

REGULATORY IMPACT STATEMENT

To Repeal Existing 6 NYCRR Part 368 Recycling Emblems and Adopt New 6 NYCRR Part 368 Product Stewardship and Product Labeling

INTRODUCTION

The New York State Department of Environmental Conservation (Department) is proposing to repeal and replace 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). This rulemaking will revise 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 will provide the requirements for the labeling of mercury-added consumer products and recycling and reuse of electronic waste, respectively.

The proposed 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 proposed rulemaking also regulates the registration, collection, recycling, reuse, reporting, and closure (if applicable) of electronic waste recycling facilities, consolidation facilities, collection sites, collectors, and collection events. Additional clarification of the requirements for retailers will be addressed as well. The proposed regulations will apply statewide.

The Department’s statutory authority associated with the proposed regulations is outlined in Section 1 below. Section 2 summarizes relevant legislative objectives, and Section 3 discusses the needs and benefits of the proposed regulations. An assessment of the potential costs associated with the proposed 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 proposed rules. Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the proposed regulations and the compliance schedule of the proposed 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 proposed 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 manufactures 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 proposal 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 to:

- 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 proposed 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 proposed 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 New York State consumers are provided truly free and convenient opportunities to recycle or reuse electronic waste while addressing the needs of other stakeholders.

All three of these regulations 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 regulations 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 "Guides 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 may approve alternative labeling, including package labeling, for mercury-added consumer products, upon the manufacturer's submission of approval of the label in another state, a written request for alternative labeling documenting that a product or class of products cannot reasonably be labeled to comply with these requirements; and an alternative labeling plan that describes how the proposed alternative labeling will address the intent of the regulations. Approvals 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 proposed regulations. The definitions of computer, computer peripheral, and small electronic

equipment have been updated to include a listing of products on the market (such as an e-readers, external hard drives, digital picture frames and internet streaming devices, etc.) that have been determined by the department to meet the definition of those types of CEE, but were not expressly stated in statute. The addition of new definitions and updates to existing definitions provide clarity to all stakeholders.

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 proposed 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 responsibility obligations in the event of brand sale/transfer. The proposed 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 proposed 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 proposed 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 proposed regulations reiterate the department's authority to revoke a registration and outline the manufacturer's subsequent years' reporting and program 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 proposed regulations.
- There is a need for consistent procedures for processing registration withdrawal requests and revoking registrations as a result of non-compliance. The proposed 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 proposed regulations reiterate the department's authority to revoke a registration for non-compliance with the EERRA and outline the collective's reporting requirements for a collective that has had its registration revoked.

6 NYCRR section 368-3.5 Electronic waste acceptance program

- The proposed 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 proposed 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 proposed 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.
- Cathode ray tubes (CRTs) continue to be a large portion of the residential electronic waste stream, have limited recycling value and their collection is often discouraged. The proposed regulations help ensure effective acceptance of CRT-containing electronic waste by setting minimum collection requirements for television and monitor manufacturers and establish a surcharge for under-collection.

6 NYCRR section 368-3.6 Manufacturer credits and surcharges

- Manufacturers have expressed confusion over the application of electronic waste acceptance credits. The proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed regulations require recycling facilities to test and certify the equipment to be in good working order, and to offer the equipment for sale or put it into service within one year of acceptance.
- 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 been added to the proposed regulations as well 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 proposed regulations clarify how to submit the request for withdrawal and outline reporting requirements. The proposed 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 New York State consumers 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 reported through manufacturer and collective acceptance programs. A potentially significant amount of electronic waste from New York State 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 proposed regulations add a new regulated entity, electronic waste collector and establish a reporting requirement for electronic waste collected from New York State consumers similar to the reporting requirement for registered entities.

6 NYCRR section 368-3.12 Electronic waste collection event

- The department is often unaware of collection events held around the State by various municipalities, groups and organizations. The proposed regulations add a requirement for all entities holding an electronic waste collection event, whether the entity is registered or not, to notify the department and the applicable municipality of the activity

in advance. Advanced notification to the department and municipality will result in increased awareness of the recycling/reuse opportunities available to consumers that may or may not be offered and advertised as part of 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 proposed regulations require annual notification.

4. COSTS

Costs to Industry:

The proposed 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 proposed 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 proposed electronic waste regulations add a requirement for collection sites to control entry (e.g., lockable gates, fenced areas, etc.) to the active portion of the site at all times. Many collection sites already control access to the active portion of their site via locked doors, gates or containers. For some sites, the 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 the proposed rulemaking, collection sites would also be required to provide training to all employees who handle or have responsibility for managing electronic waste, informing them of the proper handling and emergency procedures appropriate to the type of electronic waste handled at the site. Some sites may have already met this requirement while others may incur minimal costs for staff time for implementing a training process.

The proposed electronic waste regulations also require that collection sites meet certain closure requirements, including decontamination of the site, if necessary. While costs for site decontamination are difficult to estimate, the need for decontamination at a collection

site where electronic waste activity is limited to acceptance, handling and sorting should be minimal.

- **Electronic Waste Consolidation Facilities**

The proposed 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 proposed regulations add closure requirements and the requirement for recycling facilities to obtain financial assurance to address potential facility abandonment. Financial assurance instruments will be based on certified third-party estimates and will vary significantly by facility based on volume, square footage, and type and level of processing. 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 proposed 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 proposed regulations clarify and strengthen requirements for the provision of a free and convenient electronic waste acceptance program to New York State consumers 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;
- Manufacturers of televisions and monitors will be required to accept a minimum percentage of their acceptance standards in televisions and monitors through their acceptance programs. For some manufacturer and collective programs, the amount of televisions and monitors collected will be higher than what they have historically collected, and may result in increased costs; 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 proposal.

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

6. PAPERWORK

The proposed 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 proposed 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 proposed 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 proposed regulations will see additional paperwork as well.

7. DUPLICATION

The proposed 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 proposed regulations permit the Department 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 proposed 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 for the program and manufacturers, 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. The existing New York State recycling emblem regulations are not consistent with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims (16 CFR Part 260). This proposal creates consistency between the State requirements and these federal guidelines.

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

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

10. COMPLIANCE SCHEDULE

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

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

11. INITIAL REVIEW OF RULE

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

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

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

1. EFFECT OF RULE:

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

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

2. COMPLIANCE REQUIREMENTS

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

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

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

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

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

3. PROFESSIONAL SERVICES

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

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

4. COMPLIANCE COSTS

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

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

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

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

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

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

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

6. MINIMIZING ADVERSE IMPACTS

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

added consumer products requirements will have an adverse impact on local governments or small businesses.

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

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

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

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

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

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

9. INITIAL REVIEW OF RULE

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

RURAL AREA FLEXIBILITY ANALYSIS

To repeal existing:

6 NYCRR Part 368 Recycling Emblems

To adopt new:

6 NYCRR Part 368-1 Recycling Labeling

6 NYCRR Part 368-2 Mercury-Added Consumer Products Labeling

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

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

1. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

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

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

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

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

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

already used by the EERRA's regulated site and facilities.

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

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

3. COSTS

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

Part 368-1 Recycling Labeling:

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

Part 368-2 Mercury-Added Consumer Labeling:

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

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

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

- **Collection Sites**

The proposed electronic waste regulations add a requirement for collection sites to control entry (e.g., lockable gates, fenced areas, etc.) to the active portion of the site at all

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

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

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

- **Consolidation Facilities**

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

- **Recycling Facilities**

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

- **Collection Events**

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

4. MINIMIZING ADVERSE IMPACTS

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

5. RURAL AREA PARTICIPATION

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

6. INITIAL REVIEW OF RULE

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

JOB IMPACT STATEMENT

ADOPTING REVISIONS AND NEW REQUIREMENTS UNDER 6 NYCRR PART 368 PRODUCT STEWARDSHIP AND PRODUCT LABELING

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

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

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

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

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

1. NATURE OF IMPACT

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

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

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

2. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

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

3. REGIONS OF ADVERSE IMPACT

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

4. MINIMIZING ADVERSE IMPACT

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

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

In addition, the proposed regulations attempt to ease the financial burden of electronic waste collection sites, consolidation and recycling facilities participating in manufacturer and collective

acceptance programs, by clarifying and strengthening the manufacturers' requirements for covering all costs associated with the implementation of their acceptance programs' methods of acceptance.

5. SELF-EMPLOYMENT OPPORTUNITIES

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

6. INITIAL REVIEW OF RULE

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