

“CHINA ROHS” ELECTRONIC INFORMATION PRODUCTS LABELING REQUIREMENTS EFFECTIVE MARCH 1, 2007

Effective March 1, 2007, new regulations promulgated in China require anyone selling electronics products in the Chinese market to comply with strict labeling requirements concerning the presence of certain hazardous substances in the products. The regulations will also require reductions of such substances in certain products. Set forth below is a brief summary of similar restrictions imposed by other U.S. trading partners, a summary of the China RoHS compliance requirements, and a review of the possible mechanisms the Chinese government may implement to enforce the regulations.

CHINA’S REGULATIONS ARE THE LATEST IN A SERIES OF “REDUCTION OF HAZARDOUS SUBSTANCES” LAWS

A growing trend among trading partners of the United States is the regulation of hazardous substances in electronic and other manufactured products in order to limit exposure of consumers to such substances and reduce the environmental impact when such products are disposed of or recycled. This trend gained momentum in 2003 when the European Union adopted the “Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment”, known as the “EU RoHS”. Other countries such as Japan, South Korea and now the People’s Republic of China have since enacted similar, but not identical, restrictions on hazardous substances laws (“RoHS”) which are in effect or will take effect shortly.

On February 28, 2006, China promulgated the “The Measure for the Administration on Pollution Control of Electronic Information Products”, commonly referred to as “China RoHS”, which became effective March 1, 2007. The China RoHS differs in many critical respects from the other RoHS regulations, including the EU RoHS requirements, so those companies which have made their products EU RoHS compliant may not be China RoHS compliant.

China RoHS will be implemented in a two-step process:

Step One: As of March 1, 2007, Electronic Information Products (see below) and their packaging are subject to labeling and/or disclosure requirements

with respect to the presence of the Six Regulated Substances and recyclability.

Step Two: At a later date, a subset of Electronic Information Products will be subject to maximum concentration restrictions with respect to the Six Regulated Substances, and manufacturers of such products will be required to obtain compulsory government certification of such compliance; such products will become subject to these additional requirements upon listing in a to-be-issued catalogue.

ELECTRONIC INFORMATION PRODUCTS

The China RoHS applies to all “electronic information products” or “EIPs” containing “toxic and hazardous substances or elements” available for sale in Chinese market on or after March 1, 2007.

EIPs are defined in the China RoHS as “products produced with electronic information technologies”, including:

- electronic radar products;
- electronic communication products;
- radio and television products;
- computer products;
- home electronic products;
- electronic instrument measuring products;
- specialized electronic products;
- electronic components and parts;
- electronic applications; and
- electronic materials and accessories.

While many of these products are also covered by the EU RoHS, certain product groups covered by the China RoHS are outside the scope of the EU RoHS, including: radar systems, electronic test equipment, automotive electronics, semi-conductors and other components, medical devices and products, electronic components generally, batteries and packaging materials.

SIX REGULATED HAZARDOUS SUBSTANCES

One of the few similarities between EU RoHS and China RoHS is that they both regulate the same six hazardous substances: lead, mercury, cadmium,

hexavalent chromium, polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PBDE) (the “Six Regulated Substances”).

LABELING/MARKING REQUIREMENTS

Effective March 1, 2007, EIP’s and their packaging are subject to labeling and/or disclosure requirements with respect to the presence of the Six Regulated Substances and recyclability.

The China RoHS has three labeling/marketing requirements: (1) “Environment Friendly Use Period”, (2) Hazardous Material and Contents, and (3) Packaging Materials. If an Electronic Information Product contains one or more of the Six Regulated Substances, it must be labeled to indicate the Environment Friendly Use Period. A draft Industry Standard which would assist companies in determining the appropriate period has been circulated but has not to date been finalized.

In addition, the manufacturer or importer must also provide additional information on which of the Six Regulated Substances are contained in the Electronic Information Product. Such information must be provided in the form of a chart, in Chinese, as set forth in the PRC Industry Marking Standard, issued on November 6, 2006 by the Ministry of Information Industry of the Chinese Government.

Further, the China RoHS mandates that packaging materials must meet certain non-hazardous content and recyclability requirements, and must also be labeled in accordance with a separate Industry Standard.

COMING SOON: REGULATED SUBSTANCE REDUCTION REQUIREMENTS

In addition to the marking requirements detailed above, manufacturers of certain EIPs will be required to (1) reduce or eliminate any toxic or hazardous

substances or elements which currently exist in their EIPs (“Hazardous Substance Restrictions”) and (2) obtain a mandatory certification from a Chinese certification authority.

The Hazardous Substance Restrictions will be triggered when the Chinese Government lists an Electronic Information Product in the “Catalogue Subject to the Key Point Management for Pollution Control of Electronic Information Products” (the “Key Point Catalogue”). The Key Point Catalogue is not yet available and is expected to be released in the third quarter of 2007. Once an Electronic Information Product is listed, the manufacturer or distributor will have to obtain compulsory certification, from a Chinese lab, that the product in question meets the applicable Hazardous Substance Restrictions.

ENFORCEMENT AND PENALTIES

While the China RoHS regulations do not specify what the penalties will be for non-compliance, they do provide that import inspections will be part of the enforcement scheme, which could mean the seizure and/or return of non-compliant products goods manufactured after March 1, 2007. Other administrative penalties which may be applicable typically include: disciplinary warnings, fines, confiscation of illegal gains or confiscation of non-compliant products, and suspension of production or business, etc. Criminal fines and incarceration are also possible in the event of more serious or willful violations.

Forthcoming regulations and standards are expected to provide more specific guidance regarding how the China RoHS will be implemented and enforced. Accordingly manufacturers in China and importers to China should closely monitor future China RoHS developments.

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