



**FEES & BURGESS, P.C.**  
**SUPPLY CHAIN MANAGEMENT**  
**MEMO**



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**ELECTRONICS INDUSTRY MAY SOON BE COPING WITH  
AMERICAN ROHS**

**Fees & Burgess, P.C.,  
Emphasizes:**

In 2004, the European Union (EU) enacted the Restriction of Hazardous Substance (RoHS) directive, limiting the concentration of certain metals in most forms of electronics. The purpose behind the directive was to reduce the use of materials that have a negative impact on the environment and are harmful to humans.

RoHS had a monumental impact on electronics manufacturers, resulting in parts shortages, dramatic shifts in pricing for components, extensive reengineering of products and manufacturing processes, and the added costs and administrative headache that come to a company having to comply with a law that fundamentally alters an entire industry. Furthermore, the use of components and solder with lower concentrations of the target metals tended to result in products that were more prone to defects (*e.g.*, tin whiskers). Electronics used in certain applications are exempt from RoHS, as are products that have no ties to the EU, but the scope of the directive is still extremely broad.

Since RoHS was implemented, a number of states within the United States have considered their own restrictions on the same metals that are regulated under the EU's directive. California has actually passed legislation limiting the use of these metals in a limited number of applications. These efforts by state legislatures have raised some concern about the states adopting different standards governing the use of these metals, which manufacturers would then have to try and interpret and apply on a state-by-state basis to their products and processes.

In an effort to standardize the approach used in this country to address these harmful metals, Representative Michael Burgess of Texas proposed the Environmental Design of Electrical Equipment (EDEE) Act (H.R. 2420) on May 14, 2009. If passed, the EDEE would amend the Toxic Substances Control Act of 1976 to restrict the use of metals, such as lead, mercury, cadmium, and hexavalent chromium in any "electroindustry product" manufactured after July 1, 2010. An "electroindustry product" is "any product or equipment that is directly used to facilitate the transmission, distribution, or control of electricity, or that uses electrical power for arc welding, lighting, signaling protection and communication, or medical imaging, or electrical motors and generators." Within the EDEE, there are several specifically-enumerated exceptions to this definition, which generally mirror the exemptions under RoHS. Examples include, (a) products or equipment designed for use with a voltage of 300 volts or above; and (b) several forms of medical imaging, monitoring, and emergency call system devices.

**General Civil Litigation**

**Commercial Law &  
Litigation**

**Municipal Law &  
Litigation**

**Police Civil Liability  
Defense**

**Employment Law &  
Litigation**

**Construction Litigation**

**Corporate Law &  
Government Contracting**

**Insurance Defense**

**Railroad Law**

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**ELECTRONICS INDUSTRY MAY SOON BE COPING WITH AMERICAN ROHS**  
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The EDEE has the desirable goal of setting uniform standards for the electronics industry before the states enact a patchwork approach that would be difficult and costly for manufacturers to implement and administer. On the other hand, the manufacturers out there who, to date, have managed to minimize their exposure to the RoHS restrictions, may now find themselves forced to comply with requirements under American law that are essentially the same as those adopted by the EU.

As noted above, one of the troublesome results of RoHS's implementation was difficulty obtaining certain kinds of parts from suppliers of electronic components. Since RoHS was adopted, it has become more and more difficult to acquire lead parts, for instance, which had typically been used in the manufacture of a large percentage of electronics in the past. There are still some applications that use lead products, because they are exempt from RoHS, or they relate to products sold outside of the EU. Manufacturers supporting those applications have had to deal with an ever-dwindling supply base for lead components in the wake of RoHs. If this proposed legislation is passed in the United States, it may further decrease the number of component vendors that are willing to stock lead parts, or at least put economic pressure on them to reduce their inventories for fear of being stuck with excess lead components and limited customer demand for the same.

The EDEE has been referred to the House Committee on Energy and Commerce.

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**PROPOSED BILL WOULD IMPOSE NEW PENALTIES ON FEDERAL CONTRACTORS  
THAT USE UNAUTHORIZED WORKERS**

Representative Ginny Brown-Waite of Florida has introduced a bill (H.R. 1555 and H.R. 1668, having substantially identical language) that would provide harsh penalties for federal contractors who directly employ aliens that are not authorized to work in the United States, or knowingly use subcontractors who employ such persons. The proposed legislation would require any head of an executive agency, upon finding, by a preponderance of the evidence, that a contractor has engaged in either of these practices, to debar or suspend that contractor for a period of three (3) years. The bill further directs the agency head to terminate the current contract with the contractor unless the worker at issue is terminated.

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## LEGISLATION WOULD PROVIDE PERKS TO “PATRIOT CORPORATIONS”

On April 2, 2009, Representative Jan Schakowsky of Illinois introduced the Patriot Corporations of America Act (PCAA) of 2009 (H.R. 1874). The PCAA would give “Patriot Corporations” a preference in the evaluation of their bids and proposals for government procurement contract for goods or services. A “Patriot Corporation” under the PCAA is a company that:

- (a) Produces 90% of its goods or services in the United States;
- (b) Does not pay any management employee more than 10,000 percent of what the lowest full-time employee is paid;
- (c) Conducts 50% of its research and development (determined based on cost) in the United States;
- (d) Pays at least 5% of employee wages into a portable pension plan;
- (e) Pays at least 70% of the cost of a standardized health insurance plan for its employees;
- (f) Remains neutral in employee organization drives and has a policy to that effect;
- (g) Pays full differential salary and insurance benefits to employees who are members of the National Guard or the Reserves when those employees are called to duty; and
- (h) Has not been in violation of any other federal regulations.

The bill does not state what level of preference would be given, or how that preference would be factored into the overall contract award decision. In addition, the PCAA provides for a reduced tax rate to be applied to Patriot corporations. Patriot corporations would have to be certified by the government annually.

The PCAA would also reclassify corporations created or organized as a foreign corporation principally to avoid federal taxation, so that such entities are treated as domestic corporations for taxation purposes. Finally, the PCAA would increase taxes for a period from January 1, 2009, through December 31, 2020, on individuals with an adjusted gross income of \$500,000 or more (\$1 million or more for joint returns).

A similar bill was introduced back in 2007 by Representative Schakowsky, but that legislation was never enacted. The current bill has been referred to the Committee on Ways and Means and the Committee on Oversight and Government Reform.

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## Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars/webinars:

### **August 24, 2009 — Huntsville, Alabama**

*Small Business Employers Legal Update Workshop*, co-presented with Jamie Jones, CEO of Jamie Jones Consulting. We will discuss:

- SCA revisited - Obama Executive Orders for government contractors and small business
- Genetic Information Non-Discrimination Act
- Lilly Ledbetter Fair Pay Act of 2009
- Pending and Anticipated Legislation
- Forewarn Act, Employment Non-Discrimination Act, Healthy Families, Employee Free Choice Act, and proposed "compromise"
- Summary of Federal Employment Laws and Number of Employee Thresholds
- E-Verify
- How does a small business survive and afford compliance? Operational How-To's

This workshop is a must for small businesses seeking to understand the myriad of employment laws, both existing and anticipated, and how the regulations impact the operations of the business. HRCI credit pending. To register, click [here](#).

### **September 9, 2009 — Birmingham, Alabama**

*Wage & Hour Master Class*, presented for, and sponsored by, M. Lee Smith Publishing, Inc. Master payroll and overtime compliance in just one day and learn how to avoid a DOL audit by attending this all-new program created just for Alabama employers and HR management. We will discuss:

- Who is, and isn't, covered by the 5 main exemptions to the Fair Labor Standards Act
- Which workplace activities are and are not compensable, in light of recent court decisions
- Techniques that work for avoiding overtime – and those that backfire
- How to handle bonuses, commissions, and tips
- Why FLSA retaliation lawsuits are exploding, and what you can do to steer clear

*And much more...*

Our clients receive a 20% discount on the class registration fee; contact Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com) for more information.



## Calendar of Events

**September 16, 2009 — Webinar; 12:00 - 1:30 P.M., CST*****Delivery Terms and Allocation of Risk in Commercial Contracts under Incoterms and the Uniform Commercial Code***

This webinar will give participants an understanding of the meaning of various delivery terms under both Incoterms 2000 and the Uniform Commercial Code (UCC), including changes to the UCC, eliminating previously used delivery terms, and the trend toward using delivery terms under Incoterms 2000 under domestic agreements. This webinar is pending approval for 1.5 ISM and NCMA credit hours. To register, click [here](#).

**September 24-25, 2009 — Chicago, Illinois*****IPC EMS Program Manager Training and Certification II***

Presenting Contract Management and Business Arrangements: Risk Allocation in Critical Areas of the Contract, as part of EMS Training II: Part C.

**October 7, 2009 — Webinar; 12:00 - 1:00 P.M., CST*****Contracting on Your Own Terms / Reducing Risk in Purchasing Terms and Conditions***

This one-hour webinar will cover Do's and Don'ts of:

- Systemic Purchase Terms Coverage and Communication
- "Battle of the forms" issues
- Important coverage areas
- Getting your terms in a real-time contracting environment
- "Flow through" of purchasing terms from vendors through resellers to customers
- Issues with purchasing through distribution
- Material liability, warranty, and indemnity issues
- International Procurement
- Key terms and conditions
- International contracting tips

This webinar is pending approval for 1.0 ISM and NCMA credit hours. To register, click [here](#).

**October 21-22, 2009 — Scottsdale, Arizona*****IPC Electronics Industry Executive Summit***

This presentation will address contracts from an EMS-supplier standpoint. A few key topics included: contracts with distribution and with direct purchases including fabricated items (metal, plastics, pcbs), as well as off-shore (Asian) procurement contracts.

If you would like more information on these seminars, please go to [www.feesburgess.com](http://www.feesburgess.com)



**SPEAKERS**

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program contact Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com).

To remove your name from our mailing list, please e-mail [staylor@feesburgess.com](mailto:staylor@feesburgess.com).

**NEWSLETTERS**

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes* focusing on multiple practice areas and *F&B HR Corner* focusing on human resource issues. To receive any of these e-newsletters, please provide Sylvia Taylor at [staylor@feesburgess.com](mailto:staylor@feesburgess.com) with your contact information.

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“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”