



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Ecology AO # 15-03

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: See Attachment A

Citation of existing rules affected by this order:

Repealed:

Amended: Chapter 173-900 WAC – Electronic Product Recycling Program

Suspended:

Statutory authority for adoption: RCW 70.95N.230

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 15-21-065 on October 19, 2015.

Describe any changes other than editing from proposed to adopted version: See Attachment B

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

3/1/16

NAME (TYPE OR PRINT)

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SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 01, 2016

TIME: 3:25 PM

WSR 16-06-107

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>16</u>	Repealed	<u>3</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	_____	Amended	<u>17</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	_____	Amended	<u>17</u>	Repealed	<u>3</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>1</u>	Amended	<u>33</u>	Repealed	<u>3</u>
				-		

Attachment A

Purpose:

The purpose of Chapter 173-900 WAC is to implement a stewardship program to fulfill Legislative findings that: “...a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established; ... that the system must encourage the design of electronic products that are less toxic and more recyclable; ... and that the responsibility for this system must be shared among all stakeholders, with the manufacturers financing the collection, transportation, and recycling system.”

The revised rule responds to amendments adopted to the underlying statute, Chapter 70.95N RCW, by the 2013 Legislature. The rule was revised to account for each manufacturer’s financial obligation to the stewardship program based totally on market share and eliminating all references to return share calculations in the existing rule.

Also in response to 2013 legislation, annual reports required to be submitted to Ecology by the stewardship organization on the operation of an electronics recycling program are required to include;

- (1) An estimate of each type of material recovered from the recycling of electronics including cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals;
- (2) An estimate of the weight of all collected products that are ultimately reused, recycled, or end up as residual waste that is disposed;
- (3) A description of program revenues and costs including the average cost of the program per pound of covered electronic product collected, and costs for education and promotional efforts, collection, transportation, processing and labor, and program administration; and
- (4) A description of the methods used to collect, transport and process covered electronic products.

Other amendments include:

- Retailers of covered electronic products must provide take-home information on the recycling of electronics to consumers at the time of purchase of a covered electronic product,
- Allowing Ecology to provide notifications electronically to the organizations operating recycling programs rather than by certified mail, and
- Updating references to the Ecology oversight program from the old name, the Solid Waste and Financial Assistance Program, to the current program name, the Waste 2 Resources Program.

Attachment B

Describe any changes other than editing from proposed to adopted version:

Under “Definitions” (WAC 173-900-030) the following changes were made from the proposed rule filed on October 19, 2015.

1. The definitions of “Manufacturers whose CEPs (covered electronic products) are not directly sold in or into Washington state” and “Manufacturers who previously manufactured” were proposed to be stricken entirely, but a commenter noted that these terms were not also stricken from WAC 173-900-280 where the rule explains the tiered administrative fees Ecology uses to charge manufacturers. For clarity, it was decided to only strike the portion of these definitions that referred to return share – the previous system for assigning manufacturer program responsibility that was replaced by a 100% market share system by the 2013 legislation. This allows Ecology to keep the rule language consistent and accurate without making a number of more convoluted deletions and adjustments to Section 280.
2. As a result of the change noted in #1, above, the proposed subsection (d) to the definition of “Manufacturer” was moved up to immediately follow subsection (c). In the proposed language it appeared following the deletion of the two definitions discussed in #1 above, and if not moved would have been in the wrong location in the adopted rule.
3. The proposed rule amended the following definition, “Small business means a business in Washington State employing less than fifty people.” Commenters noted that the addition of “in Washington state” raised the question as to whether this meant a business must employ less than fifty people company-wide or that less than fifty people could be employed by the company and located in Washington state. Since this attempt at a clarification was unclear and not essential, Ecology opted to delete the proposed change.

In new section WAC 173-900-925, Calculation of market shares, a commenter pointed out that Ecology failed to incorporate the entire passage from the 2013 legislation requiring implementation of a market share system to replace the original return share system. It was Ecology’s intent to use the exact legislative language for the portion of this section in question, so the rule language was edited as follows to match the language in the statute:

173-900-925(2) “Ecology will determine each manufacturer’s percentage of market share by dividing each manufacturer’s total pounds of CEPs sold in or into Washington by the sum total of all pounds of CEPs sold in or into Washington by all manufacturers.”