
China Releases FAQ Concerning Measures for the Administration of the Control of Pollution by Electronic Information Products

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On June 5, 2006, the China Ministry of Information Industry (MII) published responses to 36 frequently asked questions (FAQ) concerning the Measures for the Administration of the Control of Pollution by Electronic Information Products (often referred to as China RoHS). China RoHS was promulgated on February 28, 2006, and is intended to enhance environmental protection by requiring the reduction or elimination of toxic and hazardous substances in electronic products and product packaging during product design, production, import and sale. China RoHS becomes effective on March 1, 2007.

The FAQ—which encompass eight of the questions and answers published by the MII on March 3, 2006—discuss several aspects of China RoHS, including the timeline for implementation, methods for administering and enforcing regulatory requirements, the scope of covered electronic products, and similarities and differences between China RoHS and the EU RoHS Directive. A brief overview of the FAQ follows.

Scope of Regulated Products: "Electronic Information Products"

China RoHS applies to all "electronic information products" (EIPs) containing "toxic and hazardous substances or elements" that are available for sale in the Chinese marketplace on or after March 1, 2007. MII has published on its website a detailed list of EIPs, entitled "notes by category of electronic information products." The FAQ include several responses aimed at clarifying the scope of EIPs, and list the following as examples of EIPs: radar equipment, batteries, "black" household electric appliances (such as televisions, radios, DVD players and stereos), and any product component or part sold separately as a commodity. Replacement parts or products produced before March 1, 2007, and used only for maintenance and warranty replacement of a previously sold product are not subject to China RoHS requirements. In addition, "white" household electronic appliances, such as refrigerators, washing machines and air conditioners, are not considered EIPs, although components of some of these products may be subject to China RoHS.

Scope of Regulated Substances

China RoHS regulates lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PBDE), consistent with the substances regulated under the EU RoHS Directive. While China RoHS also contains an open-ended category for "other toxic and hazardous substances or elements specified by the State," the FAQ make clear that this category is meant to facilitate the future addition, if any, of other toxic and hazardous substances or elements. At present, China RoHS regulates only the six enumerated substances.

First Regulatory Tier: Marking Requirements

China RoHS establishes a two-tiered regulatory regime for EIPs. Under the first tier, each EIP and its packaging must bear markings that identify the name and amount of any toxic or hazardous substance or element present, the parts containing such substances or elements, and whether or not such parts may be recycled. The FAQ refer to this first tier of marking requirements as "self-declaration" or "express indication." Markings also must indicate the "environmental protection use period" of the EIP, or the period during which the toxic or hazardous substances or elements contained in the EIP will not leak, causing pollution to the environment or serious damage to humans or to property. The environmental protection use period is separate from, and may be longer or shorter than, the useful life of a product. If the item cannot be marked because of size or functional limitations, the marking may be made in the instructional brochure. This marking requirement cannot be satisfied solely by publishing the information on a website. According to the FAQ, regulations governing marking, entitled "Markings and Requirements for the Control of Pollution by Electronic Information Products," are forthcoming.

Second Regulatory Tier: Restriction and Substitution Requirements

The second regulatory tier is triggered when a particular EIP becomes listed in a "Catalogue for Priority Control of Pollution by Electronic Information Products" (Catalogue), established by China RoHS. Unlike the EU RoHS Directive, which defined broad categories of electronic products to which standards apply, China RoHS will apply restriction and substitution standards only to those products identified specifically in the Catalogue. MII only recently drafted a regulation setting forth the underlying procedures for compiling the Catalogue; thus, the Catalogue currently is empty. The listing of EIPs will occur gradually over time.

According to the FAQ, an EIP will be added to the Catalogue when it has realized "mature technology and economic feasibility," or when it is confirmed that a particular EIP can meet applicable substitution or restriction standards. China RoHS does not contain exemptions analogous to the scientific or technical impracticability exemptions under the EU RoHS Directive, as EIPs that are not listed in the Catalogue are effectively exempt from all restriction or substitution standards.

Under the second regulatory tier, an EIP listed in the Catalogue, whether it is an old or new model, must meet applicable restriction or substitution standards and receive a government-approved verification before it may be sold in the Chinese market. Currently, MII has authorized the formulation of eight industry standards. Each standard will be formulated by a government work group, and the process is intended to be open and transparent. Of the authorized standards, advanced drafts of the following three standards have been prepared: Requirements for the Restriction of Toxic

Substances in EIPs, Testing Methods for Restricted Use Substances in EIPs, and Markings and Requirements for the Prevention and Control of Pollution by EIPs (discussed above). According to the FAQ, these three standards will be sent for rigorous and lengthy review before being promulgated; the timeline for promulgation is uncertain. The FAQ indicate that the restrictions governing the maximum allowable amounts of the six enumerated substances "basically" will be consistent with and will not be more stringent than those set under the EU RoHS Directive.

To view an English translation of the FAQ concerning the China RoHS, translated by WilmerHale's Beijing office, please [click here](#).

Beijing

[Lester Ross](#)

+86 10 8529 7588

lester.ross@wilmerhale.com

Berlin

Jörg Karenfort

Henning Grotelüschen

Boston

[Mark C. Kalpin](#)

+1 617 526 6176

mark.kalpin@wilmerhale.com

[H. David Gold](#)

+1 617 526 6425

david.gold@wilmerhale.com

Brussels

[Christian Duvernoy](#)

+32 2 285 49 06

christian.duvernoy@wilmerhale.com

[Martin Goyette](#)

+32 2 285 49 50

martin.goyette@wilmerhale.com