

What Is a "Covered Electronic Device?"

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.

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.

▶ What Is a "Covered Electronic Device?"

e-Waste Recycling Bulletin (04-I) identified several new obligations imposed under the Act on manufacturers, retailers, and consumers of a "covered electronic device." This *Bulletin* will assist readers in identifying electronic devices that come within the definition of that critical statutory term.

As enacted, the Electronic Waste Recycling Act establishes the following as the definition of "covered electronic device":

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 measured diagonally and which the department determines, when discarded or disposed, would be a hazardous waste pursuant to [provisions of the Health and Safety Code].

Cal. Public Resources Code § 42463(f)(1). Given the broad array of electronic devices distributed in commerce, the statutory definition raises many questions, such as:

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- Is the definition restricted to consumer products?
- Does it include industrial equipment?
- Does it include video displays within other electronic devices?
- When is a device considered “hazardous?”

Limited guidance as to some of these questions lies in the statutory exemption from the Act, providing that the term “covered electronic device” does not include:

an automobile or a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment, that contains a cathode ray tube, cathode ray tube device, flat panel screen, or other similar video display device that is contained within, and is not separate from, the larger piece of industrial or commercial equipment.

Public Resources Code § 42463(f)(2). The exemption itself, however, raises additional questions. What does “large” mean? “Contained within”? “Separate from”?

Until recently, these statutory definitions were the only source of guidance for the regulated community. Regulations promulgated recently by the Department of Toxic Substances Control (“DTSC”), one of two agencies that administer the Act, now provide some further guidance. DTSC’s definition of “covered electronic devices” expressly includes certain electronic devices with which most persons are familiar. Implicitly, the definition also provides some insight as to what devices might be excluded under the statutory exemption. The DTSC regulations, which became effective June 2004, define “covered electronic devices” as:

cathode ray tube containing devices (CRT devices) with CRTs greater than four inches measured diagonally; cathode ray tubes (CRTs) greater than four inches measured diagonally; computer monitors containing cathode ray tubes greater than four inches measured diagonally; laptop computers with liquid crystal display (LCD) screens greater than four inches measured diagonally; LCD containing desktop monitors greater than four inches measured diagonally; televisions containing cathode ray tubes greater than four inches measured diagonally.

22 Cal. Code Regs. § 66260.201(a) and 22 Cal. Code Regs. § 66261.126, Appendix X. The regulation also excludes from coverage electronic devices for which the manufacturer “has obtained the Department’s concurrence that the device is non-hazardous” *22 Cal. Code Regs. § 66260.201(a)*.

The DTSC regulations obviously bring desktop and laptop computers with CRT and LCD monitors larger than four inches within the requirements of the Act. Nevertheless, manufacturers of other products continue to face questions, such as whether their products are “cathode ray tube containing” devices or whether the CRTs associated with their products are, in the words of the statutory exemption, “contained within” or “separate from” their products. Significantly, the regulations provide no guidance as to when a device is considered “large” for purposes of the statutory exemption. Manufacturers are encouraged to seek counsel or guidance from DTSC on these important issues.

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