

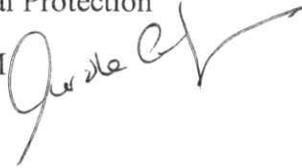


STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

DAVID P. LITTELL  
COMMISSIONER

JOHN ELIAS BALDACCI  
GOVERNOR

MEMORANDUM

To: Board of Environmental Protection  
From: Carole Cifrino, BRWM   
Date: February 18, 2010  
Re: Amendments to 06-096 CMR 415 – *Reasonable Costs for the Handling and Recycling of Electronic Wastes* - Adoption

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I ask the board to amend Chapter 415 of the Maine Solid Waste Management Rules; a copy of the rule showing the proposed amendments follows this memo. Also included in your packet material is a draft Basis Statement with the department’s proposed response to the two written comments received.

**Statutory and regulatory references**

- Maine Administrative Procedures Act, Rulemaking, 5 MRSA §§ 8051-8074;
- Sale of Consumer Products Affecting the Environment, Electronic Waste, 38 MRSA §1610; and
- Department of Environmental Protection (DEP), Solid Waste Management Rules, Chapter 415: Reasonable Costs for Handling and Recycling of Electronic Wastes, 06-096 CMR 415.

**Scope:** The proposed rule amendments integrate statutory changes made in 2007 and 2009 by the Legislatures to 38 MRSA §1610, Maine’s *Electronic Waste Law*, and clarify consolidator responsibilities consistent with how the program is currently being implemented.

**Overview:** Maine law at 38 MRSA §1610(5)(D) requires manufacturers to pay the "reasonable" costs of consolidating covered electronic wastes for recycling. The process and criteria for determining what constitutes reasonable costs are set forth in Chapter 415. Chapter 415 was adopted by the Board of Environmental Protection on October 20, 2005 and became effective on November 13<sup>th</sup> that year.

The changes made to statute and integrated into the proposed changes to the rule include: clarification of definitions, streamlining of submittal requirements for manufacturers, the addition of desktop printers and game consoles as products subject to the manufacturer responsibility requirements, and a change in the financing basis for televisions from “return share“ (actual weight of a manufacturer’s product recycled) to “market share” (a percentage of the total weight of the product recycled). Other revisions include: clarification of the application process for consolidators, simplification of consolidator handling responsibilities, clarification of consolidator and manufacturer responsibilities when a manufacturer selects its recycler, and clarification that consolidators may impose a finance charge on invoiced amounts outstanding for more than 90 days.

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**Issues.** This rulemaking does not directly involve significant environmental issues. The two comments received relate to administrative processes established to implement the addition of game consoles to the program and the change to the basis for manufacturer financing of television recycling.

**Procedure**

- The posted the proposed amendments for written public comment on November 19, 2009;
- Notice of the rulemaking was mailed on November 20 and 23 to the Department's rule-making subscription list and to approximately 130 manufacturers, 8 consolidators and over 400 municipalities;
- The notice was published by the Secretary of State's Office on December 1, 2009.
- The draft amendments and notice form were made available on the Department's website;
- The comment period ended on January 4, 2010 at 5:00 p.m.

**Department recommendation.** The Department requests that the Board adopt the amendments as proposed.

**Estimated time of presentation.** 10 minutes.

## Chapter 415:

**REASONABLE COSTS FOR HANDLING AND RECYCLING OF ELECTRONIC WASTES**

SUMMARY: This rule establishes the requirements and procedures for determining reasonable costs for the consolidation and recycling of electronic waste generated by households in Maine pursuant to 38 M.R.S.A. section 1610.

1. **Definitions.** The following terms, as used in these rules, have the following meanings unless the context indicates otherwise.
  - A. **Computer monitor.** "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display, ~~including a portable notebook computer,~~ primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a portable notebook computer and a digital picture frame.
  - B. **Consolidation facility.** "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling, ~~treatment or disposal~~ facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator ~~or qualified recycling and dismantling facility with a minimum 40-foot trailer~~ and used to collect and transport covered electronic devices at municipal collection sites in this State at no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to this rule. For purposes of this rule, 16,000 pounds of covered electronic devices is equivalent to a full 40-foot trailer.
  - C. **Consolidator.** "Consolidator" means a person that provides ~~collection~~ consolidation and handling services for electronic wastes, and that operates at least one consolidation facility.
  - D. **Covered electronic device.** "Covered electronic device" means a computer central processing unit, ~~a desktop printer, a video game console, a cathode ray tube, a cathode ray tube device, a flat panel display~~ computer monitor, a television or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act. For purposes of this rule, a "covered electronic device" also does not include any device disposed of by a business, industry, medical, educational or governmental entity.
  - E. **Department.** "Department" means the Maine Department of Environmental Protection.
  - F. **Desktop printer.** "Desktop printer" means a device that prints text or illustrations on paper and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile.

**F.G. Geographic service area.** “Geographic service area” means four geographic areas of Maine delineated as: Region 1 - Aroostook, Washington, and Hancock Counties; Region 2 – Piscataquis and Penobscot Counties; Region 3 – Sagadahoc, Kennebec, Somerset Waldo, Knox and Lincoln Counties; and Region 4 - Franklin Oxford, Cumberland, Androscoggin and York Counties.

**G.H. Handle.** "Handle" means to receive, collect, consolidate, store, transfer, track, package, load for transport, and perform associated administrative tasks, including recordkeeping and reporting.

**H.I. Maine’s E-waste Law.** “Maine’s E-waste Law” means the provisions in 38 M.R.S.A section 1610.

**J. Manufacturer.** "Manufacturer" means a person who:

- ~~(1) Manufactures and sells, or has manufactured and sold, by any means, including, but not limited to, transactions conducted through sales outlets, catalogs or the Internet, a covered electronic device under its own brand or label;~~
- ~~(2) Sells, or has sold under its own brand or label, a covered electronic device produced by other suppliers under its own brand and label;~~
- ~~(3) Owns a brand that it licenses or licensed to another person for use on a covered electronic device; or~~
- ~~(4) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States.~~

**K. Market share.** “Market share” means a manufacturer’s national sales of a covered electronic device expressed as a percentage of the total of all manufacturers’ national sales for that category of covered electronic devices.

**M.R.S.A. M.R.S.A.** “M.R.S.A.” means the Maine Revised Statutes Annotated.

**M. Municipal collection site.** "Municipal collection site" means a municipally owned solid waste facility or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. A “municipal collection site” as defined herein is not inherently a “consolidation facility” for purposes of this rule.

**N. Orphan waste.** "Orphan waste" means a covered electronic device, the manufacturer of which cannot be identified or is no longer in business and has no successor in interest.

**O. Person.** “Person” means any individual; partnership; corporation; firm; federal, state or local government entity; or public or private organization of any character.

**P. Qualified recycling and dismantling facility.** “Qualified recycling and dismantling facility” means a business that processes covered electronic devices for reuse or recycling and that provides the consolidator with a sworn certification that its processing, refurbishment for reuse and recycling of covered electronic devices meet the guidelines for environmentally sound management as published by the Department.

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NOTE: The Department publication "Guidelines for Environmentally Sound Management of Televisions and Computer Monitors" (ESM Guidelines) is available at [www.maine.gov/dep/rwm/ewaste](http://www.maine.gov/dep/rwm/ewaste).

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**Q.O. Recycling.** "Recycling" means processing of covered electronic devices or their component materials for recovery of useable materials. Energy recovery or energy generation by means of combustion is not recycling.

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NOTE: Smelting of hazardous wastes to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

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**R. Recycling share.** The percentage of costs assigned by the Department to a television or video game console manufacturer for the transportation, handling and recycling of the total weight of televisions or video game consoles.

**P.S. Television.** "Television" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to receive video programming via broadcast, cable or satellite transmission, recorded transmissions from VHS, DVD and similar video players, or video from surveillance or other similar cameras.

**Q.T. Universal waste.** "Universal waste" means cathode ray tubes, lamps, mercury-containing devices, non-leaking polychlorinated biphenyl ballasts, and certain batteries as further defined in Maine's *Identification of Hazardous Wastes* rule, 06-096 CMR 850.13&14.

**U. Video game console.** "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game.

## 2. Criteria for determining reasonable costs of consolidation operations.

**A. Consolidator approval process.** To be eligible to receive reimbursement from manufacturers for the consolidation of covered electronic devices generated as waste by households in Maine, a consolidator must be approved by the Department. By October 1 each year, a consolidator may submit information to the Department to demonstrate it meets the criteria for approval to offer consolidation facility services for covered electronic devices from Maine households and to receive reimbursement from manufacturers. The Department shall approve annually a group of up to 10 consolidators to provide consolidation facility services ~~to municipalities~~. The Department will include in the approved group consolidators that:

- (1) provide adequate demonstration that they have the ability to operate in conformance with this rule and Maine's E-waste Law;
- (2) submit the lowest cost schedules, ~~including anticipated annual cost adjustments for a two to three year approval period (if sought), with overall consolidator costs for handling, transportation to recycling and recycling, not to exceed \$0.48 per pound for televisions, and computer monitors, desktop printers and game consoles;~~ and
- (3) when considered in aggregate, ensure that geographically-convenient consolidation services are provided throughout the state.

~~The Department may~~ shall approve consolidators for a period ~~not to exceed three years of one year,~~ subject to the Department's annual evaluation of new submittals from consolidators. Manufacturers shall reimburse consolidators for all eligible costs incurred during the entire time period that a consolidator is approved by the Department.

The Department may request updated information from any consolidator whenever it receives ~~what it determines to be credible~~ information of a significant change in any of the information provided in the consolidator's submittals to the Department. The Department may remove a consolidator from the approved list when violations of Maine's environmental laws are adjudicated or otherwise resolved, or when the Department determines that inaccurate information has been provided by a consolidator to the Department and the consolidator cannot cure the inaccuracy. The Department shall provide consolidators with at least thirty (30) days notification prior to removing them from the list of approved consolidators.

~~At least 90 days prior to expiration of its approval, a consolidator may submit information to the Department to demonstrate it continues to meet the criteria for inclusion in the group of up to 10 consolidators approved to offer consolidation facility services to municipalities and to receive reimbursement from manufacturers. By October 1 each year, an approved consolidator may also submit any changes to its previously approved annual cost schedule to implement adjustments necessary to cover unanticipated cost increases.~~

~~The Department shall annually evaluate all new submittals and proposed annual cost schedule changes, and adjust the published approval list to include no more than the 10 consolidators with the lowest submitted costs, while also ensuring that geographically convenient consolidation services are provided throughout the state. The Department shall provide consolidators with at least thirty (30) days notification prior to removing them from the list of approved consolidators. Manufacturers shall reimburse consolidators for all eligible costs incurred during the entire time period that a consolidator is approved by the Department.~~

The Department may add additional consolidators before the annual review if there are openings on the approval list and the Department determines that the consolidator meets the criteria for inclusion on the list.

**B. ~~Consolidator demonstration of technical ability and financial capacity~~ Application requirements.** To be approved to receive reimbursement from manufacturers for the handling, transportation and recycling of ~~waste televisions and computer monitors~~ covered electronic devices from Maine households, the consolidator shall submit to the Department a completed application, on forms developed by the Department, that includes, at a minimum, the following information:

- (1) A description of the company's qualifications and experience in managing ~~electronic waste~~ covered electronic devices and other, universal wastes, specifically including cathode ray tubes;
- (2) Evidence of the technical ability to comply with the consolidator responsibilities in Maine's E-waste Law, 38 M.R.S.A. §1610.5(B);
- (3) A listing and explanation of any adjudicated civil violations and criminal convictions of, and administrative agreements or consent decrees or administrative orders, for violations of any applicable state or federal laws;
- (4) A copy of the standard operating procedures for handling of televisions, ~~and computer monitors, desktop printers and game consoles,~~ including procedures to track units that are identified at receipt as generated from a household in Maine, and for data collection and management, including tracking of each computer monitor and desktop printer by brands and weight, and the total weight of televisions and of game consoles, and other information specified in sections 3(C)(1) and 3(C)(2) of this rule from televisions and computer monitors;
- (5) A description of consolidation capacity, including the location and description of consolidation facilities and geographic service area(s);
- (6) A description and disclosure of all business relationships with electronic waste recycling and dismantling facilities and electronics manufacturers, including ownership of any electronic waste recycling and dismantling facilities or related companies, exclusive of any contractual relationships entered into to meet the requirements of this rule;
- (7) Evidence of financial capacity;
- (8) A fee schedule for ~~each of the next three calendar years of total allowable costs to be billed to the responsible manufacturers related to the handling, transportation and recycling of televisions and computer monitors for each geographic service area.~~ The proposed fees shall be, expressed as the price per pound for each of the following:
  - i. transportation from a municipal collection site to the facility at which the consolidator aggregates covered electronic devices and/or performs the waste accounting and sorting as required,
  - ii. handling at the consolidation facility; ~~a per mile cost for mobilization of a 40 foot trailer to consolidate covered electronic devices at municipal collection sites;~~

iii. transportation from the consolidation facility to the recycling facility (if the recycling occurs at a different facility); and ~~for~~

iv. recycling.

Costs for transportation must be based on an assumption of transporting a full 40-foot trailer; and

- (9) Evidence of commercial general liability insurance or equivalent corporate guarantee for accidents and other emergencies with limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

The Department shall make the current list of approved consolidators available through its website, and, upon request, in writing.

- C. **Allowable costs.** Each consolidator shall bill a manufacturer in accordance with their most recent fee schedule submitted to and approved by the Department for allowable costs associated with the handling, transportation and recycling of household-generated waste ~~computer monitors and televisions that are or were produced by that manufacturer or any business for which the manufacturer is legally responsible, and a *pro rata* share of orphan waste computer monitors and orphan waste televisions~~ covered electronic devices. The only costs that may be billed to manufacturers are those associated with managing covered electronic devices in conformance with this rule unless otherwise contracted by the manufacturer.

Allowable handling, transportation and recycling costs are those directly associated with meeting the requirements of this rule for covered electronic devices, including but not limited to:

- (1) Providing transport from geographically convenient consolidation facility services collection sites, including the cost of mobilizing a transport vehicle to collect at least a 40-foot trailer full of covered electronic devices at a single municipal collection site, and the cost of transporting at a per pound rate assuming a full 40-foot trailer of covered electronic devices collected from multiple municipal collection sites from the point at which the trailer is full;

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Note: 16,000 pounds of covered electronic devices is considered equivalent to a full 40-foot trailer; see section 1(B).

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- (2) Accounting, by brand and manufacturer, of ~~televisions-desktop printers and of computer monitors;~~ accounting by total weight of televisions and of game consoles; and the collection of other information as required in sections 3(B)(1) and 3(B)(2) of this rule;
- (3) Storing, loading and unloading;
- (4) Packaging for transport;
- (5) Transportation and tracking of covered electronic devices to a qualified recycling and dismantling facility;
- (6) Billing, record-keeping and reporting as required by section 3;
- (7) A reasonable rate of profit or return on investment; ~~and~~

- (8) Costs billed to the consolidator by a qualified recycling and dismantling facilities for recycling; and
- (9) A monthly finance charge not to exceed 2.0% for any invoiced amount more than 90 days overdue.

The cost of physically separating brands for a specific manufacturer, and the cost of gathering and providing additional information from each unit (e.g., serial number, model number) not required by this rule are not allowable costs and must be borne by each manufacturer that requests these services by arrangement between the manufacturer and consolidator.

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NOTE: A manufacturer may be responsible for the costs of handling, transportation and recycling of multiple brands.

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**D. Department determination of Manufacturer Brands Determination and Orphan Waste and recycling share responsibilities.**

- (1) Manufacturer brand determination. The Department shall provide manufacturers and approved consolidators with a listing of manufacturers and the brand(s) known to the Department for which each manufacturer is responsible. The Department will determine the brands for which each manufacturer is responsible based on data provided by manufacturers, consolidators and electronic waste collection programs in other jurisdictions within the United States, and information from reputable reference sources such as the “The Thomas Register”, “Gale Trade Name Directory”, “Headquarters USA”, “Dun and Bradstreet Industry Handbook”, trade association directories, and similar resources. It is the responsibility of the manufacturer to provide the Department with documentation establishing or refuting a manufacturer’s responsibility for a specific brand when such information is requested by the Department.
- (2) Orphan share responsibilities. The Department shall annually determine each computer monitor and desktop printer manufacturer’s pro rata share of the orphan waste portion of each the television waste stream and the computer monitor waste stream based on the best available information, including but not limited to, data provided by manufacturers and consolidators and data from electronic waste collection programs in other jurisdictions within the United States. The Department will incorporate into the orphan share determination, and thus into the manufacturer *pro rata* share of the orphan waste stream, Maine-specific data after analysis is completed of at least one year of data submitted to the Department in reports by consolidators.

In calculating manufacturers’ *pro rata* shares of the orphan waste stream, the Department shall credit manufacturers for waste ~~televisions and computer monitors~~ and desktop printers collected through no-cost manufacturer take back programs, provided the manufacturer provides sufficient documentation to the Department to demonstrate: ~~that the units were generated as waste by Maine households;~~ the number of units by product type, and total weight by brand and the timeframe in which the units were received; ~~and that the units were processed by a qualified recycling and dismantling facility.~~ The Department may request additional documentation from manufacturers if needed to justify providing an orphan share credit.

If the Department determines that a manufacturer is responsible for a *de minimis* share of the ~~television or computer monitor or desktop printer~~ waste stream and that the costs of

assessment and billing are likely to exceed the billable amount, the Department may decide to identify that manufacturer as not responsible for a *pro rata* share of the orphan waste stream. In no case shall any share greater than 1% of the ~~television or computer monitor or desktop printer~~ waste stream be considered *de minimis* by the Department for purposes of allocating *pro rata* shares of the orphan waste stream.

Annually by December 1, the Department shall provide computer monitor and desktop printer manufacturers, and approved consolidators, with a schedule of each manufacturer's *pro rata* orphan share responsibilities effective for the following calendar year. The Department will issue the first *pro rata* share determination no later than January 1, 2006, and shall subsequently provide an annual updated schedule of *pro rata* shares by November 15<sup>th</sup>, effective for the following calendar year. The Department shall use the following formula for calculating the *pro rata* share of the orphan waste for each manufacturer:

$$S = B \div T$$

When:

S = *pro rata* share (expressed as a decimal fraction),

B = weight or number of manufacturer brand units, and

T = total weight or number of units from manufacturers with orphan share responsibility

In calculating the *pro rata* shares of orphan waste, the Department shall credit manufacturers that submit adequate information from their own takeback program ~~as follows~~ by subtracting the weight or number of units collected from the value of "T".

- ~~• The number of other manufacturers' brand units collected will be subtracted from the value of "B" for the collecting manufacturer and from the value of "T", and~~
- ~~The number of their own brand units will not be included in the accounting of the Maine waste stream in determining the values of "B" and "T".~~

(3) Recycling share responsibilities. Annually by December 1, the Department shall provide television and game console manufacturers and approved consolidators with a schedule of each manufacturer's recycling share effective for the following calendar year. Based on readily available national market share data, the Department shall use the following formula to calculate the recycling shares for each manufacturer:

$$S = M / (1 - T)$$

When:

S = recycling share

M = manufacturer's national market share based on readily available market share data, and

T = total percentage of market share (expressed as a decimal) from manufacturers with *de minimis* market shares and manufacturers that had greater than a *de minimis*

market share in the relevant readily available national market share data and that are no longer selling the relevant product.

If the Department determines that a manufacturer is responsible for a *de minimis* share of the television or game console waste stream based on readily available national market share data, the Department may identify that manufacturer as not responsible for a recycling share of that waste stream. In no case shall any manufacturer with greater than 0.1% of the television or game console market share be determined to have a *de minimis* share for purposes of allocating recycling shares for a waste stream.

**E. Consolidator and Manufacturer Arrangements.** Manufacturers may establish arrangements with approved consolidators to facilitate implementation of this rule. Those arrangements may include any limitation on services to be provided by the consolidator that are otherwise eligible as allowable costs, and billing arrangements that are consistent with this rule. In the absence of an arrangement, the presumption established in this rule is that a manufacturer desires compliance with the requirements of this rule, other than requirements specifically assigned to manufacturers, to be processed by the consolidator.

### 3. Operational standards.

**A. Required ~~consolidator services~~ handling options for computer monitors and desktop printers.** Each consolidator shall offer a computer monitor or desktop printer manufacturer the following handling option plans:

(1) “Option 1” plan - The consolidator separates manufacturer’s product and informs the manufacturer annually or when a 40-foot truckload of the manufacturer’s product is available, whichever occurs first, for The manufacturer shall contract for pick up of its product from the consolidator within 72 hours of notice and shipment to a qualified recycling and dismantling facility-its contracted recycleras contracted by the manufacturer, plus tAt the time of pick up, the consolidator shall provide the manufacturer’s contracted recycler with a listing of the units by brand and weight, and shall bills the manufacturer for the management of its share of orphan products and the consolidator’s transportation and handling costs associated with the manufacturer’s product.;

~~(1)~~

~~(1)The consolidator informs the manufacturer when it has handled 16,000 pounds of the manufacturer’s product and makes a full truckload of mixed brand product available to the manufacturer for shipment to a qualified recycling and dismantling facility as contracted by the manufacturer, plus the consolidator bills the manufacturer for handling of the manufacturer’s share and the handling, transportation and recycling costs of the manufacturer’s orphan share;~~

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Note: Because manufacturers are responsible for the shipment of their share of waste in options (1) ~~and (2)~~ above, manufacturers may arrange for shipment in their choice of transport vehicle size.

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~~(3)~~(2) Standard plan - The consolidator performs a brand count and contracts with a qualified recycling and dismantling facility, and bills the manufacturer for the costs associated with handling, transportation and recycling based on the weight of the products received for which that manufacturer is responsible plus its share of orphan products.

The consolidator shall manage the handling, transportation, recycling and billing in accordance with each computer monitor and desktop printer manufacturer's selected annual preference for one of these options (or such other contracted arrangements negotiated that are consistent with these rules but vary from the alternatives outlined in this section). For each manufacturer that does not notify the ~~consolidator~~ department of a preference by ~~January~~ July 1 of each year, the consolidator shall use ~~option (3)~~ the standard plan for the following calendar year for the handling, transportation, recycling and billing of the brands and orphan share for which that manufacturer is responsible. ~~When given annual notice of a change in manufacturer preference, a consolidator shall implement the change in the consolidation services option selected by that manufacturer within 90 days.~~

**B. Required handling for televisions and game consoles.** Consolidators shall manage the handling, transportation, and recycling of televisions and game consoles, and shall bill each manufacturer for the manufacturer's recycling share as determined by the department in accordance with section 2.D(3) for each product category received for which that manufacturer is responsible.

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NOTE: For e-waste that Maine municipalities elect to manage under this system, the E-Waste Law, 38 MRSA 1610(5)(B)(4), requires consolidators to transport ~~waste computer monitors and waste televisions~~ covered electronic devices to facilities that provide a sworn certification that its handling, processing, refurbishment and recycling of this e-waste meets the guidelines for environmentally sound management as provided by the Department. A manufacturer that contracts for pick up and transportation from a consolidation facility may provide the consolidation facility with documentation that the wastes are shipped to such qualified recycling and dismantling facilities.

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**BC. Handling, transport and recordkeeping requirements.**

- (1) All handling, transport and recordkeeping shall be performed in accordance with 06-096 CMR 850.3(A)(13) the universal waste provisions of Maine's *Hazardous Waste Management Rules*.
- (2) ~~Beginning January 1, 2006, a consolidator shall maintain a written log that identifies responsible manufacturers by recording the brand and weight of each waste computer monitor and waste television delivered to the consolidation facility and identified at receipt as generated by a household in Maine.~~ A consolidator shall maintain a written log that identifies responsible manufacturers by recording the brand and weight of each computer monitor and desktop printer managed by the consolidator and identified at receipt as generated by a household in Maine. The consolidator may perform the brand identification and weighing at ~~the~~ its consolidation facility or may contract for this identification and accounting services with the qualified recycling and dismantling facility to which the waste is shipped. A consolidator also shall determine a total weight of waste televisions and a total weight of waste game consoles and identified at receipt as generated by a household in Maine. The costs for handling, transportation and recycling of units not clearly identified as generated by Maine households are the responsibility of the entity that delivers, or causes to be delivered, the units to the consolidator.

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NOTE: ~~Municipalities~~ Collection sites are responsible for clearly ~~distinguishing~~ identifying to the consolidators units that are generated as waste by ~~their residents~~ Maine households. One way to do this is to utilize stickers that clearly mark, with an indelible marker or grease pencil, each unit

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as generated by a business (e.g. "BW" –for Business Waste) or a Maine household with a large mark such as (e.g. "MH" – for Maine Household).

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- (3) The consolidator shall establish and implement procedures for clearly distinguishing and tracking household waste units separately from business waste units.
- (4) ~~For all units for which a manufacturer has not contracted for pick up at the consolidation facility,~~ The consolidator shall transport waste computer monitors and waste televisions all televisions and game consoles, and all computer monitors and desktop printers which are the responsibility of manufacturers under the standard handling plan, only to qualified recycling and dismantling facilities.
- (5) For computer monitors and desktop printers that are the responsibility of manufacturers who have selected the "Option 1" handling plan, the consolidator shall separate and store each manufacturer's product. The consolidator shall inform the manufacturer and the manufacturer's contracted recycler annually or when a 40-foot truckload of the Option 1 manufacturers' product is available, whichever occurs first, for pick up within 3 business days of notice as contracted by the manufacturer. The consolidator shall ensure docking is available for the manufacturer's transporter and shall load the manufacturer's product onto the transporter's truck. The consolidator shall also provide the manufacturer's contracted recycler with a listing of the units by manufacturer, brand and weight in hard copy at the time of pick up and in electronic spreadsheet format via e-mail that same business day.

If the manufacturer fails to arrange for pick up its product within 3 business days of notification by the consolidator, the consolidator may ship the product with the listing of units by brand and weight to the manufacturers' designated recycler, and invoice the responsible manufacturer for the transportation cost of that shipment and shall provide the manufacturer with documentation of the basis for the invoiced costs. . If the consolidator does not provide the manufacturer's transporter with the listing of units by brand and weight for delivery with the shipment to the recycler, the manufacturer may refuse to pick up the shipment and may bill the consolidator for the cost of the transporter's trip. The consolidator is then responsible for delivering the shipment with the listing of the units by brand and weight to the manufacturer's selected recycler at the consolidator's expense.

- ~~(5)~~(6) When provided with at least 24-hours notice, the consolidator must allow on-site audit reviews by manufacturers during normal business hours of Monday – Friday from 9:00 a.m. to 4:00 p.m. to evaluate the consolidator's operations in relation to Maine's E-waste law and these rules, and to check the systems that ensure the validity of data provided to the manufacturer and the Department.

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Note: A manufacturer may provide the Department with the results of any audit it performs. The Department may use this information to target unannounced inspections to determine compliance with applicable Maine laws and regulations.

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**ED. Billing.** Consolidators and manufacturers shall work cooperatively to ensure implementation of a practical and feasible billing system. At a minimum, a consolidator shall invoice a manufacturer for the allowable costs incurred by the consolidator and associated with the handling, transportation and recycling for which each manufacturer is responsible under the provisions of this rule in conformance with its most recent fee schedule submitted to the Department. A consolidator shall bill each computer monitor and desktop printer manufacturer

monthly for the services provided related to the manufacturer's products and its *pro rata* share of the orphan waste, and each television and game console manufacturer monthly for its recycling share of the appropriate waste stream.

- (1) At a minimum, each bill to a computer monitor and desktop printer manufacturer must include the following information:
  - (a) Unit count and total weight by brand for each brand for which the manufacturer is responsible, with the ~~television and computer monitor~~ and desktop printer waste streams clearly distinguished;
  - (b) unit count and total weight by brand of orphan waste;
  - ~~(c) total product weight for all televisions and computer monitors generated by Maine households and managed by the consolidator during the billing term;~~
  - (~~c~~) total cost per pound billed; and
  - (~~d~~) total amount due from the manufacturer.

The total amount due from the manufacturer will equal  $[M + (S)(W)][C]+F$  where:

M = the total weight of the brands for which the manufacturer is responsible,

S = the manufacturer's *pro rata* share of the orphan waste stream,

W = the total weight of the orphan waste stream managed by the consolidator for the billing term, ~~and~~

C = cost per pound for management services provided, and

F= any applicable finance charge.

- (2) At a minimum, each bill to a television and game console manufacturer must include the following information:
  - (a) total product weight for the television waste stream and the game console waste stream generated by Maine households and managed by the consolidator during the billing term;
  - (b) total cost per pound billed; and
  - (c) total amount due from the manufacturer.

The total amount due from the manufacturer will equal  $(W \times S \times C)+F$  where:

W = the total weight of televisions or game consoles managed by the consolidator during the billing term,

S = the manufacturer's recycling share for the calendar year for that waste stream,

C = cost per pound for management services provided, and

## BASIS STATEMENT

Amendments to Chapter 415,

*Reasonable Costs for the Handling and Recycling of Electronic Wastes*

### History

- The proposed amendments to Chapter 415, *Reasonable Costs for the Handling and Recycling of Electronic Wastes*, were necessary as a result of recent legislation, including Public Law 2007 Chapter 292 and Public Laws 2009 Chapters 231 and 397. These laws clarify the responsibilities of manufacturers, consolidators, and the department, add additional electronic products to the manufacturer-financed system, and change the basis for television manufacturers' financial responsibility for recycling of their products from a return share to a market share basis.
- Proposed amendments to the rule were posted for written public comment on November 19, 2009; the comment period ended on January 4, 2010 at 5:00 p.m.
- Comments were received from 2 people.

### Comment and Response

Comments were received from the following:

*Consumer Electronics Association (CEA) - Parker Brugge*

*Nintendo – Jon Pedersen, Nintendo*

### Section 2. Criteria for determining reasonable costs of consolidation operations

COMMENT: Subsection C. Allowable costs.

We understand the need for recycling products at the end of their useful lifecycle. In the recent memorandum of November 18, 2009, from your office, video game consoles have been grouped with televisions on the price schedules from the consolidators.

We have reviewed the differences in these products, from a recycling standpoint with our current recycling vendor and found the cost versus value to be vastly different. The cost to recycle a CRT/LCD television is fairly high while a video game console actually has core material resale value that exceeds any handling and transportation costs.

It appears that by grouping video game consoles with televisions our industry may well be subsidizing the recycling costs of televisions. We don't believe that represents "reasonable costs" for video game console manufacturers.

A more reasonable parallel to draw would be with desktop computers that do not contain a display and have a core material value that results in minimal recycling cost or in many cases, a recovery value. (*Nintendo*)

RESPONSE: *Thank you for this information on the residual value versus cost of recycling video game consoles; this is the first information we have received on comparative recycling value of these two products. The Department has approved consolidators and their rate schedules for*

*recycling for 2010, including a combined rate for televisions and video game consoles based on the common handling of these products for recycling with financial responsibility assigned based on market share. We will seek additional information on comparative recycling costs and examine the ramifications on handling and recycling processes if we were to establish separate rate schedules for these two product lines. If we find information to corroborate a significant recycling value differential and processes can be readily implemented that do not significantly increase costs, we will require separate rate schedules in future years.*

### **Section 3. Operational Standards**

#### **Subsection A. Required consolidator service options**

CEA appreciates the opportunity to comment on the proposed modification of regulations at 06-096 CMR 415 *Reasonable Costs for the Handling and Recycling of Electronic Wastes*. Most of the changes proposed are constructive and CEA wishes to suggest one alternative approach to maintain the flexibility currently in the system for all manufacturers of covered electronic devices in the modified system.

CEA recognizes that the statutory change from a returns-based to a market share-based financing model for televisions, and now for game consoles, requires regulatory change concerning “Option 1” in the existing regulations at 06-096 CMR 415 3.A.(1). As you are aware, Option 1 allows manufacturers to have consolidators set aside full truckload amounts of the manufacturer’s branded product for recycling by recyclers hired by the manufacturer. CEA requests that this option be continued for computer monitors and desktop printers consistent with the proposed regulation, and that a similar option be provided for manufacturers of televisions and video game consoles. CEA suggests that the following language be included to provide this option for television and game console manufacturers:

Option 2 plan – The consolidator separates an amount of televisions and game console waste stream equal to the weight of the recycling share of the manufacturer managed by the consolidator during the billing term and informs the manufacturer annually or when a 40-foot truckload of the manufacturer’s recycling share of product is available, whichever comes first. The manufacturer shall contract for pick up of its share of product from the consolidator within 72 hours of notice and ship to its contracted recycler. At the time of pickup, the consolidator shall provide the manufacturer’s contracted recycler with the total product weight for the television waste stream and the game console waste stream generated by Maine households and managed by the consolidator during the billing term, and shall bill the manufacturer for the consolidator’s transportation and handling costs associated with the manufacturer’s share of product.

In addition to this change, there are several other areas in Section 3 (Operational standards) relating to Option 1 that propose to reference only computer and printer manufacturers. CEA respectfully requests that these should be expanded to include all manufacturers of covered electronic devices. (CEA)

RESPONSE: *In 2009, the Maine's Legislature amended the Electronic Waste law to change the basis of financial responsibility for television recycling from the actual amount of their product in the waste stream to responsibility proportional to their market share. Television manufacturers brought this proposal to the Legislature, testifying that, given the long lifespan of televisions, a market-share basis created a more level playing field for manufacturers in the current market place. Additionally, they testified that it would reduce handling costs by allowing televisions to be "...simply transported, consolidated and recycled in aggregate." This proposal to allow a handling option that requires consolidators to separate and store some of the product they receive outside of their standard operations will create an additional cost in the television recycling system, and runs counter to the intended effects of the recent legislative change.*

