



**MISSOURI
DEPARTMENT
OF NATURAL
RESOURCES**

**Title 10--DEPARTMENT OF NATURAL RESOURCES
Division 25--Hazardous Waste Management Commission
Chapter 19--Electronics Scrap Management**

EMERGENCY RULE

10 CSR 25-19.010 Electronics Scrap Management

PURPOSE: This rule clarifies the responsibilities of computer equipment manufacturers, retailers, recyclers and the department for providing recycling or reuse of certain consumer electronic equipment at no additional cost. The rule contains procedures for manufacturers to submit and implement recovery plans, and standards for recyclers that process equipment collected under the recovery plans.

EMERGENCY STATEMENT: The Department of Natural Resources, Hazardous Waste Management Commission, finds that this emergency rule is necessary to satisfy a statutory mandate to promulgate a rule to implement the Manufacturer Responsibility and Consumer Convenience Equipment Collection and Recovery Act, SB720, signed into law by acting Governor (Lt. Governor Peter Kinder) on June 16, 2008. The act may not be enforced until rules are promulgated. (see comment about consequences in next paragraph) . The act requires computer manufacturers to develop a plan for the department, which provides reasonably convenient recycling opportunities for their computers to consumers in Missouri. The act also requires the department to promulgate rules by July 1, 2009, educate consumers about the recycling and reuse of computers, and to provide a web site for this purpose, which should include a list of manufacturers' recovery plans, as well as dates and locations for collection opportunities

The department is proposing to use an emergency rule to meet the July 1, 2009 statutory deadline because the department interprets the language of the bill as requiring a rule in effect on that date ("The department shall adopt any rules required to implement sections 260.1050 to 260.1101 not later than July 1, 2009." section 260.1101.1, RSMo.) and the regular rule process, would not be capable of completing the promulgation of a rule by this date. The development of the rule did not allow time between its August 28, 2008 effective date and July 1, 2009 deadline to promulgate a regular rule. While the Department will not meet the statutory deadline for establishing the rule, there is no harm to the public or additional public cost that comes about because of the situation. Neither the electronic scrap statute nor rule deal with televisions, the component of electronic scrap most likely to need this type of service given the changeover to digital television this month.

The regular rule is identical to the emergency rule, and will begin the formal rulemaking processes and accompanying opportunities for public involvement, while this emergency rule meets the statutory deadline and implements the law until the regular rule completes the rulemaking process.

As preliminary work, the Department reviewed the requirement for this rule and determined a regulatory impact report, pursuant to section 640.015, RSMo, was not required as this rule

would not establish environmental standards or conditions, a report required solely of this Department in promulgating some rules.

Given the high level of interest in this topic, the Department then began the process of notifying stakeholders and convening a group of involved parties to facilitate the rulemaking effort.

Sections 260.1050 to 260.1101, RSMo, enacted by SB 720, is the first statute in Missouri that deals with the topic of the management of electronics waste management. To develop this rule, the department convened a workgroup of electronics stakeholders, including large and small manufacturers, retailers, recyclers and consumers. This workgroup was a subset of a larger group convened three years ago as the Electronic Scrap Stakeholder Workgroup, whose work is displayed on the website www.e-cyclemo.org. The entire group was invited to participate to the extent they desired in crafting the rule required by SB 720, and many chose to participate. The stakeholder group for the rule met three times from October to December, 2008, and reviewed various working drafts of rules. A final working draft was circulated in January, 2009 for review, with a request for comments by the end of that month.. As with any stakeholder group based on volunteer participation, the department remained open to further suggestions from stakeholders after the requested response date. There were no significant comments warranting a further meeting in March. The rule was placed on the agenda of the Missouri Hazardous Waste Management Commission, which meets six times per year, for its consideration. The Commission adopted a finding of necessity on April 16, 2009. Following that approval, the Department proceeded to circulate the draft rule through the 30-day interagency review coordination pursuant to Executive Order 02-05, which was completed May 22. The Department is proceeding with the regular rulemaking, although this will not be in time to complete the rulemaking by the July 1 statutory deadline.

This emergency rule was filed June 19, 2009, effective July 1, 2009 and expires on February 25, 2010, the thirtieth legislative day of the 2010 Missouri General Assembly.

(1) Definitions

The following terms, when used in this rule, have the following meanings.

(A) Brand--The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product.

(B) Consumer--An individual who uses computer equipment that is purchased primarily for personal or home business use.

(C) Covered Equipment--Electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions. Equipment includes a desktop, notebook or laptop computer, including a computer monitor or other display device that does not contain a tuner, and the accompanying keyboard and mouse associated with the computer of the same manufacturing brand.

1. Desktop computer--A computer with a main unit that is intended to be located in a permanent location, often on a desk or on the floor

2. Notebook or laptop computer--A computer with an incorporated video display greater than four inches in size measured diagonally and can be carried as one unit by an individual. A notebook computer is sometimes referred to as laptop computer, or tablet computer.

(D) Manufacturer--A person, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, or any other legal entity whatever which is recognized by law as the subject of rights and duties:

1. who manufactures or manufactured covered equipment under a brand that:
 - A. the person owns or owned; or
 - B. the person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;
2. who sells or sold covered equipment manufactured by others under a brand that:
 - A. the person owns or owned; or
 - B. the person is or was licensed to use, other than under a license to manufacture covered equipment for delivery exclusively to or at the order of the licensor;
3. who manufactures or manufactured covered equipment without affixing a label with a brand;
4. who manufactures or manufactured covered equipment to which the person affixes or affixed a label with a brand that:
 - A. the person does not or has not owned; or
 - B. the person is not or was not licensed to use; or
5. who imports or imported covered equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the covered equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(E) Recycler-- A person or group that engages in recycling of covered equipment.

(F) Recycling-- The transforming or remanufacturing of unwanted covered equipment into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting of unwanted covered equipment with or without other waste.

(G) Retailer--A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state.

(H) Reuse--The use of a used product or part of a used product, which has been recovered or diverted from the solid waste stream, for its original intended purpose.

(I) Tuner--An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

(2) Applicability

(A) The collection, recycling, and reuse provisions of this rule apply exclusively to covered equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state.

(B) This rule does not apply to:

1. a television, any part of a motor vehicle, an automated typewriter or typesetter, a portable handheld calculator, a personal digital assistant, a printer, or a telephone; or
2. a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(C) This rule applies to the following persons, as defined in this rule:

1. manufacturers;

2. retailers;
3. consumers; and
4. recyclers.

(D) Facilities involved, under this rule, in the collection of used covered equipment for recycling or the recycling of used covered equipment must be in compliance with this rule.

(3) Manufacturer Responsibility

(A) Before a manufacturer may offer covered equipment for sale in this state, the manufacturer shall:

1. adopt and implement a recovery plan approved by the department;
2. affix a permanent, readily visible label to the covered equipment with the manufacturer's brand(s); and
3. comply with reporting requirements of this rule.

(B) The recovery plan shall be submitted on forms provided by the department and shall enable a consumer to recycle covered equipment without paying a separate fee at the time of recycling and must include provisions for:

1. the manufacturer's collection from a consumer of any used covered equipment labeled with the manufacturer's brand(s);
2. recycling or reuse of covered equipment collected under paragraph 1. of this subsection, including information for the consumer on how and where to return the covered equipment labeled with the manufacturer's brand(s) at no cost to the consumer. This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the covered equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the department of what the new Internet link will be at least 30 days in advance;
3. method or methods of collection of covered equipment that is:
 - A. reasonably convenient and available to consumers in this state; and
 - B. designed to meet the collection needs of consumers in this state;
4. a statement that there will be no separate fee required to be paid by the consumer for collection service.
5. contact information of authorized collection providers;
6. identifying processes and methods used to recycle covered equipment and the facility(ies) location(s), including the identification of which recycling standard of section (7)(B) each facility will implement. This would include information that enables the department to determine if the recycling facility is following standards identified in the law and regulation;
7. describing the public information campaign for consumers;
8. graphically representing any brand(s) sold by the manufacturer; and
9. a copy of existing or proposed Web page that provides the recycling information to the consumer.

(C) Reasonably convenient collection of covered equipment generally reflects the level of effort exerted for the purchase of the covered equipment. The following collection methods, alone or combined, meet the convenience requirements of this section:

1. a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning covered equipment by mail, without the consumer having to pay any mailing, shipping, handling, or any other cost directly related to mailing;

2. a system by which the manufacturer or the manufacturer's designee offers the consumer direct pick up of the covered equipment;

3. a system using physical collection sites or alternate collection services that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return covered equipment. At a minimum, there shall be one collection site located in each city or town with a population greater than ten thousand;

4. a system using a minimum of one collection event held by the manufacturer or the manufacturer's designee at which the consumer may return covered equipment. Collection event(s) shall, at a minimum, be located in each city or town with a population of greater than five thousand or per county or per solid waste district;

5. a system by which the manufacturer or the manufacturer's designee offers a designated drop-off facility within a thirty (30) mile radius of retailer and to which the consumer may return covered equipment;

6. a system by which the manufacturer or the manufacturer's designee offers a designated local recycler within a thirty (30) mile radius of retailer and to which the consumer may return covered equipment; or

7. other method approved by the department.

(D) Collection services under this section may use existing collection and consolidation infrastructure for handling covered equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. Other suitable operations include, but are not limited to, local governments and solid waste management districts as established in section 260.305, RSMo. Collection services may include systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in section (3)(C)1. of this rule, either individually or by working together with a group of manufacturers or by working with others, it shall be deemed to meet the convenience requirements of this section.

(E) The manufacturer:

1. shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

2. shall provide to the department a recovery plan in accordance with this rule and notification of the date by which that the manufacturer has, or will have a compliant collection program. In order to be eligible for the department's list of manufacturers that have approved recovery plans and have notified the department of the date by which they have or will have a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2010; and

3. may include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's covered equipment when the covered equipment is sold.

(F) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the department that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law.

(G) On forms provided by the department, each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the department by January 31 of each year after submitting a recovery plan that includes:

1. the weight of covered equipment collected, recycled, and reused during the preceding calendar year;
2. documentation verifying the collection, recycling, and reuse of that covered equipment in a manner that complies with federal, state and local laws; and
3. any changes to their recovery plan.

(H) If more than one person is a manufacturer of a certain brand of covered equipment, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this rule for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the covered equipment of that brand, the department may consider any of those persons to be the responsible manufacturer for purposes of this rule.

(I) The obligations under this rule of a manufacturer who manufactures or manufactured covered equipment, or sells or sold covered equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the covered equipment, extend to all covered equipment bearing that brand regardless of its date of manufacture.

(4) Retailer Responsibilities

(A) A person who is a retailer of covered equipment shall not sell or offer to sell new covered equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the department's list of manufacturers that have approved recovery plans and have notified the department that they have a compliant collection program.

(B) Retailers may go to the department's Internet site and view all manufacturers that are listed as having approved recovery plans and having notified the department that they have a compliant collection program. Covered equipment from manufacturers on that list may be sold in or into the state.

(C) A retailer is not required to collect covered equipment for recycling or reuse under this rule unless the retailer is also a manufacturer as defined in this rule. This does not mean that a retailer who is also a manufacturer has to collect covered equipment at a retail outlet.

(D) A retailer may assume the responsibility of the manufacturer if the retailer wants to sell covered equipment of a manufacturer that does not have an approved recovery plan.

(5) Sound Environmental Management

(A) Covered equipment collected under this rule must be recycled or reused in a manner that complies with federal, state, and local law.

(B) The department adopts, as standards for recycling or reuse of covered equipment under this rule, the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, and "Responsible Recycling ("R2") Practices for Use In Accredited Certification Programs for Electronics Recyclers" issued by the U.S. Environmental Protection Agency. The adopted standards apply to covered equipment used by an individual primarily for personal or home

business use and returned to the manufacturer by a consumer or collected by a manufacturer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

AUTHORITY: sections 260.1053, 260.1059, 260.1062, 260.1065, 260.1074, 260.1089, and 260.1101 RSMo Cum. Supp. 2008. Emergency rule filed June 19, 2008, effective July 1, 2009, and expires February 4, 2010. A proposed rule covering this same material is published in this issue of the Missouri Register.