IBM

Midwest States Regional Initiative on e-Waste Management

IBM Comments on Draft Model Legislation

November 17, 2005

IBM has been a global leader in computer recycling for more than 15 years. IBM has recovered more end-of-life (EOL) computer equipment than any other computer manufacturer in the world, and IBM has publicly reported its collection and recycling results longer than any other computer company in the world. Since 1995, when IBM first began providing the volumes of EOL product waste it collected and recovered (i.e., resold, refurbished, or recycled) in the company's annual corporate environmental report, IBM has documented the collection and recovery of nearly 1.2 billion pounds of EOL product waste.

In 2004, IBM, through its global asset and product recovery system with 69 operations running worldwide (including customer lease returns, customer return / recycling programs, and some IBM internal product scrap), collected and recovered more than 128 million pounds of EOL product waste. This included over 1.5 million PCs, notebook computers, and monitors, more than half of which were collected through programs running in the U.S alone.

Through our experiences here in the U. S. and with product collection and recycling programs around the world, we have developed an in-depth perspective regarding what types of product collection and recycling programs are effective and workable. With regard to legislation, it is IBM's objective to promote the electronic product recycling solution that will most effectively cause product recycling to occur and to sustain it.

We appreciate the efforts of the Midwest Initiative participants to develop fair and reasonable model state legislation to address this important issue. IBM is generally supportive of the approach taken in the model legislation (Financing Option B), and offers the following comments and suggestions that we believe can improve the efficiency and effectiveness of the electronic waste recycling system.

Section 5: Financing Mechanism

IBM supports financing the electronic waste recycling system with an Advance Recycling Fee collected at the point of sale to final product users. However, while we believe that it is easiest to collect the advance recycling fee at the point of sale, we are open to the idea of an upfront fee paid by manufacturers and others involved in the sale and distribution of products. It is important to note that manufacturers can not always control what states their products are sold. As such, there will

typically be no way for a manufacturer to document the actual number of covered electronic devices ultimately sold in a state.

Given this fact, we do not believe that the financing system envisioned by Option A of the draft model state legislation is feasible. Given the broad range of covered electronic devices, the large number of product manufacturers and brands sold in the U.S., and the fact that certain types of sales (leases and business-to-business contracts that provide end-of-life takeback programs for covered electronic devices) are excluded, we do not believe that a "market research firm" will be able to develop a reasonable and accurate estimate of the number of covered electronic devices placed on the market in a particular state.   We are also concerned that this approach severely limits the ability of manufacturers to internalize the costs of compliance with a state's recycling requirements to end users in that state. As a result, manufacturers will likely need to internalize the cost on all national sales. This will result in a system whereby consumers in states that have alternative financing systems for collection and recycling of electronic products are required to subsidize recycling of products in states implementing this legislation. In some instances, such as California, consumers will end up paying not only for recycling of products in their own state, but they will also be required to subsidize recycling in other states through higher product prices required to recover recycling costs for states implementing this legislation.

In contrast, we believe that Financing Option B which would assess the fee on the fist seller in the state would be more accurate and easily implemented. However, since some products originally sold to distributors and retailers in the state may not actually end up being sold to final users in the state, it will be necessary to include a rebate mechanism whereby distributors and retailers that take possession of a product within the state for which the Advance Recycling Fee has been previously paid, but then ship the product to another state, are refunded the recycling fee for those products shipped outside the state.

Section 6: Manufacturer Responsibility

As noted above, manufacturers will not always have the ability to accurately determine the numbers of covered electronic devices sold in a particular state. As such, any numbers reported directly by manufacturers will likely be based on estimates using national sales data and state and national census data. We do not believe that this is an acceptable and accurate methodology for determining fees submitted to the Corporation.

Section 9: Corporation Responsibilities

Section 9.(6) requirements should be changed to reflect that the Corporation shall receive fees as described in Section (5) for the sale of covered electronic devices. It

should also be noted that under Financing Option B, these fees may be remitted by others (e.g., retailers, distributors) in addition to manufacturers

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

IBM supports the concept that no collector or recycler of covered electronic products receiving payment from the Corporation for collection and recycling of products should charge consumers and end of life fee for these same services. However, it is important that collectors and recyclers be allowed to charge additional fees for any "exceptional services" provided. These might include home pickup of products, assured data destruction on computers, assistance with inventory control (e.g., serial number documentation), equipment remarketing assistance, etc.

Section 12: Restriction on Hazardous Substances

IBM generally supports the concept that covered electronic devices sold in states implementing this legislation should be compliant with EU RoHS requirements after July 1, 2006. However, the language in the draft legislation is not clear. The Electronic Industries Alliance (EIA) is working to draft acceptable language that can be used by states wanting to mirror EU RoHS requirements for covered products sold in their state. EIA should be consulted to provide acceptable language for this section.

Section 16: Enforcement

Enforcement language appears to be only directed at manufacturers and needs to be modified to include retailers, distributors and others with requirements under the legislation.

Addendum – Individual Responsibility under Option A

IBM supports the idea that manufacturers that operate their own collection and recycling programs should be compensated for their efforts and costs. We believe that this compensation should be determined based on the actual amount of products collected in the state and recycled by the manufacturer, and that the compensation should be equal to the amount that would have been paid by the Corporation for collection and recycling of the same amount of products through the collective recycling system.

IBM does not support systems where manufacturers can "opt out" of paying fees based on the promise of establishing an "equivalent" recycling system. Not only is it virtually impossible to determine the "equivalence" of manufacturer programs, but

this system would be confusing to consumers, distributors, retailers, and others responsible for remittance of fees.

Thank you for the opportunity to provide these comments. Please contact me if you have questions regarding IBM's views on this important issue.

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