To prohibit the export from the United States of certain electronic waste, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. GENE GREEN of Texas (for himself, Mr. THOMPSON of California, and Mr. CARTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the export from the United States of certain electronic waste, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Responsible Electronics Recycling Act”.

SEC. 2. ELECTRONIC WASTE EXPORT RESTRICTIONS.

(a) AMENDMENT.—Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is amended by adding at the end the following new section:
SEC. 3024. ELECTRONIC WASTE EXPORT RESTRICTIONS.

"(a) In General.—Beginning 12 months after the date of enactment of this section, except as provided in subsection (e) or (f), no person shall export any restricted electronic waste to a country described in subsection (e).

"(b) Covered Waste.—

"(1) Definitions.—For purposes of this section:

"(A) The term ‘covered electronic equipment’ means used computers, central processing units, mobile computers (including notebooks, netbooks, tablets, and e-book readers), computer accessories including input devices, webcams, speakers, data storage devices, servers, and monitors, televisions, digital picture frames, and other video display devices, digital imaging devices (including printers, copiers, facsimile machines, image scanners, and multifunction machines), television peripheral devices including video cassette recorders, DVD players, video game systems, game controllers, signal converter boxes, and cable and satellite receivers, digital cameras and projectors, digital audio players, telephones and electronic communication equipment, networking devices including routers, network cards, modems, and hubs,
audio equipment, other wireless communication devices including cell phones, mobile television and entertainment devices, personal digital assistants, and portable GPS navigation systems, and other used electronic products the Administrator determines to be similar in accordance with paragraph (2).

“(B)(i) The term ‘restricted electronic waste’ means—

“(I) items of covered electronic equipment, whole or in fragments, that include, contain, are derived from, or consist of—

“(aa) cathode ray tubes or cathode ray tube glass in any form, or cathode ray tube phosphor residues or dusts in any form;

“(bb) a lamp or other device containing mercury phosphor;

“(cc) batteries containing lead, cadmium, mercury, or flammable organic solvents;
“(dd) switches or any other devices containing mercury in elemental or compound form;

“(ee) capacitors, transformers, light ballasts, or any other devices containing or suspected of containing polychlorinated biphenyls (PCBs); or

“(ff) parts, components, or assemblies, or materials derived therefrom, containing hexavalent chromium or beryllium (in elemental or compound form);

“(II) except as provided in paragraph (3), items of covered electronic equipment, whole or in fragments, that include, contain, are derived from, or consist of—

“(aa) circuit boards containing lead, cadmium, or beryllium in elemental or compound form;

“(bb) printer drums or any other devices containing selenium in elemental or compound form;
“(cc) liquid crystal displays, flatscreen glass, light emitting diodes (LEDs), or any other device containing arsenic in elemental or compound form; or

“(dd) parts, components, or assemblies, or materials derived therefrom, containing antimony, barium, cadmium, chromium (other than hexavalent chromium), lead, thallium, beryllium, arsenic, or selenium; or

“(III) any other covered electronic equipment parts, components, or assemblies, or materials derived therefrom, containing any other toxic material identified by the Administrator under paragraph (2).

“(ii) The term ‘restricted electronic waste’ shall not apply to covered electronic equipment or parts which are tested prior to export, and are found to be—

“(I) functional for the purpose for which the equipment or parts were designed, as provided for in subsection
(h)(1), or, in the case of multifunction devices, fully functional for at least one of the primary purposes for which the equipment or parts were designed; “(II) appropriately packaged for shipment as provided for in subsection (h)(1); and “(III) appropriately labeled or marked as provided for in subsection (h)(3).

“(2) ADDITIONAL COVERED ELECTRONIC EQUIPMENT AND RESTRICTED MATERIALS.—Not later than one year after the date of enactment of this section, the Administrator shall, after notice and opportunity for public comment, and after consultation with appropriate Federal and State agencies, develop and promulgate procedures for identifying—

“(A) similar electronic equipment to add to the list of covered electronic equipment under paragraph (1)(A); and

“(B) additional restricted toxic materials, the presence of which in covered electronic equipment poses a potential hazard to human health or the environment at the end of the life of the equipment.
Such procedures shall include a method for any interested party to propose a new product or material for review by the Administrator.

“(3) DE MINIMIS LEVELS.—Not later than one year after the date of enactment of this section, the Administrator shall, after notice and opportunity for public comment, and after consultation with appropriate Federal and State agencies, develop and promulgate procedures for identifying de minimis levels for restricted electronic waste specified under paragraph (1)(B)(i)(II) or (III) below which such waste shall be deemed to not pose a potential hazard to human health or the environment. Notwithstanding subsection (a) and the definition of restricted electronic waste under paragraph (1)(B), a person may export restricted electronic waste described in paragraph (1)(B)(i)(II) or (III) to a country described in subsection (e) upon demonstration that the waste does not contain more than the de minimis levels, established by the Administrator under this paragraph, of antimony, barium, cadmium, chromium (other than hexavalent chromium), lead, thallium, beryllium, arsenic, or selenium.
“(c) COUNTRIES TO WHICH PROHIBITION APPLIES.—The countries referred to in subsection (a) are all countries which are not—

“(1) members of the Organization for Economic Cooperation and Development or the European Union; or

“(2) Liechtenstein.

“(d) OECD.—For the purposes of export to Organization for Economic Cooperation and Development countries, circuit boards shall be subject to the amber list requirements defined in section 262.89 of the OECD Waste Lists.

“(e) GENERAL EXCEPTIONS.—Subject to subsection (g), the prohibition under subsection (a) shall not apply to—

“(1) furnace-ready cathode ray tube glass cullet, cleaned of all phosphors, to be used as a direct feedstock in a lead-glass manufacturing furnace without further processing or preparation required other than quality control, which the competent authority in the importing country has stated in writing is not waste;

“(2) customer returns to point of sale or to contractual warranty collectors of recently purchased electronic equipment or parts that is either—
“(A) under original equipment manufacturer warranty to customers; or

“(B) under warranty from the original design manufacturer to the original equipment manufacturer, or otherwise returned by the original purchaser of the electronic equipment, due to defect or customer dissatisfaction, and the manufacturer accepts such returns for the purposes of repair or replacement in order to return to the customer a functional working product or part of the same type and model, except that products covered in this subparagraph shall not include—

“(i) products or parts accepted for return from individuals or businesses under general takeback, recycling, trade-in (for purposes of recycling, disposal, sales promotions, or obtaining credit for product purchases or leases) or buy-back programs, events, or policies designed to collect used or waste electronic equipment;

“(ii) products or parts returned at the end of leases to customers; or

“(iii) products or parts collected by asset recovery programs; or
“(3) recalls of parts or products by an original equipment manufacturer or original design manufacturer whereby—

“(A) the product or part is subject to recall notice issued by the Consumer Product Safety Commission or other pertinent Federal authority;

“(B) the original design manufacturer requires the defective part or product to be physically returned to that manufacturer as a term of the warranty; and

“(C) any export of recalled products or parts is to a country from whose competent authority the Administrator has received written consent under subsection (g).

“(f) EXPORT CONDITIONS.—Equipment may be exported under subsection (e)(2) or (3) only if—

“(1) the Administrator has received written consent under subsection (g) from the competent authority in the country receiving the export and any country the export passes through in transit;

“(2) the export is made by an original equipment manufacturer or its contractual agent to the original design manufacturer’s site of last assembly, or to a company contracted to make warranty re-
pairs, for the purposes of business credit to the original equipment manufacturer, repair or refurbishment and subsequent reuse;

“(3) the original equipment manufacturer has a presence and assets in the United States; and

“(4) the person who exports the equipment or parts—

“(A) keeps copies of normal business records, such as contracts, demonstrating that each shipment of exported used electronic equipment or parts is intended for repair or refurbishment and subsequent reuse, which documentation shall be retained for a period of at least 6 years after the date the used electronic equipment or parts were exported; and

“(B) submits an annual report to the Administrator on the amount and types of waste resulting from the refurbishment process, and how it was disposed of or recycled, which shall include—

“(i) number and weight of units of products returned by the original equipment manufacturer for repair or refurbishment, listed by category and country of destination; and
“(ii) the restricted electronic waste parts or residues sent onward to further reuse, disposal, or recycling following repair or refurbishment, listed by weight, a description of the wastes, and the ultimate country destination.

“(g) EXPORT PROCEDURES.—

“(1) NOTICE TO ADMINISTRATOR.—Not later than 60 days before the initial export shipment, an exporter shall transmit to the Administrator written notice of an intended export permitted under this section. Such a notification may cover export activities extending over a maximum of 12 months for the same type of restricted electronic waste, exported to the same facility via the same transit countries. The notification shall include the following information:

“(A) The name, mailing address, telephone number, and EPA ID number.

“(B) Documentation of licensing of the exporter by the Environmental Protection Agency pursuant to subsection (h)(2).

“(C) The name and site address of the consignee and any alternate consignee.

“(D) A statement from the consignee that includes—
“(i) a description of the type and total quantity of restricted electronic waste that will be exported to the consignee;

“(ii) the estimated frequency or rate at which such restricted electronic waste is to be exported, and the period of time over which such waste is to be exported;

“(iii) all points of entry to and departure from each country through which the restricted electronic waste will pass in transit;

“(iv) a description of the means by which each shipment of the restricted electronic waste will be transported, including the mode of transportation and type or types of container; and

“(v) a description of the manner in which the restricted electronic waste will be treated, stored, or disposed of in the receiving country.

“(E) A list of all transit countries through which the restricted electronic waste will be transported, and a description of the approximate length of time the waste will remain in
each country and the nature of its handling
while there.

“(2) ACKNOWLEDGMENT OF CONSENT.—

“(A) REQUIREMENT.—No restricted elec-
tronic waste may be exported pursuant to this
section unless the written consent of the com-
petent authority of the receiving country, and of
each country through which the restricted elec-
tronic waste will pass in transit, has been ob-
tained and the Administrator has transmitted
to the exporter an Acknowledgment of Consent
reflecting receipt of each such country’s con-
sent.

“(B) COUNTRY NOTIFICATION.—In con-
junction with other relevant agencies, the Ad-
ministrator shall provide a complete notification
to the receiving country and any transit coun-
tries. A notification is complete when the Ad-
ministrator receives a notification which the Ad-
ministrator determines satisfies the require-
ments of this section.

“(C) EXPORTER NOTIFICATION.—When
the receiving country and all transit countries
have consented to the receipt or transit of the
restricted electronic waste, the Administrator
shall transmit an Acknowledgment of Consent to the exporter. The exporter shall attach a copy of the Acknowledgment of Consent to the manifest, or otherwise ensure that the Acknowledgment of Consent accompanies the restricted electronic waste shipment.

“(3) WITHDRAWAL OF CONSENT.—Where the receiving country or a transit country objects to receipt or transit of restricted electronic waste, or withdraws a prior consent, the Administrator shall notify the exporter in writing.

“(4) DEFINITION OF CONSIGNEE.—For purposes of this subsection, the term ‘consignee’ means the ultimate treatment, storage, or disposal facility in a receiving country to which restricted electronic waste will be sent.

“(h) REGULATIONS.—Not later than 12 months after the date of enactment of this section, the Administrator shall issue regulations for carrying out this section, including—

“(1) testing requirements for verifying that used covered electronic equipment or parts proposed to be exported under this section are functional for the purposes for which they were designed, including requirements for proper packaging to prevent such
equipment or parts from losing functionality due to
damage during transit;

“(2) establishing a process whereby any entity
exporting restricted electronic waste from the United
States must be licensed by the Environmental Pro-
tection Agency;

“(3) in consultation with the appropriate Fed-
eral agency or agencies, provisions for an efficient
export control regime which will allow for—

“(A) distinguishing among exports of—

“(i) restricted electronic waste as per-
mitted under this section;

“(ii) restricted electronic waste as
prohibited under this section; and

“(iii) tested working used covered
electronic equipment as permitted under
this section; and

“(B) enforcement mechanisms, tests, and
procedures in coordination with other enforce-
ment procedures; and

“(4) establishing a registry of violators, where-
by any person or entity found to be exporting re-
stricted electronic waste in violation of this section
shall be listed on a public registry on a Web site
maintained by the Administrator for a period of 5 years.”.

(b) **TABLE OF CONTENTS AMENDMENT.**—The table of contents for the Solid Waste Disposal Act is amended by adding after the item relating to section 3023 the following new item:

“Sec. 3024. Electronic waste export restrictions.”.

**SEC. 3. CRIMINAL PENALTIES.**

Section 3008(d) of the Solid Waste Disposal Act (42 U.S.C. 6928(d)) is amended—

(1) by striking “or” at the end of paragraph (6);

(2) by inserting “or” at the end of paragraph (7); and

(3) by inserting after paragraph (7) the following new paragraph:

“(8) knowingly exports restricted electronic waste in violation of section 3024;”.