should bear some responsibility for the adequate sorting, packaging, and storage of electronic waste to encourage cost efficiencies with transportation and the handling process required of recyclers receiving collected material. The commenter suggested the Department develop collection and packaging guidelines for collection sites and allow collection sites to be charged for partial loads. Another commenter suggested removing all references to partial loads in the regulations, as it believes prohibiting charging for partial loads runs contrary to the Department's mission to reduce emissions of greenhouse gases.

(Commenters 24, 25)

Response to comment #41: The Department does not believe there is anything in the regulations that discourages the shared responsibility between all program partners for effective and efficient acceptance programs. It is expected that electronic waste acceptance programs will enter into agreements with program partners in advance of the program year, with such agreements outlining what is mutually agreed upon and expected from all involved parties, including guidelines for collection and packaging. The Department does not believe the repercussions of a partial load should fall upon a program partner collection site, as it is more likely a consequence of an acceptance program's ineffective public education program, program monitoring and/or communications between program partners.

Comment #42: One commenter argued that although its business operations were not typical for the average electronic waste consolidation facility, it would find the weighing and tracking of separate types of covered electronic equipment onerous, difficult, and costly. The commenter consolidation facility indicated it has access to a scale at its facility but does not weigh anything currently. The commenter suggested allowing an alternate, facility-specific weighing and tracking system be requested and approved by the Department in the consolidation facility's registration.

(Commenter 21)

Response to comment #42: The Department requires the same level of detail (i.e., type of electronic waste accepted, by weight in lbs.) from all registered sites/facilities for program

tracking and reporting purposes. The consolidation facility or recycling facility to which electronic waste is sent, is expected to provide such information to collection sites for their own reporting.

Comment #43: One commenter suggested it be allowed to charge municipalities for holding collection events that were not planned “ahead of time” as part of a manufacturer’s acceptance program.

(Commenter 26)

Response to comment #43: A program partner recycling facility holding an event should seek reimbursement or upfront payment from its electronic waste acceptance program(s) for the acceptance of electronic waste. The Department will allow acceptance programs to add collection events to its planned program throughout the year, with weight eligible towards manufacturers’ acceptance standards, when the acceptance program’s monitoring and tracking of electronic waste received warrants the addition of such collection event(s).

Comment #44: One commenter felt there should not be an “arbitrary” timeline to “scrap” covered electronic equipment recovered for reuse. The commenter suggested the proposed regulations limit the one-year timeline tool to prevent stockpiling of covered electronic equipment that is a “negative-value waste stream,” such as CRTs and broken flat screens, and require recyclers to demonstrate they have a legitimate system in place to show proper management and marketing of the items being held for reuse.

(Commenter 26)

Response to comment #44: Section 368-3.10(e) will still require a recycling facility to test and certify, within one year of receipt by the recycling facility, that the CEE intended for reuse is in good working condition for the same purpose for which it was manufactured. However, the Department acknowledges the commenter’s concern and has modified the reuse requirements for recycling facilities in section 368-3.10(e)(2) to no longer require the certified equipment to be offered for sale or donated within one year of its receipt.

Comment #45: One commenter suggested the regulations adjust the timeframe such that all program participants will have earlier knowledge of manufacturer-specific acceptance standards and the statewide recycling and reuse goal.

(Commenter 10)

Response to comment #45: The Department acknowledges the desire for an earlier distribution of manufacturer acceptance standard minimums and the statewide goal. Unfortunately, without a legislative amendment, the acceptance standards and statewide goal will continue to be for the year in which they are distributed. The Department is tasked with reviewing, and in many cases

correcting the collection and sales data submitted by hundreds of regulated entities in March. In addition, reports are often filed well after the deadline. The Department must take the time necessary to ensure the accuracy and completeness of the data before making a final determination on the statewide recycling and reuse goal and manufacturer-specific acceptance standard minimums.

Comment #46: The commenter objects to the specific provision allowing for 25% of credits to be applied towards a manufacturer's acceptance standard.

(Commenter 10)

Response to comment #46: The 25% limit is set in the Act and would require a legislative amendment to change.

Comment #47: One commenter suggested that any retailer that acts as an electronic waste collection site be subject to closure and financial assurance requirements. The commenter explains that the opportunity exists for a retailer to accumulate a significant amount of electronic waste and subsequently abandon a storage location due to financial hardship.

(Commenter 10)

Response to comment #47: Retail collection sites would be subject to the same closure requirements as any other electronic waste collection sites. The Department is not aware of any historical examples of retail electronic waste acceptance locations abandoning stockpiles of electronic waste.

Comment #48: One commenter suggested municipalities operating multiple collection site locations be allowed to register on one online form similar to what is allowed of multiple retail collection site locations.

(Commenter 23)

Response to comment #48: The ability for retailers to register multiple collection site locations on one registration form is set in the Act. The Act does not afford the same ability to any other regulated entity type.

Comment #49: One commenter argued that the cost of compliance for the regulation's new manufacturer requirements would exceed the surcharge penalty structure, and the commenter would expect manufacturers to simply pay the surcharge rather than modifying their acceptance programs to comply with the regulations.

(Commenter 24)

Response to comment #49: The ECL's enforcement penalties for non-compliance (e.g., not maintaining a convenient program, charging, etc.) go beyond the surcharge under-collection fee. It is in a manufacturer's best interest to provide a free, convenient, and continuous acceptance program to consumers of the State as the Act intended.

Comment #50: One commenter stated the requirement for manufacturers to continue to meet the requirements of the Act and regulations for three full calendar years following revocation or the manufacturer's request to withdraw, is "legally dubious."

(Commenter 24)

Response to comment #50: The Department has removed the requirement of section 368-3.3(k)(2) for a program continuation following revocation. For the most part, registrations have been revoked after a manufacturer has gone out of business or bankrupt, and it would be extremely difficult to find persons to hold accountable. A revoked manufacturer likely has not maintained a program for several years prior to the revocation. Manufacturers requesting to withdrawal from the program will still be required to maintain a program for three years as it's likely CEE is still being sold into the marketplace. In addition, the way acceptance standards are calculated eases a manufacturer into the program with the use of three prior years of sales data averaged, which slowly increases its acceptance standard. Manufacturers will be similarly eased out of the program for three years.

Comment #51: One commenter requested the regulations clarify what is meant by the term "downstream vendor."

(Commenter 18)

Response to comment #51: The Department acknowledges this request for clarification and has further explained the term "downstream vendor" where is referenced in the regulations -- definition of material change in section 368-3.2(u). A downstream vendor is any entity to which electronic waste or electronic waste component materials are sent for further reuse or further processing.

Comment #52: One commenter requested the regulations specify what is to be included in registrations and annual reports as result of the regulations, and if new registrations will be required.

(Commenter 18)

Response to comment #52: Online registrations and annual reports will only request information necessary to demonstrate compliance with the Act and Part 368.

Comment #53: One commenter urged the Department to clarify that any quarterly reporting will be streamlined to sync with annual reporting requirements so that tracking on a quarterly basis is not an additional significant burden that would add costs to recycling without increasing recycling amounts.

(Commenter 18)

Response to comment #53: The regulations require acceptance programs to monitor, track, and document acceptance methods offered on a quarterly basis to show the frequency of use and weight received, in pounds, by consumers in locations where the acceptance method is offered. This documentation will only be provided to the Department upon request and would not require additional types of data or formatting to what an acceptance program would already be tracking for provision in its required annual reporting. If acceptance methods are found to be under-performing during any quarter of the program year, acceptance programs must explore other opportunities and implement actions to ensure every effort is made to meet minimum acceptance standards and continuously collect.

Comment #54: One commenter suggested that section 368 – 3.13, the waste transporter and waste management facility requirements, should not only require transporters and facilities to educate users on the proper methods for recycling electronic waste, but should also notify users that it is illegal to dispose of electronic waste in the trash or at such facilities.

(Commenter 12)

Response to comment #54: The Department has added language consistent with the Act's disposal ban to the regulation's waste transporter requirements of section 368-3.13(a). Disposal ban language is already a requirement of the regulation's solid and hazardous waste management facility requirements section.