

Manufacturer Duties Under the California e-Waste Recycling Act

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 substances. Each requirement will have a ripple effect 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.

▶ Who is a "manufacturer?"

e-Waste Recycling Bulletin 04-I summarized key provisions of the Electronic Waste Recycling Act. *e-Waste Recycling Bulletin* 04-II subsequently described the "covered electronic devices" that are subject to the Act. This *Bulletin* helps readers to determine who is a "manufacturer" for purposes of the Act and what the Act requires a manufacturer to do.

As enacted, the Electronic Waste Recycling Act defines a "manufacturer" as either of the following:

(A) A person who manufactures a covered electronic device sold in this state.

(B) A person who *sells* a covered electronic device in this state under *a person's brand name*.

Cal. Pub. Res. Code § 42463(n) (emphasis added). Part (A) of the definition is reasonably clear. If a person manufactures a covered electronic device that

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is sold in the state, then he or she is a "manufacturer" under the Act, regardless of where the device is manufactured.

Part (B) of the definition encompasses persons who sell directly to consumers, whether they manufacture their own devices or have someone else do so on a contract basis. Because the terms "sell" or "sale" are defined by the Act to exclude "a wholesale transaction with a distributor or a retailer" (*Cal. Pub. Res. Code § 42463(p)(1)*), a person who sells a covered electronic device on "wholesale" terms to a "distributor" or "retailer," is not a "manufacturer" under part (B). However, a person who sells a covered electronic device in California under *his or her own* brand name, excluding wholesale transactions with distributors or retailers, is a "manufacturer" under the Act and subject to a manufacturer's duties. A person who sells a covered electronic device in California under *someone else's* brand name, even on retail terms or directly to consumers, is not a "manufacturer," but rather would be subject to the Act as a "retailer." See *Cal. Pub. Res. Code § 42463(o)*.

▶ What is a manufacturer required to do?

On or before **April 1, 2004**, a manufacturer was supposed to have done the following:

[I]nform the retailer if a covered electronic device sold by that manufacturer is subject to the covered electronic waste recycling fee established pursuant to this chapter [*Cal. Pub. Res. Code § 42464*].

Cal. Pub. Res. Code § 42465.3. A "retailer" is a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device. *Cal. Pub. Res. Code § 42463(o)*. "Retailer" also includes a person who manufactures a covered electronic device and sells the device *directly* to consumers, excluding wholesale transactions with distributors and other retailers. *Id.* California's Integrated Waste Management Board has made a sample notification letter available to manufacturers on its website: <http://www.ciwmb.ca.gov/Electronics/Act2003/Manufacturer/Notice/>.

On **July 1, 2004**, it also became unlawful for any person to sell a covered electronic device to a consumer in California, unless the manufacturer of the device had demonstrated compliance with the Act. *Cal. Pub. Res. Code § 42465*. "Consumer" means a purchaser or owner of a covered electronic device, excluding retailers and distributors involved in wholesale transactions and manufacturers who purchase specialty or medical electronic equipment that may be a covered electronic device. *Cal. Pub. Res. Code § 42463(d)*. Where a manufacturer has not yet notified its retailers about the manufacturer's devices that are subject to the Act's recycling fees, the manufacturer has failed to comply with the Act. Civil liability for such non-compliance can result in penalties of up to \$25,000.

On **January 1, 2005**, it will become illegal to sell or offer for sale a covered electronic device in California, unless the device bears the manufacturer's name or brand name. *Cal. Pub. Res. Code § 42465.1*. Where a manufacturer sells directly to consumers, this labeling requirement will fall upon the manufacturer itself. Even where a manufacturer only sells wholesale, however, downstream retailers and distributors who sell the manufacturer's products will be subject to penalties for selling a device without a manufacturer's label and will insist on the required labeling. Therefore, whether directly or indirectly, manufacturers will be required to label all covered devices no later than January 1, 2005.

Starting **July 1, 2005**, manufacturers also will have new annual reporting obligations for their covered electronic devices. *Cal. Pub. Res. Code § 42465.2(a)(1)*. Manufacturers will have to report information about device sales, reductions in the use of certain heavy metals, and their recycling efforts, including efforts to increase design for recycling. Confidential business information will be eligible for confidential treatment under state law. *Cal. Pub. Res. Code § 42465.2(b)*.

Also beginning **July 1, 2005**, manufacturers will have to start providing consumers detailed information about recycling the manufacturer's devices. *Cal. Pub. Res. Code § 42465.2(a)(2)*. This includes information on how and where to return devices for recycling and contemplates the use of toll-free numbers, the Internet, device labeling, or other information accompanying the device when sold.

Lastly, manufacturers need to prepare for the future prohibition of covered electronic devices containing certain heavy metals. The Act requires the Department of Toxic Substances Control ("DTSC") to adopt regulations prohibiting the sale or offer for sale of electronic devices that are banned under European Directive 2002/95/EC. This Directive requires the substitution of certain heavy metals with alternatives in electrical and electronic equipment, effective January 1, 2008. DTSC's regulations will take effect on **January 1, 2007** or on the date the Directive takes effect, whichever is later. We will discuss the Directive and its exemptions from the substitution requirement in a future *Bulletin*.

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