

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: March 28, 2012

DATE OF REQUEST: March 9, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2011-0988-RUL. Consideration of the adoption of new Subchapter J of 30 TAC Chapter 328, Waste Minimization and Recycling, comprising new Sections 328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191, 328.193, 328.195, and 328.197.

The adoption would implement Senate Bill 329 from the 82nd Legislature, Regular Session, 2011, relating to a program for the recycling of certain television equipment. The proposed rules were published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7782). (Cynthia Carter, Tim Reidy) (Rule Project No. 2011-028-328-AD)

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Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 9, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Brian Christian, Division Director
Small Business and Environmental Assistance

Docket No.: 2011-0988-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 328, Waste Minimization and Recycling
SB 329: Television Equipment Recycling Program
Rule Project No. 2011-028-328-AD

Background and reason(s) for the rulemaking:

Rulemaking is necessary to implement Senate Bill (SB) 329, which amends Chapter 361 of the Texas Health and Safety Code by adding Subchapter Z, and amends §7.052 (b-1) and (b-2) of the Texas Water Code. SB 329, 82nd Legislature, Regular Session, 2011, was authored by Senator Kirk Watson and co-authored by Senators John Carona, Wendy Davis, Juan “Chuy” Hinojosa, and Royce West. SB 329 was sponsored by Representative Warren Chisum and joint-sponsored by Representative Elliott Naishtat. The bill took effect September 1, 2011.

SB 329 affects television manufacturers, television retailers, recyclers of television equipment, television consumers, and the TCEQ. While rulemaking is not specifically required, rulemaking authority is provided and adopting rules would give all affected parties clear and enforceable guidelines and requirements. Any rules needed to implement the legislation are required to be adopted by May 1, 2012.

A separate program for recycling consumer computer equipment was created by the 80th Legislature in 2007 and was implemented by adding Subchapter I to 30 TAC Chapter 328.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rules will help establish a program for the collection and recycling of television equipment. The rules will specify requirements for the implementation of the program, but do not create significant requirements beyond what is specified by statute. Manufacturers, retailers, recyclers, consumers, and the TCEQ will be affected by the rules.

Manufacturers include those who sell or offer for sale televisions in Texas. The rules require television manufacturers to provide recycling for Texas consumers' covered television equipment, register with the TCEQ, certify that they recycle all accepted covered television equipment in accordance with TCEQ standards, and

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provide reports to the TCEQ regarding their recycling activities. The rules include separate provisions regarding manufacturers who participate in a recycling leadership program (RLP), including exemptions for RLP participants from some registration and reporting requirements.

Retailers include those who sell televisions in Texas, as well as Internet retailers. The rules prohibit retailers from selling products from manufacturers who are not on TCEQ's list of registered manufacturers. The rules also require retailers to provide written information, published by the commission, to consumers on the legal disposition and recycling of television equipment.

Recyclers include those persons engaged in the business of recycling covered television equipment in the state. The rules require recyclers to register with the TCEQ, certify that they are in compliance with TCEQ standards, and certify that they recycle all accepted covered television equipment in accordance with TCEQ standards. Recyclers are also required to maintain a written record of the weight or volume of all covered television equipment received and the disposition of that equipment. Finally, the rules require recyclers to annually report to the TCEQ the total weight or volume of covered television equipment received and recycled within the preceding 12 months.

The rules encourage consumers to learn about recycling and recommended methods for recycling covered television equipment by visiting the TCEQ's or manufacturer's Web site or by calling the TCEQ's or manufacturer's toll free telephone number. The rules make consumers liable for any information, in any form, left on the consumers' covered television equipment that is collected or recycled.

The rules require the TCEQ to post an Internet list of television manufacturers: 1) whose recovery plans have been approved by the TCEQ, 2) who have certified that their public education programs comply with the rules, and 3) who have registered with the TCEQ and paid their annual registration fee. The rules also require the TCEQ to educate consumers and provide information to counties and municipalities regarding the collection and recycling of television equipment. The rules require the TCEQ to host or designate another person to host an Internet Web site and provide a toll-free telephone number to provide consumers with information about recycling covered television equipment. Additionally, the TCEQ is required to determine the annual state recycling rate of covered television equipment, and provide registered television manufacturers with their annual market share allocation for collection, reuse, and recycling. The TCEQ must also review active RLP programs and adopt standards for the recycling or reuse of covered television equipment. Finally, the rules require the TCEQ to provide biennial reports on the program to the agency's legislative oversight committees.

B.) Scope required by federal regulations or state statutes:

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Rulemaking is authorized by SB 329, which states that any rules required to implement SB 329 must be adopted by May 1, 2012.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommends several additions to the rules beyond the requirements that are specified by statute:

- **Applicability and Effective Date (§328.163):**
 - Allow retailers to sell television equipment acquired before April 1, 2013 without incurring a penalty. The statutory deadline is September 1, 2012.
 - This change will allow retailers to sell inventory acquired prior to the commission's publication of its Internet list of manufacturers who are in compliance with Subchapter J; thereby avoiding the unintended consequence of prohibiting retailers from ordering or selling covered television equipment after the statutory deadline of September 1, 2012 and before the commission's publication of its Internet list on April 1, 2013.
- **Definitions (§328.165):**
 - Specifically define a recycler as a person who separates collected equipment and refurbishes that equipment for reuse, or processes equipment to be returned to use in the form of raw materials or products.
 - This additional definition clarifies that entities that only collect or sort equipment for recycling will not be classified as recyclers and therefore will not be subject to the requirements of recyclers.
 - Specifically define a collector as a person who receives covered television equipment from consumers and arranges for the delivery of the covered television equipment to a recycler.
 - This additional definition further clarifies which entities will be considered recyclers.
- **Manufacturer's Registration and Reporting (§328.171):**
 - Add specific requirements on how a manufacturer should complete and submit their registration information to the commission.
 - These additions clarify what is required of a manufacturer as part of their registration and help ensure manufacturer compliance with this subchapter.
- **Manufacturer's Recovery Plan and Related Responsibilities (§328.173):**
 - Add to the requirements for a manufacturer's recovery plan: (1) information for consumers on how and where to return the manufacturer's television equipment, and (2) a statement

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indicating by what date the manufacturer had, or will have, a compliant collection program.

- These additions clarify the responsibilities of the manufacturer and will better allow the commission to determine which manufacturers are eligible for inclusion on the commission's Internet Web site list of manufacturers.
- Recycling Leadership Program (§328.175):
 - Add a requirement that an RLP also submit to the commission a list of the 200 sites or programs planned by the program participants for the current year.
 - This addition will help the commission better ensure that an RLP's plan will meet the requirements of the subchapter.
 - Add a requirement that an RLP also submit to the commission documentation that the RLP has established a public education program regarding collection, reuse, and recycling opportunities for covered television equipment in this state.
 - An RLP must have a compliant education program in order to be listed on the commission's Internet Web site list of manufacturers. This addition is necessary for the commission to determine whether a participant in an RLP is eligible for inclusion on the Internet Web site list.
- Recycling Leadership Program Collection Report (§328.177):
 - Add three additional requirements to an RLP's biennial report: (1) separate the reporting by year; (2) document that a financial incentive of equal or greater value to any fee charged at the time of recycling is provided by the television manufacturer, if applicable; and (3) document that a participating manufacturer has, either individually or through the RLP, implemented the required public education program.
 - These requirements will help the commission ensure that an RLP is meeting the requirements of the subchapter and will help ensure consistency in the commission's legislative report.
- Retailer Responsibilities (§328.179):
 - Add language to clarify that the definition of an "order" is the entire amount of covered television equipment requested from a manufacturer at one time for the purpose of sale by the retailer.
 - This addition could help clarify how a potential enforcement action could be calculated against a retailer who orders and sells television equipment from a manufacturer not on the commission's list of manufacturers.
- Recycler Responsibilities (§328.181):
 - Add specific requirements as to how a recycler must certify that they are in compliance with the standards adopted under the subchapter.

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- These additions clarify exactly what is required of a recycler to certify their compliance with the subchapter and would help ensure compliance of a recycler with the rules.

Statutory authority:

Texas Health and Safety Code, §§361.971 - 361.992

Texas Water Code, §7.052(b-1) and (b-2)

Effect on the:

A.) Regulated community:

Television manufacturers whose televisions are offered for sale or sold to a consumer in Texas, including those manufacturers who are located outside of Texas, will be affected. There may be a fiscal impact on manufacturers in order to start up a recycling program. Additionally, manufacturers who do not participate in an RLP will be required to pay a \$2,500 annual fee to the TCEQ. However, any fiscal implications for manufacturers are not expected to be significant.

Retailers who offer for sale or sell televisions to consumers in Texas, including Internet retailers, will be affected. No significant fiscal impact is anticipated.

Recyclers who accept television equipment for recycling will be affected. Some recyclers may be required to change or adopt new recycling standards in order to comply with the rules. These affected recyclers may realize some fiscal impact as they conform to the new standards.

B.) Public:

Consumers who have, or will have in their possession, covered television equipment should be positively affected by the rules. There is no significant fiscal impact expected for consumers.

C.) Agency programs:

Several agency programs will be affected by the rules. Staff proposes to divide the work as follows:

- The Small Business and Environmental Assistance Division (SBEA) will conduct necessary reviews of manufacturer recovery and education plans; perform consumer education, including the development of necessary materials; make updates to and ensure maintenance of the required Web page and telephone number; conduct compliance assistance for manufacturers; determine and provide to manufacturers the annual state recycling rate and market share allocation; and develop the biennial report to the legislature.
- The Waste Permits Division will facilitate the registration and annual registration renewal for recyclers and will accept manufacturer recovery plans.

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- The Permitting and Registration Support Division will accept manufacturer registrations and fees.
- The Financial Administration Division will work with the Permitting and Registration Support Division to facilitate manufacturers' annual payment of the \$2,500 fee.
- Field Operations and Enforcement staff will conduct compliance and enforcement tasks on an as-needed basis.

The rules do not create a group of affected persons who are not already affected by statute.

Stakeholder meetings:

A stakeholder meeting was held on July 7, 2011, prior to drafting of the rules. Stakeholders included television manufacturers, environmental groups, the general public, councils of government, local governments, and electronics recyclers. Because the stakeholder meeting was held prior to drafting of the rules, the rule proposal was drafted using stakeholder input.

During the stakeholder meeting, there was discussion about the following issues:

- Establishing market share amounts and recycling rates for manufacturers. Some stakeholders voiced concern about the lack of incentive for manufacturers to recycle significant amounts in an attempt to keep market share requirements low.
- Possibilities for mail-back programs. Stakeholders discussed how mail-back options could be a benefit to rural communities and also raised potential feasibility issues.
 - Concern was raised about hazardous material leaking from improperly packaged televisions. Language in adopted §328.175(d)(2) addresses this comment.
- Responsibilities for recyclers, including how a recycler is defined for this program.
 - Stakeholders suggested clarification to the definition of a recycler, including whether a city collecting electronics would be considered a recycler. Adopted §328.165 includes a definition of a recycler to clarify that a person who solely collects covered television equipment for recycling would not be considered a recycler.
- Environmental management standards for the program, including which certification criteria would be used and how it would be enforced.
 - Some stakeholders suggested the use of several certification criteria including Recycling Industry Operating Standards (RIOS), Responsible Recycling (R2), e-Stewards, and third-party auditing. TCEQ staff researched the suggested standards and determined that the proposed standards, also used in the Computer Equipment Recycling Program (CERP), would provide regulatory consistency to recyclers, help ensure

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efficient implementation, and provide the same level of environmental protection as adopting other suggested standards.

- Ensuring consumer education. Stakeholders discussed how to inform consumers about the issue of liability and what kind of outreach the TCEQ is required to conduct using the manufacturer fees.
 - TCEQ staff clarified that the statute lists the specific uses for the manufacturer registration fees collected, which are to maintain the public Internet Web site and toll-free telephone number.

Public comment:

The commission received over 600 comments from individuals, organizations, and businesses. Four attendees provided oral comments at the public hearing on December 13, 2011.

The major concerns identified during the public comment period include the following:

- **Public Interest and Education.** The commission received many comments that encouraged the commission to put public interest first in its adoption and implementation of the rules. Numerous comments also expressed concern over ensuring that the public is educated about the television equipment recycling program.
- **Convenient Recycling Options.** Many individuals commented that television manufacturers need to offer collection methods that are readily available to consumers. In particular, the commission received numerous comments expressing concern over television manufacturers using mail-back programs or post offices as collection sites.
- **Definitions.** Concern was raised that the proposed definition of a recycler would not adequately clarify which entities should be subject to the requirements of a recycler. The commission received suggested definitions for both a “recycler” and a “collector.”
- **Recycling Leadership Program.** Concern was raised that a community who collects televisions at the curbside would be prohibited from having their collected televisions count toward an RLP’s program.
- **Commission Responsibilities.** Several commenters expressed concern over the timeline delineated by the rules. Specific comments included: (1) suggestions that the commission should require RLPs to submit their first reports in 2014 in order to include RLP’s reporting information in the commission’s report to the legislature; (2) suggestions that the commission should provide the recycling rate and manufacturer market share allocation before the respective November 1 and December 1 deadlines; and (3) suggestions that, since the manufacturers must begin their program by April 1, 2013, the commission should extrapolate the nine months of data to 12 months in order to set the market share allocations for 2014.
- **Management of Collected Television Equipment.** The commission received numerous comments in opposition to the adoption of the portions of the 2006

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Institute of Scrap Recycling Industries, Incorporated (ISRI) standards. Specific comments regarding the opposition to the adopted standards include: (1) concerns that the adopted standards are outdated or superseded by other standards; (2) suggestions that the commission should require recyclers to obtain third-party certification from R2 or e-Stewards, or to follow the R2 or e-Stewards standards; and (3) assertions that the e-Stewards and R2 standards are more protective of the environment than the adopted standards.

- Amount of Penalties. The commission received a comment suggesting that manufacturers who miss their market share allocations will have failed to implement a compliant recovery plan and should be subject to the maximum amount of penalties provided for by the statute.

Significant changes from proposal:

In response to comments, the commission further clarified the proposed definition of a “recycler” and added a definition of a “collector.” These additions will help clarify which entities are subject to the requirements facing recyclers.

Potential controversial concerns and legislative interest:

- Management of Collected Television Equipment:
 - SB 329 instructs the commission to adopt “as standards for recycling or reuse of covered television equipment in this state the standards provided by 'Electronics Recycling Operating Practices' as approved by the board of directors of ISRI, April 25, 2006, or other standards from a comparable nationally recognized organization.” The commission received numerous comments in opposition to adopting portions of the 2006 ISRI standards.

Many commenters suggested that the commission should require recyclers of covered television equipment or television manufacturers to obtain third-party R2 or e-Stewards certifications. SB 329 does not mandate that recyclers of covered television equipment receive R2 or e-Stewards certification.

Many commenters suggested that the commission follow the R2 or e-Stewards standards. Both R2 and e-Stewards are meant to be used in their entirety, and meeting only portions of the standards is not considered compliance by those organizations. An e-Stewards representative explained that in order to comply with the standards an accredited certification body must verify conformity to all of the standards. No one can simply claim that they meet e-Stewards standards, as they are trademarked and protected. According to e-Stewards, this prevents a company from touting their conformity to the e-Stewards standards when there has been no independent accredited certification to verify their compliance. It also ensures that the e-Steward standards are applied in a uniform manner.

If the commission were to require certification by e-Stewards, the commission would be unable to provide recyclers with copies of the

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standards. Recyclers would be required to purchase the e-Stewards standards and obtain certification from that organization. This raises issues of transparency.

Requiring certification by either R2 or e-Stewards would also place an additional financial burden on recyclers, many of which are small businesses, by requiring them to invest in attaining certification.

Furthermore, much of the R2 and e-Stewards standards deal with activities and practices that fall outside of the commission's jurisdiction. The commission cannot regulate activities and practices that are beyond its jurisdiction. During the adoption of the CERP rules in 2008, the commission specifically adopted only portions of the ISRI standards that fell within the commission's jurisdiction. Requiring recyclers to certify compliance with either R2 or e-Stewards standards would leave the television recycling rules subject to challenge on the basis that the commission exceeded its rulemaking authority.

The Executive Director has determined that the adopted portions of the standards approved by ISRI's board of directors on April 25, 2006 will provide regulatory consistency between the television recycling program and the CERP, and are just as protective as other electronic recycling standards from comparable nationally recognized organizations that are within the commission's jurisdiction. Having a consistent set of standards between the television recycling program and the CERP will assist the commission in administering the television recycling program. For example, an investigator inspecting an electronics recycler would be able to reference one set of recycling standards to determine compliance with both the television recycling program and the CERP. A consistent set of standards between the two programs also minimizes the regulatory burden placed on electronics recyclers who recycle both computer equipment and covered television equipment.

After researching electronics recycling standards from comparable nationally recognized organizations, including the R2, RIOS, and e-Stewards standards, the Executive Director has determined that the adopted portions of the ISRI standards are equally protective. Recycling facilities already face a number of regulations under the commission's jurisdiction that are meant to protect the environment and discourage sham recycling. TCEQ staff have found no correlation between certification by a private entity and compliance with TCEQ rules.

- Use of mail-back programs or post offices as collection sites:
 - The commission received numerous comments expressing concern over manufacturers using only mail-back programs or using only post offices as

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collection sites. A few commenters suggested that the commission should not allow a mail-back option at all and that the commission could automatically reject a plan that relies exclusively on a mail-back program.

The Executive Director respectfully disagrees with the assertion that the commission could automatically reject a manufacturer's plan that relies exclusively on a mail-back program. SB 329 lists three options for an RLP to meet the requirement of 200 sites or programs, including use of a mail-back program. As written, the legislation allows an RLP to use any combination of the three options, or even just one option. Furthermore, SB 329 does not require manufacturers to utilize a specific collection method. The statute and the rules allow manufacturers the flexibility to develop programs that will work best for their customers. If a television manufacturer can provide an effective mail-back program, both the statute and rules allow it. An RLP may consider a post office location to be counted as either a single collection site or a single collection method for the purposes of complying with §328.175(b).

- Legislative Interest:
 - An exchange between Representative Chisum and Representative Aliseda expressed an interest in monitoring the implementation of the program to ensure that it does not have just a few television manufacturers recycling and reporting large numbers for the benefit of all manufacturers participating in an RLP.
 - While not reduced to the written record, Senator Watson stated on the floor of the Senate that the bill language leaves the commission discretion and flexibility to update the recycling standards. Stakeholders may take that flexibility to encourage the commission to adopt standards more stringent than ISRI. As noted, staff evaluated other standards as part of this rulemaking.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking will not affect current policy or require the development of new policy.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Although rulemaking is not specifically required, without rules in place, the agency might spend more time and resources implementing the program on an ad hoc basis.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: Nov. 18, 2011

Anticipated Texas Register publication date: April 13, 2012

Anticipated effective date: May 1, 2012

Six-month Texas Register filing deadline: May 18, 2012

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The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191, 328.193, 328.195, and 328.197.

Sections 328.165 and 328.185 are adopted *with changes* to the proposed text as published in the November 18, 2011, issue of *Texas Register* (36 TexReg 7782). Sections 328.161, 328.163, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.187, 328.189, 328.191, 328.193, 328.195, and 328.197 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Senate Bill (SB) 329, passed by the 82nd Legislature, 2011, requires the commission to implement a television equipment recycling program based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. The legislation authorizes the commission to adopt rules to help implement the program. Adopting rules will help the TCEQ to implement the program more efficiently. The legislation also states that the commission must adopt any rules required to implement SB 329 by May 1, 2012.

Section by Section Discussion

The commission adopts new Subchapter J, Television Equipment Recycling Program, to Chapter 328.

§328.161, Purpose

Adopted new §328.161 explains that the purpose of Subchapter J is to help establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment.

§328.163, Applicability and Effective Dates

Adopted new §328.163 describes the television equipment that is covered by adopted new Subchapter J. Adopted new §328.163(b)(2) clarifies that the subchapter does not apply to a display device that is peripheral to a computer and contains a television tuner, if that device is collected and recycled by its manufacturer in accordance with Subchapter I of Chapter 328. The language in SB 329 could be interpreted to exempt all of a manufacturer's covered television equipment from the requirements of Subchapter J if they make one product that is collected and recycled in accordance with the Computer Equipment Recycling Program (CERP). A manufacturer who makes covered television equipment in addition to the display device referenced in §328.163(b)(2) would still be required to provide for the collection and recycling of their covered television equipment under Subchapter J.

Adopted new §328.163(i) allows retailers to sell television equipment acquired before April 1, 2013 without incurring a penalty. This change to SB 329 allows retailers to sell inventory acquired prior to the commission's publication of its Internet Web site list of manufacturers who are in compliance with Subchapter J, thereby avoiding the unintended consequence of prohibiting retailers from ordering or selling covered television equipment after the statutory deadline of September 1, 2012 and before the commission's publication of its Internet Web site list on April 1, 2013.

The adopted section specifies the effective dates for the requirements in §§328.171, 328.173, 328.175, 328.177, 328.179, 328.181, and 328.185.

§328.165, Definitions

Adopted new §328.165 defines terms and is adopted with changes to the proposed text.

The commission adds to the definition of "brand" the language referenced in SB 329, which is the same language used to define "brand" in Subchapter I of Chapter 328.

Providing the specific language for the definition adds clarity to this subchapter.

The commission also adds a definition of "recycler" for use in this subchapter in order to clarify that entities that only collect or separate equipment for recycling (for example, a local government conducting a collection event or an entity separating equipment into

categories to send to a recycler) would not be classified as a recycler, and therefore would not be subject to adopted new §328.181 and §328.193.

In response to comments, the definition of "recycler" for use in this subchapter is further clarified to state that entities that only collect or "sort" equipment for recycling would not be classified as a recycler, and therefore would not be subject to adopted new §328.181 and §328.193. "Sort" is a more accurate description of the intended activity than "separate." Recyclers that are exempt under §328.5(a) are subject to adopted new §328.181 and §328.193.

In response to comments, a definition of "collector" is added for use in this subchapter in order to clarify that a collector is a person who receives covered television equipment from consumers and arranges for the delivery of the covered television equipment to a recycler. This addition further clarifies which entities will be considered recyclers under this subchapter.

§328.167, Sales Prohibition

The commission adopts the same sales prohibition as contained in SB 329, prohibiting the sale of new covered television equipment that has not been labeled in compliance with adopted new §328.169.

§328.169, Manufacturer's Labeling Requirement

Adopted new §328.169 follows the legislation's requirement that manufacturers may sell only covered television equipment that is permanently affixed with a readily-visible label of the manufacturer's brand.

§328.171, Manufacturer's Registration and Reporting

Adopted new §328.171 lists the registration and reporting requirements that apply to manufacturers of covered television equipment. The registration fee requirement of adopted new §328.171(a)(2) and the reporting requirement of adopted new §328.171(d) do not apply to a manufacturer of covered television equipment participating in a manufacturer recycling leadership program (RLP) under adopted new §328.175. Except where noted, the provisions of §328.171 are consistent with SB 329.

Adopted new §328.171(a) adds to SB 329 specific requirements on how a manufacturer should complete and submit their registration information to the commission. These additions clarify what is required of a manufacturer as part of their registration and will help ensure manufacturer compliance with this subchapter.

Adopted new §328.171(d)(1) differs from SB 329 by requiring a manufacturer who does not track the weight of covered television equipment it sells by state to report the total "weight" of covered television equipment it sells nationally; SB 329 states that a

manufacturer may report the total "amount" of covered television equipment sold nationally. This change clarifies how a manufacturer should report its annual sales of covered television equipment and will ensure consistency among manufacturer reports.

Adopted new §328.171(d)(3) adds to SB 329 a requirement that a manufacturer must provide documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193. Manufacturers participating in an RLP are required to provide the same documentation, and this addition will maintain consistency in requirements for all manufacturers.

§328.173, Manufacturer's Recovery Plan and Related Responsibilities

The commission adopts new §328.173, which requires manufacturers who are not participating in a manufacturer RLP under adopted new §328.175 to submit a recovery plan to the commission. The rule language in adopted new §328.173 adds two elements to the minimal requirements for a recovery plan delineated in SB 329: 1) information for consumers on how and where to return the manufacturer's television equipment; and 2) a statement indicating that the manufacturer has, or will have, a compliant collection program by April 1, 2013. These additions clarify the responsibilities of the manufacturer and will allow the commission to determine which manufacturers are eligible for inclusion on its publicly available Internet Web site list of television manufacturers in accordance with adopted new §328.185.

§328.175, Manufacturer Recycling Leadership Program

Adopted new §328.175 lists the responsibilities of a manufacturer of covered television equipment that participates in an RLP. Except where noted, the provisions of §328.175 are consistent with SB 329.

Adopted new §328.175(d)(2) adds language to the requirements in SB 329, clarifying that an RLP may include a system where the consumer returns covered television equipment by mail only if the system provides for packaging that will prevent any spillage in case of breakage.

Adopted new §328.175(g) adds to the language contained in SB 329 by requiring each RLP to provide the commission with a list of manufacturers who are participating in the program as of January 1 of that year, clarifying that to be considered a participant in an RLP for a given year, a manufacturer must be a member of the program from the first day of the year. This addition will help ensure that all RLP participants adhere to the same standards; without this deadline, some manufacturers may interpret the rule to mean that they could join an RLP at any time during the year and still benefit from the registration fee and reporting exemptions.

The commission also adopts new §328.175(g) by requiring that an RLP submit a list of

the 200 sites or programs planned by the program participants for the current year, and documentation that the RLP has established a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. These additions will help the commission ensure that an RLP will meet the requirements of this subchapter. Further, a manufacturer participating in an RLP must have a compliant public education plan in order to be listed on the commission's Internet Web site list of manufacturers. This addition is necessary for the commission to determine whether a participant in an RLP is eligible for inclusion on the Internet Web site list.

§328.177, Recycling Leadership Program Collection Report

Adopted new §328.177 lists the requirements for an RLP when submitting their biennial collection report to the commission. Adopted new §328.177(b)(3) clarifies SB 329 by specifying that the required collection report must document the weight of covered television equipment that each individual manufacturer or RLP collected in the two preceding "calendar years;" the language in SB 329 states only "year." Adopted new §328.177(b)(3) also requires an RLP to separate the two preceding years in the biennial report by year. These additional requirements will help ensure consistency in the commission's legislative report since manufacturers not participating in an RLP must report annually.

Adopted new §328.177(b)(5) adds a requirement to the language in SB 329 that an RLP's collection report include documentation that a financial incentive of equal or greater value to any fee charged at the time of recycling is provided by the television manufacturer, if applicable. This addition will help the commission ensure that an RLP is offering a financial incentive of equal or greater value to a fee charged at the time of recycling, if a fee is charged.

Adopted new §328.177(b)(6) adds a requirement to the language in SB 329 that an RLP's collection report include documentation that a participating manufacturer has, either individually or through the RLP, implemented a public education program regarding collection, reuse, and recycling opportunities for covered television equipment in this state. This addition will help the commission ensure that an RLP is meeting the public education requirements of SB 329.

§328.179, Retailer Responsibilities

The retailer responsibilities in adopted new §328.179 are largely unchanged from SB 329, prohibiting retailers from ordering or selling products from a television manufacturer that is not included on the commission's Internet Web site list and requiring retailers to provide consumers written information published by the commission regarding the legal disposition and recycling of television equipment.

The commission adopts new §328.179(a) defining "order" for the purposes of Subchapter J. When used in Subchapter J, "order" is considered to be the entire amount of covered television equipment requested from a manufacturer at one time for the purpose of sale by the retailer. This addition clarifies how a potential enforcement action could be calculated against a retailer who orders and sells television equipment from a manufacturer that is not on the commission's Internet Web site list of manufacturers and will help ensure clear understanding and implementation of the rules.

§328.181, Recycler Responsibilities

Adopted new §328.181 lists recycler responsibilities under Subchapter J. The commission adopts new §328.181 to require recyclers to certify that they are in compliance with the standards adopted under §328.193. Adopted new §328.181(b)(1) adds specific requirements for a recycler's certification. This language tracks 30 TAC Chapter 305, Consolidated Permits, but is specific to recyclers of television equipment. This addition is consistent with the requirements of the CERP and will help maintain consistency for recyclers of electronic equipment.

Adopted new §328.181(b)(4) clarifies the language of SB 329 by requiring recyclers to maintain a written log recording the "weight or volume" of all covered television equipment received by the person and the disposition of that equipment; SB 329 requires a recycler to maintain a written log recording only the "weight" of covered

television equipment received. The addition of the word "volume" will ensure consistency with the requirements of adopted new §328.193.

Adopted new §328.181(b)(5) clarifies the language of SB 329 by requiring recyclers to report to the commission by January 31 the total "weight or volume" of covered television equipment "received, recycled, and disposed of" during the preceding "calendar year;" SB 329 requires the report to document the total "weight" of covered television equipment "received and recycled" during the preceding "year" only. The addition of the word "volume" will ensure consistency with the requirements of adopted new §328.193. The addition of the word "calendar" will ensure that all recyclers report for the same time period. Requiring recyclers to report the amount of covered television equipment that was disposed of will help the commission ensure recycler compliance with this subchapter.

§328.183, Liability

Adopted new §328.183 tracks the language of SB 329 regarding liability verbatim, stating that a television manufacturer, retailer, or recycler of covered television equipment is not liable for information in any form that a consumer leaves on covered television equipment that is collected or recycled under Subchapter J.

§328.185, Commission Responsibilities

§328.185 is adopted with changes to the proposed text.

Adopted new §328.185 lists the responsibilities of the commission under Subchapter J.

Adopted new §328.185(a)(1) adds to the language of SB 329 the phrase "if applicable" where appropriate to differentiate between different prerequisites for inclusion on the commission's Internet Web site list of television manufacturers. This addition clarifies that not all manufacturers are subject to the same requirements. Manufacturers in an RLP are not required to have an approved recovery plan or pay the annual registration fee, and manufacturers who do not participate in an RLP are not required to implement a public education program.

Adopted new §328.185(a)(2) adds to the list of manufacturers who will be included on the commission's Internet Web site list of manufacturers, as required by SB 329, those who manufacture a display device that is peripheral to a computer and contains a television tuner, who collect and recycle the device in accordance with Subchapter I. The commission adopts this addition to avoid the possible unintended consequence of excluding manufacturers who comply with Subchapter I from inclusion on the list, thereby prohibiting retailers from ordering or selling their brand of covered television equipment pursuant to §328.179(a).

Adopted new §328.185(e) adds language to SB 329, stating that inclusion on the

commission's Internet Web site list does not constitute a determination by the commission that a television manufacturer's actual practices are in compliance with this subchapter or other law.

Adopted new §328.185(g) clarifies the language in SB 329 by stating that the market share allocation provided to affected manufacturers establishes their recycling responsibility for the following year. Affected manufacturers will be provided their market share allocation before the new year begins.

Adopted new §328.185(j) regarding the commission's biennial report to the legislature is largely unchanged from SB 329. The only modifications are section references that are specific to the adopted rules.

In response to comments, §328.185(j)(2)(A) is corrected to reference §328.177 instead of §328.175.

§328.187, Enforcement

Adopted new §328.187 is largely unchanged from SB 329, listing the responsibilities of the commission in enforcing this subchapter. The modifications are section references that are specific to the adopted rule.

§328.189, Financial and Proprietary Information

Adopted new §328.189 tracks the language of SB 329 regarding financial and proprietary information verbatim, stating that financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Texas Government Code, Chapter 522.

§328.191, Consumer Responsibilities

Adopted new §328.191 tracks the language of SB 329 regarding consumer responsibilities verbatim, placing the responsibility for any information in any form left on a consumer's covered television equipment that is collected or recycled on the consumer. Adopted new §328.191 also encourages consumers to learn about recommended methods for recycling covered television equipment.

§328.193, Management of Collected Television Equipment

The commission adopts new §328.193 regarding the management of covered television equipment. SB 329 requires the commission to adopt either the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc. (ISRI), April 25, 2006, or other standards from a comparable nationally recognized organization. The commission adopts the portions of the April 25, 2006, ISRI standards that fall under the commission's jurisdiction.

Adopting the portions of the ISRI standards that fall under the commission's jurisdiction, rather than other standards from a comparable nationally recognized organization, will provide regulatory consistency to recyclers because the same standards are used in the CERP. It will also help the commission to more efficiently implement the program in that investigators would have a consistent set of standards to use when reviewing a recycler. Using a different set of standards could have a negative impact on small businesses; in particular, recyclers would be required to comply with two different sets of standards for electronics recycling.

TCEQ staff researched standards from other nationally recognized organizations, including the R2, RIOS, and e-Stewards standards. The RIOS standards were last revised in March of 2006, making them less current than the adopted April 2006 ISRI standards. Staff also determined that much of the R2 and e-Stewards standards fall outside of the commission's jurisdiction. The commission could not require a recycler to attain certification from an entity if the commission does not have jurisdiction over all standards used for the certification.

Further, the adopted portions of the ISRI standards are as protective of the environment as the portions of the R2 and e-Stewards standards where the commission does have

jurisdiction. Recycling facilities already face a number of regulations under the commission's jurisdiction that are meant to ensure the safe management of waste and adopting an additional set of standards would not increase that protection. TCEQ staff have found no correlation between certification by a private entity and their compliance with TCEQ rules.

In addition, the adopted section includes a provision whereby if the United States Environmental Protection Agency (EPA) adopts similar standards that were deemed an acceptable substitute by the commission, the commission may, by rule, revoke the ISRI standards and adopt the EPA standards.

§328.195, Federal Preemption; Expiration

Adopted new §328.195 tracks the language of SB 329 regarding federal preemption and expiration verbatim, explaining that the commission may adopt an agency statement that interprets a national program established by federal law that meets the purposes of Subchapter J as preemptive of Subchapter J.

§328.197, Amount of Penalties

Adopted new §328.197 is largely unchanged from SB 329. The modifications are to provide more detail regarding the assessment and amount of penalties available under Subchapter J.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rules is to help establish a comprehensive, convenient, and economically sound program for the collection and recycling of television equipment. Furthermore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety. The adopted rules afford television manufacturers the opportunity to establish recovery programs tailored to their individual needs. The flexibility of the adopted rules will allow manufacturers to develop the most cost-effective means of meeting the recycling requirements. This should prevent the adopted rules from adversely affecting the economy or a sector of the economy in a material way. The commission concludes that the adopted rules do not

meet the definition of a major environmental rule.

In addition to the fact that the adopted rules do not meet the definition of a major environmental rule, the adopted rules are not subject to Texas Government Code, §2001.0225 because they do not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225 applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

First, applicable federal standards for the collection and recycling of covered television equipment do not currently exist. SB 329, §3(a), 82nd Legislature, 2011, authorizes the commission to adopt any rules required to implement the statute. Second, the adopted rules are in direct response to the previously mentioned bill and do not exceed its requirements. Third, the adopted rules do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the adopted rules will be adopted under the authority of SB 329, §3(a), 82nd Legislature, 2011, which authorizes

the commission to adopt any rules required to implement the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invited public comment regarding the Regulatory Impact Analysis Determination during the comment period. No comments were received regarding the determination.

Takings Impact Assessment

The commission evaluated the adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rules do not constitute a taking. The specific purpose of the adopted rules is to help establish a comprehensive, convenient, and economically sound program for the collection and recycling of television equipment. This rulemaking substantially advances this stated purpose by establishing specific requirements for the collection, reuse, and recycling of covered television equipment.

Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Covered television equipment is not real property. The adopted rules do not affect a landowner's right in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to real property and reduce its value by 25% or more beyond that which

would otherwise exist in the absence of the adopted rules.

Consistency with the Coastal Management Program

The commission reviewed the rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rules are not subject to the Texas Coastal Management Program.

Public Comment

The commission held a public hearing on December 13, 2011 to receive public comments on the proposed rules. Commission staff members were available before and after the hearing to address specific questions from those who attended the hearing. The public comment period closed on December 19, 2011.

Comments were received from: Central Texas Zero Waste Alliance; Consumer Electronics Association (CEA); CINCO Electronics Recycling; Electronics Recyclers International; Global Electric Electronic Processing (GEEP); State of Texas Alliance for Recycling (STAR); TechnoCycle; Texas Campaign for the Environment (TCE); Texas Product Stewardship Council (TxPSC); Travis County Transportation and Natural Resources Department; Waste Management (WM); and over 590 individuals. Numerous

comments suggested changes to the rules.

Response to Comments

General Comments, Television Equipment Recycling Rules

Several individuals commented on the importance of recycling televisions to keep harmful chemicals out of the environment, to provide jobs and cut costs, and to keep televisions out of landfills.

The commission appreciates these comments and agrees that there are numerous benefits to recycling covered television equipment. No changes have been made in response to these comments.

CEA commented in support of adopting the rules as proposed. In particular, CEA commented in support of RLPs. CEA also commented that, while some of the reporting requirements are not typically associated with normal business operations and all mandates on their industry in the rules are inherently state-specific, they understand the desire to evaluate the performance of television manufacturers and have no objections to the requirements.

The commission appreciates this comment in support of the rules as proposed. No changes have been made in response to this comment.

One individual commented that the TCEQ should combine the television equipment recycling rules with the current computer equipment recycling rules.

The commission respectfully disagrees with this suggestion. The statutory requirements for the computer recycling rules differ significantly from the statutory requirements for the television recycling rules. The television recycling program has more extensive requirements for both manufacturers and recyclers than the CERP. The two programs employ substantially different methods to ensure manufacturer compliance. The television recycling program also requires recyclers to register with and report to the TCEQ annually; there is no such requirement in the CERP.

Where relevant, efforts were made to maintain consistency between the two programs to ensure efficient implementation of the program for recyclers, manufacturers, and the commission. No changes have been made in response to this comment.

Numerous individuals requested that the TCEQ strengthen the television recycling requirements and standards set by SB 329.

The commission acknowledges these comments. However, the comments do not suggest any specific changes to the rules. No changes have been made in response to these comments.

Several individuals suggested the possibility of including municipal waste departments or other municipal entities in the collection and recycling process required of television manufacturers.

The commission appreciates these suggestions and encourages television manufacturers to partner, as appropriate, with local governments, including municipal waste departments, as part of their collection and recycling programs. No changes have been made in response to these comments.

General Comments, Public Interest and Education

Many individuals commented that the TCEQ needs to put public interest first in its adoption and implementation of the television recycling rules. Several individuals made general statements asking the TCEQ to provide rules that make SB 329 work, to help recycle televisions, to support and fight for these rules, and to make recycling televisions worthwhile.

The commission appreciates these comments. The commission will continue to work with manufacturers, retailers, recyclers, and other interested stakeholders to help ensure the development of a comprehensive program that will allow Texas citizens the opportunity to recycle covered television equipment. No changes have been made in response to these comments.

One individual commented that the TCEQ needs to make certain that every citizen has knowledge of and convenient access to methods of returning both televisions and computers.

The commission appreciates this comment but notes that the recycling of computer equipment is beyond the scope of these rules. Opportunities for recycling computer equipment are available as part of the CERP.

The commission is committed to meeting the public education requirements of SB 329. The commission looks forward to working with participants in RLPs, retailers, recyclers, councils of governments, local governments, associations, non-profits, and other stakeholders in educating as many Texans as possible about the recycling opportunities the television recycling program offers. No changes have been made in

response to this comment.

TCE commented that both RLPs and manufacturers who collect and recycle their market share allocation should be required to comply with specific public education provisions.

The commission respectfully disagrees with this comment. SB 329 provided specific requirements for manufacturers participating in an RLP to implement a public education program. No such requirements were provided for manufacturers who collect and recycle their market share allocation. No changes were made in response to this comment.

TCE commented that some manufacturers might choose the option of collecting and recycling their market share allocation and purposely put into place a "less than comprehensive and convenient" collection program and a "less than effective" public education program so that the enforceable market share allocation is low in subsequent years. TCE commented that the rules need to put into place reasonable measures to guard against this scenario.

The commission appreciates this comment and understands TCE's concern. The commission will work with all manufactures of covered television equipment to ensure that they offer comprehensive collection and recycling

programs. The commission will also work with manufacturers participating in an RLP to ensure that they develop compliant public education programs. Collection information provided to the commission will be included in the commission's biennial report to the legislature, which will serve as an additional incentive for manufacturers to develop truly comprehensive programs. No changes have been made in response to this comment.

TCE commented that the fees collected from affected manufacturers should not only be used for the maintenance of the commission's Internet Web site and toll-free telephone number regarding the collection and recycling of covered television equipment, but also for efforts to let the public know of those information resources.

The TCEQ appreciates this comment but respectfully disagrees that fees collected as part of this program can be used to educate the public about the existence of the commission's Internet Web site and toll-free telephone number regarding the collection and recycling of covered television equipment. SB 329 specifically states that the fees collected as part of this program are to be deposited to the Television Recycling Account and may be "appropriated only to the commission to be used by the commission to maintain a public Internet Web site and toll-free telephone number that

provide consumers with information about covered television equipment recycling opportunities in this state." SB 329 does not authorize the commission to use fees collected under the television recycling program to educate the public about the commission's toll-free telephone phone number and Internet Web site regarding the collection and recycling of covered television equipment. No changes have been made in response to this comment.

General Comments, Convenient Recycling Options

Numerous individuals commented that television manufacturers need to offer recycling options that are convenient, accessible, and free to consumers. Several individuals commented that consumers should not be forced to pay to mail back a television.

The commission appreciates these comments and understands consumers' desire that opportunities to recycle their covered television equipment are readily available. A manufacturer of covered television equipment that is not participating in an RLP must offer collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling. Requiring consumers to pay for postage to mail back their covered television equipment for recycling would constitute a separate fee at the time of recycling. A manufacturer of covered

television equipment who participates in an RLP may not charge a separate fee at the time of recycling unless, at the time of recycling, the manufacturer provides a financial incentive of equal or greater value. Under this scenario, a manufacturer may require a consumer to pay for postage at the time of recycling, provided that it also provides an equivalent financial incentive. No changes were made in response to these comments.

A number of individuals commented that the television recycling program must provide convenient drop-off locations, such as retailers or stores that sell electronics. A few individuals suggested that the rules should require both manufacturers and retailers to establish drop-off locations.

The commission appreciates these comments. The rules allow manufacturers the flexibility to develop an effective program. Manufacturers may choose to partner with retailers, such as stores that sell electronics, to provide collection sites. However, SB 329 does not require retailers to collect covered television equipment for recycling. No changes were made in response to these comments.

TCE, WM, and numerous individuals commented on manufacturers' use of mail-back programs or post offices as drop-off locations. WM specifically commented that the way

in which a mail-back program is defined under §328.175(b) is very vague. TCE and numerous individuals expressed concern over television manufacturers using only mail-back programs or using only post offices as drop-off locations. Numerous comments specifically asked that the TCEQ not allow television manufacturers to rely solely on post offices as drop-off locations. TCE further commented that the TCEQ is not bound by the legislation to accept programs that only offer a mail-back option, and should not do so. TCE and many individuals referenced the CERP to show that programs relying exclusively on a mail-back option do not work. A few individuals commented that the TCEQ should not allow a mail-back program at all.

The commission acknowledges these comments. The commission will allow an RLP to consider a post office location to be counted as either a single collection site or a single collection method for the purposes of complying with §328.175(b).

The commission respectfully disagrees with TCE's assertion that the commission is not bound to accept a manufacturer's plan that relies exclusively on a mail-back program. SB 329 lists three options for an RLP to meet the requirement of 200 sites or programs, including use of a mail-back program. As written, the legislation allows an RLP to use any combination of the three options, or even just one option. Furthermore, SB

329 does not require manufacturers to utilize a specific collection method. The statute and the rules allow manufacturers the flexibility to develop programs that will work best for their customers. If a television manufacturer can provide an effective mail-back program, both the statute and rules allow it. No changes were made in response to these comments.

TCE commented that the TCEQ should require the programs of manufacturers who collect and recycle their market share allocation to be geographically spread out; specifically, TCE commented that each council of government should have at least three drop-off locations and ensure that urban and suburban areas are adequately served with multiple locations. One individual similarly commented that a drop-off location should be provided in every city and town at least twice a year.

The commission respectfully disagrees with this comment. The rules allow manufacturers the flexibility to develop an effective program for their customers, including the geographic placement of their programs. Television manufacturers are encouraged to work with municipalities and councils of government to ensure that their program effectively meets the needs of their customers. No changes were made in response to this comment.

TCE commented that manufacturers required to collect and recycle their market share allocation should be required to report on the services they provide in "low population" counties, as RLPs are required to do. TCE further commented that it is unclear whether RLPs will be required to report only on services provided by RLP sites in these counties, or on all available services.

The commission respectfully disagrees that manufacturers who collect and recycle their market share allocation should be required to report on services provided in low population counties, defined for this program as populations less than 50,000. Manufacturers participating in an RLP and manufacturers who collect and recycle their market share allocations are subject to different reporting requirements that were specifically enumerated in SB 329. Further, the rules allow manufacturers the flexibility to develop an effective program for their customers, including the geographic placement of their programs.

RLPs are required to report on the collection opportunities available to consumers in counties with populations of less than 50,000. This reporting requirement applies specifically to collection opportunities provided by the RLP. If an RLP wishes to report on collection opportunities available outside of those provided by the RLP, it is permitted to do so under

§328.177(d). No changes were made in response to this comment.

Comments by Rule Section

§328.163, Applicability and Effective Dates

TCE commented in support of the clarification made in §328.163(b)(2) that a manufacturer that makes one display device with a tuner that is collected and recycled in accordance with the CERP is not exempt from complying with the television equipment recycling rules.

The commission appreciates TCE's support of this clarification. No changes were made in response to this comment.

TCE commented in support of the change made to SB 329 in §328.163(i), which allows retailers to sell television equipment acquired before April 1, 2013 without incurring a penalty, rather than September 1, 2012. TCE commented that retailers should be able to continue selling televisions "as long as they are labeled with the brand name."

The commission appreciates this comment. To further clarify, SB 329 prohibits a retailer from selling new covered television equipment unless it is labeled in accordance with the manufacturers' labeling requirement. This prohibition begins on the effective date of SB 329, September 1, 2011. No

changes were made in response to this comment.

§328.165, Definitions

WM commented that a definition of a collector should be added to the rules in order to specify what activities a collector may engage in without being considered a recycler.

The commission agrees with this comment and has added a definition of a collector to §328.165.

WM commented that the definition of a recycler should be clarified to be consistent with the suggested definition of a collector.

The commission agrees with this comment and has modified the definition of a recycler in §328.165.

TCE commented in support of the clarification that "collectors of used electronics" that do not process the materials for recycling should not be classified as recyclers or subject to all of the provisions applicable to recyclers.

The commission appreciates TCE's support of this clarification. To further clarify, the definition of recycler in §328.165 only applies to recyclers of

covered television equipment under this subchapter and does not necessarily apply to recyclers of other types of electronics. No changes were made in response to this comment.

§328.167, Sales Prohibition

TCE commented in support of §328.167, which prohibits the sale of unlabeled televisions.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

TCE and TxPSC commented that §328.167 should be expanded to also state that televisions made by manufacturers not on the TCEQ-approved list may not be sold in Texas. TCE commented that while this language is found elsewhere in the rules, it would provide greater clarity to group all sales prohibitions together.

The commission acknowledges these comments. Because the two sales prohibitions have separate effective dates, the commission respectfully disagrees that grouping the sales prohibitions together may offer greater clarity. The sales prohibition on unlabeled televisions has an effective date of September 1, 2011, and the sales prohibition on televisions made by

manufacturers not on the TCEQ-approved list has an effective date of April 1, 2013. No changes were made in response to these comments.

§328.169, Manufacturer's Labeling Requirement

TCE commented in support of §328.169, which requires all television manufacturers to label their products regardless of whether they participate in an RLP.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

§328.171, Manufacturer's Registration and Reporting

TCE commented in support of the requirement that affected manufacturers who do not track the weight of covered television equipment they sell by state should report the total weight of covered television equipment they sell nationally.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

§328.173, Manufacturer's Recovery Plan and Related Responsibilities

TCE commented in support of requiring affected manufacturers to provide information

for consumers on how and where to return covered television equipment.

The commission appreciates TCE's support of this requirement. To further clarify, affected manufacturers must provide, as part of their recovery plan, information for the consumer on how and where to return covered television equipment "labeled with the manufacturer's brand(s)."

Manufacturers who collect and recycle their market share allocation are not required to provide information on how and where to return covered television equipment labeled with other manufacturers' brands. No changes were made in response to this comment.

TCE commented in support of requiring affected manufacturers to state by which date their recycling program will be in place, "provided that it is operational no later than April 1, 2013 for companies currently selling televisions in Texas."

The commission appreciates TCE's support of this requirement. Section 328.173(e)(5) specifically requires that the referenced statement must indicate that the manufacturer has, or will have, a compliant collection program by April 1, 2013. No changes were made in response to this comment.

TCE commented that more elements should be added to §328.173 to guarantee delivery of the "promised convenient recycling infrastructure."

The commission acknowledges this comment and appreciates TCE's concern. However, the comment does not specify how the commission could "guarantee delivery" of recycling infrastructure beyond what is currently in the rules. No changes were made in response to this comment.

TCE commented that the rules should explicitly state that the TCEQ will reject a manufacturer's recovery plan that is identical to a previous year's plan, if the manufacturer did not collect its required market share allocation.

The commission respectfully disagrees with this comment. Section 328.173(f) already explicitly states that the TCEQ has the authority to reject a manufacturer's recovery plan. No changes were made in response to this comment.

§328.175, Manufacturer Recycling Leadership Program

TCE commented in support of requiring RLPs to annually provide additional documentation to the TCEQ beyond what is required by SB 329, including a list of manufacturers who are participating in the RLP as of January 1 of that year and a list of

the 200 sites required as part of the RLP.

The commission appreciates TCE's support of this requirement.

To further clarify, RLPs must provide to the commission a list of the 200 sites "or programs planned" by RLP participants for the current year. No changes were made in response to this comment.

TCE commented in agreement with the clarification that manufacturers could not sign up for an RLP at any time during the year and be exempt from the registration fee and annual reporting requirements.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

TCE commented in support of requiring RLPs to separate the two reporting years in their biennial report by year.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

TCE commented in support of requiring RLPs to document that, if a fee is charged at the

time of recycling, a consumer will receive a financial incentive of equal or greater value.

The commission appreciates TCE's support of this requirement. No changes were made in response to this comment.

TCE commented in support of requiring manufacturers to detail their implementation of an effective public education program.

The commission appreciates TCE's support of this requirement. To further clarify, §328.175(f) requires manufacturers participating in an RLP to, individually or through the RLP, establish and implement a public education program. Pursuant to §328.177(b)(6), manufacturers participating in an RLP must include in their collection report documentation that the required public education program has been established and implemented. No changes were made in response to this comment.

TCE commented in support of requiring RLPs to document that that their program complies with the requirements for environmentally sound recycling.

The commission appreciates TCE's support of this requirement. No changes

were made in response to this comment.

WM commented that a community who collects televisions at the curbside would be prohibited from having their collected televisions count toward an RLP's program, as the only collection methods allowed are: 1) a permanent collection site; 2) a mail back program; and 3) a collection event. WM suggested adding specific language that would allow a community to collect televisions at the curbside and have the collected televisions count toward a manufacturer's program. WM's proposed language also provided that the cost associated with curbside collection "may be included in a municipal/private fee/tax for general refuse collection for this service."

The commission acknowledges this comment and appreciates WM's concern. However, the statute and rules allow for the possibility of community curbside collections to be counted as part of a manufacturer's program. For example, if a television manufacturer or RLP partnered with a community to arrange for a curbside collection of covered television equipment, the manufacturer could count the collection of televisions as a "collection event." However, the commission notes that SB 329 specifically states that a television manufacturer may not charge a separate fee at the time of recycling unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television

manufacturer. No changes were made to the rules in response to this comment.

§328.179, Retailer Responsibilities

One individual commented that the instruction package material with each television bought and sold in Texas should include clear language regarding the recycling options for the product and should reference the TCEQ Web site for additional recycling information.

The commission appreciates this comment. Section 328.179 requires retailers to provide to consumers written information published by the commission regarding the legal disposition and recycling of television equipment. This information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, retailers may provide consumers a toll-free telephone number and address of an Internet Web site provided where this information is located. No changes were made in response to this comment.

TCE commented in support of the definition of an "order" for the purposes of this subchapter.

The commission appreciates TCE's support of this definition. No changes were made in response to this comment.

§328.181, Recycler Responsibilities

WM commented that a manufacturer should not be exempt from the requirements of a recycler because they are a manufacturer and that this section should apply to manufacturers if they are also a recycler under the subchapter's definition of a recycler.

The commission respectfully disagrees with this comment. Television manufacturers are already subject to many of the same registration and reporting requirements as recyclers. Requiring television manufacturers to also register and report as recyclers would result in duplication of reporting and would not add an increased environmental benefit. No changes were made in response to this comment.

TCE commented in support of requiring recyclers to provide the previous "calendar year's" weight of covered television equipment "received and recycled."

The commission appreciates this comment. To further clarify, the rules require recyclers to report the total weight or volume of covered television equipment "received, recycled, and disposed of" during the preceding

calendar year. No changes were made in response to this comment.

§328.185, Commission Responsibilities

TxPSC and TCE commented that the sequencing of reporting by manufacturers to the commission and reporting by the commission to the legislature is inconsistent. TCE specifically suggested that, in order to include RLPs' reporting information in the commission's first report to the legislature, the rules should require RLPs to submit their first reports by January 31, 2014. TxPSC requested that RLPs be required, "at a minimum," to provide an interim report to the commission in 2014 to "allow the commission to start determining baseline information to assist in determining the effectiveness of the statewide program as well as to provide accurate data to the legislature."

The commission respectfully disagrees with the suggestion that RLPs should be required to report in 2014. The rules require RLPs to provide the commission with select information on an annual basis. Specifically, §328.175(g) requires each RLP to provide the commission with a list of television manufacturers participating in the program as of January 1 of that year; documentation that the RLP has established and implemented a public education program that meets the requirements of Subchapter J; and a list of the 200 sites or programs planned by the RLP participants for

the current year. This information will help the commission to ensure that RLPs are meeting the requirements of Subchapter J before its first biennial report is due. Further, SB 329 specifically states that a collection report required of an RLP is not required to be prepared and submitted for the first time before January 31, 2015. No changes were made in response to these comments.

TxPSC commented that the rules are unclear as to how market share allocations will be set for non-RLP manufacturers in order to set realistic allocations for manufacturers to follow in succeeding years. TxPSC asked whether there will be any escalators used over the years to improve recycling allocations, or whether any allocations will ever be provided to manufacturers participating in RLPs.

The commission acknowledges this comment but respectfully disagrees that the rules are unclear regarding the computation of a manufacturer's market share allocation. SB 329 outlines what information will be used to determine a manufacturer's market share allocation for the upcoming year. SB 329 also establishes different requirements for manufacturers who participate in an RLP and manufacturers who choose to collect and recycle their market share allocation. No changes were made in response to this comment.

TCE and TxPSC both commented that the rules are unclear on what information the commission is required to provide to local jurisdictions "regarding the legal disposal and recycling of covered television equipment." TxPSC asked whether this information will be guidance to properly handle the disposal and recycling of televisions, or if it will be the results of the program in the vicinity of each county and municipality within the state. TCE asked whether this information will include Conditionally Exempt Small Quantity Generator (CESQ) rules, the federal Cathode Ray Tube (CRT) rule, and whether the TCEQ will prohibit the disposal of CRTs in Texas landfills.

The commission acknowledges these comments but disagrees that the rules are unclear regarding the information that the commission is required to provide to local jurisdictions. Section 328.185(i) mirrors the language provided by SB 329, which clearly states that the commission is required to provide to each county and municipality in Texas written information regarding the legal disposal and recycling of covered television equipment. Providing information on the results of this program to each county and municipality in Texas would go beyond this requirement; this information will also be included in the commission's publicly-available biennial report to the legislature. Including information on CESQ rules, the federal CRT rule, or prohibiting the disposal of CRTs in Texas landfills is beyond the

scope of this rulemaking. Further, this information is already readily available on multiple public Web sites. No changes were made in response to these comments.

TCE commented that the rules should explicitly define what efforts the TCEQ will undertake to inform local governments about the television equipment recycling program.

The commission respectfully disagrees with this comment. Section 328.185(i) mirrors the language in SB 329, which grants the commission the flexibility to determine the most effective way to provide the required information to local governments. The commission will coordinate with the agency's Small Business and Local Government Assistance Division to assist with outreach to local governments. No changes were made in response to this comment.

TCE commented that the TCEQ should develop a process to inform local governments and other stakeholders about the television equipment recycling program so that the biennial legislative report will provide comprehensive information "that would assist the legislature in evaluating the effectiveness of this subchapter."

The commission appreciates this comment and will work with local governments and other stakeholders in order to fulfill the public education and outreach requirements at §328.185. No changes were made in response to this comment.

TCE commented that the TCEQ should broaden the requirements for being listed on the commission's Internet list of manufacturers to include RLP manufacturers; TCE commented that currently, the list only cites the companies collecting and recycling their market share allocation and those that participate in the CERP.

The commission respectfully disagrees with this comment. Manufacturers who participate in an RLP are to be included on the commission's Internet Web site list of manufacturers. Section 328.185(a)(1) specifically states that the commission's Internet list of television manufacturers will include those "who have certified that their public education programs are in full compliance with this subchapter, if applicable; and who are in compliance with the registration and registration fee requirements of this subchapter, if applicable." The reference to manufacturers with a public education program refers solely to manufacturers participating in an RLP. Further, while manufacturers participating in an RLP are exempt from the registration fee requirements of this subchapter, they are not exempt from

the registration itself. No changes were made in response to this comment.

TCE commented that the TCEQ should assure television manufacturers that they will receive their recycling rate and market share allocations in a timely manner by changing the date by which the TCEQ will provide this information to February 15.

The commission respectfully disagrees with this comment. SB 329 provides that the commission will calculate the state recycling rate no later than November 1 of each year. SB 329 also provides that the commission will provide manufacturers who submit recovery plans pursuant to §328.173(b) with their market share allocation no later than December 1. If possible, the commission intends to calculate the state recycling rate and provide manufacturers with their market share allocations well in advance of the November 1 and December 1 deadlines. However, the timeline provided by SB 329 gives the commission the flexibility to work with manufacturers to ensure that the correct information is used to determine the state recycling rate and calculate market share allocations. No changes were made in response to this comment.

TCE commented that the manufacturers affected by the market share requirements are not required to begin their program until April 1, 2013, and that the TCEQ should

extrapolate the nine months of data to 12 months in order to set the market share allocations for 2014.

The commission respectfully disagrees with this comment. While manufacturers are not required to have a fully-implemented program until April 1, 2013, the commission expects that many manufacturers will have programs in effect before that date. Furthermore, the reporting period required by the rules is for the calendar year. No changes were made in response to this comment.

TxPSC commented that, under §328.185(j)(2)(A), the reference to §328.175 should actually reference §328.177.

The commission agrees with this comment and §328.185(j)(2)(A) has been changed to reference §328.177.

TCE and TxPSC both commented on including recyclers' annual reports to the commission in the commission's biennial report to the legislature. TCE further commented that the commission's biennial report to the legislature should include this information, as well as an analysis of the information supplied by the recyclers.

The commission acknowledges these comments but respectfully disagrees that recyclers' annual reports should be required by rule to be included in the commission's biennial report to the legislature. SB 329 does not require the commission to include the recyclers' annual reports in the commission's biennial report to the legislature. No changes were made to the rules in response to these comments.

§328.193, Management of Collected Television Equipment

Central Texas Zero Waste Alliance, Cinco Electronics Recycling, Electronics Recyclers International, GEEP, STAR, TCE, TechnoCycle, TxPSC, Travis County Transportation and Natural Resources Department, WM, and numerous individuals commented in opposition to the adoption of portions of the 2006 ISRI standards.

Several entities commented that the 2006 ISRI standards are "obsolete and no longer exist" and that the commission should use the flexibility offered by language in SB 329 to adopt different standards and ensure "environmentally sound recycling."

The commission acknowledges these comments and appreciates these entities' and individuals' concern that recyclers of covered television equipment follow sound environmental practices. SB 329 requires the commission to adopt "standards for recycling or reuse of covered television

equipment in this state the standards provided by 'Electronics Recycling Operating Practices' as approved by the board of directors of the ISRI, April 25, 2006, or other standards from a comparable nationally recognized organization."

The commission agrees with the commenters that the language of SB 329 provides the commission with the flexibility to adopt standards other than the standards approved by ISRI's board of directors on April 25, 2006. However, the commission has determined that the adopted portions of the standards approved by ISRI's board of directors on April 25, 2006 will provide regulatory consistency between the television recycling program and the CERP, and are just as protective as other electronic recycling standards from comparable nationally recognized organizations that are within the commission's jurisdiction. Having a consistent set of standards between the television recycling program and the CERP will assist the commission in administering the television recycling program. For example, an investigator inspecting an electronics recycler would be able to reference one set of recycling standards to determine compliance with both the television recycling program and the CERP. A consistent set of standards between the two programs also minimizes the regulatory burden placed on electronics recyclers who recycle both computer equipment and

covered television equipment.

After researching electronics recycling standards from comparable nationally recognized organizations, including the R2, RIOS, and e-Stewards standards, the commission has determined that the adopted portions of the ISRI standards are equally protective. The commission has determined that the RIOS standards were last revised in March 2006, making them less current than the adopted ISRI standards. As discussed in greater detail in the following response, much of the R2 and e-Stewards standards deal with activities and practices that fall outside of the commission's jurisdiction. The commission cannot regulate activities and practices that are beyond its jurisdiction. Furthermore, after comparing the portions of the R2 and e-Stewards standards that the commission has jurisdiction over, the commission has determined that the adopted portions of the ISRI standards are equally protective.

The adopted portions of the ISRI standards are found at §328.193(b). No changes were made in response to these comments.

Numerous commenters suggested that the TCEQ require recyclers of covered television equipment or television manufacturers to obtain third-party certification from R2 or e-

Stewards, or to follow the R2 or e-Stewards standards.

While numerous comments were received suggesting that television manufacturers should be required to obtain R2 or e-Stewards certifications, the commission believes that these comments in fact refer to recyclers of covered television equipment. The requirements in §328.193 regarding the management of collected television equipment are intended for recyclers, rather than manufacturers. The responses to these comments will address requiring recyclers of covered television equipment to obtain R2 or e-Stewards certifications.

The commission acknowledges these comments but respectfully disagrees that recyclers of covered television equipment should be required to obtain R2 or e-Stewards certification, or to adopt the standards used by R2 or e-Stewards.

As previously mentioned, SB 329 instructs the commission to adopt "as standards for recycling or reuse of covered television equipment in this state the standards provided by 'Electronics Recycling Operating Practices' as approved by the board of directors of the ISRI, April 25, 2006, or other standards from a comparable nationally recognized organization." SB 329

does not mandate that recyclers of covered television equipment receive R2 or e-Stewards certification.

Both R2 and e-Stewards are meant to be used in their totality, and meeting only portions of the standards is not considered compliance by those organizations. An e-Stewards representative explained that in order to comply with the standards an accredited certification body must verify conformity to all of the standards. No one can simply claim that they meet e-Stewards standards, as they are trademarked and protected. According to e-Stewards, this prevents a company from touting their conformity with the e-Stewards standards when there has been no independent accredited certification to verify their compliance. It also ensures that the e-Stewards standards are applied in a uniform manner.

If the commission were to require certification by e-Stewards, the commission would be unable to provide recyclers with copies of the standards. Recyclers would be required to purchase the e-Stewards standards and obtain certification from that organization. This raises issues of transparency.

Requiring certification by either R2 or e-Stewards would also place an

additional financial burden on recyclers, many of which are small businesses, by requiring them to invest in attaining certification.

Furthermore, much of the R2 and e-Stewards deal with activities and practices that fall outside of the commission's jurisdiction. The commission cannot regulate activities and practices that are beyond its jurisdiction. During the adoption of the CERP rules in 2008, the commission specifically adopted only portions of the ISRI standards that fell within the commission's jurisdiction. Requiring recyclers to certify compliance with either R2 or e-Stewards standards would leave the television recycling rules subject to challenge on the basis that the commission exceeded its rulemaking authority. No changes were made in response to these comments.

STAR, TCE, TxPSC, and WM commented that the TCEQ uses third-party certification in other areas and should be able to do so for recyclers of television equipment.

The commission acknowledges these comments but respectfully disagrees that it should require recyclers to receive third-party certification with either R2 or e-Stewards standards. As stated by commenters, the commission requires some documents to have the seal of an individual with

a Professional Engineer's license, although it does not have jurisdiction over all of the standards used to qualify a professional engineer. The commission also requires Confined Animal Feeding Operations to conform to standards set by the Natural Resources Conservation Service and allows supervisors of certain solid waste facilities to use "Manager of Landfill Operations" certifications issued by the Solid Waste Association of North America. However, the commission is mandated by state or federal law to require these licenses or certifications. As previously mentioned, SB 329 does not require that recyclers of covered television equipment receive R2 or e-Stewards certification. No changes were made in response to these comments.

Numerous commenters suggested that the R2 and e-Stewards standards are more protective of the environment than the portions of the 2006 ISRI standards.

The commission acknowledges these comments but respectfully disagrees that requiring recyclers to attain R2 or e-Stewards certification would offer an increased environmental benefit. Recycling facilities already face a number of regulations under the commission's jurisdiction that are meant to protect the environment and discourage sham recycling. TCEQ staff have found no correlation between certification by a private entity and

compliance with TCEQ rules. No changes were made in response to these comments.

WM suggested that three specific areas in the R2 and e-Stewards standards are more protective of the environment, including: (1) requiring air monitoring if breaking or crushing e-waste; (2) requiring environmental management systems (EMS); and (3) requiring removal of fluorescent bulbs from laptops prior to shredding.

The commission acknowledges this comment but respectfully disagrees that requiring certification by e-Stewards or R2 would be more protective of the environment in the three areas listed. First, the Occupational Safety and Health Administration has regulations that set limits for air contaminants in the workplace. Also, the commission has existing air permitting regulations that address emissions that may result from the breaking or crushing of used electronics at an electronics recycling facility. Next, the commission encourages facilities to voluntarily implement EMS and provides incentives to entities that implement an EMS. Requiring a recycling facility to have an EMS would be inconsistent with current commission practices. Finally, the Universal Waste Rule, §335.261(e), already effectively addresses the crushing of lamps and is protective of human health and the environment. No changes were made in response to

this comment.

TCE and WM commented that requiring certification by R2 or e-Stewards would help the commission more efficiently implement the program because the commission could simply require and look for evidence of a certification. TCE further commented that requiring the third-party certifications would more adequately address problems with sham recyclers than do existing TCEQ regulations and would give the commission assurance that standards more rigorous than those provided by TCEQ rules are followed.

The commission acknowledges these requirements but respectfully disagrees that requiring recyclers to obtain third-party certifications would assist the commission with the implementation of the television recycling program or would offer an increased environmental benefit. The commission must be able to evaluate basic compliance with standards it sets forth; training or certifications are only one component. The commission would be unable to evaluate compliance simply by noting whether an entity has the R2 or e-Stewards certification. The commission has reviewed the ISRI standards and available information on recycling standards from comparable nationally recognized organizations. In the areas where the commission has regulatory authority, staff have not found

that additional standards provide an increased environmental benefit. No changes were made in response to these comments.

Many of the commenting individuals stated that "we should reward, not punish, responsible, job-creating companies doing business in Texas." TCE commented that many responsible recyclers already comply with one or both of the R2 or e-Stewards certifications. TCE also noted that the EPA has formally recognized both the R2 and e-Stewards certifications and does not certify recyclers itself since these two certifications exist.

The commission acknowledges these comments. As previously noted, the commission provides incentives to regulated entities that go above and beyond basic compliance and those that implement an EMS. These incentives would also apply to recyclers that have already attained R2 or e-Stewards certification. No changes were made in response to these comments.

The Travis County Transportation and Natural Resources Department commented that the wording in §328.193(b)(1)(B) is "awkward and confusing because it appears to conflate guidance relating to recycling and disposal." Travis County Transportation and Natural Resources Department requested clarification on the requirements for proper

recycling and the requirements for proper disposal of covered television equipment that cannot be refurbished, reused, or recycled.

The commission acknowledges this comment and appreciates this request for clarification. Section 328.193(b)(1)(B) states that a recycler shall only dispose of covered television equipment that cannot be refurbished, reused, or recycled (in accordance with the listed requirements). No changes have been made in response to these comments.

§328.187, Enforcement

Several individuals commented that the TCEQ needs to effectively enforce the rules and ensure that recyclers and television manufacturers adhere to the correct standards.

The commission acknowledges these comments and will diligently enforce these rules. No changes were made in response to these comments.

§328.197, Amount of Penalties

TCE commented that the listed penalties apply to companies that fail to "label its covered television equipment or adopt and implement a recovery plan." TCE further commented that this reading would mean that a television manufacturer that does not collect its market share allocation will have failed to implement a compliant recovery

plan. TCE asks if the warnings will apply, and how this will be implemented. TCE also asked what the penalties would be for RLPs that fail to meet their obligation to have at least 200 sites or programs or provide the required reporting.

The commission acknowledges this comment and appreciates this request for clarification. Section 328.187(d) directs the commission to first issue a warning notice to any person in violation of Subchapter J. A warning will apply to a manufacturer who fails to implement a recovery plan, if the manufacturer did not comply with the requirements of an RLP. If the manufacturer does not comply with the warning, they may be referred to the commission's Enforcement Division for additional enforcement action, which may include assessing penalties as outlined in Texas Water Code, §7.052 (b-1). Calculation of specific penalty amounts will be determined on a case by case basis subject to the guidelines provided in the commission's Penalty Policy.

RLPs that fail to meet their obligation to have at least 200 sites or programs or provide the required reporting could be subject to the penalties outlined in Texas Water Code, §7.052 (b-2). Calculation of specific penalty amounts will be determined on a case by case basis subject to the guidelines provided in the Commission's Penalty Policy. No changes were made to the rules in

response to this comment.

General Comments, Beyond Scope of Rules

One individual commented that the TCEQ should co-sponsor House Resolution 2284, prohibiting the export from the United States of certain electronic waste. The individual further commented on the exportation of e-waste to China and its effect of American jobs.

The commission acknowledges this comment. However, the commission does not have the authority to co-sponsor federal legislation. No changes have been made in response to this comment.

Several individuals commented that the TCEQ should pass, or support the passage of, SB 329.

The commission acknowledges these comments. SB 329 was passed by the 82nd Legislature, 2011, during its regular session. No changes have been made in response to these comments.

One individual commented that they would like to see shredders included in the recycle process.

The commission appreciates the comment. However, this rulemaking is limited to the collection and recycling of covered television equipment. Recycling shredders is beyond the scope of this rulemaking. No changes have been made in response to this comment.

Two individuals commented that the TCEQ should reward television manufacturers who offer recycling locations with tax credits, and allow recyclers who recycle over a specific annual volume to use tax rebate incentives to offset some of the costs incurred in implementing a program to comply with SB 329.

The commission acknowledges these comments. However, SB 329 does not authorize the commission to offer tax credits or tax rebates to manufacturers or recyclers. Tax credits and tax rebates are beyond the scope of this rulemaking. No changes have been made in response to these comments.

One individual commented that retailers and corporations should take back 100% of electronics.

The commission acknowledges this comment. However, SB 329 requires

manufacturers of covered television equipment to either recycle the quantity of covered television equipment computed by the commission as its market share allocation or join a RLP to provide collection, transportation, and recycling infrastructure for covered television equipment in this state. SB 329 does not require retailers and corporations to take back 100% of electronics. No changes have been made in response to this comment.

Several individuals requested that TCEQ create rules that provide Texans with a convenient way to recycle all electronics.

The commission appreciates these comments. However, as previously mentioned, this rulemaking is limited to the collection and recycling of covered television equipment. No changes have been made in response to these comments.

STAR, TCE, TxPSC, and WM commented that several suggested changes to the television equipment recycling rules should also be made to the computer recycling rules.

The commission acknowledges these comments and agrees that there is

benefit to maintaining consistency between the computer recycling and television recycling programs. However, at this time, the commission has determined that reopening the computer recycling rules is not necessary to implement the television recycling program. As such, the computer equipment recycling rules are beyond the scope of this rulemaking. No changes have been made in response to these comments.

Several individuals commented that the TCEQ needs to encourage and reward recycling, including offering incentives to manufacturers. One individual also commented that the TCEQ needs to heavily discourage and fine dumping.

The commission appreciates these comments. SB 329 provides that manufacturers of covered television equipment who collect more than their market share allocation or provide collection sites or recycling events located in council of government regions where there are fewer than six permanent collection sites open at least twice each month are to be given special preference when bidding for a contract with a state agency for the purchase or lease of covered television equipment. The comptroller is required to adopt rules to implement this portion of SB 329. The TCEQ will continue to pursue appropriate enforcement actions in response to illegal dumping, including the imposition of fines and penalties. No changes have

been made in response to these comments.

TCE asked that several reports written on the state of "takeback" recycling in Texas be considered during the revisions of the television recycling rules.

The commission appreciates this comment. The commission is familiar with these documents. The commission's prior experience implementing the CERP will be will be beneficial as it implements the television recycling program. No changes have been made in response to this comment.

SUBCHAPTER J: TELEVISION EQUIPMENT RECYCLING PROGRAM

**§§328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175,
328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191,
328.193, 328.195, AND 328.197**

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC. The new sections are adopted under Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; and THSC, §§361.971 - 361.992 and TWC, §7.052(b-1) and (b-2), as amended by the 82nd Legislature, 2011, which authorizes the commission to adopt rules to help create a recycling program for covered television equipment.

The new rules implement THSC, §§361.971 - 361.992 and TWC, §7.052(b-1) and (b-2), as amended by the 82nd Legislature, 2011.

§328.161. Purpose.

(a) The purpose of this subchapter is to help establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment.

(b) The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

§328.163. Applicability and Effective Dates.

(a) Except as provided by this section and Texas Health and Safety Code, §361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state; or

(2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by §328.135 of this title (relating to Definitions):

(2) a display device that is peripheral to a computer and contains a television tuner, if that device is collected and recycled by its manufacturer in accordance with Subchapter I of this chapter (relating to Computer Equipment Recycling Program):

(3) any part of a motor vehicle, including a replacement part:

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use, including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

(c) This subchapter may not be enforced until July 1, 2012.

(d) A registration and, except as provided by §328.175 of this title (relating to Manufacturer Recycling Leadership Program), registration fee required by §328.171(a)(2) of this title (relating to Manufacturer's Registration and Reporting) is required to be submitted for the first time by January 31, 2013. A report required by §328.171(d) of this title is required to be submitted for the first time by January 31, 2014.

(e) A recovery plan required by §328.173(b) of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) is required to be submitted for the first time by January 31, 2013.

(f) Documentation required by §328.175(g) of this title is required to be submitted for the first time by January 31, 2013.

(g) A collection report required by §328.177(a) of this title (relating to Recycling Leadership Program Collection Report) is required to be submitted for the first time by January 31, 2015.

(h) A retailer of covered television equipment is not required to provide the information required by §328.179(b) of this title (relating to Retailer Responsibilities) until July 1, 2012.

(i) Notwithstanding §328.179 of this title, a retailer of television equipment may sell television equipment inventory that the retailer acquired before April 1, 2013 without incurring a penalty.

(j) A registration required by §328.181(b) of this title (relating to Recycler Responsibilities) is required to be submitted for the first time by January 31, 2013. A recycler is required to submit the report required by §328.181(b)(5) of this title for the first time by January 31, 2014.

(k) The commission shall prepare and post the list required by §328.185(a) of this title (relating to Commission Responsibilities) for the first time by April 1, 2013.

(l) The commission shall establish the state recycling rate, in accordance with §328.185(f) of this title, for the first time by November 1, 2013.

(m) The commission shall provide applicable television manufacturers the television manufacturer's market share allocation, in accordance with §328.185(g) of this title, for the first time by December 1, 2013.

(n) The commission shall prepare and submit the report required by §328.185(j) of this title, for the first time by March 1, 2014.

§328.165. Definitions.

The following terms, when used in this subchapter, have the following meanings.

(1) **Brand**--The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product.

(2) **Collector**--A person who receives covered television equipment from consumers and arranges for the delivery of the covered television equipment to a recycler. A collector is prohibited from acting as a recycler unless registered as a recycler.

(3) ~~(2)~~ **Consumer**--An individual who uses covered television equipment that is purchased primarily for personal or home business use.

(4) ~~(3)~~ **Covered television equipment**--The following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(5) ~~(4)~~ **Market share allocation**--The quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under §328.173 of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) is responsible for collecting, reusing, and recycling, as computed by the commission under §328.185 of this title (relating to Commission Responsibilities).

(6) ~~(5)~~ **Recycler**--A person who separates collected equipment and refurbishes that equipment for reuse, or processes equipment to be returned to use in

the form of raw materials or products. The term does not include an entity that solely collects or sorts separates television equipment prior to shipment for recycling.

(7) (6) Recycling--Any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(8) (7) Retailer--A person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(9) (8) Television--An electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(10) (9) Television manufacturer--A person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

§328.167. Sales Prohibition.

A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with §328.169 of this title (relating to Manufacturer's Labeling Requirement).

§328.169. Manufacturer's Labeling Requirement.

A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

§328.171. Manufacturer's Registration and Reporting.

(a) General provisions.

(1) A television manufacturer of covered television equipment shall register with the agency, on authorized agency forms or electronic submission in accordance with subsection (c) of this section, except as provided by §328.175 of this title (relating to Manufacturer Recycling Leadership Program). Initial registration is required by January 31, 2013.

(2) A television manufacturer of covered television equipment shall renew its registration annually and is subject to the registration fee and payment requirements. The registration fee each year is \$2,500 to be paid on or before January 31 of each year, starting January 31, 2013. A manufacturer's failure to properly or timely register does not exempt the manufacturer from such fee and payment requirements.

(3) A manufacturer may designate a legally authorized representative to complete and submit the required registration information. However, the manufacturer remains responsible for compliance with the provisions of this section by such representative.

(4) The registration or registration renewal must include:

(A) a list of all brands the television manufacturer sells or offers for sale in this state regardless of whether the television manufacturer owns or is licensed to use the brand; and

(B) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Changes or additional information.

(1) The manufacturer shall provide written notice to the executive director of the following:

(A) change in manufacturer information (e.g., legally authorized representative, mailing address, or telephone number); and

(B) change in list of all brands the television manufacturer sells or offers for sale in this state regardless of whether the television manufacturer owns or is licensed to use the brand.

(2) Notice of any change or additional information must be submitted on the appropriate agency form that has been completed in accordance with this section.

(3) Notice of any change or additional information must be submitted to the executive director within 30 days from the date of the occurrence of the change or addition.

(c) Required Form for Providing Manufacturer's Registration Information.

(1) Manufacturers shall provide the required information on the current agency registration form or approved electronic submission.

(2) The manufacturer is responsible for ensuring that the registration form is fully complete and accurate. The form must be dated and signed by the manufacturer or a legally authorized representative of the manufacturer, and must be submitted to the agency in accordance with the time frames established in this chapter.

(3) When any of the required manufacturer's registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the manufacturer to submit additional information. A manufacturer shall submit any such required additional information within 30 days of receipt of such request.

(d) Except as provided by §328.175 of this title, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total weight of covered television equipment the television manufacturer sold nationally in the preceding calendar year;

(2) the total weight of covered television equipment the television manufacturer collected, recycled, and reused in this state during the preceding calendar year; and

(3) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193 of this title (relating to Management of Collected Television Equipment).

§328.173. Manufacturer's Recovery Plan and Related Responsibilities.

(a) This section does not apply to a television manufacturer that participates in a recycling leadership program described by §328.175 of this title (relating to Manufacturer Recycling Leadership Program).

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under §328.171 of this title (relating to Manufacturer's Registration and Reporting), each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under subsection (b) of this section shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the

individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under subsection (b) of this section shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under subsection (b) of this section must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and

recycled by or on behalf of the television manufacturer during the preceding calendar year:

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling:

(4) information for the consumer on how and where to return the television equipment labeled with the manufacturer's brand(s). This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the television equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the commission of what the new Internet link will be 30 days in advance; and

(5) a statement indicating that the manufacturer has, or will have, a compliant collection program by April 1, 2013.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet Web site listing as provided by §328.185 of this title (relating to Commission

Responsibilities). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

§328.175. Manufacturer Recycling Leadership Program.

(a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by subsection (d) of this section where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under subsection (b) of this section for recycling of covered television equipment include the following:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment:

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail, as long as the system provides for packaging that would prevent any spillage in case of breakage; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and registration renewal fees required by §328.171(a) of this title (relating to Manufacturer's Registration and Reporting); and

(2) the reporting requirements of §328.171(d) of this title.

(f) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, which may include packaging inserts, television manufacturers' Internet Web sites, and

other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

(g) Not later than January 31 of each year, each recycling leadership program must provide to the commission:

(1) a list of the television manufacturers participating in the program as of January 1 of that year;

(2) documentation that the recycling leadership program has established a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment; and

(3) a list of the 200 sites or programs planned by the recycling leadership program participants for the current year. A map of the sites or programs may be included with the list.

§328.177. Recycling Leadership Program Collection Report.

(a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under §328.175 of this title (relating to Manufacturer Recycling Leadership Program) shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding calendar years, separated by year;

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193 of this title (relating to Management of Collected Television Equipment);

(5) documentation that a financial incentive of equal or greater value to a fee charged at the time of recycling is provided by the television manufacturer, if a television manufacturer does charge a separate fee at the time of recycling; and

(6) documentation, including an Internet address, that a television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program has individually or through the recycling leadership program established and implemented a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by subsection (b)(1) of this section may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

§328.179. Retailer Responsibilities.

(a) A retailer may order and sell only products from a television manufacturer that is included on the list published under §328.185 of this title (relating to Commission Responsibilities). For purposes of this subchapter, an order is considered to be the entire amount of covered television equipment requested from a manufacturer at one time for the purpose of sale by the retailer. A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet Web site described by §328.185(a) of this title.

(b) A retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet Web site provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

§328.181. Recycler Responsibilities.

(a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) Register with the commission and certify, as follows, that the person is in compliance with the standards adopted under §328.193 of this title (relating to Management of Collected Television Equipment).

(A) All certifications shall be signed as follows:

(i) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this clause, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing

authority to sign certifications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(ii) For a partnership or sole proprietorship, the certification shall be signed by a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency, the certification shall be signed by either a principal executive officer or a ranking elected official. For purposes of this clause, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the United States Environmental Protection Agency).

(B) A person signing the certification shall make the following certification: "I certify that (insert name of person who is engaged in the business of recycling covered television equipment in this state) is in compliance with the standards adopted under Title 30 of the Texas Administrative Code §328.193 (relating to Management of Collected Television Equipment). I certify under penalty of law that this document and any attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather

and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(C) All certifications shall be signed by a person described in subparagraph (A) of this paragraph or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) the authorization is made in writing by a person described in subparagraph (A) of this paragraph;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may be either a named individual or any individual occupying a named position); and

(iii) the written authorization is submitted to the executive director.

(D) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any certifications to be signed by an authorized representative.

(2) On or before January 31 of each year renew the registration with the commission and certify, per paragraph (1) of this subsection, the person's continued compliance with §328.193 of this title.

(3) Recycle all covered television equipment accepted for recycling in accordance with §328.193 of this title.

(4) Maintain a written log recording the weight or volume of all covered television equipment received by the person and the disposition of that equipment.

(5) Annually report to the commission by January 31 the total weight or volume of covered television equipment received, recycled, and disposed of by the person in the preceding calendar year.

§328.183. Liability.

(a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

§328.185. Commission Responsibilities.

(a) The commission shall publish on a publicly accessible Internet Web site a list of television manufacturers:

(1) whose recovery plans have been approved by the commission, if applicable; who have certified that their public education programs are in full compliance with this subchapter, if applicable; and who are in compliance with the registration and fee requirements of this subchapter, if applicable; or

(2) who manufacture a display device that is peripheral to a computer and contains a television tuner; who collect and recycle the device in accordance with

Subchapter I of this chapter (relating to Computer Equipment Recycling Program); and who do not manufacture any other device subject to this subchapter.

(b) The commission shall remove television manufacturers no longer in compliance under subsection (a) of this section from the Internet Web site once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet Web site and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet Web site and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law. The commission's list under subsection (a) of this section does not constitute a determination by the commission that a television manufacturer's actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under §328.173 of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under §328.173 of this title during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under §328.173 of this title the television manufacturer's market share allocation for collection, reuse, and recycling for the following year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television

equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under subsection (f) of this section.

(h) In any year in which more than one recycling leadership program is implemented under §328.175 of this title (relating to Manufacturer Recycling Leadership Program), the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

(j) Biennial Report to Legislature.

(1) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(2) The report must include:

(A) collection information provided to the commission by each television manufacturer's report required by §328.171 of this title (relating to Manufacturer's Registration and Reporting) or §328.177 ~~§328.175~~ of this title (relating to Recycling Leadership Program Collection Report), as applicable;

(B) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(C) any recommendations under subsection (h) of this section; and

(D) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

§328.187. Enforcement.

(a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by subsections (d) and (e) of this section, take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Texas Water Code, §7.032, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

§328.189. Financial and Proprietary Information.

Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Texas Government Code, Chapter 552.

§328.191. Consumer Responsibilities.

(a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet Web sites or calling their toll-free telephone numbers.

§328.193. Management of Collected Television Equipment.

(a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission adopts, as standards for recycling or reuse of covered television equipment under this subchapter, the following portions of the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Incorporated, April 25, 2006. The remaining portions of the standards are voluntary unless required by other law. The adopted standards apply to covered television equipment recycled or reused in this state. If at any time the United States Environmental Protection Agency (EPA) adopts standards for recycling or reuse of television equipment that are determined by the commission to be an acceptable substitute, the commission may, by rule, revoke the ISRI standards and adopt the EPA standards.

(1) General requirements for recyclers.

(A) Following all efforts to refurbish or reuse covered television equipment, the remaining covered television equipment shall be manually dismantled for reusable components or processed for recycling either in accordance with §328.4(b) of this title (relating to Limitations on Storage of Recyclable Materials) for those facilities subject to and not exempted from that section, or in accordance with the following conditions for those facilities exempt from or not subject to §328.4(b) of this title.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title (relating to Definitions)), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage or turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall only dispose of covered television equipment that cannot be refurbished; reused; or, in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), §330.11(e) of this title (relating to Notification Required), and Subchapter A of this chapter (relating to Purpose and General Information), recycled.

(C) For all transfers of covered television equipment intended for recycling, recyclers shall maintain commercial contracts, or equivalent commercial arrangements, that shall include:

(i) covered television equipment quantity and type;

(ii) packaging requirements; and

(iii) recycling methods and specifications.

(D) Recyclers shall maintain records for a minimum of three years; or longer if required by local, state, or federal law; including any of the following which are applicable:

(i) manifests;

(ii) bills of lading;

(iii) waste disposal records; and

(iv) records that document:

(I) if the covered television equipment is sent to a facility affiliated with (as defined in §328.2 of this title) the recycler, the facility's

location, and the condition of the covered television equipment (refurbished, reusable, recyclable, or to be determined); and

(II) if the covered television equipment is sent to a facility not affiliated with (as defined in §328.2 of this title) the recycler, the location of the first unaffiliated facility to which the covered television equipment is sent and the condition of the covered television equipment (refurbished, reusable, recyclable, or to be determined).

(E) Recyclers shall maintain and possess a written work practice that specifically addresses, at least, the following:

(i) lead;

(ii) mercury;

(iii) beryllium;

(iv) cadmium;

(v) batteries;

(vi) polychlorinated biphenyls; and

(vii) free-flowing fluids such as oils and lubricants.

(F) Recyclers shall ensure that covered television equipment is stored and processed in a manner that minimizes the potential release of any hazardous substance into the environment.

(G) Recyclers shall package all covered television equipment designated for reuse in a manner that protects against damage and minimizes the potential for releases of hazardous substances during storage and transportation. Recyclers must package all covered television equipment designated for processing in a manner that minimizes the potential for releases of hazardous substances during storage and transportation.

(H) The covered television equipment recycling facility shall operate in accordance with the closure and financial-assurance requirements of §328.5 of this title (relating to Reporting and Recordkeeping Requirements), unless exempted under §328.5 of this title.

(2) Manual dismantling and mechanical processing at a covered television equipment recycling facility.

(A) Following all efforts to refurbish or reuse covered television equipment, the remaining covered television equipment should be dismantled for useable components or commodities; processed for recycling in accordance with the following conditions; or properly disposed of in accordance with paragraph (1)(B) of this subsection.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage of turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall have a written, up-to-date plan for responding to and reporting pollutant releases, including accidents, spills, fires, or explosions.

(C) Hazardous waste shall be managed, recycled, and disposed of in accordance with Chapter 335 of this title.

§328.195. Federal Preemption; Expiration.

(a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

§328.197. Amount of Penalties.

(a) The amount of the penalty assessed against a manufacturer that does not label its covered television equipment or adopt and implement a recovery plan as required by §328.169 of this title (relating to Manufacturer's Labeling Requirement) or §328.173 of

this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) as applicable, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation.

(b) Except as provided by subsection (a) of this section, the amount of the penalty for a violation of this subchapter may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation.

(c) A penalty under this section is in addition to any other penalty that may be assessed for a violation of Texas Health and Safety Code, Chapter 361, Subchapter Y or

Z.

ORDER ADOPTING NEW RULES

Docket No. 2011-0988-RUL

On March 28, 2012, the Texas Commission on Environmental Quality (Commission) adopted new rules in 30 TAC Chapter 328, concerning the Television Equipment Recycling Program. The proposed rules were published for comment in the November 18, 2011 issue of the Texas Register (36 TexReg 7782).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with Texas Register requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Government Code, § 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

of the date of the commission meeting and the deadlines for the filing of exceptions and replies. The general counsel, either by agreement of the parties and the judge, or on the general counsel's own motion, may reschedule the presentation of the proposal for decision. The chief clerk shall send notice of the rescheduled meeting date to the parties ~~and, if not also a party, to the executive director~~ no later than ten days before the rescheduled meeting.

(b) Consistent with notices required by law, the commission may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The commission may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2011.

TRD-201104806

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 18, 2011

For further information, please call: (512) 239-0779



CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER J. TELEVISION EQUIPMENT RECYCLING PROGRAM

30 TAC §§328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191, 328.193, 328.195, 328.197

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§328.161, 328.163, 328.165, 328.167, 328.169, 328.171, 328.173, 328.175, 328.177, 328.179, 328.181, 328.183, 328.185, 328.187, 328.189, 328.191, 328.193, 328.195, and 328.197.

Background and Summary of the Factual Basis for the Proposed Rules

Senate Bill (SB) 329, passed by the 82nd Legislature, 2011, requires the commission to implement a television equipment recycling program based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. The legislation authorizes the commission to adopt rules to help implement the program. Adopting rules would help the TCEQ to implement the program more efficiently. The legislation also states that the commission must adopt any rules required to implement SB 329 by May 1, 2012.

Section by Section Discussion

The proposal would amend Chapter 328 by adding new Subchapter J, Television Equipment Recycling Program.

§328.161, Purpose

Proposed new §328.161 explains that the purpose of proposed new Subchapter J is to help establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment.

§328.163, Applicability and Effective Dates

Proposed new §328.163 describes the television equipment that is covered by proposed new Subchapter J. Proposed new §328.163(b)(2) clarifies that the subchapter does not apply to a display device that is peripheral to a computer and contains a television tuner, if that device is collected and recycled by its manufacturer in accordance with Subchapter I of Chapter 328. The language in SB 329 could be interpreted to exempt all of a manufacturer's covered television equipment from the requirements of Subchapter J if they make one product that is collected and recycled in accordance with the Computer Equipment Recycling Program (CERP). A manufacturer who makes covered television equipment in addition to the display device referenced in §328.163(b)(2) would still be required to provide for the collection and recycling of their covered television equipment.

Proposed new §328.163(i) allows retailers to sell television equipment acquired before April 1, 2013 without incurring a penalty. This proposed change to SB 329 allows retailers to sell inventory acquired prior to the commission's publication of its Internet Web site list of manufacturers who are in compliance with Subchapter J, thereby avoiding the unintended consequence of prohibiting retailers from ordering or selling covered television equipment after the statutory deadline of September 1, 2012 and before the commission's publication of its Internet Web site list on April 1, 2013.

The proposed section specifies the effective dates for the requirements in §§328.171, 328.173, 328.175, 328.177, 328.179, 328.181, and 328.185.

§328.165, Definitions

Proposed new §328.165 defines terms. The commission proposes to add to the definition of "brand" the language referenced in SB 329, which is the same language used to define "brand" in Subchapter I of Chapter 328. Providing the specific language for the definition adds clarity to this subchapter.

The commission also proposes to add a definition of "recycler" for use in this subchapter in order to clarify that entities that only collect or separate equipment for recycling (for example, a local government conducting a collection event or an entity separating equipment into categories to send to a recycler) would not be classified as a recycler, and therefore would not be subject to proposed new §328.181 and §328.193.

§328.167, Sales Prohibition

The commission proposes the same sales prohibition as contained in SB 329, prohibiting the sale of new covered television equipment that has not been labeled in compliance with proposed new §328.169.

§328.169, Manufacturer's Labeling Requirement

Proposed new §328.169 follows the legislation's requirement that manufacturers may sell only covered television equipment that is permanently affixed with a readily-visible label of the manufacturer's brand.

§328.171, Manufacturer's Registration and Reporting

Proposed new §328.171 lists the registration and reporting requirements that apply to manufacturers of covered television equipment. The registration fee requirement of proposed new §328.171(a)(2) and the reporting requirement of proposed new §328.171(d) do not apply to a manufacturer of covered television equipment participating in a manufacturer recycling leadership program (RLP) under proposed new §328.175. Except where noted, the provisions of §328.171 are consistent with SB 329.

Proposed new §328.171(a) adds to SB 329 specific requirements on how a manufacturer should complete and submit their registration information to the commission. These additions clarify what is required of a manufacturer as part of their registration and will help ensure manufacturer compliance with this subchapter.

Proposed new §328.171(d)(1) differs from SB 329 by requiring a manufacturer who does not track the weight of covered television equipment it sells by state to report the total "weight" of covered television equipment it sells nationally; SB 329 states that a manufacturer may report the total "amount" of covered television equipment sold nationally. This change clarifies how a manufacturer should report its annual sales of covered television equipment and will ensure consistency among manufacturer reports.

Proposed new §328.171(d)(3) adds to SB 329 a requirement that a manufacturer must provide documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193. Manufacturers participating in an RLP are required to provide the same documentation, and this addition will maintain consistency in requirements for all manufacturers.

§328.173, Manufacturer's Recovery Plan and Related Responsibilities

The commission proposes new §328.173, which requires manufacturers who are not participating in a manufacturer RLP under proposed new §328.175 to submit a recovery plan to the commission. The rule language in proposed new §328.173 adds two elements to the minimal requirements for a recovery plan delineated in SB 329: 1) information for consumers on how and where to return the manufacturer's television equipment; and 2) a statement indicating that the manufacturer has, or will have, a compliant collection program by April 1, 2013. These additions clarify the responsibilities of the manufacturer and will allow the commission to determine which manufacturers are eligible for inclusion on its publicly available Internet Web site list of television manufacturers in accordance with proposed new §328.185.

§328.175, Manufacturer Recycling Leadership Program

Proposed new §328.175 lists the responsibilities of a manufacturer of covered television equipment that participates in an RLP. Except where noted, the provisions of §328.175 are consistent with SB 329.

Proposed new §328.175(d)(2) adds language to the requirements in SB 329, clarifying that an RLP may include a system where the consumer returns covered television equipment by mail only if the system provides for packaging that will prevent any spillage in case of breakage.

Proposed new §328.175(g) adds to the language contained in SB 329 by requiring each RLP to provide the commission with a list of manufacturers who are participating in the program as of January 1 of that year, clarifying that to be considered a participant in an RLP for a given year, a manufacturer must be a

member of the program from the first day of the year. This addition will help ensure that all RLP participants adhere to the same standards; without this deadline, some manufacturers may interpret the rule to mean that they could join an RLP at any time during the year and still benefit from the registration fee and reporting exemptions.

The commission also proposes new §328.175(g) by requiring that an RLP submit a list of the 200 sites or programs planned by the program participants for the current year, and documentation that the RLP has established a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. These additions will help the commission ensure that an RLP will meet the requirements of this subchapter. Further, a manufacturer participating in an RLP must have a compliant public education plan in order to be listed on the commission's Internet Web site list of manufacturers. This addition is necessary for the commission to determine whether a participant in an RLP is eligible for inclusion on the Internet Web site list.

§328.177, Recycling Leadership Program Collection Report

Proposed new §328.177 lists the requirements for an RLP when submitting their biennial collection report to the commission. Proposed new §328.177(b)(3) clarifies SB 329 by specifying that the required collection report must document the weight of covered television equipment that each individual manufacturer or RLP collected in the two preceding "calendar years;" the language in SB 329 states only "year." Proposed new §328.177(b)(3) also requires an RLP to separate the two preceding years in the biennial report by year. These additional requirements will help ensure consistency in the commission's legislative report since manufacturers not participating in an RLP must report annually.

Proposed new §328.177(b)(5) adds a requirement to the language in SB 329 that an RLP's collection report include documentation that a financial incentive of equal or greater value to any fee charged at the time of recycling is provided by the television manufacturer, if applicable. This addition will help the commission ensure that an RLP is offering a financial incentive of equal or greater value to a fee charged at the time of recycling, if a fee is charged.

Proposed new §328.177(b)(6) adds a requirement to the language in SB 329 that an RLP's collection report include documentation that a participating manufacturer has, either individually or through the RLP, implemented a public education program regarding collection, reuse, and recycling opportunities for covered television equipment in this state. This addition will help the commission ensure that an RLP is meeting the public education requirements of SB 329.

§328.179, Retailer Responsibilities

The retailer responsibilities in proposed new §328.179 are largely unchanged from SB 329, prohibiting retailers from ordering or selling products from a television manufacturer that is not included on the commission's Internet Web site list and requiring retailers to provide consumers written information published by the commission regarding the legal disposition and recycling of television equipment.

The commission proposes new §328.179(a) defining "order" for the purposes of Subchapter J. When used in Subchapter J, "order" is considered to be the entire amount of covered television equipment requested from a manufacturer at one time for the

purpose of sale by the retailer. This addition clarifies how a potential enforcement action could be calculated against a retailer who orders and sells television equipment from a manufacturer that is not on the commission's Internet Web site list of manufacturers and will help ensure clear understanding and implementation of the rules.

§328.181, Recycler Responsibilities

Proposed new §328.181 lists recycler responsibilities under Subchapter J. The commission proposes new §328.181 to require recyclers to certify that they are in compliance with the standards adopted under §328.193. Proposed new §328.181(b)(1) adds specific requirements for a recycler's certification. This language tracks 30 TAC Chapter 305, Consolidated Permits, but is specific to recyclers of television equipment. This addition is consistent with the requirements of the CERP and will help maintain consistency for recyclers of electronic equipment.

Proposed new §328.181(b)(5) clarifies the language of SB 329 by requiring recyclers to report to the commission by January 31 the total weight of covered television equipment "received, recycled, and disposed of" during the preceding "calendar year;" SB 329 requires the report to document the total weight of covered television equipment "received and recycled" during the preceding "year" only. The addition of the word "calendar" will ensure that all recyclers report for the same time period. Requiring recyclers to report the amount of covered television equipment that was disposed of will help the commission ensure recycler compliance with this subchapter.

§328.183, Liability

Proposed new §328.183 tracks the language of SB 329 regarding liability verbatim, stating that a television manufacturer, retailer, or recycler of covered television equipment is not liable for information in any form that a consumer leaves on covered television equipment that is collected or recycled under Subchapter J.

§328.185, Commission Responsibilities

Proposed new §328.185 lists the responsibilities of the commission under Subchapter J. Proposed new §328.185(a)(1) adds to the language of SB 329 the phrase "if applicable" where appropriate to differentiate between different prerequisites for inclusion on the commission's Internet Web site list of television manufacturers. This addition clarifies that not all manufacturers are subject to the same requirements. Manufacturers in an RLP are not required to have an approved recovery plan or pay the annual registration fee, and manufacturers who do not participate in an RLP are not required to implement a public education program.

Proposed new §328.185(a)(2) adds to the list of manufacturers who will be included on the commission's Internet Web site list of manufacturers, as required by SB 329, those who manufacture a display device that is peripheral to a computer and contains a television tuner, who collect and recycle the device in accordance with Subchapter I. The commission proposes this addition to avoid the possible unintended consequence of excluding manufacturers who comply with Subchapter I from inclusion on the list, thereby prohibiting retailers from ordering or selling their brand of covered television equipment pursuant to §328.179(a).

Proposed new §328.185(e) adds language to SB 329, stating that inclusion on the commission's Internet Web site list does not constitute a determination by the commission that a televi-

sion manufacturer's actual practices are in compliance with this subchapter or other law.

Proposed new §328.185(g) clarifies the language in SB 329 by stating that the market share allocation provided to affected manufacturers establishes their recycling responsibility for the following year. Affected manufacturers will be provided their market share allocation before the new year begins.

Proposed new §328.185(j) regarding the commission's biennial report to the legislature is largely unchanged from SB 329. The only proposed modifications are section references that are specific to the proposed rules.

§328.187, Enforcement

Proposed new §328.187 is largely unchanged from SB 329, listing the responsibilities of the commission in enforcing this subchapter. The proposed modifications are section references that are specific to the proposed rule.

§328.189, Financial and Proprietary Information

Proposed new §328.189 tracks the language of SB 329 regarding financial and proprietary information verbatim, stating that financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Texas Government Code, Chapter 522.

§328.191, Consumer Responsibilities

Proposed new §328.191 tracks the language of SB 329 regarding consumer responsibilities verbatim, placing the responsibility for any information in any form left on a consumer's covered television equipment that is collected or recycled on the consumer. Proposed new §328.191 also encourages consumers to learn about recommended methods for recycling covered television equipment.

§328.193, Management of Collected Television Equipment

The commission proposes new §328.193 regarding the management of covered television equipment. SB 329 requires the commission to adopt either the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc. (ISRI), April 25, 2006, or other standards from a comparable nationally recognized organization. The commission proposes to adopt the portions of the April 25, 2006, ISRI standards that fall under the commission's jurisdiction.

Adopting the portions of the ISRI standards that fall under the commission's jurisdiction, rather than other standards from a comparable nationally recognized organization, would provide regulatory consistency to recyclers because the same standards are used in the CERP. It would also help the commission to more efficiently implement the program in that investigators would have a consistent set of standards to use when reviewing a recycler. Using a different set of standards could have a negative impact on small businesses; in particular, recyclers would be required to comply with two different sets of standards for electronics recycling.

TCEQ staff researched standards from other nationally recognized organizations, including the R2, RIOS, and e-Stewards standards. The RIOS standards were last revised in March of 2006, making them less current than the proposed April 2006 ISRI standards. Staff also determined that much of the R2 and e-Stewards standards fall outside of the commission's jurisdiction. The commission could not require a recycler to attain certifi-

cation from an entity if the commission does not have jurisdiction over all standards used for the certification.

Further, the proposed portions of the ISRI standards are as protective of the environment as the portions of the R2 and e-Stewards standards where the commission does have jurisdiction. Recycling facilities already face a number of regulations under the commission's jurisdiction that are meant to ensure the safe management of waste and adopting an additional set of standards would not increase that protection. TCEQ staff have found no correlation between certification by a private entity and their compliance with TCEQ rules.

In addition, the proposed section includes a provision whereby if the United States Environmental Protection Agency (EPA) adopts similar standards that were deemed an acceptable substitute by the commission, the commission may, by rule, revoke the ISRI standards and adopt the EPA standards.

§328.195, Federal Preemption; Expiration

Proposed new §328.195 tracks the language of SB 329 regarding federal preemption and expiration verbatim, explaining that the commission may adopt an agency statement that interprets a national program established by federal law that meets the purposes of Subchapter J as preemptive of Subchapter J.

§328.197, Amount of Penalties

Proposed new §328.197 is largely unchanged from SB 329. The proposed modifications are to provide more detail regarding the assessment and amount of penalties available under Subchapter J.

Fiscal Note: Costs to State and Local Government

Jeff Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the commission or for other units of state or local government as a result of administration or enforcement of the proposed rules. The proposed rulemaking implements SB 329 and establishes a television equipment collection and recycling program.

The proposed rulemaking would specify requirements for the new television equipment collection and recycling program. Even though the rulemaking would specify requirements for the implementation of the program, the proposed rules generally mirror requirements that already exist in statute. In order to implement SB 329, the TCEQ would be required to: 1) maintain a public Internet Web site and toll-free telephone number; 2) educate consumers; 3) provide information to counties and municipalities regarding the collection and recycling of television equipment; 4) determine the annual state recycling rate of covered television equipment and provide registered television manufacturers with their annual market share allocation; 5) ensure that manufacturers, retailers, and recyclers are in compliance with the proposed rules and statutory requirements; 6) adopt standards for the recycling or reuse of covered television equipment; and 7) provide biennial reports on the program to the commission's legislative oversight committees.

Costs for the commission to implement the consumer education requirements, reporting requirements, investigation and enforcement activities, and to determine the annual state recycling rate and each manufacturer's market share allocation are not expected to be significant and would be absorbed using current resources.

The proposed rules require the commission to maintain a toll-free telephone number that provides consumers with information about television recycling opportunities in the state. The proposed rules also require the commission to publish on the Internet a list of television manufacturers whose recovery plans have been approved by the commission, who have certified that their public education programs are in full compliance with commission rules, and who are in compliance with the registration and fee requirements. Costs for the commission to maintain a toll-free telephone number and to maintain a public Internet Web site are not expected to be significant and would be funded through the newly created Television Recycling Account. SB 329 established a new Television Recycling Account in the General Revenue Fund. This account would consist of an annual \$2,500 registration fee paid by television manufacturers that would be collected by the commission and deposited into the new account. Use of the funds in the new account is restricted by statute to the operation of a public Internet Web site and a toll-free telephone number. The registration fee would not be collected from manufacturers who choose to participate in an RLP.

The commission is not able to estimate how much registration fee revenue would be collected and deposited into the new Television Recycling Account due to the fact that staff is not able to estimate the number of manufacturers who will choose to participate in an RLP. There are estimated to be between 60 and 80 television manufacturers that would be subject to the annual registration fee. If 60 manufacturers pay the annual registration fee, then the commission could collect up to \$150,000 each year which could be used to operate the toll-free number and the public Internet Web site. However, it may be that the fee collections will fall short of these estimated amounts, in which case the commission will have to use whatever funding is available in order to operate the toll-free number and the Web site.

Some local governments offer television equipment recycling as a service to their residents. Local governments may benefit from being able to set up partnerships with manufacturers to collect television equipment and thus decrease the amount of collections by those local governments. Any costs savings are not expected to be significant.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be enhanced protection of the environment, public health, and safety through the implementation of programs to collect and recycle used television equipment. The proposed rulemaking would help lessen the amount of valuable television equipment components and resources sent to landfills, reducing the need to extract and process virgin materials.

Manufacturers, retailers, recyclers, consumers, and the TCEQ would be affected by the proposed rulemaking. The proposed rules would specify requirements for the implementation of the television equipment recycling program, but would not create significant additional requirements over those that already exist in statute.

The proposed rules are not expected to result in significant fiscal implications for consumers, though in the end consumers may see slight price increases for the purchase of new covered television equipment. The proposed rulemaking is also expected to allow consumers to obtain information about television recycling and methods for recycling covered television equipment.

Consumers could obtain this information by visiting the TCEQ's or the manufacturer's Web site or by calling the TCEQ's or the manufacturer's toll-free telephone numbers. Consumers should also have expanded options for recycling used television equipment at little to no additional costs.

No significant fiscal implications are expected for manufacturers. Manufacturers affected by the proposed rulemaking would be expected to recoup any additional costs through price adjustments to retailers and consumers. The proposed rules would require television manufacturers to pay an annual \$2,500 registration fee to the commission. There are estimated to be between 60 and 80 television manufacturers that would be subject to the provisions of the proposed rules. The \$2,500 registration fee would not apply to television manufacturers who participate in an RLP. Because it is not known how many manufacturers would participate in an RLP, it is not known how many of the 60 to 80 manufacturers would pay the registration fee.

Each manufacturer of covered television equipment sold in Texas who does not participate in an RLP must submit to TCEQ a recovery plan to collect, reuse, and recycle covered television equipment. Each individual or group that submits a recovery plan must collect, reuse, and recycle the quantity of covered television equipment computed by TCEQ as the market share allocation. The television manufacturer may collect and recycle its market share allocation through operation of its program individually or in partnership with other television manufacturers as long as the collection methods allow a consumer to recycle television equipment without paying a separate fee at the time of recycling. It is assumed there will be costs to develop and implement the recovery plan, but the commission is not able to determine what those costs would be for an individual manufacturer. It is further assumed that if it is more cost effective to participate in an RLP, the manufacturer would choose that option.

Costs are also anticipated for manufacturers to participate in an RLP, though it is assumed that these costs would be spread over a large group of participants and therefore diluted to a certain extent. It is expected that there may be additional costs to implement a public education campaign, set up a collection system that provides at least 200 individual collection sites, and pay collection sites and recyclers. Manufacturers would be expected to recoup any additional costs through price adjustments to retailers and consumers.

Fiscal implications for retailers of covered television equipment are not expected to be significant. Retailers include those who sell televisions in Texas, as well as Internet retailers. The rules would prohibit retailers from selling products from manufacturers who are not on TCEQ's list of registered manufacturers. The proposed rules require a person who is a retailer of covered television equipment to provide to consumers in writing the information published by TCEQ regarding the legal disposition and recycling of television equipment. This information can be included with the sales receipt, as part of the packaging of the equipment, or through a toll-free telephone number and address of an Internet Web site provided to consumers. The proposed rules do not require a retailer to collect covered television equipment for recycling.

Some new costs for recyclers engaged in the business of recycling covered television equipment in the state may be anticipated, though in general they are not expected to be significant. The rules would require recyclers to register with the TCEQ, certify that they are in compliance with TCEQ standards, and certify

that they recycle all accepted covered television equipment in accordance with TCEQ standards. Recyclers would also be required to maintain a written record of the weight of all covered television equipment received under the television equipment recycling program and the disposition of that equipment. Finally, the rules would require recyclers to annually report to the TCEQ the total weight of covered television equipment received and recycled under the television equipment recycling program within the preceding 12 months. Any additional costs would depend on what steps, if any, the recycler would have to take to come into compliance with these requirements.

Small Business and Micro-Business Assessment

Adverse fiscal implications may be anticipated for some small or micro-businesses under the proposed rules, but these fiscal implications are not expected to be significant. Program staff did not identify any television manufacturers that were thought to be small businesses. It is not known how many retailers would meet the definition of a small or micro-business, but costs to those retailers are expected to be minimal. Those retailers that are small businesses would be affected by the rules since they will only be permitted to sell covered television equipment that is on the TCEQ list of manufacturers. They will also be required to provide television equipment recycling information to consumers.

An estimated 40 recyclers are small or micro-businesses and could see additional costs due to additional record keeping and reporting requirements under the proposed rules. The recyclers will be required to register annually under the program and report to the TCEQ. Some recyclers may realize additional costs if they have to adopt new recycling standards in order to comply with the program requirements. Any additional costs would depend on what steps, if any, the recycler would have to take to come into compliance with these requirements. It could also be assumed that recyclers will recoup any increases in their costs through increased rates assessed to their customers (television manufacturers).

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the rules are proposed in order to comply with the legislative requirements of the new television equipment recycling program created by SB 329.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute.

A "major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent

of the proposed rulemaking is to help establish a comprehensive, convenient, and economically sound program for the collection and recycling of television equipment. Furthermore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety. The proposed rulemaking affords television manufacturers the opportunity to establish recovery programs tailored to their individual needs. The flexibility of the proposed rulemaking will allow manufacturers to develop the most cost-effective means of meeting the recycling requirements. This should prevent the proposed rulemaking from adversely affecting the economy or a sector of the economy in a material way. The commission concludes that the proposed rulemaking does not meet the definition of a major environmental rule.

In addition to the fact that the proposed rulemaking does not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225 applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

First, applicable federal standards for the collection and recycling of covered television equipment do not currently exist. SB 329, §3(a), 82nd Legislature, 2011, authorizes the commission to adopt any rules required to implement the statute. Second, the proposed rulemaking is in direct response to the previously mentioned bill and does not exceed its requirements. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking will be adopted under the authority of SB 329, §3(a), 82nd Legislature, 2011, which authorizes the commission to adopt any rules required to implement the statute. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Takings Impact Assessment

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific purpose of these proposed rules is to help establish a comprehensive, convenient, and economically sound program for the collection and recycling of television equipment. This rulemaking substantially advances that stated purpose by establishing specific requirements for the collection, reuse, and recycling of covered television equipment.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real

property. Covered television equipment is not real property. The proposed rules do not affect a landowner's right in private real property because this rulemaking does not burden (constitutionally) nor restrict or limit the owner's right to real property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on December 13, 2011 at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submission of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2011-028-328-AD. The comment period closes December 19, 2011. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.texas.gov/nav/rules/propose_adapt.html. For further information, please contact Cynthia Carter, Pollution Prevention and Education Section, (512) 239-3143.

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC. The new sections are also proposed under Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act; THSC, §361.022 and §361.023, which set

public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; and THSC, §§361.971 - 361.992 and TWC, §7.052(b-1) and (b-2), as amended by the 82nd Legislature, 2011, which authorizes the commission to adopt rules to help create a recycling program for covered television equipment.

The proposed new sections implement THSC, §§361.971 - 361.992 and TWC, §7.052(b-1) and (b-2), as amended by the 82nd Legislature, 2011.

§328.161. Purpose.

(a) The purpose of this subchapter is to help establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment.

(b) The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

§328.163. Applicability and Effective Dates.

(a) Except as provided by this section and Texas Health and Safety Code, §361.991, this subchapter applies only to covered television equipment that is:

- (1) offered for sale or sold to a consumer in this state; or
- (2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by §328.135 of this title (relating to Definitions);

(2) a display device that is peripheral to a computer and contains a television tuner, if that device is collected and recycled by its manufacturer in accordance with Subchapter I of this chapter (relating to Computer Equipment Recycling Program);

(3) any part of a motor vehicle, including a replacement part;

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use, including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

(c) This subchapter may not be enforced until July 1, 2012.

(d) A registration and, except as provided by §328.175 of this title (relating to Manufacturer Recycling Leadership Program), registration fee required by §328.171(a)(2) of this title (relating to Manufacturer's Registration and Reporting) is required to be submitted for the first time by January 31, 2013. A report required by §328.171(d) of this title is required to be submitted for the first time by January 31, 2014.

(e) A recovery plan required by §328.173(b) of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) is required to be submitted for the first time by January 31, 2013.

(f) Documentation required by §328.175(g) of this title is required to be submitted for the first time by January 31, 2013.

(g) A collection report required by §328.177(a) of this title (relating to Recycling Leadership Program Collection Report) is required to be submitted for the first time by January 31, 2015.

(h) A retailer of covered television equipment is not required to provide the information required by §328.179(b) of this title (relating to Retailer Responsibilities) until July 1, 2012.

(i) Notwithstanding §328.179 of this title, a retailer of television equipment may sell television equipment inventory that the retailer acquired before April 1, 2013 without incurring a penalty.

(j) A registration required by §328.181(b) of this title (relating to Recycler Responsibilities) is required to be submitted for the first time by January 31, 2013. A recycler is required to submit the report required by §328.181(b)(5) of this title for the first time by January 31, 2014.

(k) The commission shall prepare and post the list required by §328.185(a) of this title (relating to Commission Responsibilities) for the first time by April 1, 2013.

(l) The commission shall establish the state recycling rate, in accordance with §328.185(f) of this title, for the first time by November 1, 2013.

(m) The commission shall provide applicable television manufacturers the television manufacturer's market share allocation, in accordance with §328.185(g) of this title, for the first time by December 1, 2013.

(n) The commission shall prepare and submit the report required by §328.185(j) of this title, for the first time by March 1, 2014.

§328.165. Definitions.

The following terms, when used in this subchapter, have the following meanings.

(1) Brand--The name, symbol, logo, trademark, or other information that identifies a whole product rather than the components of the product.

(2) Consumer--An individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) Covered television equipment--The following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) Market share allocation--The quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under §328.173 of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) is responsible for collecting, reusing, and recycling, as computed by the commission under §328.185 of this title (relating to Commission Responsibilities).

(5) Recycler--A person who separates collected equipment and refurbishes that equipment for reuse, or processes equipment to be returned to use in the form of raw materials or products. The term does not include an entity that solely collects or separates television equipment for recycling.

(6) Recycling--Any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(7) Retailer--A person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(8) Television--An electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(9) Television manufacturer--A person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

§328.167. Sales Prohibition.

A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with §328.169 of this title (relating to Manufacturer's Labeling Requirement).

§328.169. Manufacturer's Labeling Requirement.

A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

§328.171. Manufacturer's Registration and Reporting.

(a) General provisions.

(1) A television manufacturer of covered television equipment shall register with the agency, on authorized agency forms or electronic submission in accordance with subsection (c) of this section, except as provided by §328.175 of this title (relating to Manufacturer

Recycling Leadership Program). Initial registration is required by January 31, 2013.

(2) A television manufacturer of covered television equipment shall renew its registration annually and is subject to the registration fee and payment requirements. The registration fee each year is \$2,500 to be paid on or before January 31 of each year, starting January 31, 2013. A manufacturer's failure to properly or timely register does not exempt the manufacturer from such fee and payment requirements.

(3) A manufacturer may designate a legally authorized representative to complete and submit the required registration information. However, the manufacturer remains responsible for compliance with the provisions of this section by such representative.

(4) The registration or registration renewal must include:

(A) a list of all brands the television manufacturer sells or offers for sale in this state regardless of whether the television manufacturer owns or is licensed to use the brand; and

(B) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Changes or additional information.

(1) The manufacturer shall provide written notice to the executive director of the following:

(A) change in manufacturer information (e.g., legally authorized representative, mailing address, or telephone number); and

(B) change in list of all brands the television manufacturer sells or offers for sale in this state regardless of whether the television manufacturer owns or is licensed to use the brand.

(2) Notice of any change or additional information must be submitted on the appropriate agency form that has been completed in accordance with this section.

(3) Notice of any change or additional information must be submitted to the executive director within 30 days from the date of the occurrence of the change or addition.

(c) Required Form for Providing Manufacturer's Registration Information.

(1) Manufacturers shall provide the required information on the current agency registration form or approved electronic submission.

(2) The manufacturer is responsible for ensuring that the registration form is fully complete and accurate. The form must be dated and signed by the manufacturer or a legally authorized representative of the manufacturer, and must be submitted to the agency in accordance with the time frames established in this chapter.

(3) When any of the required manufacturer's registration information submitted to the executive director is determined to be incomplete or inaccurate (including illegible or unclear information), the executive director may require the manufacturer to submit additional information. A manufacturer shall submit any such required additional information within 30 days of receipt of such request.

(d) Except as provided by §328.175 of this title, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the

television manufacturer may report the total weight of covered television equipment the television manufacturer sold nationally in the preceding calendar year;

(2) the total weight of covered television equipment the television manufacturer collected, recycled, and reused in this state during the preceding calendar year; and

(3) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193 of this title (relating to Management of Collected Television Equipment).

§328.173. *Manufacturer's Recovery Plan and Related Responsibilities.*

(a) This section does not apply to a television manufacturer that participates in a recycling leadership program described by §328.175 of this title (relating to Manufacturer Recycling Leadership Program).

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under §328.171 of this title (relating to Manufacturer's Registration and Reporting), each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under subsection (b) of this section shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under subsection (b) of this section shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under subsection (b) of this section must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding calendar year;

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling;

(4) information for the consumer on how and where to return the television equipment labeled with the manufacturer's brand(s). This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the television equipment labeled with the manufacturer's brand(s). If the Internet link is going to change, the manufacturer shall notify the commission of what the new Internet link will be 30 days in advance; and

(5) a statement indicating that the manufacturer has, or will have, a compliant collection program by April 1, 2013.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet Web site listing as provided by §328.185 of this title (relating to Commission Responsibilities). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

§328.175. *Manufacturer Recycling Leadership Program.*

(a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by subsection (d) of this section where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under subsection (b) of this section for recycling of covered television equipment include the following:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail, as long as the system provides for packaging that would prevent any spillage in case of breakage; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and registration renewal fees required by §328.171(a) of this title (relating to Manufacturer's Registration and Reporting); and

(2) the reporting requirements of §328.171(d) of this title.

(f) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, which may include packaging inserts, television manufacturers' Internet Web sites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

(g) Not later than January 31 of each year, each recycling leadership program must provide to the commission:

(1) a list of the television manufacturers participating in the program as of January 1 of that year;

(2) documentation that the recycling leadership program has established a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment; and

(3) a list of the 200 sites or programs planned by the recycling leadership program participants for the current year. A map of the sites or programs may be included with the list.

§328.177. Recycling Leadership Program Collection Report.

(a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under §328.175 of this title (relating to Manufacturer Recycling Leadership Program) shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding calendar years, separated by year;

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with §328.193 of this title (relating to Management of Collected Television Equipment);

(5) documentation that a financial incentive of equal or greater value to a fee charged at the time of recycling is provided by the television manufacturer, if a television manufacturer does charge a separate fee at the time of recycling; and

(6) documentation, including an Internet address, that a television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program has individually or through the recycling leadership program established and implemented a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by subsection (b)(1) of this section may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

§328.179. Retailer Responsibilities.

(a) A retailer may order and sell only products from a television manufacturer that is included on the list published under §328.185 of this title (relating to Commission Responsibilities). For purposes of this subchapter, an order is considered to be the entire amount of covered television equipment requested from a manufacturer at one time for the purpose of sale by the retailer. A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet Web site described by §328.185(a) of this title.

(b) A retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet Web site provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

§328.181. Recycler Responsibilities.

(a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) Register with the commission and certify, as follows, that the person is in compliance with the standards adopted under §328.193 of this title (relating to Management of Collected Television Equipment).

(A) All certifications shall be signed as follows:

(i) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this clause, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business func-

tion, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign certifications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(ii) For a partnership or sole proprietorship, the certification shall be signed by a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency, the certification shall be signed by either a principal executive officer or a ranking elected official. For purposes of this clause, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the United States Environmental Protection Agency).

(B) A person signing the certification shall make the following certification: "I certify that (insert name of person who is engaged in the business of recycling covered television equipment in this state) is in compliance with the standards adopted under Title 30 of the Texas Administrative Code §328.193 (relating to Management of Collected Television Equipment). I certify under penalty of law that this document and any attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(C) All certifications shall be signed by a person described in subparagraph (A) of this paragraph or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) the authorization is made in writing by a person described in subparagraph (A) of this paragraph;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the applicant, such as the position of plant manager, operator, environmental manager, or a position of equivalent responsibility. (A duly authorized representative may be either a named individual or any individual occupying a named position); and

(iii) the written authorization is submitted to the executive director.

(D) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to or together with any certifications to be signed by an authorized representative.

(2) On or before January 31 of each year renew the registration with the commission and certify, per paragraph (1) of this subsection, the person's continued compliance with §328.193 of this title.

(3) Recycle all covered television equipment accepted for recycling in accordance with §328.193 of this title.

(4) Maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment.

(5) Annually report to the commission by January 31 the total weight or volume of covered television equipment received, recycled, and disposed of by the person in the preceding calendar year.

§328.183. Liability.

(a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

§328.185. Commission Responsibilities.

(a) The commission shall publish on a publicly accessible Internet Web site a list of television manufacturers:

(1) whose recovery plans have been approved by the commission, if applicable; who have certified that their public education programs are in full compliance with this subchapter, if applicable; and who are in compliance with the registration and fee requirements of this subchapter, if applicable; or

(2) who manufacture a display device that is peripheral to a computer and contains a television tuner; who collect and recycle the device in accordance with Subchapter I of this chapter (relating to Computer Equipment Recycling Program); and who do not manufacture any other device subject to this subchapter.

(b) The commission shall remove television manufacturers no longer in compliance under subsection (a) of this section from the Internet Web site once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet Web site and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet Web site and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law. The commission's list under subsection (a) of this section does not constitute a determination by the commission that a television manufacturer's actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under §328.173 of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) to the total weight of covered television equipment sold

in this state by television manufacturers submitting a recovery plan under §328.173 of this title during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under §328.173 of this title the television manufacturer's market share allocation for collection, reuse, and recycling for the following year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under subsection (f) of this section.

(h) In any year in which more than one recycling leadership program is implemented under §328.175 of this title (relating to Manufacturer Recycling Leadership Program), the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

(j) Biennial Report to Legislature.

(1) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(2) The report must include:

(A) collection information provided to the commission by each television manufacturer's report required by §328.171 of this title (relating to Manufacturer's Registration and Reporting) or §328.175 of this title, as applicable;

(B) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(C) any recommendations under subsection (h) of this section; and

(D) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

§328.187. Enforcement.

(a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by subsections (d) and (e) of this section, take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Texas Water Code, §7.032, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

§328.189. Financial and Proprietary Information.

Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Texas Government Code, Chapter 552.

§328.191. Consumer Responsibilities.

(a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet Web sites or calling their toll-free telephone numbers.

§328.193. Management of Collected Television Equipment.

(a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission adopts, as standards for recycling or reuse of covered television equipment under this subchapter, the following portions of the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Incorporated, April 25, 2006. The remaining portions of the standards are voluntary unless required by other law. The adopted standards apply to covered television equipment recycled or reused in this state. If at any time the United States Environmental Protection Agency (EPA) adopts standards for recycling or reuse of television equipment that are determined by the commission to be an acceptable substitute, the commission may, by rule, revoke the ISRI standards and adopt the EPA standards.

(1) General requirements for recyclers.

(A) Following all efforts to refurbish or reuse covered television equipment, the remaining covered television equipment shall be manually dismantled for reusable components or processed for recycling either in accordance with §328.4(b) of this title (relating to Limitations on Storage of Recyclable Materials) for those facilities subject to and not exempted from that section, or in accordance with the following conditions for those facilities exempt from or not subject to §328.4(b) of this title.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title (relating to Definitions)), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage or turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall only dispose of covered television equipment that cannot be refurbished; reused; or, in accordance with

Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), §330.11(e) of this title (relating to Notification Required), and Subchapter A of this chapter (relating to Purpose and General Information), recycled.

(C) For all transfers of covered television equipment intended for recycling, recyclers shall maintain commercial contracts, or equivalent commercial arrangements, that shall include:

- (i) covered television equipment quantity and type;
- (ii) packaging requirements; and
- (iii) recycling methods and specifications.

(D) Recyclers shall maintain records for a minimum of three years; or longer if required by local, state, or federal law; including any of the following which are applicable:

- (i) manifests;
- (ii) bills of lading;
- (iii) waste disposal records; and
- (iv) records that document:

(I) if the covered television equipment is sent to a facility affiliated with (as defined in §328.2 of this title) the recycler, the facility's location, and the condition of the covered television equipment (refurbished, reusable, recyclable, or to be determined); and

(II) if the covered television equipment is sent to a facility not affiliated with (as defined in §328.2 of this title) the recycler, the location of the first unaffiliated facility to which the covered television equipment is sent and the condition of the covered television equipment (refurbished, reusable, recyclable, or to be determined).

(E) Recyclers shall maintain and possess a written work practice that specifically addresses, at least, the following:

- (i) lead;
- (ii) mercury;
- (iii) beryllium;
- (iv) cadmium;
- (v) batteries;
- (vi) polychlorinated biphenyls; and
- (vii) free-flowing fluids such as oils and lubricants.

(F) Recyclers shall ensure that covered television equipment is stored and processed in a manner that minimizes the potential release of any hazardous substance into the environment.

(G) Recyclers shall package all covered television equipment designated for reuse in a manner that protects against damage and minimizes the potential for releases of hazardous substances during storage and transportation. Recyclers must package all covered television equipment designated for processing in a manner that minimizes the potential for releases of hazardous substances during storage and transportation.

(H) The covered television equipment recycling facility shall operate in accordance with the closure and financial-assurance requirements of §328.5 of this title (relating to Reporting and Record-keeping Requirements), unless exempted under §328.5 of this title.

(2) Manual dismantling and mechanical processing at a covered television equipment recycling facility.

(A) Following all efforts to refurbish or reuse covered television equipment, the remaining covered television equipment should be dismantled for useable components or commodities; processed for recycling in accordance with the following conditions; or properly disposed of in accordance with paragraph (1)(B) of this subsection.

(i) The facility can show that the material is potentially recyclable and has an economically feasible means of being recycled.

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage of turnover, the percentage requirements shall be applied to each material of the same type.

(B) Recyclers shall have a written, up-to-date plan for responding to and reporting pollutant releases, including accidents, spills, fires, or explosions.

(C) Hazardous waste shall be managed, recycled, and disposed of in accordance with Chapter 335 of this title.

§328.195. *Federal Preemption; Expiration.*

(a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

§328.197. *Amount of Penalties.*

(a) The amount of the penalty assessed against a manufacturer that does not label its covered television equipment or adopt and implement a recovery plan as required by §328.169 of this title (relating to Manufacturer's Labeling Requirement) or §328.173 of this title (relating to Manufacturer's Recovery Plan and Related Responsibilities) as applicable, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation.

(b) Except as provided by subsection (a) of this section, the amount of the penalty for a violation of this subchapter may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation.

(c) A penalty under this section is in addition to any other penalty that may be assessed for a violation of Texas Health and Safety Code, Chapter 361, Subchapter Y or Z.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 4, 2011.

TRD-201104795

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: December 18, 2011

For further information, please call: (512) 239-2548

AN ACT

relating to the sale, recovery, and recycling of certain television equipment; providing administrative penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 361, Health and Safety Code, is amended by adding Subchapter Z to read as follows:

SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. In this subchapter:

(1) "Brand" has the meaning assigned by Section 361.952.

(2) "Consumer" means an individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) "Covered television equipment" means the following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer that contains a television tuner.

(4) "Market share allocation" means the quantity of

covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

(5) "Recycling" means any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(7) "Television" means an electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(8) "Television manufacturer" means a person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to

use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network;
or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state; or

(2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by Section 361.952;

(2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that

manufacturer collects and recycles the device in accordance with

Subchapter Y;

(3) any part of a motor vehicle, including a replacement part;

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of

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equipment that has reached the end of its useful life.

Sec. 361.974. SALES PROHIBITION. A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING.
(a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of \$2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

(1) a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand; and

(2) contact information for the person the commission may contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total amount of covered television equipment the television manufacturer sold nationally in the preceding calendar year; and

(2) the total weight of covered television equipment the television manufacturer collected and recycled in this state during the preceding calendar year.

(c) Fees collected under this section shall be deposited to the credit of the television recycling account created under Section 361.977.

Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The television recycling account is an account in the general revenue fund that consists of the:

- (1) fees collected under Section 361.976; and
- (2) interest earned on the money in the account.

(b) Money in the account may be appropriated only to the commission to be used by the commission to maintain a public Internet website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in this state.

Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) This section does not apply to a television manufacturer that participates in a recycling leadership program

described by Section 361.979.

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under Section 361.976, each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

(1) a statement of whether the television manufacturer

intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission may reject the recovery plan if it does not meet all requirements of this subchapter.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM.

(a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this

state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT.

(a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available

to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years;
and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied

with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet website described by Section 361.984(a).

(b) A person who is a retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under

Section 361.990;

(4) maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and

(5) annually report to the commission the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

(1) whose recovery plans have been approved by the commission;

(2) whose public education programs are in full compliance with this subchapter; and

(3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.

(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet website and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission

shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against a

television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission by each television manufacturer's report required by Section 361.976(b) or 361.980(a), as applicable;

(2) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(3) any recommendations under Section 361.984(h); and

(4) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Sec. 361.988. FEES. (a) Except as provided by Section 361.976(a), this subchapter does not authorize the commission to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Fees or costs collected under this subchapter may be used by the commission only to implement this subchapter.

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet websites or calling their toll-free telephone numbers.

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT.

(a) Covered television equipment collected under this subchapter

must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Incorporated, April 25, 2006, or other standards from a comparable nationally recognized organization.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.

(d) In considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation; or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there

are fewer than six permanent collection sites open at least twice each month.

(e) The comptroller shall adopt rules to implement this section.

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

SECTION 2. Subsections (b-1) and (b-2), Section 7.052, Water Code, are amended to read as follows:

(b-1) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or covered television equipment or adopt and implement a recovery plan as required by Section 361.955, 361.975, or 361.978, Health and Safety Code, as applicable, may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

(b-2) Except as provided by Subsection (b-1), the amount of the penalty for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code, may not exceed \$1,000 for the second

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violation or \$2,000 for each subsequent violation. A penalty under this subsection is in addition to any other penalty that may be assessed for a violation of Subchapter Y or Z, Chapter 361, Health and Safety Code.

SECTION 3. (a) The Texas Commission on Environmental Quality shall adopt any rules required to implement this Act not later than May 1, 2012.

(b) This Act may not be enforced before July 1, 2012.

(c) A report required under Section 361.976, Health and Safety Code, as added by this Act, is not required to be prepared or submitted for the first time before January 31, 2013.

(d) A recovery plan required under Section 361.978, Health and Safety Code, as added by this Act, is not required to be prepared and submitted before January 31, 2013.

(e) A collection report required under Section 361.980, Health and Safety Code, as added by this Act, is not required to be prepared and submitted for the first time before January 31, 2015.

(f) A retailer of covered television equipment is not required to provide the information described by Subsection (b), Section 361.981, Health and Safety Code, as added by this Act, before the date on which the Texas Commission on Environmental Quality rules implementing this Act take effect.

(g) Not later than April 1, 2013, the Texas Commission on Environmental Quality shall prepare and post for the first time the list required under Subsection (a), Section 361.984, Health and Safety Code, as added by this Act.

(h) Not later than November 1, 2013, the Texas Commission on Environmental Quality shall establish for the first time the state recycling rate required under Subsection (f), Section 361.984, Health and Safety Code, as added by this Act.

(i) Not later than December 1, 2013, the Texas Commission on Environmental Quality shall provide for the first time to each applicable television manufacturer the television manufacturer's market share allocation as required under Subsection (g), Section 361.984, Health and Safety Code, as added by this Act.

(j) Notwithstanding Section 361.985, Health and Safety Code, as added by this Act, a retailer of television equipment may sell television equipment inventory that the retailer acquired before September 1, 2012, without incurring a penalty.

(k) The Texas Commission on Environmental Quality is not required to prepare or submit for the first time the report required under Section 361.987, Health and Safety Code, as added by this Act, before March 1, 2014.

SECTION 4. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 329 passed the Senate on March 23, 2011, by the following vote: Yeas 29, Nays 2; and that the Senate concurred in House amendment on May 24, 2011, by the following vote: Yeas 29, Nays 2.

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Secretary of the Senate

I hereby certify that S.B. No. 329 passed the House, with amendment, on May 19, 2011, by the following vote: Yeas 142, Nays 6, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor