

**Chapter 415: REASONABLE COSTS FOR HANDLING AND RECYCLING OF ELECTRONIC WASTES**

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

1. **Definitions.** The following terms, as used in these rules, have the following meanings unless the context indicates otherwise.
  - A. **Computer monitor.** "Computer monitor" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to display information from a central processing unit or the Internet. "Computer monitor" includes a portable notebook computer and a digital picture frame.
  - B. **Consolidation facility.** "Consolidation facility" means a facility where electronic wastes are consolidated and temporarily stored while awaiting shipment of at least a 40-foot trailer full of covered electronic devices to a recycling facility. "Consolidation facility" includes a transport vehicle owned or leased by a consolidator and used to collect and transport covered electronic devices in this State at no greater than the per pound transportation rate for a full 40-foot trailer as approved by the department for each consolidator pursuant to this rule. For purposes of this rule, 16,000 pounds of covered electronic devices is equivalent to a full 40-foot trailer.
  - C. **Consolidator.** "Consolidator" means a person that provides consolidation and handling services for electronic wastes, and that operates at least one consolidation facility.
  - D. **Covered electronic device.** "Covered electronic device" means a computer central processing unit, a desktop printer, a video game console, a computer monitor, a television or similar video display device with a screen that is greater than 4 inches measured diagonally and that contains one or more circuit boards. "Covered electronic device" does not include an automobile, a household appliance, a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a cathode ray tube, a cathode ray tube device, a flat panel display or similar video display device that is contained within, and is not separate from, the larger piece of equipment, or other medical devices as that term is defined under the Federal Food, Drug, and Cosmetic Act. For purposes of this rule, a "covered electronic device" also does not include any device disposed of by a business, industry, medical, educational or governmental entity.
  - E. **Department.** "Department" means the Maine Department of Environmental Protection.
  - F. **Desktop printer.** "Desktop printer" means a device that prints text or illustrations on paper and that is designed for external use with a desktop or portable computer. "Desktop printer" includes, but is not limited to, a daisy wheel, dot matrix, inkjet, laser, LCD and LED line or thermal printer, including a device that performs other functions in addition to printing such as copying, scanning or transmitting a facsimile.
  - G. **Geographic service area.** "Geographic service area" means four geographic areas of Maine delineated as: Region 1 - Aroostook, Washington, and Hancock Counties; Region 2 –

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Piscataquis and Penobscot Counties; Region 3 – Sagadahoc, Kennebec, Somerset Waldo, Knox and Lincoln Counties; and Region 4 - Franklin Oxford, Cumberland, Androscoggin and York Counties.

- H. Handle.** "Handle" means to receive, collect, consolidate, store, transfer, track, package, load for transport, and perform associated administrative tasks, including recordkeeping and reporting.
- I. Maine's E-waste Law.** "Maine's E-waste Law" means the provisions in 38 M.R.S.A section 1610.
- J. Manufacturer.** "Manufacturer" means a person who:
- (1) Manufactures or has manufactured a covered electronic device under its own brand or label;
  - (2) Sells, or has sold under its own brand or label a covered electronic device produced by other suppliers;
  - (3) Owns a brand that it licenses or licensed to another person for use on a covered electronic device; or
  - (4) Imports or has imported a covered electronic device into the United States that is manufactured by a person without a presence in the United States.
- K. Market share.** "Market share" means a manufacturer's national sales of a covered electronic device expressed as a percentage of the total of all manufacturers' national sales for that category of covered electronic devices.
- L. M.R.S.A.** "M.R.S.A." means the Maine Revised Statutes Annotated.
- M. Municipal collection site.** "Municipal collection site" means a municipally owned solid waste facility or recycling center, including a facility owned by a consortium of municipalities or a facility that is under contract with a municipality or consortium of municipalities to provide solid waste management services. A "municipal collection site" as defined herein is not inherently a "consolidation facility" for purposes of this rule.
- N. Orphan waste.** "Orphan waste" means a covered electronic device, the manufacturer of which cannot be identified or is no longer in business and has no successor in interest.
- O. Person.** "Person" means any individual; partnership; corporation; firm; federal, state or local government entity; or public or private organization of any character.
- P. Qualified recycling and dismantling facility.** "Qualified recycling and dismantling facility" means a business that processes covered electronic devices for reuse or recycling and that provides the consolidator with a sworn certification that its processing, refurbishment for reuse and recycling of covered electronic devices meet the guidelines for environmentally sound management as published by the Department.

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

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

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

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- R. Recycling share.** The percentage of costs assigned by the Department to a television or video game console manufacturer for the transportation, handling and recycling of the total weight of televisions or video game consoles.
- S. Television.** "Television" means a covered electronic device that is a cathode ray tube or flat panel display primarily intended to receive video programming via broadcast, cable or satellite transmission, recorded transmissions from VHS, DVD and similar video players, or video from surveillance or other similar cameras.
- T. Universal waste.** "Universal waste" means cathode ray tubes, lamps, mercury-containing devices, non-leaking polychlorinated biphenyl ballasts, and certain batteries as further defined in Maine's *Identification of Hazardous Wastes* rule, 06-096 CMR 850.13&14.
- U. Video game console.** "Video game console" means an interactive entertainment computer or electronic device that produces a video display signal that can be used with a display device such as a television or computer monitor to display a video game.

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

- A. Consolidator approval process.** To be eligible to receive reimbursement from manufacturers for the consolidation of covered electronic devices generated as waste by households in Maine, a consolidator must be approved by the Department. By October 1 each year, a consolidator may submit information to the Department to demonstrate it meets the criteria for approval to offer consolidation facility services for covered electronic devices from Maine households and to receive reimbursement from manufacturers. The Department shall approve annually a group of up to 10 consolidators to provide consolidation facility services. The Department will include in the approved group consolidators that:
- (1) provide adequate demonstration that they have the ability to operate in conformance with this rule and Maine's E-waste Law;
  - (2) submit the lowest cost schedules, with overall consolidator costs for handling, transportation to recycling and recycling not to exceed \$0.48 per pound for televisions, computer monitors, desktop printers and game consoles; and
  - (3) when considered in aggregate, ensure that geographically-convenient consolidation services are provided throughout the state.

The Department shall approve consolidators for a period of one year. Manufacturers shall reimburse consolidators for all eligible costs incurred during the entire time period that a consolidator is approved by the Department.

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

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

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

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

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

- C. Allowable costs.** Each consolidator shall bill a manufacturer in accordance with their most recent fee schedule submitted to and approved by the Department for allowable costs associated with the handling, transportation and recycling of household-generated covered electronic devices. The only costs that may be billed to manufacturers are those associated with managing covered electronic devices in conformance with this rule unless otherwise contracted by the manufacturer.

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

- (1) Providing transport from geographically convenient collection sites, at a per pound rate assuming a full 40-foot trailer;

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

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

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

**D. Department determination of manufacturer brands, orphan waste and recycling share responsibilities.**

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

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

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

Annually by December 1, the Department shall provide computer monitor and desktop printer manufacturers, and approved consolidators, with a schedule of each manufacturer’s *pro rata* orphan share responsibilities effective for the following calendar year. The Department shall use the following formula for calculating the *pro rata* share of the orphan waste for each manufacturer:

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$$S = B \div T$$

When:

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

B = weight or number of manufacturer brand units, and

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

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

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

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

When:

S = recycling share

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

T = total percentage of market share (expressed as a decimal) from manufacturers with *de minimis* market shares and manufacturers that had greater than a *de minimis* market share in the relevant readily available national market share data and that are no longer selling the relevant product.

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

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

**3. Operational standards**

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

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

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NOTE: Because manufacturers are responsible for the shipment of their share of waste in option (1) above, manufacturers may arrange for shipment in their choice of transport vehicle size.

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

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

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

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

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

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

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NOTE: Collection sites are responsible for clearly distinguishing to the consolidators units that are generated as waste by Maine households. One way to do this is to utilize stickers that clearly mark each unit as generated by a business (e.g. "BW" –for Business Waste) or a Maine household (e.g. "MH" - for Maine Household).

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- (3) The consolidator shall establish and implement procedures for clearly distinguishing and tracking household waste units separately from business waste units.
- (4) The consolidator shall transport all televisions and game consoles, and all computer monitors and desktop printers which are the responsibility of manufacturers under the standard handling plan, only to qualified recycling and dismantling facilities.
- (5) For computer monitors and desktop printers that are the responsibility of manufacturers who have selected the "Option 1" handling plan, the consolidator shall separate and store each manufacturer's product. The consolidator shall inform the manufacturer and the manufacturer's contracted recycler annually or when a 40-foot truckload of the Option 1 manufacturers' product is available, whichever occurs first, for pick up within 3 business days of notice as contracted by the manufacturer. The consolidator shall ensure docking is available for the manufacturer's transporter and shall load the manufacturer's product onto the transporter's truck. The consolidator shall also provide the manufacturer's contracted recycler with a listing of the units by manufacturer, brand and weight in hard copy at the time of pick up and in electronic spreadsheet format via e-mail that same business day.

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

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is then responsible for delivering the shipment with the listing of the units by brand and weight to the manufacturer's selected recycler at the consolidator's expense.

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

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

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**D. Billing.** Consolidators and manufacturers shall work cooperatively to ensure implementation of a practical and feasible billing system. At a minimum, a consolidator shall invoice a manufacturer for the allowable costs incurred by the consolidator and associated with the handling, transportation and recycling for which each manufacturer is responsible under the provisions of this rule in conformance with its most recent fee schedule submitted to the Department. A consolidator shall bill each computer monitor and desktop printer manufacturer monthly for the services provided related to the manufacturer's products and its *pro rata* share of the orphan waste, and each television and game console manufacturer monthly for its recycling share of the appropriate waste stream.

- (1) At a minimum, each bill to a computer monitor and desktop printer manufacturer must include the following information:
- (a) Unit count and total weight by brand for each brand for which the manufacturer is responsible, with the computer monitor and desktop printer waste streams clearly distinguished;
  - (b) unit count and total weight by brand of orphan waste;
  - (c) total cost per pound billed; and
  - (d) total amount due from the manufacturer.

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

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

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

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

C = cost per pound for management services provided.

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

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

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

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

$C$  = cost per pound for management services provided.

- (3) Manufacturers may request additional information from consolidators at their discretion provided the requested information does not pose an unreasonable operating burden on the consolidator. The manufacturer shall pay the cost of obtaining and transmitting additional information to that manufacturer, including any costs incurred in meeting manufacturer audit requirements. The consolidator must provide the manufacturer with documentation of the cost of fulfilling the additional information request by the manufacturer.
- (4) A consolidator must maintain for a minimum of three (3) years a copy of the sworn certifications of compliance with ESM Guidelines from each recycling and dismantling facility that receives covered electronic devices from the consolidator and must provide the Department with a copy of these records within 24 hours of its request.
- (5) Manufacturers shall pay all bills received from approved consolidators and generated in conformance with this rule.
- (6) A consolidator may notify the Department whenever a manufacturer fails to meet its obligation to reimburse the consolidator for allowable costs within 90 days of receipt of an invoice and the consolidator and manufacturer have not agreed upon an alternative payment schedule.

**E. Insurance requirement.** A consolidator shall maintain commercial general liability insurance or equivalent corporate guarantee for accidents and other emergencies with limits of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.

**F. Reporting requirements.** By April 1<sup>st</sup> and October 1<sup>st</sup> each year, a consolidator shall submit a semi-annual report to the Department covering operations from the previous July 1 to December 31 and January 1 to June 30 respectively. These reports shall include, but not be limited to:

- (1) updates to any information submitted under the provisions of sections 2(A) and 2(B) of this rule;
- (2) a narrative summary of the facility's activities related to consolidation of covered electronic devices; and

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- (3) an accounting consistent with section 3(B) of this rule, by brand and responsible manufacturer (if applicable), of numbers and volume by weight for the units handled in the preceding July 1 –June 30 timeframe.

**G. Notification of cessation of services.** At least 30 days prior to ceasing operations as a consolidation facility in any of the geographic service areas indicated as served in the consolidator's documents submitted under the provisions of section 2(B) of this rule, an approved consolidator must provide the Department notice of intent to cease operations for purposes of managing covered electronic devices.

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STATUTORY AUTHORITY: 38 M.R.S.A. Sections 341-D(1-B) and 1610(5)(D)(1)

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