

**WEST VIRGINIA
SECRETARY OF STATE
Betty Ireland
ADMINISTRATIVE LAW DIVISION**

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Form #1

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Waste Management
West Virginia Department of Environmental Protection TITLE NUMBER: 33

RULE TYPE: Legislative CITE AUTHORITY: §22-15A-29

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

TITLE OF RULE BEING PROPOSED: Covered Electronic Devices Takeback Program

DATE OF PUBLIC HEARING: January 8, 2009 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: West Virginia Department of Environmental Protection
601 57th Street, S.E.
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL WRITTEN BOTH

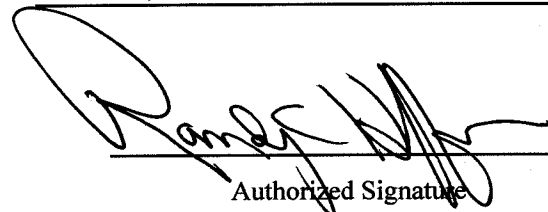
DATE WRITTEN COMMENT PERIOD ENDS: January 8, 2009 TIME: end of hearing

WRITTEN COMMENTS MAY BE MAILED TO: West Virginia Department of Environmental Protection
Public Information Office Attn: Kathy Cosco
601 57th Street, S.E.
Charleston, WV 25304

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

Rule Title: Covered Electronic Devices Takeback Program (33 CSR 11)

A. AUTHORITY:

W. Va. Code § 22-15A-29

B. SUMMARY OF RULE:

This Rule establishes procedures for manufacturers of covered electronic devices to register their brands with the State and pay the required annual registration fee. This Rule also establishes the Covered Electronic Device Grant Program, which allows counties and municipalities to receive grants to stage electronic takeback events or establish long term takeback/recycling programs.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

By the terms of S.B. 746, passed during the last Legislative session, W. Va. Code § 22-15A-29 directs the agency to promulgate emergency and legislative rules to implement the provisions of W. Va. Code §§ 2215A-24 through 22-15A-28 by January 1, 2009.

D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE / DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation; thus, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION

In accordance with W. Va. Code §§ 22-1A-1 and 3(c), the Secretary has determined that this Rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. COUSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its meeting on December 9, 2008, the Environmental Protection Advisory Council discussed the proposed Rule. The minutes of that meeting will be filed separately.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Covered Electronic Devices Takeback Program

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Department of Environmental Protection

Address: 601 57th Street, S.E.
Charleston, WV 25304

Phone Number: 304-926-0499 ext 1115 Email: gary.w.rogers@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

West Virginia Code §22-15A-25 creates a new fund, the Covered Electronic Devices Takeback Fund, which is expected to collect approximately \$500,000 the first year the takeback program is implemented and approximately \$250,000 each year thereafter. All costs associated with operating the takeback program is expected to be paid from the Covered Electronic Devices Takeback Fund and is not expected to affect any current budgets already established by the State.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	500,000.00	250,000.00	250,000.00
Personal Services	38,000.00	38,000.00	38,000.00
Current Expenses	32,000.00	32,000.00	32,000.00
Repairs & Alterations			
Assets	5,000.00		
Other	425,000.00	180,000.00	180,000.00
2. Estimated Total Revenues	500,000.00	250,000.00	250,000.00

Rule Title: _____

Rule Title: Covered Electronic Devices Takeback Program

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

During the first year of the program, the initial registration fee is \$10,000 per manufacturer that has not implemented a takeback program in West Virginia. The expected revenue, which was based on Maryland's program that is virtually identical to that of West Virginia's, is \$500,000 during FY2009. The fee for all subsequent years for the nonparticipating registered manufacturer is \$5,000. Therefore the expected revenue for all subsequent years is approximately half of the revenue collected during the initial year.


MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None.

Date: November 20, 2008

Signature of Agency Head or Authorized Representative



A handwritten signature in black ink, appearing to be 'D. G. ...', is written over a horizontal line.

TITLE 33

LEGISLATIVE RULE

DEPARTMENT OF ENVIRONMENTAL PROTECTION

WASTE MANAGEMENT

SERIES 11

COVERED ELECTRONIC DEVICES TAKEBACK PROGRAM

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§33-11-1. General.

1.1. Scope and Purpose – This legislative rule establishes procedures for covered electronic device manufacturers to register their brands with the state and sets out guidelines for municipalities and counties to apply for and receive grants for the purpose of conducting electronic collection events and programs. The funding available for grants is established by the registration fee imposed on all covered electronic device manufacturers that conduct business in West Virginia.

1.2. Authority – West Virginia Code §22-15A-29.

1.3. Filing Date –

1.4. Effective Date –

§33-11-2. Definitions.

2.1. “Brand” means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

2.2. “Computer” means a desktop, personal computer or laptop computer, including a computer monitor. Computer does not include a personal digital assistant device, computer peripheral such as a mouse or other similar pointing device, a printer or a detachable keyboard.

2.3. “County” means any county commission or solid waste authority within the state.

2.4. “Covered electronic device (CED)” means a television, computer or video display device with a screen that is greater than four inches measured diagonally. “Covered electronic device” does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial, or medical equipment.

2.5. “Department” means the Department of Environmental Protection.

2.6. “Manufacturer” means a person that is the brand owner of a covered electronic device or television sold or offered for sale in West Virginia by any means, including transactions conducted through retail sales outlets, catalogs or the internet.

2.7. “Municipality” means a community incorporated through the West Virginia Secretary of State’s Office.

2.8. “Person” means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

2.9. “Recyclable Materials” means those materials that would otherwise become solid waste for disposal in a refuse disposal system and which may be collected, separated or processed and returned to the marketplace in the form of raw materials or products.

2.10. “Television” means any telecommunication system device that is designed to receive moving pictures and sound broadcasts over a distance and includes a television tuner or a video display device

peripheral to a computer in which the display contains a television tuner.

2.11. "Secretary" means the Secretary of the Department of Environmental Protection.

2.12. "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of images sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving images on the screen. A "video display device" may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, other image projection technology or imaging display technologies.

2.13. Other definitions in West Virginia Code §22-15A-2 are adopted for use, where applicable, in this rule.

§33-11-3. Manufacturer Registration.

3.1. The registration and fee requirements of this rule apply to manufacturers that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding the initial registration required by this section.

3.2. Manufacturers that sold or leased covered electronic devices in 2008, on or after June 6, 2008, shall register with the Secretary no later than January 1, 2009; using a registration form prescribed by the department.

3.3. Manufacturers commencing the sale or lease of covered electronic devices after December 31, 2008, shall register with the Secretary prior thereto. Registration shall be made on a form prescribed by the department.

3.4. All registrations, regardless of the date submitted, expire on December 31 of the registration year and shall in no case be effective for more than one year.

3.5. The registration form shall contain the following:

3.5.1. Legal name of the manufacturer;

3.5.2. Contact person regarding the registration;

3.5.3. Address of manufacturer;

3.5.4. Telephone number of manufacturer;

3.5.5. All brand names under which the manufacturer sells, leases, or offers for sale covered electronic devices or televisions in West Virginia;

3.5.6. Whether the manufacturer has implemented a takeback program for its covered electronic devices or televisions or both;

3.5.7. A toll free telephone number and website that the manufacturer has established to provide detailed information about the takeback program, if any, and the procedures for returning covered electronic devices;

3.5.8. The Secretary may request additional information necessary to further the goals of the program.

3.6. Any changes to the registration information during the year shall be reported to the department within thirty days of its occurrence.

3.7. Any registration that does not meet the requirements of this section will be considered incomplete. The manufacturer shall submit a revised registration within sixty days of being notified of the deficiency.

§33-11-4. Registration Fees.

4.1. Annual registration fees shall be paid by manufacturers to the department. The amount of the fee shall be based on whether an approved covered electronic device takeback program has been implemented in West Virginia

by the manufacturer. The fees are structured as follows:

Initial Registration: Did not implement an approved program in WV the previous year	\$10,000
Initial Registration: Did implement and maintain an approved program in WV the previous year	\$3,000
Subsequent Registration: Did not implement an approved program in WV the previous year	\$5,000
Subsequent Registration: Did implement and maintain an approved program in WV the previous year	\$500

4.2. Registration fees are due to the department no later than the first day of January of the year to which they apply and shall accompany the required registration form described in section 3.5. The registration fees shall be paid in full, are nonrefundable, and shall not be pro-rated for the year.

4.3. A program shall be considered implemented during the year for which the manufacturer has submitted a complete performance report approved by the department.

4.4. Notwithstanding the lack of a complete performance report, a manufacturer that demonstrates to the satisfaction of the department that a takeback program for its brands was implemented and maintained in West Virginia during 2008 shall be subject to the initial registration fee of \$3,000.

§33-11-5. Performance Reports.

5.1. All manufacturers that have implemented a covered electronic device takeback or recycling program shall submit a performance report to the department on or before February 15th detailing the programs methods and results for the previous year.

5.2. The department shall prescribe the annual performance report form to be used by manufacturers.

5.3. The department shall review all submitted performance reports and make a determination whether the program meets the minimum requirements of a takeback program.

5.4. The performance report shall include, at a minimum, the following information:

5.4.1. The total weight of covered electronic devices received by the program from West Virginia during the reporting year;

5.4.2. The total number of covered electronic devices from West Virginia that were recycled or refurbished and reused during the reporting year, either by actual count or by using average product weights;

5.4.3. A detailed description of the processes and methods used to collect, recycle or refurbish and reuse the covered electronic devices received from West Virginia;

5.4.4. Any significant changes to the program that the manufacturer plans to make in the current year;

5.4.5. Any additional information the Secretary deems appropriate to further the goals of the program.

§33-11-6. Required Elements of a Manufacturer's Takeback Program.

6.1. A manufacturer's takeback program must meet the following requirements to be approved by the department:

6.1.1. The takeback program shall enable a consumer to recycle covered electronic devices without paying a separate recycling fee at the time of recycling or collection;

6.1.2. The takeback program shall implement a method of collecting covered electronic devices that have reached the end of their useful lives and are labeled with the manufacturer's brand;

6.1.3. The takeback program shall implement a method of recycling, refurbishing or reusing the covered electronic devices collected or provide evidence that the recyclable materials were delivered to an electronic device recycling market;

6.1.4. The collection process of the covered electronic devices shall be reasonable, convenient, and available to the consumers of West Virginia and designed to meet the collection needs of those consumers.

6.1.4.a. Convenient systems of collection include mail-in recycling at no charge to the consumer, drop off centers, or collection events;

6.1.4.b. Manufacturers who use existing collection infrastructure for collecting covered electronic devices, such as public or private recycling centers and recycling organizations, or who establish a system of collection and recycling managed by a group of manufacturers, shall be deemed to meet the convenience requirement of this section.

6.1.5. The takeback program shall include information for the consumer on how and where to return the manufacturers covered electronic devices.

6.1.6. The takeback program shall include a method of maintaining a current and accurate record of all manufacturer's covered electronic devices collected and recycled or refurbished and reused.

6.2. If more than one person is a manufacturer of a certain brand of covered electronic devices, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer for that brand.

6.3. A takeback program implemented with the use of state grant funds, whether wholly or in part, shall not be considered a takeback program implemented by a manufacturer.

6.4. The department may require the takeback program to comply with any

environmental management standards adopted, approved, or established by the United States Environmental Protection Agency that ensure safe and proper handling of electronic devices.

§33-11-7. Public List of Manufacturers.

7.1. The department shall maintain a current list of registered covered electronic device manufacturers and their brands and shall publish the list on the internet to provide retailers access to the manufacturers authorized to sell or lease their products in West Virginia.

7.2. No manufacturer shall be considered registered that has not complied with all the requirements of this rule.

7.3. Retailers are responsible for reviewing the public list of manufacturers periodically to ensure the brands they are selling are registered.

§33-11-8. CED Recycling Grant Program.

8.1. CED Recycling Grants are available to counties and municipalities for the purpose of establishing CED recycling or takeback programs, CED collection events, and CED recycling education programs.

8.2. CED Recycling Grants are limited to a maximum amount of \$40,000.

8.3. Applications for CED Recycling Grants shall be submitted to the department on forms prescribed by the department.

8.4. CED Recycling Grants shall be awarded on a tiered matching basis. The first \$20,000 of a grant shall not require the grantee to provide matching funds. Any amount over the first \$20,000 of a grant shall be matched by the grantee on a dollar-to-dollar basis. (Example: A grant in the amount of \$32,000 would require a \$12,000 match from the grantee. The total grant of \$32,000 less \$20,000 equals \$12,000. The grantee would be required to match the \$12,000 for a total project cost of \$44,000).

8.5. All matching funds provided by the grantee shall be actual funds expended from sources other than funds provided by the

department. In-kind costs and estimated costs shall not be considered matching costs.

8.6. At least fifty percent of the monies credited to the Covered Electronic Device Takeback Fund in the previous fiscal year shall be used for grants for the current year.

8.7. Applications must be postmarked no later than August 31 for consideration in the next grant period.

§33-11-9. General Conditions Applicable to Grant Applications.

9.1 The following general conditions apply to all applications for funding under the CED Recycling Grant Program:

9.1.1. The project shall be designed to affect a significant and measurable amount of covered electronic devices in the area to be served;

9.1.2. The project shall be designed to involve all or a substantial percentage of the residents located in the project area and should include a plan to provide public education regarding CED recycling.

§33-11-10. Authorized Uses of Grant.

10.1. Authorized use of grant funds in an approved CED recycling program may include the following:

10.1.1. Operational costs incurred in the implementation of the program;

10.1.2. Costs associated with the production and distribution or placement of advertising in newspapers, radio, or elsewhere, such costs being related to the development and implementation of the program;

10.1.3. Purchase of equipment and supplies that will specifically serve to fulfill the program objectives;

10.1.4. Costs associated with promotional items that serve to create public awareness of the program;

10.1.5. Public informational and educational programs that increase public awareness or solicit public support for promoting citizen responsibility toward CED recycling;

10.1.6. Other relevant costs upon approval of the department.

§33-11-11. Unauthorized Uses of a Grant.

11.1. The grantee shall not use a grant to replace funds currently budgeted or used to maintain and operate a CED recycling program during the grant period.

11.2. The grantee shall not use a grant for expenditures not substantially related to CED recycling.

11.3. Grant funds shall not be used for the following:

11.3.1. Land acquisitions;

11.3.2. Office furniture or equipment, or to decorate or renovate an office;

11.3.3. Entertainment costs;

11.3.4. Alcoholic beverages, meals, and gratuities;

11.3.5. Beautification costs;

11.3.6. Any type of lobbying expenses;

11.3.7. Landfill operations or management.

§33-11-12. Departmental Review of Applications.

12.1. The department may reject any and all applications that do not meet eligibility and submission requirements established by the department and this rule.

12.2. If the total request for funding for the year exceeds the amount of funding available for grants, the department may reject applicants that received a CED recycling grant the previous year.

12.3. The department shall review all applications and submit those applications recommended for funding to the Secretary for final approval and awarding.

12.4. Applicants shall be notified in writing of approval or denial of a grant within a reasonable time after award recommendations have been approved by the Secretary.

§33-11-13. Requirements of a Grant Recipient.

13.1. All CED recycling grants are for the twelve-month period beginning the first day of October and ending the last day of September of the following year.

13.2. Grant funds will be disbursed at the time a completed grant agreement and all required documents necessary to initiate the grant are received by the department.

13.3. The grantee shall retain and make available upon request by the department, for a period of five years, all financial records, supporting documents, statistical records, and all other records and data as they relate to the application, acceptance and use of the grant.

13.4. The grantee shall deposit the grant immediately upon receipt in a separate account.

13.5. If, through any cause, the grantee fails to fulfill in a timely and proper manner the obligations imposed in the grant agreement or violates any provision of this rule, the department may terminate the grant and the grantee shall immediately return the grant, in its entirety, to the department.

13.6. The grantee shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations.

13.7. The grantee shall solicit sealed bids, by public notice as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-2, for all purchases that have an estimated cost of five thousand dollars or more. Any attempt to segregate the purchase into sections to circumvent the bidding requirement shall be cause for termination of the grant.

13.8. The grantee shall reimburse the department any amount of the grant used for unauthorized expenditures. Authorized expenditures are those outlined in the budget of the approved application and that have sufficient supporting documentation.

13.9. The grantee shall return any unexpended grant funds remaining at the end of the grant period to the department. If the grantee expends any grant funds after the grant period specified on the grant agreement, those expenditures shall be considered unauthorized.

13.10 The grantee shall submit a final report to the department within 30 days following the last day of the grant period. The report shall contain:

13.10.1. A complete accounting of the grant expended during the period;

13.10.2. Documentation supporting all grant expenditures, including without limitation, invoices, checks, titles and purchase orders;

13.10.3. All bank statements of the grant account;

13.10.4. All bidding information for expenditures costing \$5,000 or greater, including copies of the legal ads, bids received, and authorization to purchase;

13.10.5. An evaluation of the total operating costs and community support for the project;

13.10.6. An evaluation of successes and failures encountered in implementing the original application's work tasks;

13.10.7. Program information as described in section 5.4 of this rule; and

13.10.8. An analysis of the project including: the estimated cost per ton to recycle that volume and the estimated revenue per ton of recycled material.

13.11. The department shall return an incomplete report to the grantee for completion. A grantee shall resubmit a completed report within thirty days of notification that the report is incomplete.

§33-11-14. Department Site Visits.

14.1. The department shall periodically conduct site visits with grantees. These visits shall be conducted to provide assistance, to review progress, to discuss any problems encountered in project implementation, or to review financial compliance and clarify any discrepancies found in the final report.