

California's Electronic Waste Recycling Act Imposes Requirements on Manufacturers From Around the World

California's Electronic Waste Recycling Act of 2003 ("the Act"), enacted as Senate Bill 20, established a series of requirements for manufacturers and retailers of electronic products that contain cathode ray tubes (CRTs) and Liquid Crystal Display (LCD) panels.

When all of these requirements are fully implemented, California will have a comprehensive recycling and disposal program for CRT and LCD products that are sold in California, and will impose European standards banning the sale of CRT and LCD products containing certain chemicals. Each requirement will have ripple effects on manufacturers around the world.

Several requirements are in effect now. The Act implements other requirements on a prescribed timetable, while the Legislature is considering several amendments.

This *e-Waste Recycling Bulletin* and subsequent Bulletins in this series will apprise readers of key requirements under the Act and current developments in its implementation.

[▶ Overview of the Electronic Waste Recycling Act of 2003](#)

Key Requirements and Effective Dates

April 1, 2004 – Manufacturer Notification to Retailers: By this date, every "manufacturer" of a "covered electronic device" who sells that device was required to notify every "retailer" of each device subject to the Act.

(*Ed. Note:* The effective date for this requirement has passed. Manufacturers not in compliance should consult with counsel.)

The term "manufacturer" includes a person who manufactures a covered device sold in California and a person who sells a covered device in California under

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that person's brand name. "Retailer" includes persons who sell, lease or transfer a covered electronic device in California to a consumer.

The term "covered electronic device" includes a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size (diagonally) which the department determines, when discarded or disposed, would be a hazardous waste pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. This definition specifically excludes an automobile or a large piece of commercial or industrial equipment, such as commercial medical equipment, that contains a video display device within, and not separate from, the larger piece of industrial or commercial equipment.

July 1, 2004 – Compliance Required. On this date, it became unlawful to sell a covered electronic device to a consumer in California unless the Department of Toxic Substances Control ("DTSC") or the Integrated Waste Management Board ("IWMB") determines that the manufacturer demonstrates compliance with the Act.

(*Ed. Note:* This requirement may be problematic where manufacturers have not yet made the notifications referred to above, particularly in light of ambiguities in the means available to secure determinations of compliance and mechanisms for enforcement. Nevertheless, the implementation date for this requirement has passed, and the requirement thus is in effect. *See also* discussion of Assembly Bill 901, *infra*. Manufacturers and retailers confronted with these anomalies are well-advised to consult with counsel.)

November 1, 2004 - Recycling Fees. On or after this date, retailers will collect a **recycling fee** on the first sale in California of a covered electronic device from a retailer to a consumer. (This requirement originally was to be imposed on July 1, 2004. Emergency legislation (Assembly Bill 901) extended the implementation date for this requirement to November 1, 2004, but left all other implementation dates intact.)

January 1, 2005 - Labeling Requirements. On or after this date, it will be unlawful for any person to sell or offer for sale in California a covered electronic device that is not clearly labeled with the manufacturer's name or the manufacturer's brand label.

July 1, 2005 - Reporting Requirements. On or before this date, and annually thereafter, each manufacturer that sells a covered electronic device in California will be required to report to the IWMB the number of covered electronic devices it sold in California during the preceding year and a set of "baselines" identifying: (1) the amounts of certain designated chemicals in covered electronic devices manufactured in that year and the reduction of those chemicals from the previous year; (2) the total estimated amount of recycled materials in those devices and the increase in recycled materials from the previous year; and (3) any efforts to design those devices for recycling and plans for further efforts to do so.

July 1, 2005 – Recycling Information Requirements. On or before this date, and perpetually thereafter, each manufacturer subject to the Act will be required to make information available to consumers that describes where and how to return, recycle and dispose of covered electronic devices. (This requirement presumes that manufacturers, retailers, and State authorities have put in place a system for recycling and disposing of covered electronic devices, with "collectors" and "recyclers" to receive payments from an Electronic Waste Recovery and Recycling

account, funded by the recycling fees discussed above.)

January 1, 2007 - Prohibition on Sale of Covered Electronic Devices That Do Not Conform to European Union Standards. On this date or the date on which EU Directive 2002/95/EC becomes effective in Europe, whichever is later, it shall be unlawful for any person to sell in California any covered electronic device manufactured after that date that does not comply with the Directive. The Directive will prohibit the sale of devices containing lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls ("PBBs") or polybrominated diphenyl ethers ("PBDEs").

Currently in Effect – Electronic Waste Export Requirements. Any person who intends to export covered electronic waste to a foreign destination must, at least 60 days before export: notify DTSC of the destination, contents, and volume; demonstrate that import at the country of destination complies with all applicable laws; demonstrate that the exportation complies with international law; demonstrate that covered electronic waste will be handled within the country of destination under Organization for Economic Cooperation and Development rules, standards, and requirements; and demonstrate that the covered electronic waste is being exported for reuse or recycling. These export requirements do not apply to a component part of a covered electronic device exported to an authorized collector or recycler that is reused or recycled into a new electronic component.

Penalties for Non-Compliance

The Act allows for civil liability of up to \$2500, to be imposed administratively by the IWMB, for each sale of a covered electronic device for which a recycling fee has not been paid. The Act also allows for a civil penalty of up to \$5000, to be imposed by a superior court, for each such sale. The Act further allows for civil liability of up to \$25,000, to be imposed administratively by the IWMB, against any manufacturer for failure to comply with the Act, except for penalties imposed under the provisions above.

▶ Further Details and Developments

The Legislature is now considering amendments to the Act, which may be effected in the near future by Senate Bill 50. Emergency regulations implementing some provisions of the Act have been published at Title 14 of the California Code of Regulations, Division 7, Chapter 8 (by IWMB) and at Title 22 of the California Code of Regulations, Division 4.5, Chapter 10 (by DTSC). Other regulations may be promulgated as well. The Act also includes various exceptions. Thus, each requirement identified above requires further discussion, and close attention.

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