

Statement of Reasons in Support of Adoption of Conn. Agencies Regs. § 22a-638-1 and Conn. Agencies Regs. § 22a-630(d)-1

Introduction

This Statement of Reasons concerns proposed regulations regarding the collection, transportation, reuse, refurbishment and recycling of covered electronic devices (“CEDs”) generated by households in Connecticut.¹ These regulations are adopted pursuant to Public Acts 07-189 and 08-35, codified at Conn. Gen. Stat. §§ 22a-629 et seq.

Currently, electronic wastes are being discarded with municipal solid waste or in other places where their hazardous constituents may threaten human health or the environment. These hazardous constituents may include lead, mercury, cadmium, nickel and zinc. In addition, materials used to manufacture CEDs can be recovered to make other products when recycled. Recycling conserves natural resources and reduces greenhouse gas emissions, two important goals of the State Solid Waste Management Plan. Adoption of these regulations will help facilitate the recycling and recovery of valuable material resources. Equally important, the program established by these regulations will implement the tenets of product stewardship in that the manufacturers of CEDs remain financially responsible for the disposition of their products at the end of their useful life.

To assist in drafting the regulations, the Department convened a stakeholder group consisting of electronics manufacturers, recyclers, municipalities and other interested parties. The stakeholder process provided the Department with valuable information and was important to the development of these regulations. The Department takes this opportunity to thank those who provided input during this stakeholder process. Notice of the Department’s proposed regulations was published in the Connecticut Law Journal on September 22, 2009. Notice was also provided to members of the stakeholder group as well as published in certain trade journals. The Department accepted public comment on the proposed regulations during the public comment period from September 22, 2009 to October 30, 2009 and held a public hearing for receipt of comments on October 26, 2009. This document summarizes the principal comments

¹ For purposes of the proposed regulations, the term CEDs includes monitors, televisions, computers, and printers.

received by the Department during the comment period, including those in support of and in opposition to the promulgation of these regulations, the Department's response to these comments, as well as revisions being made by the Department and the rationale for any such revisions. This document follows the order of the proposed regulations.

I. General Comments

A. Public Education

1. Commenters – Linda Krausse, Executive Director, Connecticut River Estuary Regional Planning Agency,
Ralph Eno, First Selectman, Town of Lyme

Comment

The law and proposed regulations list three or four items as covered electronic devices, but residents are used to disposing of many other types of electronic devices. These other types of electronic devices are not covered by the proposed regulations, yet may still contain toxic materials. What public education program is contemplated for the proposed regulations and how will it educate residents to bring in only three or four items?

Response

The Department does intend to develop a public education campaign closer to the rollout of the program which will provide general information to the public about the importance of recycling electronic devices including the type of CEDs covered by the program. The Department will continue to work with any municipality that is interested regarding options for recycling non-CEDs.

At this time, pursuant to Conn. Gen. Stat. § 22a-638, the Department has decided to only add printers to the devices listed in the statute. Given that this is a new program, the Department believes that it is not practical at this time to expand the list of CEDs beyond printers. The Department wants to ensure that the program can function effectively before it further expands the list of CEDs. Since no actual changes to the regulations were sought, the Department has not made any revisions to the regulations in response to this comment.

B. Supportive Comments

2. Commenters – Doreen Zaback, Resource Recovery Project Coordinator, Wallingford
Resources Recovery Project
Kim O'Rourke, Recycling Coordinator, City of Middletown

Comment

The commenters are in favor of the proposed regulations. It is important that municipalities not be burdened with additional costs.

Response

The Department is thankful for the support provided by the commenters and as discussed below, see response to comments 45 and 46, has been careful to try and not impose additional costs upon municipalities to implement this program.

C. Standards for the Regulations

3. Commenters - Valerie Rickman, Assistant Manager, Environmental Affairs, Information Technology Industry Council
Barbara Kyle, National Coordinator, Electronics Take Back Coalition
Joe Nardone, Vice President of Business Development, Eco International

Comment

Valerie Rickman noted that EPA's Plug-In to eCycling Guidelines for Material Management, or "Plug-In," was the guidance document used by EPA several years ago, but that now Plug-In is no longer used. Instead she notes that Responsible Recycling Practices for Electronic Recyclers, known as the R2 standards, establishes the generally accepted industry standard for electronics recycling. R2 addresses all of the elements of Plug-In and Ms. Rickman recommends that the regulations follow the R2 Guidelines. Barbara Kyle believes that the Department should not accept the latest version of R2 as meeting the requirements for standards for recyclers regarding exports. She also noted that another standard, E-Stewards, is more stringent than Plug-In regarding exports and recommend use of the E-Steward standards. Finally, Joe Nardone agrees with the manner in which the Department establishes the operational standards for covered electronic recyclers ("CERs"), and prefers this method to relying on specific standards developed

by others such as R2, the Basel Action Network (“BAN”) or the International Organization for Standardization (“ISO”).

Response

Conn. Gen. Stat. § 22a-632(b) requires that the Department establish standards for recyclers that at a minimum demonstrate compliance with Plug-In. Plug-In, not R2, e-steward or some other standard was used as a baseline in developing the regulations, including the provision regarding exports. Other than expressing a preference for conformance with some other standard, the commenters who recommended adoption of other standards did not articulate any deficiencies with Plug-In, why an alternative standard was preferable, or suggest that any particular section of the regulations be revised so as to possibly conform with both Plug-In and some alternative standard so as to ensure compliance with section 22a-632(b). As such, the Department has not made any revisions in response to this comment.

D. Forms Prescribed the Commissioner

4. Commenter - Michael Harder, Hebron resident

Comment

There are numerous references in the regulations to “forms prescribed by the commissioner”. This requires extra work for the Department. The commenter recommends that instead of forms prescribed by the commissioner, the Department should use the phrase “forms acceptable to the commissioner” which could allow for use of both DEP and individual forms.

Response

The Department believes that it is important to standardize both the information being requested as well as the format in which information is provided. This certainly aids in the review of information and helps ensure that all persons submit the same type of information. Allowing submitters to develop their own forms would not eliminate work for the Department; if anything it might create more work since the Department would not know where required information was being provided. By using forms prescribed by the Department, the Department can more readily determine if the information needed to make a decision is included. Once the forms are initially developed, there would be no additional work for the Department except to occasionally review

and revise the forms. For all these reasons, the Department has not made any revisions to the regulations in response to this comment.

E. One Day Collection Events

5. Commenter – Peter Egan, Director of Environmental Affairs and Development, Connecticut Resources Recovery Authority

Comment

The commenter encourages the Department to consider one-day collections as meeting the “convenient and accessible” requirement in Conn. Gen. Stat. § 22a-631(b) for municipalities.

Response

The Department acknowledges the important role that one-day collections events have played in the recycling of CEDs. This was especially so before the enactment of chapter 446n of the General Statutes, when, except for a municipalities, one-day collection events were about the only way that members of the public could recycle CEDs. CRRA has certainly been in the forefront with respect to these efforts.

Conn. Gen. Stat. § 22a-631(b) now requires, however, that with respect to CEDs, each municipality shall provide collection and recycling opportunities to its residents giving priority to convenience and accessibility. The regulations do not specify how this requirement must be satisfied, but rather, provide that each municipality must submit a plan to the commissioner outlining how the municipality intends to satisfy this convenient and accessible requirement. Without prejudging the content of any particular plan, the Department notes that it has significant reservations about whether collecting CEDs at one-day collection events alone – with nothing more – would satisfy the convenient and accessible requirement in section 22a-631(b). One-day collections can certainly be combined with other recycling opportunities, such as dropping off CEDs at a transfer station or at a local retail establishment, and in this combined manner, be acceptable.

The Department recognizes that one-day collection events may be utilized at the outset of the program, particularly by those few municipalities that demonstrate that they are unable to utilize a local transfer station for dropping off CEDs. If so, such municipalities may very well be

required to demonstrate their efforts to supplement one-day collection events with other convenient and accessible recycling opportunities and, in the future, additional recycling opportunities may well be required for any such municipality.

II. Comments Regarding Definitions

A. Covered Electronic Device

6. Commenter – Valerie Rickman, Assistant Manager, Environmental Affairs, Information Technology Industry Council

Comment

The definition of “covered electronic device” in section 22a-638-1(a)(3), page 1, uses the term “consumer”. The Information Technology Industry Council (“ITIC”) recommends defining “consumer” as coming from a household. ITIC also recommends making this change in the definition of printer in section 22a-638-1(a)(9), page 2. ITIC is concerned that without this change commercial printers could be erroneously included in the law.

Response

Conn. Gen. Stat. §§ 22a-631(c)(4) specifies that a CER must maintain certain logs for CEDs delivered to a CER “generated by a household in the state.” Similarly, Conn. Gen. Stat. § 22a-635(b) refers to Connecticut residents providing CEDs to a collector. In addition, section 22a-638-1(c)(2) of the regulations requires that a CER use a system to identify, track and differentiate computers, monitors, printers, and televisions from households in Connecticut from those that are from households outside Connecticut or from non-household sources. Similarly, section 22a-638-1(j)(1) allows a CER to submit an invoice only for “a CED generated by a household in Connecticut.” While based upon all of these sources, the Department believes that the intention and implementation of the program will be clear; namely, that only CEDs from households in Connecticut are covered by the program established by the statute and the regulations. Nevertheless, to help make this intention clearer the Department has adopted the commenter’s suggestion and will be adding a new definition of “consumer” to section 22a-638-1(a).

A new section will be added to section 22a-638-1(a) as follows, with the remaining definitions renumbered accordingly:

(3) “Consumer” means a person from a household.

7. Commenters – Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler’s Coalition
Sheila Baumer, Borough of Naugatuck Recycling Coordinator
Kim O’Rourke, Recycling Coordinator, City of Middletown
Nicholas Ammann, Manager, State and Local Government Affairs, Apple Inc.

Comment

The commenters expressed their support for printers being included in the list of CEDs.

Response

Pursuant to Conn. Gen. Stat. § 22a-638(4), the Department added printers to the list of CEDs. See 22a-638-1(a)(3) and (a)(9). The Department appreciates the support expressed by the commenters and will keep printers on the list of CEDs.

B. Recycling Facility

8. Commenter – Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler’s Coalition

Comment

With respect to section 22a-638-1(a)(11), page 3, the definition of “Recycling Facility” as written would apply to a municipal transfer station because of inclusion of the term “collect”. The commenter suggests amending the definition to exclude municipal transfer stations.

Response

The Department did not intend the term “recycling facility” to include the initial location where CEDs are dropped off by residents. In many municipalities, this may be the municipal transfer station. However, if a transfer station was used as a location for something more than just a location for residents to drop off CEDs, if for example, recycling activities such as disassembling the internal component of a CED took place at a transfer station, then a transfer station would be a “recycling facility” as defined in section 22a-638-1(a)(11). The Department will clarify

however, that the definition of “recycling facility” does not include the initial location used by residents to drop off CEDs. Section 22a-638-1(a)(11) is revised as follows:

(11) “Recycling facility” means a place or location, including all land and structures or appurtenances, used to collect, separate or process CEDs or components of CEDs into raw materials or products. This includes, but is not limited to, land and structures or appurtenances used for the disassembly and physical recovery of CEDs, including, but not limited to, crushing, shredding, grinding, glass-to-glass recycling or other operations. A recycling facility does not include the initial location used to collect CEDs from residents, provided such facility is not used for any other purpose specified in this definition, in which case it would be a recycling facility;

C. Refurbishment

9. Commenter – Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler’s Coalition

Comment

With respect to section 22a-638-1(a)(12), page 3, the commenter recommends that the Department review the list of what constitutes refurbishment. Specifically, the commenter recommends adding changing a hard drive to the list of what is considered refurbishment.

Response

The Department agrees with the commenter and did not intend to exclude upgrading a hard drive from the activities that may constitute refurbishment. In fact, upgrading other components, not mentioned in the Department’s proposed rule, such as a disc reader would also constitute refurbishment. As such, the Department has modified the definition of refurbishment to include upgrading a hard drive or other component of a CED.

Having made this revision, the Department is also making a change to clarify what is meant by the use of the term “upgrade” as that term is used in the definition of refurbishment. Upgrading a component means replacing a functioning component with another functioning component, usually a superior component. This is why the beginning of the definition used the phrase “with respect to a CED that *functions* for its intended purpose”. The term upgrading does not include repairing a CED by replacing a non-functioning component with a functioning one. That would

be a repair, not an upgrade. In short, to constitute refurbishment the CED in question must be operational to begin with; refurbishment does not include repairing a CED to make a non-functioning CED operational. The Department has modified the proposed rule to clarify this matter.

Section 22a-638-1(a)(12), the definition of refurbishment, is revised as follows:

- (12) “Refurbishment” means, with respect to a CED that functions for its original intended purpose, installing a new electrical cord, making aesthetic improvements only, such as polishing or removing scratches, or upgrading a CED by replacing an operating system or other software, memory or a component of a CED, such as a video card, sound card, disc drive or hard drive, that is working, with an upgraded operating system or software, memory or component of a CED. Other than the installation of a new electrical cord, upgrading a CED does not mean or include the repair of a non-functioning CED, including, but not limited to, repairing or replacing a non-functioning operating system or software, memory or component of a CED, with a functioning one;

D. Television

10. Commenter - Barbara Kyle, National Coordinator, Electronics Take Back Coalition

Comment

With respect to section 22a-638-1(a)(15), the commenter suggests a change to the definition of the term “television” so that it includes cable and satellite sources, not just “over the air” television. The commenter suggests inserting “...cable, or satellite,…” after “via broadcast” in the definition. This would clarify that televisions without a tuner that accept broadcasts via cable and satellite are included in the definition of a television.

Response

The pertinent portion of the definition of television related to this comment provides that a television is “a stand-alone display system containing a CRT or any other type of display primarily intended to receive video programming via *broadcast...*” (italics added). Webster’s II New College dictionary defines the term broadcast as the transmission of a radio or television signal, or to transmit a radio or television program. The Department understands this definition

to include broadcast not only “over the air” but also via cable or satellite, since all of these means of broadcasting involve the transmission of a signal to a television. While the Department considers the use of the term “broadcast” in the proposed definition of television to include broadcast via cable or satellite, it has nevertheless revised the definition of television to make this clear. Accordingly, the definition of television is revised as follows:

- (15) “Television” means a stand-alone display system containing a CRT or any other type of display primarily intended to receive video programming via broadcast, having a viewable area greater than four inches when measured diagonally, able to adhere to standard consumer video formats such as PAL, SECAM, NTSC, ATSC and HDTV and having the capability of selecting different broadcast channels and support sound capability. The term broadcast as used in the definition includes, but is not limited to, broadcast via cable or satellite. Television includes a television with a built in VCR or DVD player; and

III. Comments Regarding the Licensing of Covered Electronic Recyclers

A. Application Requirements

11. Commenter – Michael Harder, Hebron resident

Comment

Section 22a-638-1(b)(3)(L), pages 12-13, requires that a CER list in its application, the countries that CEDs will go to and through. Is the Department in a position to adequately deal with the details of this issue?

Response

The commenter is correct that if a CER intends to export CEDs, section 22a-638-1(b)(3)(L) requires the CER to identify the countries to which CEDs will be exported, including any transit countries through which CEDs will travel. During the stakeholder process, some recyclers felt this requirement was important to ensure that there adequate safeguards to deter illegal dumping of e-waste in developing countries. The Department agrees that CEDs being mismanaged in third world countries has been and continues to be a problem with respect to e-waste. The Department would be hampered and unable to evaluate this concern unless it is aware of the countries through which CEDs will travel or where CEDs are supposed to end up. No recycler, including

those involved in the stakeholder process, described this requirement as onerous or otherwise objected to this provision. This requirement also provides a basis for ensuring that a CER sends CEDs only to those countries identified in a CER's application or in updated information approved by the commissioner pursuant to section 22a-638-1(b)(8). Sending CEDs to another country would provide a basis for the Department to take action against a CER, including, but not limited to, revoking a CER's license.

12. Commenter – Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

With respect to section 22a-638-1(b)(3)(B), page 6, any request for pricing and price per pound is proprietary and confidential and should not be sought as part of the CER application process.

Response

As part of the CER application process, CERs must provide, among other things, a list and description of current and previous projects or contracts, the dollar value of such projects or contracts, including the price per pound, if ascertainable, charged by the applicant. This information is helpful to the Department in assessing an applicant's experience with managing e-waste. Obtaining price per pound information from prior contracts provides a basis for comparison and helps the Department assess the overall reasonability of an applicant's proposed fees.

If an applicant believes that such information constitutes a trade secret or is otherwise exempt from public disclosure under the state's Freedom of Information Act, Conn. Gen. Stat. § 1-200 et seq., an applicant must make this claim, along with an explanation for this claim, with its application. Under the state's Freedom of Information Act, the Department cannot automatically treat such information as being exempt from disclosure. Rather, after receipt of such information the Department would have to determine, based upon the explanation provided by an applicant, whether or not such information was exempt from disclosure. The Department has decided to adopt the rule as proposed.

13. Commenter – Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

With respect to section 22a-638-1(b)(3)(j), page 12, the commenter states that “unless the recycling companies are being regulated as a utility, this paragraph should be stricken.” This comment refers to a provision that requires an applicant to explain why the fees proposed by an applicant are greater than the fees charged or received by an applicant for similar services in any existing contract or agreement.

Response

While, the Department believes that a CER is entitled to fair market value for their services, manufacturers should not have to pay more for identical or similar services provided by a CER, unless a CER can explain the reason for any such difference. Requiring a CER to provide information regarding the fee charged or received for similar services will help the Department assess whether a CER’s proposed fees are reasonable. The Department has decided to adopt the rule as proposed.

14. Commenter – Joe Galiatsatos, Green Monster Recycling

Comment

With respect to section 22a-638-1(b)(3)(B), page 6, the commenter stated that requiring a recycler to have five years of experience in the business in order to qualify as a CER was unfair. His business was less than five years old and he believed he should have a chance to become a CER.

Response

Section 22a-638-1(b)(3)(B) requires that an applicant describe the applicant’s qualifications and experience for the past five years in managing and recycling electronic waste, including CEDs. The provision requires that an applicant provide the Department with its most recent experiences, namely those in the past five years. Additional qualifications and experience beyond the past five years may be provided, but are not required. The commenter may have misconstrued this provision; the provision does not require that an applicant have five years of experience to become a CER, rather it prescribes, from a timing standpoint, what qualifications and experiences must be provided with an application. The Department has decided to adopt this provision as proposed.

15. Commenter – Valerie Rickman, Assistant Manager, Environmental Affairs, Information Technology Industry Council

Comment

All the information needed to meet the requirements for CERs means higher costs passed on to manufacturers. The commenter urges the Department to streamline the registration process for recyclers as much as possible.

Response

The Department has attempted to streamline the regulations as much as possible while maintaining a high standard for the recycling of CEDs. The commenter did not provide any specific examples of where the regulations could be further streamlined. The Department is requiring information it believes is necessary to ensure the program is operating properly. No change to the regulations has been made in response to this comment.

B. Qualified Reimbursable Costs

16. Commenter – Carole Cifrino, Division of Solid Waste Management, Maine Department of Environmental Protection

Comment

Section 22a-638-1(b)(3)(I), pages 11-12, concerns the fee proposed by a CER when a manufacturer directs that CEDs be returned to a manufacturer or a facility designated by a manufacturer. Clause vii of this subparagraph refers to “storage of CEDs prior to physical transfer to a manufacturer or to a facility designated by the manufacturer.” The commenter suggests that clause vii clarify whether the cost of transporting CEDs to the manufacturer’s facility or to a facility designated by a manufacturer is the responsibility of the manufacturer or can be included in the fee proposed by a CER.

Response

The Department agrees that as proposed section 22a-638-1(b)(3)(I)(vii) was not as clear as it should be. The Department intended the regulation to mean that a CER will store CEDs at the CER’s facility and that a manufacturer is responsible for cost of transporting these CEDs to a manufacturer’s facility or a facility designated by a manufacturer. As such, the Department is amending section 22a-638-1(b)(3)(I)(vii), to clarify that in this context, the cost of transporting

CEDs from a CER's facility to a manufacturer's facility or a facility designated by the manufacturer is the responsibility of the manufacturer. As amended section 22a-638-1(b)(3)(I)(vii) will read as follows:

- (vii) storage of CEDs prior to physical transfer to a transporter who will transport the CEDs for or on behalf of a manufacturer, at the manufacturer's expense;

Consistent with this discussion, a change will also be made in the section of the regulations regarding amounts owed by a manufacturer and billing. The formula for calculating the amount owed makes reference to the "cost of returning" CEDs to a manufacturer or a facility designated by a manufacturer. See section 22a-638-1(j)(4), page 48, item D and section 22a-638-1(j)(6), page 49, item D. For the same reason noted above, this phrasing may be misleading and is being revised to refer instead to CEDs being returned to a manufacturer or facility designated by a manufacturer. This will make item D, in what is now sections 22a-638-1(j)(4) and (j)(7), track the language in the beginning portion of these subdivisions as well as the language in section 22a-638-1(b)(3)(I). For these reasons, the following revisions are hereby made:

section 22a-638-1(j)(4), item D:

- D = fee for the total cost for a computer, monitor or printer, including any orphan devices, being returned to a manufacturer or a facility designated by a manufacturer, expressed as a price per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

section 22a-638-1(j)(7), item D:

- D = fee for the total cost for televisions being returned to a manufacturer or facility designated by a manufacturer, expressed as a price per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

17. Commenter – Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

With respect to sections 22a-638-1(b)(3)(H) and (I), pages 10 and 11, the commenter requests that rent, capital carrying costs, etc, for providing equipment and buildings to conduct recycling be added to the list of reimbursable costs.

Response

By providing that an application to become a CER could be rejected based upon the fees proposed by an applicant, see section 22a-638-1(b)(5)(A)(viii), the Department is trying to provide incentives to keep the costs of recycling low while still requiring compliance with the standards established in the regulations. In listing qualified reimbursable costs in sections 22a-638-1(b)(3)(H) and (I) the Department focused on the most direct costs associated with transporting and recycling CEDs. The costs mentioned by the commenter are remote and indirect and may be difficult to separate from costs that are not associated with recycling CEDs. For example, rent may include space for parking, offices, and other non-CED related activities. Trying to establish what portion of rent should be attributed to management of CEDs may prove difficult, especially if at a recycling facility a recycler engages in other non-CED related activities. The same is true for the other costs noted by the commenter. Having said this, the Department recognizes that the types of costs noted in sections 22a-638-1(b)(3)(H) and (I) are intended to be both flexible and broad. It will be up to each CER to determine the types of costs to include in the categories of costs noted in the regulations. For these reasons, the Department is adopting sections 22a-638-1(b)(3)(H) and (I) as proposed.

C. Considerations for Approving or Denying an Application

18. Commenter – Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

With respect to section 22a-638-1(b)(5)(A)(viii)(I) to (IV), page 15, regarding the fees proposed by an applicant, the commenter believes that this section is inflexible and does not take into account the different cost structures of each company or any specific circumstances. The commenter also asks if companies will have the ability to adjust their price if they are outside the parameters noted in the regulations.

Response

The Department does not agree that the provisions cited by the commenter are inflexible or fail to take into account the different costs structures under which CERs may operate. The provisions provide a framework for the Department to evaluate that portion of a CER's application regarding proposed fees. The provisions allow for a range of fees to be approved by the commissioner. By allowing for a range of fees to be approved, the provisions cited by the commenter provide flexibility and take into account different cost structures. However, not every fee or every cost structure can or should be eligible for approval. Section 22a-638-1(b)(5)(A)(viii)(I) to (IV) establishes a basis for rejecting proposed fees that exceed certain population standard deviations, exceed the prevailing rates in the industry or without justification, exceed the fees that a CER charges for the same or similar services provided to others. Finally, prospective applicants should be aware that there will not be an opportunity for adjusting fees if the Department determines that they are outside the parameters noted by the commenter. Providing such an opportunity would remove the incentive for a CER to, in the first instance, submit its most competitive proposal. To make this clear, the Department is adding a provision to section 22a-638-1(b)(2) noting that the Department will not recommend fees and will not seek or recommend revisions to the fees proposed by an applicant. Again, this will help ensure that an applicant seeking to become a CER submits its most competitive proposal. For these reasons, the Department is adopting section 22a-638-1(b)(5)(A)(viii)(I) to (IV) as proposed, and is revising section 22a-638-1(b)(2) as follows:

(2) (A) To apply to become a CER a person shall submit to the commissioner a complete application on a form prescribed by the commissioner. Applications, including renewal applications, will only be accepted for a sixty (60) day period, specified by the commissioner, each year. The commissioner shall provide notice of the commencement of the sixty (60) day period to submit applications at least thirty (30) days before the sixty (60) day period begins. The commissioner may provide such notice through a posting on the department's website, advertising in trade publications, sending notice to trade associations and the most recent list of approved CERs, or any other method intended to provide notice. The commissioner shall provide notice, by mail or by e-mail, directly to anyone who requests that such direct notice be provided. No application will be reviewed if it is submitted before

or after the sixty (60) day period designated by the commissioner for the receipt of applications.

(B) Nothing in this subdivision shall prevent the commissioner from requesting, or an applicant from submitting, supplemental information regarding an application that was submitted within the sixty (60) day period for receipt of applications, except at no time shall the commissioner solicit, seek or recommend, from the applicant or any other person, a revision or modification to the fee proposed by an applicant pursuant to subdivisions (3)(H) and (I) and subdivision (5)(B) of this subsection. In addition, the commissioner shall not indicate or inform an applicant or any other person, at any time, that a particular fee be proposed pursuant to subdivisions (3)(H) and (I) and subdivision (5)(B) of this subsection, or that a revision or modification to any such fee proposed in an application submitted pursuant to this subdivision or subdivision (11) of this subsection, will increase, decrease or alter, in any way, the likelihood that such application will be approved or disapproved.

D. Multi-Year Approvals

19. Commenter – Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

With respect to section 22a-638-1(b)(5)(B), page 15 and 16, there should be a timeframe for the commissioner to approve a new fee for CERs in cases where there is a multi-year approval.

Response

This comment concerns that portion of the regulations that permits the commissioner to issue a license to a CER for up to three years. Should a multi-year license be issued, a CER is still required to submit proposed fees, specified in section 22a-638-(b)(3)(H) and (I), each year. Until the commissioner approves a new fee, a CER's prior fees remain in effect. As the commenter notes, that there is no specific timeframe for the commissioner to approve of new fees proposed by a CER. The commissioner will be assessing a CER's newly proposed fees against the proposed fees submitted by all other applicants. The commissioner will likely take action once that assessment is completed. Including an artificial deadline for the commissioner to approve fees under section 22a-638-1(b)(5)(B), has the potential to conflict with the need to be able to

evaluate the applications submitted by other applicants. For these reasons, the Department is adopting the rule as proposed.

E. Modifications to Information in an Application That Has Been Approved

20. Commenter - Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

Section 22a-638-1(b)(8)(A), page 17, the commenter believes that this provision does not allow for any innovation on behalf of processors.

Response

While the Department encourages innovation, the commissioner's approval of a CER's application is based upon the information provided in the application. The Department understands that this information may change and has provided a process for making changes to such information. If a CER seeks to modify the information covered by subdivision (8), the CER may submit a request to the commissioner for approval of the modification before any such change takes place. Other changes, as set forth in section 22a-638-1(b)(9), can be made simply by notifying the commissioner. In short, the regulations do not prohibit a CER from making changes to the information provided in its application, including, but not limited to, changes in processes or markets. As such, the Department believes that the regulations, including sections 22a-638-1(b)(8) and (b)(9), appropriately allow for and will not stifle innovation. The Department has decided to adopt this provision as proposed.

F. Transferring Approvals

21. Commenter - Michael Harder, Hebron resident

Comment

With respect to section 22a-638-1(b)(13), page 20, the Department should make clear that only the commissioner actually transfers the approval issued to a CER. The proposed language has the commissioner both approving transfers and transferring approvals.

Response

Under section 22a-638-1(b)(13), no person can act under the authority of an approval that has been issued to another person. Section 22a-638-1(b)(13) does allow a license or an approval issued by the commissioner to a CER to be transferred to another person, provided the transfer has first been approved by the commissioner. The Department acknowledges that in section 22a-638-1(b)(13) a phrase in subparagraph (A) states “the transfer has been approved” and that subparagraph (D) uses the phrase “when transferring an approval”. However, when taken in context, the Department believes that meaning of these terms and this section is clear and does not need revision. As such, the Department has decided to adopt this provision as proposed.

IV. Comments Regarding General Standards for the Reuse, Refurbishment and Recycling of CERs and the Disposal of Waste or Residue Generated from the Recycling of CERs

A. General Comment

22. Commenter - Kim O'Rourke, Recycling Coordinator, City of Middletown

Comment

The commenter was unclear whether or not the regulations required of CERs also applied to downstream vendors. The commenter supports similar standards for both. See also comment 29, below.

Response

As the commenter may be aware, the proposed regulations do not use the term “downstream vendor.” Instead, sections 22a-638-1(c) to (e), inclusive, focus on the CER and require that a CER ensure that the requirements of the regulations are met. The regulations then, do not apply directly to a downstream vendor, but rather, require that a CER ensure that its downstream vendors comply with the applicable regulations. This is the case whether a CER arranges for but does not itself performs any activities, or a CER performs all activities without assistance from any other entity. The Department is not making any revisions to the regulations in response to this comment.

23. Commenter – Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America

Comment

With respect to sections 22a-638-1(c) to (e), inclusive, there are no separate requirements for collection-only facilities versus collection and recycling facilities. There is no reason a collection-only facility should be held to the same standards as a recycling facility since no processing is happening there.

Response

The Department acknowledges that the standards that a CER must ensure are followed in sections 22a-638-1(c) to (e), inclusive, do not make a distinction between a facility that collects or stores CEDs only and a facility that engages in other activities, such as recycling CEDs. A facility that only collects CEDs still raises environmental concerns since the CEDs being stored contain a number of hazardous constituents, including, but not limited to, lead, mercury, cadmium, nickel, and zinc, all of which can cause pollution if released into the environment. In addition, such facilities may pose similar, if not greater risks than recycling facilities, regarding data and facility security. The commenter does not point to a specific requirement for a collection facility that it considers onerous or unnecessary.

There are certain provisions in these regulations, e.g., section 22a-638-1(e)(6)(A)(minimum insurance requirements), section 22a-638-1(e)(7)(closure) that a CER must ensure are followed only if a facility engages in certain activities, such as shredding circuit boards. Provided a storage facility is not engaged in such other activities, these provisions would not apply to a facility that only collects CEDs. The Department declines to adopt specific provisions only for facilities that collect CEDs, and unless otherwise specified in this Statement of Reasons, is adopting sections 22a-638-1(c) to (e), inclusive, as proposed.

B. Separation of CEDs

24. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

With respect to section 22a-638-1(c)(2), page 21, the commenter recommends inserting “and to manufacturers” after “available to the commissioner” to allow manufacturers to see the records

pertaining to how a CER separates CEDs from households outside of Connecticut or from non-household sources.

Response

The provision cited by the commenter requires, among other things, that a CER ensure that CEDs provided by residents in Connecticut are identified, tracked and differentiated from other computers, monitors, printers or televisions provided by non-residents or from sources outside Connecticut. The manufacturers presumably have an interest in this provision since it helps prevent them from paying for the transportation and recycling of e-waste not covered by the regulations. For this reason, the Department agrees with the commenter that the written procedures used by a CER, pursuant to section 22a-638-1(c)(2), would be of interest to and should be made available to a manufacturer upon request. As such, section 22a-638-1(c)(2) is hereby modified as follows:

(2) Separation of CEDs. A CER shall ensure that from the initial collection of a CED by a municipality or other person, until it is weighed and inventoried for billing purposes, there is a system in place to identify, track and differentiate CEDs from all other computers, monitors, printers and televisions from households outside Connecticut or from non-household sources. A CER shall maintain written procedures regarding such identification, tracking and differentiation and shall make such procedures available to the commissioner, or to a registered manufacturer, upon request.

C. Record of Televisions and Verification of Manufacturers

25. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

With respect to section 22a-638-1(c)(4), page 22, the commenter recommends deleting the requirement for CERs to notify DEP of brands of televisions that are not on the list of registered manufacturers. The commenter believes that this requirement is onerous because there is no other reason for a CER to look at each brand of television and the chance of finding brands that have not yet been registered with DEP is remote.

Response

Pursuant to section 22a-638-1(o), each manufacturer of a CED must register with the Department each year. Pursuant to Conn. Gen. Stat. § 22a-634(a), the Department will compile, post and maintain a list of manufacturers in compliance with chapter 446n of the General Statutes, including, but not limited to, the requirement to register with the Department. CERs will handle CEDs and through this handling, CERs can easily identify the manufacturers of CEDs. For this reason, the Department included a requirement that if a CER becomes aware of a manufacturer that is not on the Department's list of registered manufacturers, that the CER notify the commissioner. The Department does not believe that this requirement is onerous and may help to identify manufacturers that have not registered as is required by law. For this reason, the Department is adopting section 22a-638-1(c)(4) as proposed.

D. Exports

26. Commenter – Barbara Kyle, National Coordinator, Electronics TakeBack Coalition

Comment

U.S. EPA's Plug-in Guidance, which the Department uses as a baseline to establish standards for recyclers, states that exports to non-OECD countries are not legal without a bilateral agreement and there is no bilateral agreement in place with the US and any non-OECD countries. Why ask recyclers to determine if their shipment is legal when Plug-In says it is not?

Response

Guideline # 4 of Plug-In concerns the exports of CEDs. There is a note to this guideline which states, in part, that:

[u]ntil such time as the U.S. becomes a party to the Basel Convention, no country that is a party to Basel, but not a member of the OECD ("the Organisation for Economic Cooperation and Development") can legally accept hazardous waste exported from the U.S. absent a bilateral agreement between the governments under Article 11 of the Basel Convention. At this time, the U.S. has no bilateral agreement with any countries outside of the OECD that provide for the export of hazardous waste.

While this note could be read to mean that no country that is not a member of the Basel Convention and a member of the Organisation for Economic and Co-operation and Development

(“OECD”) can, absent a bilateral agreement, legally accept hazardous waste into such country, in fact the situation is much less clear. The caveats many countries provided when becoming a party to the Basel Convention make the meaning of that Convention less clear. Moreover, if indeed there are any importation prohibitions, this might change in the future if the United States ratifies the Basel Convention (the United States is party to the Convention but has not ratified it) or enters into a bilateral agreement with another country. Also, it is unclear whether residentially generated CEDs, the CEDs covered by the proposed regulations, would qualify as a “hazardous waste” as that term is used in the note from Plug-In. Such e-waste, from residential sources, is not a hazardous waste under the state and federal hazardous waste program. See Conn. Agencies Regs. § 22a-449(c)-101(a)(1), incorporating by reference 40 CFR 261.4(b)(1). The proposed regulations take all of this into account, including future changes, by requiring compliance with all of the applicable export requirements of the United States as the requirements of all importing and transit countries. See section 22a-638-1(c)(6)(A). For these reasons, the Department has decided to adopt the rule as proposed.

27. Commenter - Barbara Kyle, National Coordinator, Electronics Take Back Coalition

Comment

The competent authority of a non-OECD country must, under their laws, approve of a specific shipment of a specific cargo from a specific country. Such an authority cannot provide a blanket approval that the country legally accepts such imports. The commenter suggests that the Department change the language of section 22a-638-1(c)(6)(B), page 23, so that the competent authority approves of each shipment and eliminate the option for EPA to provide confirmation that the shipment is legal.

Response

The provision, modeled from a provision in the state of Washington, allows either U.S. EPA or other federal agency to confirm, prior to export, that the importing country can legally accept the importation of CEDs. The Department has not received any information, from the commenter or others, and has no reason to believe that confirmation of this fact from EPA or other federal agency is not sufficient or is otherwise problematic. In short, the proposed language provides

proper safeguards for ensuring the legality of shipments overseas and for this reason no change is being made to the rule as proposed.

28. Commenter - Barbara Kyle, National Coordinator, Electronics Take Back Coalition

Comment

Section 22a-638-1(c)(6)(C)(ii), pages 23-24, should clarify that CRT glass that is not crushed into cullet is not an industrial feedstock to avoid any confusion about whole CRTs being exported for refurbishment into other CRT products.

Response

Except as provided for in section 22a-638-1(c)(6)(C)(iii), section 22a-638-1(c)(6)(C) provides that prior to export a CER shall ensure that any person exporting a CED, or component of a CED, (i) removes certain designated materials, including but not limited to CRTs and CRT glass, and (ii) adequately processes CRTs and CRT glass for use as an industrial feedstock prior to export. This provision was taken virtually verbatim from Plug-In.

The commenter's suggestion that, in the context of CRT glass, the phrase "adequately processes...for use as an industrial feedstock" means crushed into cullet, would seemingly make the Department's rules much more stringent and less flexible than EPA's Plug-In guidelines. Plug-In simply does not say that CRT glass must be crushed into cullet prior to export. While crushing is certainly one way to process CRT glass into an industrial feedstock, there may be others. For instance, monitors may be processed in preparation for being recycled into televisions without crushing CRT glass. (Note, if monitors are recycled in this fashion a CER would still need to comply with section 22a-638-1(c)(6)(C)(i) prior to export). Other forms of recycling may also emerge in the future. Since CRT glass may be processed for use as an industrial feedstock in ways other than crushing, the Department has decided to retain the language of the proposed regulation.

29. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition
Barbara Kyle, National Coordinator, Electronics Take Back Coalition

Comment

With respect to section 22a-638(c)(6), page 22, Margaret Hall recommends clarifying that what a CER must ensure applies to all downstream vendors. Barbara Kyle made a similar comment, namely that the intent of section 22a-638-1(c)(6) regarding exports is that the CER is responsible for any downstream vendor's compliance with the requirements in section 22a-638-1(c)(6). The commenter suggests adding "including any downstream vendor" to this section to clarify this intention.

Response

This comment is a specific application of the more general comment regarding CERs and the requirement in the regulations that a CER ensure that its downstream vendors comply with any applicable regulations. See the comment and response to #22 above. Accordingly, a "downstream vendor" engaged in an activity specified by section 22a-638-1(c)(6) on behalf of a CER, the CER would remain responsible for ensuring compliance with this regulation. The Department is declining to add any particular provision to clarify this, since it does not want to make the language of section 22a-638(c)(6) where this requirements is imposed different than the language of other sections of the regulations which impose a similar requirement. Accordingly, the Department is adopting this provision as proposed.

E. Reporting

30. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

With respect to section 22a-638-1(c)(7)(E), page 26, the commenter suggests removing from the CER reporting requirement the need to provide "any other information requested by the commissioner," although the commenter stated that she would withdraw her objection if no potential CER objected to this provision. The commenter felt that this provision is too broad and vague.

Response

As an initial matter, the Department notes that no other commenter objected to this provision, and so it can be treated as though the comment was withdrawn. Having said that, as this is a new

program, the Department may not be able to specify in advance every type of information to be reported by a CER regarding the implementation of the program. The provision in question allows the Department the flexibility to seek information that is otherwise not listed in section 22a-638-1(c)(7) and can be especially helpful for a future circumstance that the Department does not presently foresee. This is commonly used in other Departmental programs. For all these reasons the Department is adopting this provision as proposed.

F. Record-keeping

31. Commenter - Michael Harder, Hebron resident

Comment

A CER must maintain records of all attempts to reuse, refurbish and recycle CEDs. The regulations also require that a CER maintain records demonstrating that exports comply with all applicable export requirements of the US and the requirements of all importing and transit countries. Does the Department have the resources to delve into these details? The commenter suggests not including these record-keeping requirements and adding them to the regulations in the future if warranted.

Response

Each record-keeping requirement in the regulations was added for a reason and the Department was mindful of not unnecessarily requiring that records be maintained. In general, maintaining records will help document that the requirements of the regulations have been followed or whether a violation may have occurred. The records are not solely for the Department's benefit. The manufacturers, those paying for the recycling of CEDs, will also have the ability to audit these records. These records are commonly required for licensing and other regulatory programs and should not be a burden for recyclers. There was no objection raised by potential recyclers during the stakeholder process or public comment period to the proposed record-keeping requirements. For all these reasons the Department is adopting the record-keeping provisions as proposed.

32. Commenter - Michael Harder, Hebron resident

Comment

With respect to section 22a-638-1(e)(B), page 31, a CER must maintain records of technical or economic infeasibility if waste disposal does not include energy recovery. Is this type of record keeping necessary?

Response

The proposed regulations require that a CER ensure that reuse, refurbishment and recycling techniques be used to the fullest extent practicable, taking into account economic and technical feasibility, to minimize disposal of CEDs and their components. See 22a-638-1(c)(1). If material from a CED cannot be reused, refurbished or recycled, section 22a-638-1(e)(1)(B) requires that a CER consider whether the waste has value for energy recovery and ensure that preference is given to waste-to energy incineration over incineration without energy recovery or to land disposal. If wastes have value for energy recovery, but a CER deems energy recovery technically infeasible, a record of this determination must be made and maintained. This regulatory scheme aims to ensure that any waste is put to its best and highest use instead of being disposed of in a landfill. As the aforementioned is required by Plug-In, pursuant to section 22a-632(b), it is also required by the Department's regulations. Maintaining a record to document the CER's determination noted above is not an onerous requirement and the Department has not received any negative comments from potential recyclers regarding this provision. As such, the Department is adopting this provision as proposed.

V. Comments Regarding Specific Standards for the Reuse or Refurbishment of an Intact CED for Its Original Intended Purpose

A. General Comment

33. Commenter - Michael Harder, Hebron resident

Comment

Section 22a-638-1(d), pages 27-30, inclusive, specifies standards for CEDs being reused or refurbished. These standards include, among others, certification of suitability for reuse/refurbishment, shipping requirements, a requirement that CEDs meet the specifications of the consignee, and maintaining certain records. The commenter suggests that these provisions are business related and not of sufficient interest to the Department and should be deleted from the regulations.

Response

During the stakeholder process, several recyclers emphasized that detailed records need to be maintained on CEDs destined for reuse and refurbishment because of the potential for abuse. The requirements cited by the commenter are intended to ensure that CEDs destined for reuse or recycling are in fact reused or recycled. Moreover, a number of these requirements are required by Plug-In, guideline 5, and, as such, pursuant to Conn. Gen. Stat. § 22a-632 (b), have been included in the regulations. For these reasons the Department is adopting these provisions as proposed.

B. Determining Whether to Reuse or Refurbish A CED

34. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

With respect to section 22a-638-1(d)(2), page 28, the commenter recommends clarifying the language about the decision to recycle, but not reuse or refurbish a CED. The current provision allows a CER to make a determination to recycle, but not reuse or refurbish a CED without giving a specific reason, such as the age of the CED or economic reasons.

Response

Section 22a-638-1(d)(2) specifies certain requirements for CEDs being reused or refurbished. The Department added language to section 22a-638-1(d)(2) to make clear that the requirements for CEDs being reused or refurbished would not apply if a CER has already determined that a CED will not be reused or refurbished, but instead will be recycled. A CER can make the decision to recycle and not reuse or refurbish a CED based on economic, technical or other factors. For purposes of this program, the Department does not see the need for, or the benefit of, requiring that a CER specify the reason for not reusing or refurbishing a CED. Under this program, even if a CED is not reused or refurbished, it will be recycled. As such, the Department has decided to adopt section 22a-638-1(d)(2) as proposed.

C. Record-keeping

35. Commenter – Dave Smith, Director of Sales, WeRecycle! LLC

Comment

With respect to section 22a-638-1(d)(5)(D), page 29, the commenter believes that the requirement that a CER disclose the amount paid for CEDs intended for reuse or refurbishment is unreasonable and unnecessary. At a minimum, the commenter recommends that this provision should be clarified and that any information provided be kept confidential and not subject to the state Freedom of Information Act.

Response

As an initial matter, the Department notes that section 22a-638-1(d)(5)(D) requires that a CER maintain a record of the amounts paid for CEDs being reused or refurbished. However, while a CER may be required to provide this information if requested by the commissioner, absent such a request, section 22a-638-1(d)(5)(D) does not require the automatic disclosure of this information. Maintenance of this record is important to ensuring that CEDs intended for reuse or refurbishment are in fact reused or refurbished. The price paid for refurbished or reused CEDs may well be indicative of whether or not the CEDs were actually reused or refurbished and may help to distinguish between valid and sham claims concerning the reuse or refurbishment of CEDs.

If an applicant believes that such information constitutes a trade secret or is otherwise exempt from public disclosure, an applicant can and should make this claim with its application, including an explanation for its claim, under the state's Freedom of Information Act, Conn. Gen. Stat. § 1-200 et seq. Under this law, as currently written, there is no mechanism for the Department to automatically treat such information as protected from disclosure.

For the reasons noted above, the Department has decided to adopt the rule as proposed.

VI. Comments Regarding Specific Standards for the Recycling of CEDs and the Disposal of Waste or Residue Generated from the Recycling of CEDs

A. General Comment

36. Commenter - Michael Harder, Hebron resident

Comment

Certain provisions of section 22a-638-1(e) establish requirements for data security, employee training, facility security, etc. that would seem to be business issues and of less concern to the Department. The commenter questions whether these requirements should be retained in the final regulations.

Response

The issue of data security and the misuse of data taken from computers left by residents was raised by the legislature during the debate of the bill that led to the enactment of chapter 446n. The Department was directed to address data security in the regulations and so it has. Facility security is one aspect of data security; it requires that computers remain in secure areas of a facility so that the data remains secure. During the stakeholder process, recyclers indicated that they had stringent procedures in place for data security and that therefore the proposed requirements were necessary and appropriate. Certain other provisions regarding employee training came from EPA's Plug-In guidance and have been incorporated into the regulations pursuant to Conn. Gen. Stat. § 22a-632(b). For these reasons, the Department is adopting these provisions as proposed.

B. Financial Assurance or Other Guarantee

37. Department Revision

Comment

During the course of writing this Statement of Reasons, the Department obtained information concerning the requirement in section 22a-638(e)(7)(C), page 39, regarding financial assurance for closure. As proposed, this financial assurance requirement applied when the owner or operator of a facility engaged in the activities noted in section 22a-638-1(e)(7)(A), namely, shredding circuit boards, recycling shredded circuit boards, or receiving CEDs or components of CEDs that contain or consist of circuit boards, CRTs, batteries, mercury-containing devices, or any materials containing polychlorinated biphenyls (PCBs), including, but not limited to, ballasts. Upon inquiry of some recyclers, government officials and an industry expert, it appears that some facilities where the activities noted above take place may not have financial assurance.

Under the proposed regulations, such a facility would not be eligible to participate, either as a CER, or as a partner of a CER, in the program established under chapter 446n of the General Statutes. Moreover, while the Department believes that it is a good practice for facilities that engage in the activities noted above to maintain financial assurance for closure, the Department is concerned about ensuring that there is a sufficient pool of qualified applicants to implement the program. In addition, the Department recognizes that the proposed financial assurance requirements may not function as well as intended without making significant revisions to address, among other things, who would be the beneficiary of such instrument or guarantee, what would be acceptable coverage, what must the provisions of a financial assurance say, and who will administer funds from a financial assurance. Finally, it is the Department's understanding that guideline #6e of Plug-In only requires financial assurance when it is required by applicable laws and regulations of the state that a facility is located in.

Response

For all of these reasons, the Department has revised section 22a-638-1(e)(7)(C) to require financial assurance only when it is required by the state that a facility is located in. As revised this section will read:

(C) A CER shall ensure that the owner or operator of a facility, subject to subparagraph (A) of this subdivision, establishes and maintains an irrevocable financial assurance instrument or other guarantee to cover 100% of the costs of closing its facility, including any revisions to the closure plan and cost estimate required in subparagraph (B) of this subdivision, when, apart from this subdivision, any such assurance is required by applicable laws and regulations of the state or locality where a facility is located.

As a corollary to this revision, the Department is also revising section 22a-638-1(b)(3)(G)(vi), page 10, to reflect the revision discussed above. Clause (vi) will be revised and a new clause (vii) added as follows:

(vi) for each recycling facility and each disposal facility subject to the requirements of subsection (e)(6)(A) of this section, evidence that each facility has the insurance required by subsection (e)(6) of this section; and

(vii) for each recycling facility and each disposal facility subject to the requirements of subsection (e)(7)(A) of this section, evidence that each facility has the financial assurance or other guarantee, as may be required by subparagraph (e)(7)(C) of this section.

C. Audits

38. Commenter - Dave Smith, Director of Sales, WeRecycle! LLC

Comment

Section 22a-638-1(e)(8), page 40, regarding audits should be amended to make clear that manufacturers are not allowed access to confidential business information.

Response

While section 22a-638-1(e)(8) does not address the issue of confidentiality as between the manufacturers and recyclers, the Department anticipates that any such conflicts will need to be resolved on a case-by-case basis. Since manufacturers are paying for work to be performed, section 22a-638-1(e)(8) provides the manufacturers with the ability to conduct an audit regarding such work. While the commenter did not make clear the particular nature of the concern, it is conceivable that a recycler employs a process that a recycler legitimately claims to be a trade secret and as such may have concerns about providing a manufacturer with access to any such process without adequate protection. Including a provision, as suggested by the commenter, with a blanket prohibition preventing manufacturers from gaining any access to what a recycler believes is “confidential” tilts this balance too much in favor of the recyclers and overlooks the ability of both parties to reach an agreement regarding this matter. If an issue arises concerning a manufacturer seeking access to what a CER or recycler believes is confidential information, it is best to leave this as a matter to be worked out between the parties, rather than trying to formulate a rule applicable to all situations. For this reason, the Department is adopting section 22a-638-1(e)(8) as proposed.

VII. Comments Regarding Determining a Manufacturer’s Market Share

A. Basis for Determining a Manufacturer’s Market Share

39. Commenter – Carole Cifrino, Division of Solid Waste Management, Maine Department of Environmental Protection

Comment

In section 22a-638-1(g)(2) the Department should include the option of determining market share based on the weight of a product sold. Canada and other states are using this approach because recycling charges are based on weight.

Response

The governing statutes, Conn. Gen. Stat. §§ 22a-630(d) and 631(a), state that market share for the Connecticut program shall be determined based on market share data, which is defined by reference to the sales of a particular product, not the weight of the product sold. The statutes do not include a provision to allocate market share based on weight. For this reason the Department is adopting section 22a-638-1(g)(2) as proposed.

40. Commenter - Joe Nardone, Vice President of Business Development, Eco International

Comment

With respect to section 22a-638-1(g), page 42-43, the source of what are market shares for the various Original Equipment Manufacturers (“OEMs”) is not clearly defined. The commenter seeks an electronic link to that information.

Response

The market share for manufacturers will be determined based upon the number of units shipped, retail sales data, consumer surveys or other nationally available market share data, as provided for in section 22a-638-1(g)(2). There may not be a single electronic link to this type of information and so the Department has not revised the regulation to require such a link, although the market share determination made by the commissioner will be posted on the Department’s website and mailed to each manufacturer. See section 22a-638-1(g)(3). A manufacturer seeking to better understand or even rebut the commissioner’s market share determination can always request that the Department provide additional information about the source of the market share data. For these reasons, the Department is not amending the regulations to provide an electronic link to the source of the Department’s market share determination.

Based upon this comment, however, the Department has decided, on its own, to make two revisions to section 22a-638-1(g)(2). First, the Department has decided to add the manufacturers themselves to potential sources of market share data. This was already inherent in the opportunity for submitting rebuttal information noted above. Obtaining market share information from the manufacturers themselves should be one of the options available to the Department upon which a market share determination can be made. The regulations have accordingly been revised to allow for this option. Second, the Department is deleting that portion of section 22a-638-1(g)(2) that requires the market share to be calculated solely by taking the total number of units sold, attributable to a manufacturer, and dividing it by the total number of units sold attributable to all manufacturers. While this approach is sound and the Department may well utilize this approach, this may not be the only or sole methodology to calculate a manufacturer's market share. Through this deletion, while the final rule retains the requirement that a market share determination be based upon information that approximates the total number of units sold by all manufacturers and the number of units sold that are attributable to each manufacturer, the Department will have slightly greater flexibility in the methods for calculating a manufacturer's market share.

Based upon the above, section 22a-638-1(g)(2) is revised as follows:

- (2) For each type of CED, the commissioner shall determine a manufacturer's market share, for the purposes specified in subsection (1) of this section, based upon information that approximates the total number of units sold by all manufacturers for the previous year and approximates the number of units sold that are attributable to each manufacturer. This determination shall be based upon nationally available market share data, including, but not limited to, the number of units shipped, retail sales data, consumer surveys, information provided by the manufacturers, or other nationally available market share data.

B. Rebutting a Market Share Determination

41. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

Under section 22a-638-1(g)(3), page 43, after the commissioner determines a manufacturer's market share, the manufacturer has an opportunity to rebut this determination. The commissioner shall then make a final determination if a manufacturer rebuts the initial determination, however, there is no timeframe for the commissioner to make this decision. The commenter recommends adding a timeframe for the commissioner to make this decision.

Response

The Department needs to determine a manufacturer's market share each year. See section 22a-638-1(g)(1). This determination, for all manufacturers, is central to the administration of the program. As such, the Department is mindful of the need to make timely decisions. Moreover, no manufacturer commented on the need to establish a timeframe for decisions under section 22a-638-1(g)(3)(C). For these reasons, the Department has declined to impose a timeframe for decision within section 22a-638-1(g)(3)(C) and is adopting this provision as proposed.

C. Reimbursing a CER's Costs

42. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

This comment concerns section 22a-638-1(g)(4), page 44. If a manufacturer cannot pay a bill from a CER then the CER will be out the money. The commenter suggests using DEP administrative funds to pay the CER in this circumstance.

Response

When Conn. Gen. Stat. §§ 22a-630(b) and 22a-631(d) were originally enacted they contained provisions that allowed a certain fee and a penalty collected by the commissioner to be deposited into an account that could be used to reimburse CERs for fees not paid by a manufacturer. Both of these provisions, however, were removed by Public Act 09-3, sections 465 and 466. Nor does the Department have any administrative funds out of which it could pay CERs for amounts not paid for by a manufacturer. This risk will need to be borne by a CER. As such, the Department is adopting 22a-638-1(g)(4) as proposed.

VIII. Comments Regarding Amounts Owed By a Manufacturer and Billing

A. General Comment

43. Commenter – Valerie Rickman, Assistant Manager, Environmental Affairs, Information Technology Industry Council

Comment

The commenter states that manufacturers cannot process invoices from any number of recyclers approved by the commissioner because this is too cumbersome and costly. The frequency of the invoices should be limited in some way. The Department should consider a cap on the number of approved recyclers in order to assist manufacturers in processing invoices.

Response

As the program established by chapter 446n of the General Statutes is implemented, the Department recognizes that CERs and manufacturers will need to work together. The Department understands that some CERs and manufacturers may have had no previous working relationship and that relationships between CERs and manufacturers may take time to develop. Nevertheless, the Department is not aware of any specific limitations regarding the manufacturers ability to process invoices from multiple CERs. In addition, the regulations provide that a manufacturer can require that a CER divert a manufacturer's CEDs to a recycler designated by the manufacturer. By having the designated recycler pay invoices to the CER, a manufacturer can limit the number of CERs with which they choose to do business. Moreover, the Department has no basis, and none was provided by the commenter, for selecting the particular number of invoices, frequency of invoices, or number of CERs. Should the comment raised become or remain a problem hopefully it can be resolved between the CERs and manufacturers. If not, the Department may need to revisit this issue in the future, but for now is not making any revisions in response to this comment.

B. Time for Payment

44. Commenters - Richard Abramowitz, Director, Public Affairs, Waste Management Recycle America.

Joe Nardone, Vice President of Business Development, Eco International.

Dave Smith, Director of Sales, WeRecycle! LLC

Comment

With respect to section 22a-638-1(j)(1), pages 45-46, all three commenters strongly oppose the proposal that would allow manufacturers 90 days to pay invoices received from a CER. Joe Nardone and Dave Smith urged the Department to revise this section and require that such invoices be paid within 30 days of receipt. Richard Abramowitz commented that such invoices should be paid within 45 days of their receipt.

Response

During the stakeholder process, some manufacturers indicated that for at least for the initial payment, 90 days for payment of an invoice from a CER was necessary because of the paperwork involved in putting a new vendor into their accounting system. The Department agrees with the commenters, however, that after a CER is in a manufacturer's accounting system and this initial invoice has been paid, that subsequent invoices should be paid in less than 90 days. The commenters have indicated that 90 days is much longer than payment in 30 days, the latter being the timeframe for payment that the commenters note is common practice in the industry. The Department adopts the suggestion of the commenters and has revised the regulations to require, after payment of the initial invoice, payment of all subsequent invoices within 30 days of receipt by the manufacturer. Section 22a-638-1(j)(1) will be modified as follows:

- (1) A CER and a manufacturer shall work cooperatively to ensure implementation of a practical and feasible billing system. A CER shall only submit an invoice regarding a CED generated by a household in Connecticut. Before submission of an invoice to a manufacturer, the CER and each manufacturer shall provide each other with the information necessary to facilitate billing and payment. A CER shall not seek reimbursement for costs related to a CED that was not recycled, or for costs associated with a CED that was refurbished or reused, except as may be provided for by agreement pursuant to subsection (k) of this section. A manufacturer shall pay the initial invoice received from a CER not more than ninety (90) days after the date of receipt of such invoice. Thereafter, all invoices from such CER shall be paid within thirty (30) days of receipt by the manufacturer. A CER shall notify the commissioner, in writing, as soon as possible, whenever a manufacturer is in arrears, for any amount, more than ninety (90)

days. The provisions of subdivisions (2) to (6), inclusive, of this subsection may be varied by agreement between a CER and manufacturer, as provided for in subsection (k) of this section.

C. Amounts Owed for Computers, Monitors and Printers

45. Department Revision

Comment

The manufacturers of computers, monitors and printers are responsible for: 1) CEDs with brands attributable to the manufacturer (a manufacturer's "branded CEDs"), and 2) their share, based upon their market share, of orphan devices collected. Subdivisions (3) and (4) of section 22a-638-1(j), pages 47-48, each contain a formula to determine the amount owed by these manufacturers depending upon whether the CEDs have been recycled or returned to a manufacturer or a facility designated by a manufacturer. Subdivision (3) contains the formula to determine the amount owed for the aforementioned CEDs that are recycled, while subdivision (4) contains the formula to determine the amount owed for CEDs that are returned to a manufacturer or a facility designated by a manufacturer.

The application of the formulas in subdivisions (3) and (4) works when all of a manufacturer's branded CEDs and its share for orphan devices are either recycled or returned to a manufacturer or a facility designated by a manufacturer. The formulas, however, do not, by themselves, take into account that a manufacturer may seek to have its branded items managed differently than its share of orphan devices. For example, a manufacturer may seek the return of its branded items while requesting that a CER recycle its share of orphan devices. The Department understands that some manufacturers are requesting that CEDs be managed in this fashion in at least one other state with an e-waste program.

Response

The Department is revising the formulas in subdivisions (3) and (4) of section 22a-638-1(j), and is adding a new subdivision, to make clear how these formulas would work when a manufacturer chooses to have its branded items and its share of orphan devices managed differently. (The remaining subdivisions of this subsection will be renumbered accordingly).

Under the regulations as revised, the amounts in subdivisions (3) and (4) must be added together to calculate the amount owed by a manufacturer for its branded items and its share of orphan devices.² The Department is also revising subdivision (3) of section 22a-638-1(c) and section 22a-638-1(q)(2) to make clear that before computers, monitors or printers, are returned to a manufacturer or a facility designated by a manufacturer, that a CER must obtain and maintain the total weight of such CEDs. Doing so is necessary for both billing and for programmatic purposes.

Section 22a-638-1(c)(3) is revised as follows:

- (3) Record of Computers, Monitors and Printers and Verification of Manufacturers. For each computer, monitor and printer collected pursuant to this section, a CER shall maintain written documentation that identifies, for each calendar month, the manufacturer's name, the brand and weight of each computer, monitor and printer received, and whether at receipt, the computer, monitor or printer was identified as having been generated by a household in Connecticut. A CER shall also determine the total weight of each type of CED (meaning the total weight of computers, of monitors and of printers, each figured separately) returned to a manufacturer or a facility designated by a manufacturer pursuant to subsection (q) of this section and shall maintain written documentation of the total weight of each type of CED. If a CER receives a computer, monitor or printer that is labeled with a manufacturer's brand and that manufacturer is not on the list of registered manufacturers or the list of manufacturers of orphan devices maintained by the commissioner and posted on the department's website, the CER shall notify the commissioner, in writing, not later than ten (10) days after the receipt of any such

² The Department also notes that if for portions of the same billing period a manufacturer has it return share or its share of orphan devices both recycled and returned to the manufacturer, or a facility designated by the manufacturer, a CER will need to calculate the amounts owed for the time that CEDs are recycled separately from the amount owed for the time that CEDs are returned to a manufacturer or a facility designated by a manufacturer. These separate amounts will then need to be added together. Performing this calculation will entail adding the amounts in subdivisions (3) and (4) twice, once for each time period when CEDs were managed differently. The Department also notes that in such a situation, the value of O (i.e., the total weight of orphan devices) for each period of time must be adjusted to reflect the total weight of orphan devices received by the CER during that time period (not the total weight for the entire billing period).

computer, monitor or printer. The notification shall include the manufacturer and brand of any such computer, monitor or printer, if known.

Subdivisions (3) and (4) of section 22a-638-1(j) are revised as follows:

- (3) The amount due for the period covered by an invoice submitted to a manufacturer for computers, monitors and printers that are recycled, each figured separately, shall be calculated as follows:

$$A_R = [M_R + (O \times S_R)] \times R$$

where:

A_R = the amount due from the manufacturer in U.S. dollars;

M_R = total weight, in pounds, of the brands for which the manufacturer is responsible that are recycled;

O = total weight, in pounds, of orphan devices;

S_R = the manufacturer's *pro rata* share of orphan devices, expressed as a decimal, if the manufacturer's share for orphan devices is recycled by a CER. This amount will be zero if the manufacturer's share for orphan devices is returned to a manufacturer or a facility designated by a manufacturer; and

R = fee for the total cost of transporting and recycling CEDs, expressed as a price in US dollars per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

- (4) The amount due for the period covered by an invoice submitted to a manufacturer for computers, monitors and printers, each figured separately, that are returned to a manufacturer or a facility designated by a manufacturer pursuant to subsection (q) of this section, shall be calculated as follows:

$$A_D = [M_D + (O \times S_D)] \times D$$

where:

- A_D = amount due from the manufacturer in U.S. dollars;
- M_D = total weight, in pounds, of the brands for which the manufacturer is responsible that are returned to a manufacturer or a facility designated by a manufacturer;
- O = total weight, in pounds, of orphan devices;
- S_D = the manufacturer's *pro rata* share of orphan devices, expressed as a decimal, if the manufacturer's share for orphan devices is returned to a manufacturer or a facility designated by a manufacturer. This amount will be zero if the manufacturer's share for orphan devices is not returned to a manufacturer or a facility designated by a manufacturer but is recycled by a CER; and
- D = fee for the total cost for a computer, monitor or printer, including any orphan devices, that is returned to a manufacturer or a facility designated by a manufacturer, expressed as a price in US dollars per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

New section 22a-638-1(j)(5) is added as follows:

- (5) The total amount due for the period covered by an invoice submitted to a manufacturer for computers, monitors and printers, each figured separately, shall be equal to the sum of A_R and A_D as calculated under subdivisions (3) and (4) of this subsection.

Section 22a-638-1(q)(2)(A) is revised as follows:

- (2) (A) Before CEDs are returned to a manufacturer pursuant to subdivision (1) of this subsection, the manufacturer shall submit to the commissioner a written description of how CEDs being returned will be recycled. This written description shall include, at a minimum, the information specified in subparagraphs (C), (D), (E), (G), and if applicable, (K) and (L) of subsection (b)(3) of this section and any other information specified in section 22a-631(e) of the Connecticut General Statutes. The written

description shall also include a written certification attesting to whether all CEDs being returned to the manufacturer or a facility designated by the manufacturer, will be recycled, reused or refurbished in accordance with chapter 446n of the Connecticut General Statutes and this section. Before a CED is returned pursuant to subdivision (1) of this subsection, a CER shall determine the total weight of each type of CED (meaning the total weight of televisions, of computers, of monitors and of printers, each figured separately) returned to a manufacturer or a facility designated by a manufacturer and shall maintain a written record of the total weight of each type of CED.

- (B) A manufacturer requesting that CEDs be returned to it, or to a facility it has designated, pursuant to this subsection shall remain responsible for ensuring that all CEDs are recycled, reused or refurbished in compliance with the requirements of chapter 446n of the Connecticut General Statutes and this section. Whenever any information in the most recent written description submitted to the commissioner pursuant to this subdivision changes, or is inaccurate or misleading, or any relevant information was omitted, a manufacturer shall submit corrected or omitted information, in writing, to the commissioner not later than thirty (30) days after the information changes or is no longer accurate, or the manufacturer knows, or should have known, that relevant information was omitted.

D. Amounts Owed Regarding Televisions

46. Department Revision

Comment

Subdivisions (5) and (6) of section 22a-638-1(j), pages 48-49, each contain a formula to determine the amount each manufacturer of televisions owes for the period covered by an invoice from a CER. Subdivision (5) contains the formula for televisions that are recycled, while subdivision (6) contains the formula for televisions that are returned to a manufacturer or a facility designated by a manufacturer. The application of these formulas, however, is not as clear as it should be when within a billing period certain televisions are recycled while others are returned to a manufacturer or a facility designated by a manufacturer. In this situation, the Department intended that each manufacturer, including those manufacturers that requested that

televisions be returned to them or to a facility designated by them, would be billed, based upon their respective market shares, for the total weight of all televisions that were recycled, and visa versa. The amount owed by each manufacturer would be the sum of two amounts, namely, an amount owed for televisions that were recycled, using the formula specified in subdivision (5) and an amount owed for televisions that were returned to a manufacturer or a facility designated by a manufacturer, using the formula specified in subdivision (6). When calculating these amounts, the term “W” as used in subdivision (5) was intended to mean the total weight only of all of the televisions that were recycled for the applicable billing period, while in subdivision (6), “W” was intended to mean the total weight only of all of the televisions that were returned to a manufacturer or to a facility designated by a manufacturer for the applicable billing period.

Response

The Department is revising the regulations noted below, as well as adding one new subdivision, to remove any potential ambiguity and to clarify this intention. Certain conforming editorial changes have also been made, including, but not limited to, noting the applicable units for the variables in the formulas. Finally, section 22a-638-1(c)(4) has also been revised to make clear that before televisions are returned to a manufacturer or a facility designated by a manufacturer, that a CER must obtain and maintain the total weight of such televisions. Doing so is necessary for both billing and for programmatic purposes.

Based upon the above, the following revisions have been made:

Section 22a-638-1(j)(2)(B)(i) is revised as follows:

- (i) the total weight for all televisions, which shall include separately, the total weight of all televisions recycled and the total weight of all televisions returned to a manufacturer or to a facility designated by a manufacturer;

Sections 22a-638-1(j)(5) and (6) are revised and renumbered as follows:

- (6) The amount due for the period covered by an invoice submitted to each manufacturer for those televisions that are recycled shall be calculated as follows:

$$A = W_R \times MS \times R$$

where:

- A = amount due from the manufacturer in U.S. dollars;
- W_R = the total weight, in pounds, of all televisions that are recycled;
- MS = the manufacturer's market share, expressed as a decimal; and
- R = fee for the total cost of transporting and recycling CEDs, expressed as a price in US dollars per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

- (7) The amount due for the period covered by an invoice submitted to each manufacturer for those televisions that are returned to a manufacturer or a facility designated by a manufacturer pursuant to subsection (q) of this section, shall be calculated as follows:

$$A = W_D \times MS \times D$$

where:

- A = amount due from the manufacturer in U.S. dollars;
- W_D = the total weight, in pounds, of all televisions that are returned to a manufacturer or to a facility designated by a manufacturer;
- MS = the manufacturer's market share expressed as a decimal; and
- D = fee for the total cost of televisions that are returned to a manufacturer or facility designated by a manufacturer, expressed as a price in US dollars per pound, in accordance with the most recent fee approved by the commissioner or agreed to by the CER and the manufacturer.

New section 22a-638-1(j)(8) is added as follows:

- (8) When an invoice submitted to each manufacturer includes both televisions that are recycled and other televisions that are returned to a manufacturer, or a facility designated by the manufacturer, the amount due from each manufacturer for televisions

shall be the sum of the amount due as calculated under subdivisions (6) and (7) of this subsection.

Section 22a-638-1(c)(4) is revised as follows:

- (4) Record of Televisions and Verification of Manufacturers. A CER shall maintain written documentation of the total weight and number of televisions received each calendar month, and identified at receipt, as generated by a household in Connecticut. A CER shall also determine the total weight of all televisions returned to a manufacturer or a facility designated by a manufacturer pursuant to subsection (q) of this section and shall maintain written documentation of the total weight of all such televisions. If a CER receives a television that is labeled with a manufacturer's brand and that manufacturer is not on the list of registered manufacturers maintained by the commissioner and posted on the department's website or on the list, if one is maintained and posted on the department's website, of television brands for which no manufacturer can be identified or for which the manufacturer is no longer in business, the CER shall notify the commissioner, in writing, not later than ten (10) days after the receipt of any such television. The notification shall include the manufacturer and brand of any such television, if known.

IX. Comments Regarding Municipal Requirements

A. Impact Upon Municipalities

47. Commenters – Linda Krausse, Executive Director, Connecticut River Estuary Regional Planning Agency
Ralph Eno First Selectman, Town of Lyme

Comment

Both commenters noted that the recyclers need to understand that they will be accepting all types of electronic waste, not just CEDs. Some type of arrangement must be made to ensure that municipalities will incur no additional charges with respect to non-CEDs.

Response

Chapter 446n of the Connecticut General Statutes, under which these rules are promulgated, concerns CEDs. The chapter does not provide a mechanism or framework or frankly any authority for ensuring that municipalities do not incur costs with respect to non-CEDs. As such, this matter is not addressed in the regulations and as is the case now, each municipality or regional program will need to determine how best to manage non-CEDs. Some recyclers have indicated to the Department that they can recycle the non-CEDs at no additional cost, although the Department cannot ensure that this is the case. There may be changes in market conditions which affect a CER's willingness to manage non-CEDs.

48. Commenters - Michael Harder, Hebron resident
Timothy Webb, Director of Public Works, Town of Coventry
Ralph Eno, First Selectman, Town of Lyme

Comment

A number of commenters raised concerns about the fiscal impact the proposed program or the regulations would have on municipalities. Timothy Webb commented that the regulations will impose an unfunded mandate on the towns due to hidden costs such as site permitting, additional staff time in assisting residents, storage, tracking and processing e-waste. He spoke against the regulations out of a concern that they will become just another of the many unfunded mandates and regulations that place a burden on Connecticut communities. In its place, Mr. Webb recommended that DEP work with communities one-on-one or in a region to assist in setting up e-waste collection stations and charge a fee to cover the cost associated with the disposal as is currently done in some communities. Ralph Eno expressed concern that the program would run out of money and the towns would be left having to pay for the recycling of electronics. Finally, Mike Harder suggested that the regulations make clear that CERs and/or manufacturers must cover the costs of collection and transportation of CEDs. Mr. Harder felt that there should be a clear statement that CERs must not charge municipalities for any expenses incurred under this program similar to the requirement that municipalities are prohibited from charging residents.

Response

In response to these comments, the Department notes that the structure of Connecticut's e-waste program was established in chapter 446n of the General Statutes and this statutory structure

guided the proposed regulations. The program recommended by Mr. Webb - where DEP provides assistance in setting up e-waste collection stations and charges a fee to cover the costs of disposal - is at variance with program established by the General Assembly, both in its approach and in its funding. For that reason, the Department has not crafted an e-waste program of the type envisioned by Mr. Webb.

With respect to funding and the issue of unfunded mandates, the Department notes that the funding for this program has been established both in Conn. Gen. Stat. §§ 22a-630 and 22a-631 and in the proposed regulations, see section 22a-638-1(f) through (k), inclusive, and section 22a-630(d)-1. These provisions require that the manufacturers of CEDs 1) reimburse a CER for the cost of transporting and recycling CEDs, and 2) pay for the administration of this program. The requirements for municipalities are also established by statute, see Conn. Gen. Stat. § 22a-631(c), and do *not* include either running this program or paying for the transportation and recycling of CEDs. Given this framework, as the law is currently written, the costs of this program cannot be shifted to municipalities. Indeed, Conn. Gen. Stat. § 22-631(c) requires that a CER reimburse a municipality for any qualified costs of transporting CEDs. In short, the law provides a source for funding this program that does not rely upon funding from municipalities. As such, unless and until the law changes, municipalities will not be left having to pay for the recycling of CEDs covered by the program.

If anything, the proposed program should result in a substantial net savings for municipalities that currently recycle CEDs. Once the program is implemented such municipalities will no longer have to pay for the removal and recycling of CEDs, because such costs will be borne by the manufacturers of CEDs. For the most part, a municipality should be able to use existing facilities for collection of their residents CEDs at little or no additional cost. As was noted above, the Department will also provide assistance in helping to inform residents about the types of CEDs covered by the program. And while the Department cannot say that every aspect of the program will be completely free for municipalities, since municipalities do have statutory responsibilities under the program, the Department has attempted to eliminate or minimize these costs wherever possible.

Finally, with respect to Mr. Harder's suggestion that the regulations make clear that CERs and/or manufacturers must cover the costs of collection and transportation of CEDs, the sections of the

statute and regulations noted above regarding funding already impose these requirements. And while the statutory framework for this program does not allow the Department to adopt rules mandating that every cost of this program be borne by solely by the manufacturers, the framework for the program is such that CERs will *not* be charging municipalities costs for the services being provided under this program. Within the context of the program established by the statute and regulations, there is no provision authorizing such billing. Costs incurred by a CER regarding the transportation and recycling of CEDs – the bulk of the costs for this program - are reimbursable directly from the manufacturers and for this reason such costs need not be borne by a municipality. For all of these reasons, the Department has not made changes in the proposed regulations in response to these comments.

B. Charging Residents

49. Commenters - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler’s Coalition
Kim O’Rourke, Recycling Coordinator, City of Middletown

Comment

The statute states that municipalities cannot charge residents for the recycling of CEDs. The commenters suggest adding language to section 22a-638-1(m)(5), page 53, that would clarify that a municipality can charge a fee for a permit to establish residency and use a transfer station.

Response

Conn. Gen. Stat. § 22a-635(b) states that no Connecticut resident giving seven or fewer CEDs to a collector at one time shall be charged a fee for the collection, transportation or recycling of such CEDs. It is the Department’s understanding of this provision that if a municipality elects to offer collection of CEDs from its resident at its transfer station, that if a resident is utilizing the transfer station for CEDs only, then a town cannot charge a resident a permit or any other type of fee, unless the town has arranged for another free, convenient and accessible option for its residents. A municipality could charge a permit or other type of fee if a resident uses a transfer station for other activities, in addition to being able to drop off CEDs. The Department is not making any revisions to the regulations in response to this comment.

X. Comments Regarding Returning CEDs to a Manufacturer

A. General Comment

50. Department Revision

Comment

Section 22a-638-1(q)(1), page 60, makes provision for the return to a manufacturer, or to a facility designated by a manufacturer, the CEDs, which by brand are attributable to a manufacturer or for a manufacturer of computers, monitors or printers, such manufacturer's share for orphan devices, as determined pursuant to subsection (h) of this section. In describing the CEDs covered by this provision, subdivision (1) did not refer to the brands attributable to a manufacturer ("branded items") and for a manufacturer of computers, monitors or printers, did not make clear what was meant by the manufacturer's orphan share of CEDs. Also, the regulation did not mention that CEDs were being returned, pursuant to this subdivision, for recycling, reuse or refurbishment.

Finally, it was the Department's intent to provide a manufacturer with the ability to determine how its branded items, and for a manufacturer of computers, printers and monitors its share of orphan devices, will be managed. So a manufacturer of televisions may have its branded items recycled or may direct that such items be returned to the manufacturer or a facility designated by the manufacturer pursuant to section 22a-638-1(q)(1). A manufacturer of computers, printers and monitors has the same options, both for its branded items and for its share of orphan devices. A manufacturer of computers, printers and monitors may also have its branded items and its share of orphan devices managed differently, i.e., have one recycled while the other is returned to the manufacturer or a facility designated by the manufacturer. This intention needs to be more clearly expressed.

Response

Subdivision (1) of this subsection is being revised to address the issues noted in the comment regarding this subdivision.

Section 22a-638-1(q)(1) is revised as follows:

- (1) A manufacturer may enter into a cooperative agreement with a CER under which CEDs, for the brands attributable to such manufacturer, are returned to the manufacturer or a facility designated by the manufacturer for recycling, reuse or refurbishment. A manufacturer of computers, monitors or printers, may also enter into a cooperative agreement with a CER under which such manufacturer's share of orphan devices, as determined pursuant to subsection (h) of this section, are returned to the manufacturer or a facility designated by the manufacturer for recycling, reuse or refurbishment. Absent a cooperative agreement, upon the written request of a manufacturer, provided reasonable advance notice has been provided, a CER shall make provisions for the separation and return to the manufacturer or a facility designated by the manufacturer for recycling, reuse or refurbishment, of CEDs for the brands attributable to a manufacturer. Absent a cooperative agreement, upon the written request of a manufacturer of computers, monitors or printers, provided reasonable advance notice has been provided, a CER shall make provisions for the separation and return to the manufacturer or a facility designated by the manufacturer such manufacturer's share of orphan devices, as determined pursuant to subsection (h) of this section, for recycling, reuse or refurbishment. Under such an arrangement, the CER shall bill the manufacturer, as provided for in subsection (j) of this section.

Editorial Comments

51. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

Section 22a-638-1(b)(7)(B), page 17, commenter suggests that the word "anytime" should be two words.

Response

"Anytime" appears as one word in at least three dictionaries. As such, the Department is adopting this section as proposed.

52. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler's Coalition

Comment

Section 22a-638-1(g)(4), page 43, commenter suggests adding a comma after the word “pay” in the first line.

Response

The Department agrees and is also inserting a comma after the term “if” as well.

53. Department Revision

Comment

The term “total weight” is used throughout the regulations. In using this term the Department intended that weight be expressed in pounds.

Response

The Department is adding a definition of the term “total weight” to make this intention clear.

A new section will be added to 22a-638-1(a) as follows, with the remaining definitions renumbered accordingly:

“Total Weight” means weight expressed in pounds.

54. Department Revision

Comment

As a result of the revisions made in comments 44 and 45 the numbering of the subdivisions in subsection (j) has changed. As a result, references to these subdivisions need to be revised.

Response

The Department is making the following revisions to conform to the new numbering of subdivisions in section 22a-638-1(j):

In section 22a-638-1(j)(1), the reference to “subdivisions (2) to (6)” is revised to “subdivisions (2) to (8)”. In section 22a-638-1(j)(2)(A)(vi), the reference to “subdivisions (3) and (4)” is

revised to “subdivisions (3), (4) and (5)”. In section 22a-638-1(j)(2)(B)(iv), the references to “subdivisions (5) and (6)” is revised to “subdivisions (6), (7) and (8)”. In section 22a-638-1(k)(1)B), the reference to “subsections (j)(2) to (6)” is revised to “subsections (j)(2) to (8).”

XI. Comments Regarding the Statement of Purpose

55. Commenter - Margaret Hall, Solid Waste Manager, Town of Branford and Connecticut Recycler’s Coalition

Comment

In the Statement of Purpose, third full paragraph, on page 65, the commenter recommends a change to the first parenthetical; in a) the initial words “towns to provide” should be revised to “towns provide for”.

Response

While in general the Department did not seek comments on the Statement of Purpose, as opposed to the proposed regulations, the Department appreciates the thorough review provided by the commenter. To the extent that the existing language could leave the impression that municipalities must provide locations and points for collecting CEDs to be recycled and cannot meet this obligation by partnering with others, the Department has modified the language noted by the commenter to more closely parallel the language of Conn. Gen. Stat. § 22a-631(a). The first parenthetical in paragraph three has been revised to read “a) towns provide collection and recycling opportunities to its residents with priority given to convenience and accessibility”.

Date

Tom Metzner
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