

## NEW DECREE REGULATES THE REVERSE LOGISTICS OF ELECTRICAL AND ELECTRONIC PRODUCTS

03 MARCH 2020

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Federal Decree No. 10,240/20, published in February, implements the reverse logistics system for electronic products and their components for domestic use. The regulation was expected, since important players in the marketing cycle of these products, especially the retail sector, had not adhered to the industry agreement on the subject signed on October 31, 2019. At the time, various sectors assumed obligations before the public authorities to implement appropriate reverse logistics of waste arising from the market of electrical and electronic products and their components, on a voluntary basis, due to the contractual nature of the agreement.

Rules to ensure equal protection in the inspection and compliance with the obligations imputed by article 33 of the National Solid Waste Policy (PNRS, instituted by Law No. 12,305/10) had already been established by Federal Decree No. 9,177/17 for non-signatories of an industry agreement or consent order. Now, Decree No. 10,240/20 adopts another instrument provided for in the PNRS and in article 15 of Regulatory Decree No. 7,404/10.

The objective is to impose obligations very similar to those provided for in the industry agreement for all manufacturers, importers, distributors, and dealers of household electrical and electronic products and their components, who will also have to establish and implement reverse logistics systems for their electrical and electronic waste independently of the public collection system.

The decree applies to electrical and electronic products for domestic use whose operation requires electric supply with a maximum voltage of 240 volts. Domestic use is defined as own or personal, residential or family use exclusively by individuals. The decree also allows companies or management entities to receive electrical or electronic products and their components with characteristics similar to those of domestic use, but discarded by micro or small businesses.

As established in the industry agreement signed in October, the first phase of the structuring and implementation of the reverse logistics system is underway and is expected to be completed by December 31, 2020. In this phase, the Monitoring and Performance Group (GAP) will be created, responsible for monitoring and disseminating the implementation of the reverse logistics system. Manufacturers, importers, traders, and distributors must adhere to management entities or submit an individual model for implementation of the system.

Still in the first phase, a financial mechanism will be established to ensure the system, in addition to another mechanism that will allow the collection of the data necessary for monitoring and follow-up on the system through the GAP. On the part of the Public Administration, the Ministry of the Environment should respond, vis-à-vis state agencies, in favor of tax measures to simplify the transport of waste and support measures to facilitate the installation of waste reception and consolidation points. It is Ibama's responsibility to regulate interstate transportation in order to recognize electrical and electronic waste as non-hazardous and, consequently, allow transit thereof.

The second phase, scheduled to begin in 2021, will include qualification of service providers, development of communication and environmental education plans, leadership training, and installation of reception or consolidation points.

One issue that was much debated was the possibility of remuneration, compensation, or payment to consumers who deliver electrical or electronic products at reception points. The decree vetoed this point, but allowed the adoption of incentive mechanisms by companies or managing entities.

The reverse logistics system will be fully financed by companies in proportion to their market share. Financial resources will also be differentiated for each type of product and defined according to technical and economic criteria and the particularities of the product in question. The decree provides for possible costs related to the necessary arrangements for disposal of the waste. It is understood, therefore, that expenses related to transportation of the waste to the collection points will not be covered by the system, but solely and exclusively by the consumer or the person who performs the disposal. Considering the prohibition on compensation, remuneration, or payment to the consumer, this may be a point of discussion, because in the case of larger waste, the return may represent a cost that consumers will not want to bear, despite their shared responsibility.

The decree stipulates that manufacturers and importers are obliged to provide for environmentally sound final disposal for all waste received by the system, with preference for recycling. Although the PNRS imposes a hierarchy in solid waste management that must be observed<sup>[1]</sup> the preference for recycling is due to the

particularities and difficulties of reuse of electrical and electronic products. If re-use is feasible, however, companies should not hesitate to opt for this form of destination.

For importers, the decree mandates participation in reverse logistic systems as a requirement for compliance in the performance of their activities. The Import Declaration must also contain information on who is responsible for structuring, implementing, and operating the reverse logistics system, otherwise the license to import electrical and electronic products will not be granted.

Distributors should be encouraged to join the management entities or establish their own reverse logistic systems, as well as make physical spaces available for consolidation points, where waste will be stored pending its transfer for environmentally appropriate disposal.

Closing the cycle of the companies involved are the merchants who work in physical stores, in distance sales, or by e-commerce. It is up to them to receive, package, and temporarily store the electrical and electronic products discarded by consumers and return them to importers and manufacturers. Merchants should also be involved in the implementation of communication and non-formal environmental education plans. These obligations also apply to companies providing mobile telephony services that sell electrical and electronic products subject to the decree.

Decree No. 10,240/20 maintained the goals and deadlines of the industry agreement signed in October of 2019: at the end of the fifth year of operation of the system (2025), 17% of the electrical and electronic products placed in the Brazilian market for domestic use should have an environmentally appropriate destination. The target is calculated from the base year of 2018 in 400 cities across Brazil, but may be changed, however, by providing technical justifications supported by the life cycle particularities of each product.

As for the packaging of electrical and electronic products, the decree provides that it will be received at collection points and destined in an environmentally appropriate manner. The standard makes it clear, however, that companies will be able to sign legal instruments with other reverse packaging logistics systems, in a clear reference to those already operating in Brazil. The targets for recovery of packaging will be equivalent to those set in any of the industry agreements, decrees, or consent orders themselves, as defined by Decree No. 7,404/10 and Decree No. 9,177/17.

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<sup>[1]</sup> The PNRS provides for the prevalence of non-generation or the reduction of generation as initial strategies to be adopted for solid waste management.