

COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION TO THE DRAFT OF PROPOSED LEGISLATION AND POLICY OPTIONS

November 11, 2005

The Consumer Electronics Association (CEA) thanks the leaders of the Great Lakes E-waste Policy Development Initiative for the opportunity to present its views on the Draft Model Regional Legislation dated November 9, 2005. CEA wholeheartedly supports the stated goal of this initiative to “develop a consistent and unified approach for managing waste electronics”¹ and we look forward to working with you in this collaborative process.

CEA represents more than 2,000 companies involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. Nearly 200 of our members have a presence in the 7 states participating in this initiative. CEA also produces the nation’s largest annual trade event, the International Consumer Electronics Show.

For the 7 states participating in the NERC/ERC process, the U.S. Census Bureau estimates that our industry provides more than 195,000 jobs via 2,600 establishments with an annual payroll of nearly \$9 billion.² The Draft Legislation would have a significant effect on our industry, and we appreciate the opportunity to provide input.

Below are listed the key issues of concern, but the absence of comments with respect to any particular provision of the Draft Legislation should not be interpreted as CEA’s endorsement of the provision.

Overall CEA Comments

CEA Opposes Mandated Manufacturer Financing. CEA opposes all federal, state, and local level initiatives that mandate manufacturer financing of collection, transportation and recycling of electronics waste treatment at product end-of-life. Placing the financial burden solely on the manufacturers, as Option A in the Draft Legislation currently proposes, is contrary to the concept of shared responsibility. As proposed in Option A, all system components will be financed by a manufacturer fee. This is not shared responsibility.

CEA Supports a National Solution. CEA strongly believes that a national solution is the most appropriate means to addressing this public policy challenge, primarily as a means to avoid an undesirable patchwork of state legislative mandates. CEA applauds the language in the letter we received inviting our participation stating that “our objective is to develop model legislation that would be workable in the mid-west and beyond.” In its current form the Draft Legislation allows for, but does not require, multi-state implementation.

¹ Letter from Cynthia Moore and Dan Fields, Wisconsin Department of Natural Resources

² NAICS code 334, see <http://www.census.gov/econ/census02/data/us/US000.HTM>.

The Draft Legislation should be modified to require regional implementation that invites states in other regions to join in the future. This could be done either through a scalable interstate compact among states to implement a unified program or following the authorization of a national framework by the federal government. All significant system decisions – including the setting of any fees, product scope, what type of administrative process to implement the system and reporting requirements – should be made within a multi-state decision framework designed to “fix the problem” but minimize state-by-state redundancy and contradictions. Any such multi-state framework should be structured to invite other states from other regions to join, either singly or as a region.

While CEA recognizes that development and coordination of a truly expandable, multi-state model is a more difficult challenge, we believe that the importance of a unified regional and ultimately national solution is a critical prerequisite for implementation of a coherent and effective system. CEA would encourage the Great Lakes E-waste Policy Development Initiative to incorporate into its work program a request to Congress for authorization of a state-accessible e-waste federal framework to effect the program envisioned in the Draft. Such a framework would allow states to “opt-in” to a federal system that would provide flexibility in local collection and recycling while providing valuable economies of scale for system procurement and administrative operations. CEA would be willing to focus its advocacy efforts on the federal level to obtain passage of such a national framework through the federal legislative process, but could not support this effort if the financing provisions in Option A remain.

In order to take advantage of any such coordinated public/private advocacy effort there would need to be drafted companion model legislation for passage at the federal level. There would also need to be appropriate references and related changes added to the November 9 Draft. Once the financing arrangement endorsed by this group is clarified, CEA would be happy to work with the appropriate state officials to draft appropriate language.

Section 1: Definitions

The Draft Legislation covers a broad range of electronic devices, including desktop/personal computers, computer monitors, portable computers, desktop printers, CRT-based televisions, non-CRT-based televisions, VCRs and DVD players. Given that the products of principal concern to stakeholders are cathode ray tubes (“CRTs”), CEA believes that the model legislation should limit the product scope to display devices containing CRTs. Thus, CEA recommend that the definition of “covered electronic devices” be amended as such.

However, if the Draft Legislation continues to include a more expansive scope, CEA recommends the existing list of exclusions in the definition of “Computer” should be expanded to exclude video game consoles and that the definition of DVD players be limited to those with a display area greater than 4” measured diagonally. CEA also recommends that desktop printers be deleted.

CEA also recommends clarifications of the following definitions:

- The current definition of “sell” or “sale” includes specific exclusions, specifically “excluding wholesale transactions with distributors or dealers and excluding leases.” While CEA agrees that the most visible need currently is to address the recycling of electronics generated by households and small businesses, the exclusion of leases from the financing system could create a hole in the financing system to the benefit of large businesses and to the detriment of individual consumers. CEA recommends that if the Draft ultimately excludes leased and/or large business sales from the financing system that additional language be added to specify how products that are resold or otherwise find their way into households will or will not participate in the collection/recycling system. Furthermore, the exclusion of “wholesale transactions” would seem to contradict the requirements for implementing Financing Option B (see (1)I reference in Option B reference to “or to another person for resale or use in the state”).
- The definition of “manufacturer” in definition number 2 (“manufactures covered electronic devices for sale in this State without affixing a brand”) could overlap and “double-count” the manufacturers who brand someone else’s product under definition number 3 (“resells in this State covered electronic devices produced by other suppliers under its own brand or label”).

Section 3: Sales Prohibition

Given the large number of small manufacturers and importers of covered electronic devices, CEA anticipates a measurable level of non-compliance particularly if the manufacturer fee described in Option A is implemented as proposed. CEA requests that the Draft Legislation be amended to clarify that fees for complying manufacturers should not be raised to compensate for non-complying manufacturers, and that the recycling costs designated for those non-complying companies be paid by the state prior to state enforcement action and recovery of the manufacturer fee and associated damages.

Section 5: Financing Mechanism

Option A in the Draft Legislation contains the provisions that assign a flat \$10 fee that is to be paid per unit sold in the individual State. However, CEA notes that most manufacturers sell into States through wholesalers, resellers and other channels that, once the stock leaves the manufacturer, provide the manufacturers with no way to account for the amount of products sold into an individual State. Therefore, it will be nearly impossible for manufacturers to determine the precise number of units sold within a particular State. This fact is critical for how the fee will be absorbed throughout the distribution chain from manufacturer to retailer to consumer. For example, a manufacturer who sells to a large distributor will not be able to pass along the fee because the ultimate destination of the product (and hence the fee amount) will be unknown. A manufacturer who sells directly to a small retailer located in a single state will be able to include the fee as part of the sales arrangement. Thus, this fee structure will unwittingly penalize smaller retailers operating from a single location and/or state, and it will introduce uncertainty into the distribution chain between manufacturers and larger distributors.

Furthermore, the consumer will most likely pay more than the specified fee amount due to mark-ups in the distribution chain and payment of sales taxes on that unit amount.

This concern is compounded as more states enact fees of differing amounts, and thus another example of why harmonization of an electronics recycling program is a central tenant of CEA's recycling policy. The creation of varying manufacturer fees on varying products will introduce unfairness and uncertainty into the electronics sales distribution system, a problem clearly avoidable by creation and implementation of a harmonized multi-state/national recycling system.

This section also allows each manufacturer's share calculation to "exclude figures for sales involving business-to-business contracts that provide end-of-life takeback programs for covered electronic devices," but does not include any criteria for the Agency to use in determining how many products are sold with these contracts. CEA suggests that these sales data should be included in the dataset submitted to the Corporation; these sales should be reported as all other types of sales with additional documentation to justify exclusion of the fee on these units using criteria designed to ensure that these units will never participate in this recycling system.

Also, the schedule for fee payment in Option A is noted in the first sentence as "annually," but "quarterly" in (2). CEA suggests, for either Option A or B, that the schedule for when the Corporation would collect fees and enter into contracts with contractors be negotiated and approved on a case-by-case basis by each respective state agency.

Finally, there are several places throughout the Draft that seem to presume Option A and would need to be clarified if another option is ultimately selected (see the definition of "sell" that excludes wholesale transactions with distributors, the reference to "manufacturer's brand" in Section 4, reporting requirements limited to manufacturers in Section 6, Section 8(4), etc.).

Section 7: Retailer Responsibility

The Draft Legislation provides very specific requirements on how retailers are to provide information to their consumers on how and where to reuse and recycle products that they sell. Retailers should be given the flexibility to communicate to their consumers on proper disposal methods. Additionally, the Draft states that retailers must "indicate on receipts that a unit recycling fee has been applied for all Covered Electronic Devices (CEDs) that carry a fee," but does not specify whether the retailer must state the actual fee amount, or whether this requirement would still apply for manufacturers choosing the individual responsibility option.

Section 9: Corporation Responsibilities

In Section 9, Subsection (9)I refers to "each service area" that is currently undefined ("establishes per capita collection and recycling goals for each service area."). CEA recommends that the phrase "each state" be included instead of the service area reference.

Section 10: Fees for the Collection or Recycling of Covered Electronic Products

The title of Section 10 suggests the intention of this section is to ban end-of-life fees on consumers. However, the wording of this section is very broad and would prohibit the charging of any fees charged to consumers. Unless clarified as an end-of-life fee prohibition, Section 10 would adversely affect Internet sellers who cannot have prices for different states, and could be read to preclude any increase in the product price because it might be construed as a fee.

CEA requests that Section 10 be clarified as a prohibition against end-of-life fees that duplicate the financing system described in the Draft.

Section 11: Not-for-Profit Corporation Structure

Subsection (5) of Section 11 states that “one state government representative from each participating state may exercise the option to participate on the Board.” CEA recognizes the difficulty in quantifying the role of specific state representatives on the Board of a regional body consisting of an unknown number of states. CEA suggests that state government participation in Board activities be established through state-specific Board Advisory Committees that oversee the relationship between the Corporation and the state. CEA further suggests that the chair of each Board Advisory Committee representing states with an active cooperative agreement (or similar arrangement) serve as non-voting members of the Corporation Board.

Section 18: Relation to Federal Law

The use of the term “acceptable” in this section should be clarified or deleted. If this term should remain in the text additional clarification should be added to designate the party responsible and process for making such an “acceptability” designation.

CEA looks forward to continuing to work with the Region V states to address the issue of electronics recycling.