AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WASTE MANAGEMENT AND PREVENTION DIVISION
E-CYCLES PROGRAM

PROCEDURE FOR MANUFACTURER OPT-OUT PROGRAMS

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Department of Environmental Conservation

2/5/16

Date

§ 1. AUTHORITY

This Procedure is adopted pursuant to the requirements of 3 V.S.A. § 2853, the authority of the Secretary to adopt rules pursuant to 10 V.S.A § 7564.

§ 2. PURPOSE

It is the purpose of this Procedure to provide clarity for manufacturers on the requirements for a Manufacturer Opt-Out Individual Program ("manufacturer opt-out program" or "opt-out program"). The Procedure provides application requirements for manufacturer opt-out plan applications submitted pursuant to 10 V.S.A. § 7554 (Section 5); outlines the Secretary's review and approval process for opt-out plan applications (Sections 6 and 7); defines the operational, reporting, and performance requirements for approved manufacturer opt-out programs during the Program Year (Sections 8, 9, and 11); and specifies the registration requirements for manufacturers operating under a manufacturer opt-out program (Section 10).

§ 3. DEFINITIONS

As used in this Procedure, the terms shall have the meaning given to them in 10 V.S.A. § 7551 or as follows:

(1) "Alternative collection" means collection opportunities that are not a collection facility or collection event. Alternative collection includes mail back programs and curbside collection.

(2) "Application" means a proposal by a manufacturer to implement an opt-out program as an alternative to the State Standard Program.

(3) "Authorization" means an approval issued by the Secretary on an application to administer a manufacturer opt-out program.

(4) "Local reuse" means reuse within the United States of America.

(5) "Manufacturer Opt-Out Individual Program" refers to a program approved by the Secretary under 10 V.S.A. § 7554 for the collection, transportation, and recycling of covered electronic devices.

(6) "Primary recycler" means a recycler that receives electronic waste from collection locations, consolidation locations, collection events, or through alternative collection services.

(7) "Procedure" means the Procedure for the Environmental Sound Management of Electronic Devices for Collectors, Transporters, and Recyclers, as adopted by the Secretary pursuant to its authority under 10 V.S.A. § 7559(7).

(8) "Program Year" means the period from January 1 through December 31.

(9) "Reuse" means that an electronic device changes ownership and is used, as is, for the same purpose for which it was originally purchased.

(10) "State Standard Program" means the program for collection, transportation and recycling of covered electronic devices approved by the Secretary under 10 V.S.A. § 7552.

§ 4. ELIGIBILITY

Applications for manufacturer opt-out plans shall only be submitted by manufacturers of covered electronic devices that seek to opt out of the State Standard Program. Trade associations and other persons may prepare a manufacturer opt-out plan on behalf of one or more manufacturer applicants provided that each manufacturer applicant of the opt-out plan submits a written statement as required by § 5(a) of this Procedure with the initial opt-out plan application submission.

§ 5. MANUFACTURER OPT-OUT PLAN APPLICATIONS

(a) General Application Requirements.

(1) Applications shall be submitted to the Secretary by March 1 for the period starting October 1, 2016 through December 31, 2017 (interim quarter plus Program Year 6). For Program Year 7 and each Program Year thereafter applications shall be submitted by June 1. All applications must be submitted no later than the close of business on the date the application is due pursuant to this section. Late applications will not be considered by the Secretary.

(2) Applications shall be submitted to the Secretary in an electronic format and shall include all attachments referenced therein and that are otherwise necessary for reviewing the submission. Applications shall be submitted on a form provided by the Secretary and shall be in a format that allows for the Secretary to edit and comment on the application.

(3) Applications shall identify all manufacturer applicants intending to participate in the proposed manufacturer opt-out plan and to be bound by the terms and conditions of the plan, if approved by the Secretary.

(4) Applications shall include a signed, written statement, on a form provided by the Secretary, that contains the following with respect to each manufacturer applicant identified in subsection (a)(3) of this section:

(A) The name of the manufacturer applicant;

(B) The name and contact information (including e-mail address) for an individual designated to serve as the point of contact for the manufacturer applicant;

(C) A certification that the manufacturer applicant intends to be bound by the terms and conditions of the manufacturer opt-out application, if approved;

(D) An acknowledgement by the manufacturer applicant that implementation of the manufacturer opt-out plan, if approved, makes

the manufacturer ineligible for participation in the State Standard Program for the upcoming Program Year;

(E) A certification that the individual signing the statement on behalf of the manufacturer applicant has the legal authority to commit the manufacturer to participate in the manufacturer opt-out plan;

(F) Written statements that were not provided on the form provided by the Secretary and do not satisfy provision 4 (A)-(F), or are not included and submitted as part of the initial application, will not be considered; and

(G) A certification that all of the information, data, and other representations made in the application are truthful, accurate, and complete.

(b) Manufacturer Opt-out Plan Requirements. Manufacturer opt-out plan applications shall include the information required by this section. Applications shall be formatted to address the following requirements as they appear below, and shall clearly identify any corresponding attachments or appendices to be reviewed under each section.

(1) **Collection of electronic waste.**

(A) Collection locations. The application shall provide a list of collection locations proposed to be serviced by the opt-out program throughout the Program Year, and at minimum, meet the requirements of Attachment A.

(B) Collection events. The application shall indicate whether collection events will be utilized by the opt-out program during the Program Year.

(C) Alternative collection services. The application shall indicate whether alternative collection methods or services (i.e., take-back or mail back programs, curbside collection, etc.) will be provided by the opt-out program during the Program Year. If such services will be provided, the application shall also:

(i) Describe the proposed alternative collection method(s) or service(s) that will be provided;

(ii) Describe whether electronic waste collected under alternative collection services will count towards the program goal;

(iii) Describe how the alternative collection will ensure that electronic waste that counts towards the program goal comes only from covered entities;

(iv) Describe how electronic waste collected using alternative collection will meet the requirements of subsection (b)(5) of this

section; and

(v) If an alternative primary recycler is used, provide all information that is required in subsection (b)(2)(B) of this section.

(D) Reuse Opportunities. The application shall indicate whether any reuse opportunities will be provided by the opt-out program during the Program Year. If such opportunities will be provided, the application shall also:

(i) Describe the types of electronic waste to be diverted for reuse at each facility; and

(ii) Describe how the opt-out program will ensure that any electronic waste directed for local reuse is not counted towards the program's collection goal.

(E) Fair Compensation. The application shall describe how collection locations will be fairly compensated for providing collection services.

(2) **Transportation, Recyclers and Consolidators.**

(A) Transportation services. An application shall:

(i) Provide for each transporter to be used in the opt-out program: the transporter's name; address; and the name and contact information (including e-mail address) for an individual designated to serve as the point of contact for the transporter; and

(ii) Provide a description of the scope of transporter services to be used by the opt-out program (e.g., the solid waste district transporter will be picking up from its satellite locations and taking materials to the consolidation point located at the following address, etc.).

(B) Primary recycling services. An application shall:

(i) Include a network of at least two recyclers with at least one designated as the primary recycler;

(ii) Provide for each primary recycler to be used in the opt-out program: the recycler's name; address; and the name and contact information (including e-mail address) for an individual designated to serve as the point of contact for the primary recycler;

(iii) Include a copy of a current certification by an accredited certifying body demonstrating that any primary recycler to be used in the opt-out program is certified as compliant with either

the Responsible Recycling (R2) standards or E-Stewards Standard;

(iv) Address how the opt-out program will conduct a third-party compliance audit of any recycler to be used by the opt-out program as required by 10 V.S.A. § 7554(a)(5). An audit shall be performed at least annually and shall provide a report to the Secretary outlining the recycler's compliance and any noncompliance with applicable state and federal laws and regulations pertaining to the storage and speculative accumulation of electronic waste in the state where the recycler is located;

(v) Provide documentation of certification from the Vermont Agency of Agriculture, Food, and Markets (AAFM), Consumer Protection Section, for any scale used for weighing electronic waste materials to be recycled or shipped for export, and the date of the most recent calibration and/or inspection of the scales performed by the AAFM. For any out-of-state facilities to be used by the opt-out program, the application shall provide documentation of the out-of-state facility's compliance with respective state's weights and measures laws, regulations, and standards; and

(vi) Include a materials flow diagram or description that specifies how and to which recyclers program materials will be diverted, how program materials will be processed at each consolidation location and recycling facility, any proposed reuse of program materials, and the final disposition of program materials.

(vii) Include a description of how recyclers will be fairly compensated for providing recycling services.

(C) Consolidation points. If an opt-out program proposes to use consolidation points, the application shall:

(i) Provide a list including the name, location, and contact information for any location serving as a consolidation point, and a list of the collection locations to be serviced by the consolidation point; and

(ii) Provide documentation of certification from the Vermont Agency of Agriculture, Food, and Markets (AAFM), Consumer Protection Section, for any scale used for weighing electronic waste materials to be recycled or shipped for export, and the date of the most recent calibration and/or inspection of the scales performed by the AAFM. For any out-of-state facilities to be used by the opt-out program, the application shall provide documentation of the out-of-state facility's compliance with respective state's weights and measures laws,

regulations, and standards.

(D) Premium Services. An application shall describe any premium services that will be offered to covered entities by the opt-out program. Such services may include special curbside services, pick-up and transport from covered entities, and data security services.

(3) **Outreach and public education.** The Secretary will conduct consistent statewide outreach and public education for the State Standard Program and any approved manufacturer opt-out program.

(4) **Environmentally sound management practices.** The Secretary will conduct statewide compliance inspections of collection locations.

(A) Describe the education and training strategies the opt-out program will provide to service providers (i.e., collectors, transporters). The description shall include, at a minimum, the frequency and locations of trainings, and who will be conducting trainings.

(5) **Data tracking and materials management.**

(A) Data and accounting systems. An application must describe the accounting and reporting systems that will be employed by the opt-out program to track progress toward the program collection goal. The description shall:

(i) Describe how the data tracking systems established and maintained by the opt-out program will:

(I) Ensure electronic waste collected under the opt-out program is separately tracked through collection locations, collection events, and any alternative and premiums services offered. Collection locations and collection events shall be tracked by the facility identification number assigned by the Secretary at the time of registration;

(II) Ensure that all data collected for collectors, transporters, and recyclers is truthful and accurate; and

(III) Notify the Secretary of any collected data that the opt-out program becomes aware of that is not truthful or accurate, and what measures will be employed to correct the error.

(ii) Describe how electronic waste will be managed and tracked separately from all non-covered materials to ensure that only electronic waste is counted toward the program goal; and

(iii) Describe how the opt-out program will ensure and document that only electronic waste received from covered entities will be

counted towards the program goal. This may include samples of documents (e.g., labels and Bills of Lading used to track electronic waste).

(B) Waste sorts. An application shall describe how the opt-out program will conduct a minimum of two waste sorts of electronic waste conducted in accordance with § 9(a)(3) of this Procedure during the Program Year. The description shall address who will conduct the sorts, and at which facility or facilities the sorts will occur.

(6) **Program timeline.** An application shall include a general program timeline that describes, at minimum, the occurrence and frequency of the following: program start-up and implementation; proposed major milestones; training; collection events; waste sorts.

(7) **Confidentiality**. Applications for an opt-out program are a matter of public record. If an application includes material considered by the applicant to be proprietary and confidential under 1 V.S.A., Chapter 5, the application shall clearly designate the material as such and explain why such material should be considered confidential. The applicant must identify each page or section of the application that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the applicant if the identified material were to be released. Under no circumstances shall the entire application be designated as proprietary or confidential. If the applicant marks portions of the application confidential, the applicant shall provide a redacted version of the response for release to the public.

§ 6. MANUFACTURER OPT-OUT PLAN REVIEW AND APPROVAL

(a) Review Commencement; Administrative Completeness. The Secretary's review shall commence upon the submission of an opt-out application pursuant to the deadline specified in subsection § 5(a)(1) of this Procedure. Applications submitted after the deadline as specified in subsection § 5(a)(1) of this Procedure shall be deemed denied.

(b) Review Criteria. The Secretary shall review all timely opt-out plan applications for compliance with the requirements set forth in 10 V.S.A. § 7554 and § 5 of this Procedure.

(c) Deficiencies; Additional Information.

(1) The Secretary will review applications and indicate in a letter to the applicant any deficiencies. The letter shall specify all deficiencies, and shall identify additional information or clarification required for the Secretary's review.

(2) Manufacturer applicants are encouraged to submit additional information requested by the Secretary as soon as possible. To ensure adequate time for review an opt-out plan application, and to ensure that an opt-out plan (if approved) will be implemented by the first day of the Program Year, all additional information to be considered as part of the opt-out plan

application shall be submitted no later than June 30 for 2016 and no later than August 31 for all subsequent years. Information submitted to the Secretary after these dates shall not be considered.

(d) Determination of Completeness.

(1) No later than July 15 for 2016 and no later than October 15 for Program Year 7 and thereafter, the Secretary shall complete its review of the opt-out plan application along with additional information timely submitted by the manufacturer applicant pursuant to subsection (c) of this section.

(2) Upon completion of its review, the Secretary shall issue a draft authorization to the opt-out manufacturer or deny the opt-out plan application based on the application's compliance with the requirements of 10 V.S.A. § 7554 and § 5 of this Procedure.

(A) Authorizations shall be posted for public notice and comment pursuant to subsection (e) of this section.

(B) The Secretary shall issue any denial in writing and identify the deficiencies of the application denying the application.

(e) Public Notice and Comment. The Secretary shall post the draft authorization and application for public notice and comment for 30 days. All comments submitted during the notice and comment period shall be considered by the Secretary.

(f) Final Decision. No later than September 1 in 2016, and no later than December 1 for Program Year 7 and thereafter, the Secretary shall issue a final decision either approving or denying a manufacturer opt-out plan application that has been deemed to be complete and has been posted for public review and comment for 30 days.

§ 7. APPROVED PLANS

(a) Implementation. All approved manufacturer opt-out plans shall be implemented by the first day of the Program Year.

(b) Withdrawal Requests. A manufacturer may withdraw its manufacturer opt-out application upon receiving a decision of approval from the Secretary.

(1) Withdrawal requests shall be made in writing to the Secretary no later than 10 days upon receipt of the Secretary's final approval of the application. Withdraw requests received after 10 days of receipt of the Secretary's notice will not be accepted, and the manufacturer shall be required to implement the approved opt-out program by the first day of the Program Year.

(2) The withdrawal request shall clearly indicate the intent to withdraw the approved opt-out application, and must acknowledge the obligation and intention for the manufacturer applicant to enroll in the State Standard Program by the first day of the Program Year.

(3) The withdrawal request shall be signed by the manufacturer applicant listed on the opt-out application pursuant to subsection § 5(a)(3) of this Procedure.

(c) Conditions and Obligations. Manufacturers participating in an approved manufacturer opt-out plan shall be required to comply with any terms and conditions specified in the Secretary's decision of approval; the manufacturer opt-out program continuing obligations in § 8 of this Procedure; the reporting requirements in § 9 of this Procedure; the registration requirements in § 10 of this Procedure; the manufacturer opt-out program goal as established in § 11 of this Procedure; and all other applicable laws.

(1) Plan Amendments. An amendment to an approved manufacturer opt-out plan shall not take effect until approved by the Secretary.

(2) The request shall be made in writing to the Secretary and shall be signed by each manufacturer applicant listed on the opt-out application pursuant to subsection § 5(a)(3) of this Procedure.

(3) The request shall specify the proposed amendment and the reasons for the amendment. Proposed amendments may be submitted in redline strikeout format to the approved out-out plan.

(4) The Secretary shall review the proposed amendment for compliance with the requirements in 10 V.S.A. § 7554 and the requirements in § 5 of this Procedure.

(5) The Secretary shall make a written determination on the proposed amendment within 15 days of receipt of a request made under this section.

(A) An approval of amendment request shall contain the effective date of the approved amendment. Any approval shall only affect the sections of the plan that are specified in the original request for amendment, except that the Secretary may include additional conditions on the amendment opt-out plan that address the amended sections.

(B) A denial of an amendment request shall identify the reasons for denial.

(C) The Secretary may issue a determination that additional information is required prior to a final decision on the amendment request. The determination shall specify what additional information is required, and shall identify a date by which the additional information shall be submitted.

(6) At the discretion of the Secretary, proposed amendments that would result in a material change to the approved plan may be subject to the public notice and comment requirements of § 6(e) of this Procedure.

§ 8. MANUFACTURER OPT-OUT PROGRAM CONTINUING OBLIGATIONS

An approved manufacturer opt-out program shall be required to comply with the following provisions throughout the Program Year:

(a) Collection Methods and Facilities.

(1) Collection locations; minimum requirements.

(A) Throughout the Program Year, the opt-out program shall maintain, service, and compensate the minimum number and location of collection location facilities as established in Attachment A. To demonstrate compliance with this provision, the opt-out program shall submit to the Secretary by the first day of the Program Year a list of collection locations that have agreed to terms of service offered by the opt-out program.

(B) If a collection location leaves the opt-out program on its own accord, and as a result, the program is unable to meet the required minimum number collection locations, the program must notify the Secretary within five business days of receiving notice from a collection location of its intention to leave the program. The opt-out program must secure a replacement collection location within 90 days of the date of notification to the Secretary in order to achieve the minimum required collection locations.

(2) Collection events; shared collection locations; alternative collection services.

(A) Collection events and alternative collection shall not be used by the opt-out program to substitute for the collection facilities requirements under subsection § 8(a)(1)(A) of this Procedure. Electronic waste from covered entities collected through collection events and alternative collection may count towards the program goal established for the opt-out program.

(B) The opt-out program shall not conduct a collection event without first properly registering with the Secretary (i.e., completion of a registration on a form provided by the Secretary). All collection events shall meet the requirements of the Procedure for the Environmental Sound Management of Electronic Devices for Collectors, Transporters, and Recyclers.

(C) The opt-out program may share collection locations with other approved opt-out programs or with the State Standard Program, provided that:

(i) The collection location and the programs all agree to the sharing of the location;

(ii) Each program provides the Secretary with a list of shared locations along with documentation demonstrating that the

program meets the minimum collection location requirements, and shall provide the Secretary with an updated list of shared locations within 5 days of any changes to the list;

(iv) Each program will allocate pounds collected from shared locations based on the market share percentages of participating manufacturers of each program; and

(iv) The programs agree upon, document, and provide that documentation to the Secretary on how the following will be addressed at shared locations:

(I) How collection programs will ensure that double-counting of e-waste will not occur;

(II) How the collection programs will prevent preferential selection of high value material by any program;

(III) How the collection programs will coordinate collection equipment and storage units for the collection and allocation of material from shared locations;

(IV) How the collection programs will coordinate the pickup, transportation, and recycling of e-waste from all collection locations;

(V) How the programs will allocate, based on the market share of the participating manufacturers, the pounds of covered electronic devices managed and the associated costs, including payments made to collectors for collecting covered electronic devices;

(VI) How payments will be provided to collectors; and

(VII) How the collection programs will verify compliance with the requirements of 10 V.S.A. Chapter 166 and any approval issued by the Secretary.

(3) Consistent service at collection facilities.

(A) Electronic waste shall be collected from covered entities free of charge.

(B) Collection location facilities utilized by the opt-out program shall be staffed, open on an ongoing basis, and open to the public at a frequency approved by the Secretary in order to meet the needs of the area being served. Collection location facilities shall be prohibited from refusing or rejecting electronic waste delivered by covered entities to the facility for recycling. At least one collection facility for each county must maintain regular business hours on Saturdays.

(C) Electronic waste shall be continued to be collected from covered entities after the program goal as determined pursuant to § 11 of this Procedure has been met.

(b) Environmentally Sound Management Practices

(1) Recyclers used by the opt-out program shall be prohibited from disposing of any electronic waste. A recycler may initiate a shipment of parts that are not recyclable to a facility that is permitted or certified to accept those materials.

(c) Access. All manufacturers participating in an approved opt-out program shall agree to allow Agency personnel access to facilities used for collection, consolidation, and recycling of electronic waste during normal business hours in order to perform inspections or other activities that may be required to ensure compliance with the terms and conditions of any approved plan, including any approved amendments, the applicable provisions of 10 V.S.A. Chapter 166 and this Procedure, as well as the requirements of the Procedure for the Environmentally Sound Management of Electronic Devices for Collectors, Transporters, and Recyclers.

§ 9. MANUFACTURER OPT-OUT PROGRAM REPORTING REQUIREMENTS

(a) A manufacturer opt-out program shall submit the following reports electronically in a format that allows the data to be sorted and searched:

(1) Annual report.

(A) The opt-out program shall submit an annual report by March 1 following a Program Year. The annual report shall include the following information on the program's performance during the Program Year:

(i) The types of electronic waste collected;

(ii) The aggregate total weight of electronic waste the program has recycled (by type);

(iii) A list of primary recyclers used by the program;

(iv) A description of the processes and methods used to recycle electronic waste;

(v) The total weight of electronic waste:

(I) Collected by each collection location (specifying the county in which each collection location is located);

(II) Sent to each primary recycler;

(III) Sent for local reuse or refurbishment by each primary recycler;

(IV) Sent for non-local reuse or refurbishment by each primary recycler; and

(V) Recycled or sent for recycling by each primary recycler;

(vi) A breakdown (by weight) of electronic waste collected through collection events, alternative collection methods, and premium services, if counted towards the program goal.

(vii) Any other data mutually agreed to by the opt-out program and the Secretary as necessary to ensure and document accurate payments on a per-pound basis for collection, transportation, and recycling services, and/or to provide an accurate accounting of total weight of electronic waste collected and recycled by the program.

(2) Quarterly verification; reports.

(A) On a quarterly basis, the opt-out program must conduct a verification of all data entered into the data collection system for that quarter. The opt-out program must review all data for each collection location, collection events, and any alternative collection services and premium services offered, and all source documents, to ensure data is properly entered into the system.

(B) The opt-out program must submit the quarterly verification reports on weights that count towards goal to the Secretary no later than 30 days after the end of each quarter. The report must be sortable by facility identification number assigned to the facility by the Secretary at the time of registration.

(C) The opt-out program must report any discrepancies in data to the Secretary within five business days of discovery of the discrepancy and take reasonable efforts to make corrections in collaboration with the Secretary.

(3) Waste sorts. The opt-out program shall submit copies of all waste sort reports conducted by the program as required by § 5(b)(5)(B). Waste sort reports must be submitted no later than 30 days after the date of the sort, and must include at a minimum, the total weight of material sorted, and the total weight and percentage of the total for each of the following categories of electronic waste:

(A) Computers;

(B) Cathode ray tubes (CRT) computer monitors;

(C) Flat panel display computer monitors;

(D) Printers;

(E) CRT televisions;

(F) All non-CRT televisions;

(G) Computer peripherals;

(H) Other banned electronic devices; and

(I) Other material that is not banned electronic devices.

(4) Program milestones.

(A) The program must submit quarterly reports to the Secretary on the progress towards completing all program milestones as identified in the opt-out plan application pursuant to subsection § 5 (b)(6).

(i) All reports and documentation of operator training conducted by the opt-out program; and

(B) Reports required under this section may be included as part of, or in conjunction with, the quarterly verification reports required pursuant to § 9(a)(2) of this Procedure.

(5) Collection locations; annual reporting. By February 1 following a Program Year, the opt-out program shall provide each registered collection location and collection event participating in the program with the data required for the collection location or event to meet their annual reporting requirement to the Secretary. Copies of the data provided to collection locations and collection events under this section shall be submitted simultaneously to the Secretary in one comprehensive report that can be sorted by facility identification number.

(6) End market reconciliation. Upon request by the Secretary, the opt-out program must provide end market reconciliation data on how program materials are ultimately managed or any other downstream audit reports.

(7) Compliance audit. The opt-out program shall submit all third-party compliance audit reports conducted pursuant to § 5(b)(2)(B)(iv) in conjunction with the first quarterly report required under subsection (a)(2) of this section.

(8) Records. The opt-out program shall retain all records for a minimum of three years, and shall make such records available to the Secretary upon request.

(b) The Secretary shall notify the opt-out program in writing of any reporting deficiencies and any need for additional information or documentation. Upon such notification, the opt-out program shall be required to submit any additional information requested to the Secretary within 30 days of receipt of notice.

§ 10. MANUFACTURER REGISTRATION REQUIREMENTS

(a) All manufacturers of electronic devices that operate in the State are required to

comply with the annual registration and fee requirements of 10 V.S.A. § 7553.

(b) At the time of annual registration, manufacturers shall select the collection program that they intend to participate in for the upcoming Program Year.

(1) Manufacturers that have submitted a manufacturer opt-out plan application that has been approved by the Secretary pursuant to this Procedure shall register for the approved opt-out program for the upcoming Program Year.

(2) Manufacturers that have submitted a manufacturer opt-out plan application that had been denied by the Secretary, or that have withdrawn an approved opt-out plan application pursuant to § 7(b) of this Procedure shall register to for the State Standard Program.

(c) A manufacturer may not change its program selection after the close of the annual registration period.

(d) At the completion of a Program Year, a manufacturer participating in an approved opt-out program may then elect to seek coverage under the State Standard Program.

§ 11. MANUFACTURER OPT-OUT PROGRAM GOAL

(a) Notification; Calculation. All manufacturer opt-out programs shall be implemented to ensure satisfaction of the manufacturer electronic waste program goal ("program goal").

(1) The Secretary shall notify the opt-out program of the program's manufacturer program goal.

(2) The program goal for an opt-out program shall be determined by multiplying the product of the relevant statewide recycling goal set forth in 10 V.S.A. § 7555(a) by the overall market share of the covered electronic devices of the manufacturer or manufacturer participating in the opt-out program.

(b) Parity Surcharge. A manufacturer opt-out program will be assessed a parity surcharge if the opt-out program, as a whole, fails to meet its electronic waste program goal.

(1) Failure to meet the program goal shall be determined, and the parity surcharge will be assessed, if the lesser of the following occurs:

(A) A manufacturer accepts less than the program goal established in 10 V.S.A. § 7554(b); or

(B) The manufacturer accepts less than its market share portion of the total electronic waste collected in the State.

(2) The parity surcharge shall be calculated pursuant to 10 V.S.A. § 7554(g)(2). Opt-out programs with multiple manufacturer participants shall jointly pay the parity surcharge based on their individual market shares.

§ 12. REVOCATION

(a) A violation of any provisions of an approved plan or approved plan amendment shall constitute cause for the revocation of the opt-out plan approval. The Secretary shall issue a notice, and shall notify the applicant of what is required to cure the nonconformity.

(b) An opt-out program shall cure any alleged violation within 10 business days of any notification of alleged violation, unless another time period is agreed to by the parties.

(c) The Secretary may revoke an authorization upon determining that the opt-out program has failed to cure an alleged violation. No approved opt-out plan may be revoked without notice and an opportunity for a hearing. Revocation hearings shall be governed by the provision of 3 V.S.A. §§ 809-815. Manufacturers participating in an opt-out plan that is revoked under this section shall further be subject to the parity surcharge provided for by § 11(b)(1) of this Procedure.

§ 13. ENFORCEMENT

(a) Manufacturers participating in an approved opt-out program shall implement the program in accordance with the terms and conditions of the Secretary's approvals, and pursuant to the applicable provisions of State law, this Procedure, and the environmental management standards outlined in the Procedure for the Environmentally Sound Management of Electronic Devices for Collectors, Transporters, and Recyclers.

(b) A violation of any provisions of an approved plan or approved plan amendment is subject to the enforcement authority pursuant to 10 V.S.A. Chapters 201 and 211.

(c) Compliance with an opt-out plan approval or opt-out plan amendment approval and the terms and conditions therein does not relieve a manufacturer applicant, or any collector, transporter, or recycler participating in the approved opt-out program, from the requirements of other applicable local, state, and federal laws.

§ 14. GENERAL CONDITIONS

(a) Scope of Approval. Approvals made by the Secretary under this Procedure shall not convey any property rights or exclusive privileges, authorize any injury to private property or invasion of personal rights, and are not in any way alienable, transferrable or assignable.

(b) Appeal Rights. Any person aggrieved by any act or decision made by the Secretary under this Procedure may appeal the decision to the Superior Court Environmental Division within 30 days of the issuance of the Secretary's decision. Appeals must be made in accordance with 10 V.S.A. Chapter 220 and the Vermont Rules Environmental Court Proceedings.

(c) Severability. The provisions of any section of this Procedure are severable. If any provision of this Procedure is held to be invalid, or if any application of any provisions of this Procedure to any person or circumstance is held to be invalid, the

invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Attachment A: Required Minimum Program Collection Locations

ATTACHMENT A

REQUIRED MINIMUM PROGRAM COLLECTION LOCATIONS

The Secretary has determined that a collection program must maintain a minimum of 52 permanent collection locations that satisfy the minimum number per county as identified below. Any municipality with a population of 10,000 people or more, must have at least one collection location. Programs are encouraged to utilize as many additional collection locations as possible based on program costs and convenience.

County	Census Estimate July 1, 2009	% of Total State Population	Towns with population >10,000	Minimum number of collection facilities required per county
Addison	36,760	6%	None	at least 3
Bennington	36,411	6%	Bennington	at least 3
Caledonia	30,252	5%	None	at least 3
Chittenden	152,313	24%	Burlington Colchester Essex Milton South Burlington	at least 10
Essex	6,394	1%	None	at least 3
Franklin	48,182	8%	None	at least 3
Grand Isle	7,560	1%	None	at least 1
Lamoille	25,958	4%	None	at least 3
Orange	28,896	5%	None	at least 2
Orleans	27,301	4%	None	at least 3
Rutland	63,014	10%	Rutland City	at least 5
Washington	58,696	9%	None	at least 4
Windham	43,471	7%	Brattleboro	at least 4
Windsor	56,552	9%	Hartford	at least 5