

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** June 10, 2020

**DATE OF REQUEST:** May 22, 2020

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Andreea Vasile, Rule/Agenda Coordinator, (512) 239-1806

**CAPTION: Docket No. 2019-0963-RUL.** Consideration of the adoption of new Sections 328.200 - 328.204 of 30 TAC Chapter 328, Waste Minimization and Recycling.

The adoption implements portions of Senate Bill 1376, 86th Texas Legislature, 2019, Regular Session, which amended Texas Health and Safety Code, Section 361.425 and Section 361.426. Adopted new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, documents the requirement for governmental entities to establish a program for the separation and collection of recyclable materials generated by the entity; establishes that governmental entities shall give a preference in purchasing for products made of recyclable materials; and provides for exemptions from the requirements. The proposed rules were published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 691). (Calen Roome, Colleen Ford) (Rule Project No. 2019-125-328-AD)

Kelly Keel Linden  
**Deputy Director**

Ryan Vise  
**Division Director**

Andreea Vasile  
**Agenda Coordinator**

Copy to CCC Secretary? NO X YES

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** May 22, 2020

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Ryan Vise, Director *RV*  
External Relations Division

**Docket No.:** 2019-0963-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 328, Waste Minimization and Recycling  
SB 1376: Governmental Entity Recycling and Preference for Recycled  
Products  
Rule Project No. 2019-125-328-AD

**Background and reason(s) for the rulemaking:**

The adopted rulemaking implements Senate Bill (SB) 1376, 86th Texas Legislature, 2019, which amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental entities establish a recycling program, create procedures for a recycling program, and give preference in purchasing to products made of recyclable materials if applicable criteria are met.

The adopted rulemaking adds new rules that apply to governmental entities pertaining to recycling practices, the creation of recycling programs, and purchasing preferences for products made of recycled materials. The adoption also provides an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences will create a hardship for the governmental entity.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

The adopted rulemaking amends Chapter 328 to add new Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, §§328.200 - 328.204, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that will apply to certain governmental entities, if compliance with these rules will create a hardship.

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

The adopted rulemaking implements SB 1376 and the requirements of THSC, §361.425 and §361.426.

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

Although not specifically required by the legislation, it would be necessary for TCEQ to establish a program for governmental entities to request a hardship exemption.

**Statutory authority:**

The rulemaking is adopted under: Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also adopted under THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

**Effect on the:**

**A.) Regulated community:**

Fewer governmental entities will be required to implement recycling programs. The adopted rulemaking increases the opportunity for governmental entities to become exempt from implementing recycling programs or exempt certain recyclable materials from their recycling program.

**B.) Public:**

No public impacts are anticipated.

**C.) Agency programs:**

External Relations Division will complete rulemaking and updates to publication GI-030, The Texas School Recycling Guide.

The rules will not create a group of affected governmental entities who are not already affected by statute.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was offered during the comment period in Austin.

**Public comment:**

The commission received comments from the State of Texas Alliance for Recycling in support of the rulemaking and a comment letter from Lloyd Gosselink on behalf of the Texas Lone Star Chapter, Solid Waste Association of North America, Inc., also in support of the rulemaking but with suggested revisions.

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**Significant changes from proposal:**

The adoption includes a change to §328.204 to provide clarification regarding what statutes may apply to the purchase of recycled materials. No additional changes were made.

**Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interest have been identified.

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

The rulemaking will require development of new policies.

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

SB 1376 specifically requires rulemaking to implement this policy. There are no alternatives.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: January 31, 2020

Anticipated *Texas Register* adoption publication date: June 26, 2020

Anticipated effective date: July 2, 2020

Six-month *Texas Register* filing deadline: December 2, 2020

**Agency contacts:**

Calen Roome, Rule Project Manager, Environmental Relations Division, (512) 239-4621

Kathy Humphreys, Staff Attorney, (512) 239-3417

Andreea Vasile, Texas Register Rule/Agenda Coordinator, (512) 239-1806

**Attachments:**

Senate Bill 1376

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Morgan Johnson  
Brody Burks  
Office of General Counsel  
Calen Roome  
Andreea Vasile

AN ACT

relating to eliminating certain requirements imposed on school districts and other educational entities.

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

ARTICLE 1. POWERS AND DUTIES OF STATE BOARD FOR EDUCATOR  
CERTIFICATION, SHARED SERVICES ARRANGEMENTS, AND HIGH SCHOOL  
COMPLETION AND SUCCESS INITIATIVE COUNCIL

SECTION 1.01. Section 21.040, Education Code, is amended to read as follows:

Sec. 21.040. GENERAL POWERS AND DUTIES OF BOARD. The board shall:

~~(1) [supervise the executive director's performance,~~  
~~(2) approve an operating budget for the board and~~  
~~make a request for appropriations;~~

~~(3)]~~ appoint the members of any advisory committee to the board;

(2) ~~(4)]~~ for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board;

(3) ~~(5)]~~ provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees; and

1           (4) [~~(6)~~] develop and implement policies that clearly  
2 define the respective responsibilities of the board and the board's  
3 staff[~~, and~~

4           ~~[(7) execute interagency contracts to perform routine~~  
5 ~~administrative functions].~~

6           SECTION 1.02. Section 29.006(a), Education Code, is amended  
7 to read as follows:

8           (a) The governor shall appoint a continuing advisory  
9 committee, composed of 17 members, under 20 U.S.C. Section  
10 1412(a)(21). At least one member appointed under this subsection  
11 must be a director of special education programs for a school  
12 district [~~or for a shared services arrangement of multiple school~~  
13 ~~districts as provided by Section 29.007].~~

14           SECTION 1.03. Sections 29.095(d) and (e), Education Code,  
15 are amended to read as follows:

16           (d) The commissioner shall establish application criteria  
17 for receipt of a grant under this section. The criteria must  
18 require confirmation that the appropriate campus-level planning  
19 and decision-making committee established under Subchapter F,  
20 Chapter 11, and the school district board of trustees have approved  
21 a plan that includes:

22                   (1) a description of the student club;

23                   (2) a statement of the student club's goals, intent,  
24 and activities;

25                   (3) a statement of the source of funds to be used to  
26 match the grant;

27                   (4) a budget for the student club; and

1           (5) a statement showing that the student club's  
2 finances are sustainable~~[, and~~

3           ~~[(6) any other information the council requires]~~.

4           (e) The commissioner shall establish the minimum  
5 requirements for a local grant agreement, including requiring:

6           (1) the agreement to be signed by the sponsor of a  
7 student club receiving a grant and another authorized school  
8 district officer; and

9           (2) the district and the student club to participate  
10 in an evaluation~~[, as determined by the council,]~~ of the club's  
11 program and the program's effect on student achievement and dropout  
12 rates.

13           SECTION 1.04. Section 29.096(e), Education Code, is amended  
14 to read as follows:

15           (e) The commissioner shall establish minimum standards for  
16 a local collaborative agreement, including a requirement that the  
17 agreement must be signed by an authorized school district or  
18 open-enrollment charter school officer and an authorized  
19 representative of each of the other participating entities that is  
20 a partner in the collaboration. The program must:

21           (1) limit participation in the program to students  
22 authorized to participate by a parent or other person standing in  
23 parental relationship;

24           (2) have as a primary goal graduation from high  
25 school;

26           (3) provide for local businesses or other employers to  
27 offer paid employment or internship opportunities and advanced

1 career and vocational training;

2 (4) include an outreach component and a lead  
3 educational staff member to identify and involve eligible students  
4 and public and private entities in participating in the program;

5 (5) serve a population of students of which at least 50  
6 percent are identified as students at risk of dropping out of  
7 school, as described by Section 29.081(d);

8 (6) allocate not more than 15 percent of grant funds  
9 and matching funds, as determined by the commissioner, to  
10 administrative expenses; and

11 (7) include matching funds from any of the  
12 participating entities [~~, and~~

13 [~~(8) include any other requirements as determined by~~  
14 ~~the council]~~].

15 SECTION 1.05. Section 29.097(b), Education Code, is amended  
16 to read as follows:

17 (b) From funds appropriated for that purpose in an amount  
18 not to exceed \$3 million each year, the commissioner shall  
19 establish a pilot program for the commissioner to award grants to  
20 participating campuses to provide intensive technology-based  
21 supplementary instruction in English, mathematics, science, or  
22 social studies to students in grades nine through 12 identified as  
23 being at risk of dropping out of school, as described by Section  
24 29.081(d). Instruction techniques and technology used by a campus  
25 under this section must be based on the best available research [~~, as~~  
26 ~~determined by the council,~~] regarding college and workforce  
27 readiness.



1 SECTION 1.06. Section 39.235(a), Education Code, is amended  
2 to read as follows:

3 (a) From funds appropriated for that purpose, the  
4 commissioner may establish a grant program under which grants are  
5 awarded to middle, junior high, and high school campuses and school  
6 districts to support:

7 (1) the implementation of innovative improvement  
8 programs that are based on the best available research regarding  
9 middle, junior high, or high school reform, dropout prevention, and  
10 preparing students for postsecondary coursework or employment; and

11 (2) enhancing education practices that have been  
12 demonstrated by significant evidence of effectiveness[~~, and~~

13 [~~(3) the alignment of grants and programs to the~~  
14 ~~strategic plan adopted under Section 39.407]~~.

15 ARTICLE 2. SCHOOL OPERATIONS

16 SECTION 2.01. Sections 33.202(a), (c), (d), and (e),  
17 Education Code, are amended to read as follows:

18 (a) The University Interscholastic League [~~commissioner by~~  
19 ~~rule~~] shall develop and adopt an extracurricular activity safety  
20 training program as provided by this section. In developing the  
21 program, the league [~~commissioner~~] may use materials available from  
22 the American Red Cross, Emergency Medical Systems (EMS), or another  
23 appropriate entity.

24 (c) The safety training program must include:

25 (1) certification of participants by the American Red  
26 Cross, the American Heart Association, or a similar organization or  
27 by the University Interscholastic League[~~, as determined by the~~

1 ~~commissioner~~];

2 (2) current training in:

3 (A) emergency action planning;

4 (B) cardiopulmonary resuscitation if the person  
5 is not required to obtain certification under Section 33.086;

6 (C) communicating effectively with 9-1-1  
7 emergency service operators and other emergency personnel; and

8 (D) recognizing symptoms of potentially  
9 catastrophic injuries, including head and neck injuries,  
10 concussions, injuries related to second impact syndrome, asthma  
11 attacks, heatstroke, cardiac arrest, and injuries requiring use of  
12 a defibrillator; and

13 (3) at least once each school year, a safety drill that  
14 incorporates the training described by Subdivision (2) and  
15 simulates various injuries described by Subdivision (2)(D).

16 (d) The University Interscholastic League [~~A school~~  
17 ~~district~~] shall provide training to students participating in an  
18 extracurricular athletic activity related to:

19 (1) recognizing the symptoms of injuries described by  
20 Subsection (c)(2)(D); and

21 (2) the risks of using dietary supplements designed to  
22 enhance or marketed as enhancing athletic performance.

23 (e) The safety training program and the training under  
24 Subsection (d) must [~~may~~] each be conducted by the University  
25 Interscholastic League [~~a school or school district~~] or by another  
26 [~~an~~] organization described by Subsection (c)(1), as determined by  
27 the league.

1 SECTION 2.02. Section 361.425(b), Health and Safety Code,  
2 is amended to read as follows:

3 (b) The commission:

4 (1) by order shall exempt from compliance with this  
5 section:

6 (A) [~~a school district or~~] a municipality with a  
7 population of less than 5,000 [~~from compliance with this section~~]  
8 if the commission finds that compliance would work a hardship on  
9 [~~the district or~~] the municipality;

10 (B) a school district with a student enrollment  
11 of fewer than 10,000 students; and

12 (C) an entity described by Subsection (a) if:

13 (i) the entity petitions the commission for  
14 an exemption; and

15 (ii) the commission finds that compliance  
16 would work a hardship on the entity; and

17 (2) [~~The commission~~] shall adopt rules for  
18 administering this subsection.

19 SECTION 2.03. Section 361.426(d), Health and Safety Code,  
20 is amended to read as follows:

21 (d) The commission:

22 (1) by order shall exempt from compliance with this  
23 section:

24 (A) [~~a school district or~~] a municipality with a  
25 population of less than 5,000 [~~from compliance with this section~~]  
26 if the commission finds that compliance would work a hardship on  
27 [~~the district or~~] the municipality;

1                   (B) a school district with a student enrollment  
2 of fewer than 10,000 students; and

3                   (C) an entity described by Subsection (a) if:

4                   (i) the entity petitions the commission for  
5 an exemption; and

6                   (ii) the commission finds that compliance  
7 would work a hardship on the entity; and

8                   (2) [~~The commission~~] shall adopt rules for  
9 administering this subsection.

10                   ARTICLE 3. TEACHER QUALITY

11                   SECTION 3.01. The heading to Section 21.410, Education  
12 Code, is amended to read as follows:

13                   Sec. 21.410. MASTER [~~READING~~] TEACHER GRANT PROGRAM.

14                   SECTION 3.02. Section 21.410, Education Code, is amended by  
15 amending Subsections (a), (b), (c), (d), (f), (g), and (j) and  
16 adding Subsection (c-1) to read as follows:

17                   (a) The commissioner shall establish a master [~~reading~~]  
18 teacher grant program to encourage teachers to:

19                   (1) become certified as master [~~reading~~] teachers in  
20 reading, mathematics, technology, or science; and

21                   (2) work with other teachers and with students in  
22 order to improve student reading, mathematics, or science  
23 performance or to increase the use of technology in each classroom,  
24 as applicable.

25                   (b) From funds appropriated for the purpose, the  
26 commissioner shall make grants to school districts as provided by  
27 this section to pay stipends to selected certified master [~~reading~~]

1 teachers who teach at high-need campuses.

2 (c) The commissioner shall annually identify each high-need  
3 campus in a school district using criteria established by the  
4 commissioner by rule [~~including performance on the reading  
5 assessment instrument administered under Section 39.023~~]. The  
6 commissioner shall also use the criteria to rank campuses in order  
7 of greatest need.

8 (c-1) In establishing criteria under Subsection (c) to  
9 identify high-need campuses for purposes of awarding master teacher  
10 grants in reading, mathematics, or science, the commissioner must  
11 include performance on the reading, mathematics, or science  
12 assessment instrument administered under Section 39.023, as  
13 applicable.

14 (d) A school district may apply to the commissioner for  
15 grants for each high-need campus identified by the commissioner to  
16 be used to pay stipends to certified master [~~reading~~] teachers in  
17 accordance with this section. [~~Unless reduced under Subsection (g)~~  
18 ~~or (i), each grant is in the amount of \$5,000.~~] The commissioner  
19 shall approve the application if the district:

20 (1) applies within the period and in the manner  
21 required by rule adopted by the commissioner; and

22 (2) agrees to use each grant only for the purpose of  
23 paying a year-end stipend to a master [~~reading~~] teacher in reading,  
24 mathematics, technology, or science:

25 (A) who holds the appropriate [~~a~~] certificate  
26 issued under Section 21.0481, Section 21.0482, Section 21.0483, or  
27 Section 21.0484;

1 (B) who teaches in a position prescribed by the  
2 district at a high-need campus identified by the commissioner;

3 (C) whose primary duties include:

4 (i) teaching reading, mathematics, or  
5 science or integrating technology use in teaching, as applicable;  
6 and

7 (ii) serving as a reading, mathematics, or  
8 science teaching mentor or technology training mentor, as  
9 applicable, to other teachers for the amount of time and in the  
10 manner established by the district and by rule adopted by the  
11 commissioner; and

12 (D) who satisfies any other requirements  
13 established by rule adopted by the commissioner.

14 (f) The commissioner shall adopt rules for the distribution  
15 of grants to school districts following the year of the initial  
16 grant. A district that has been approved for a grant to pay a  
17 stipend to a certified master [~~reading~~] teacher is not required to  
18 reapply for a grant for two consecutive school years following the  
19 year of the initial [~~initial~~] grant if the district:

20 (1) continues to pay a stipend as provided by  
21 Subsection (g); and

22 (2) notifies the commissioner in writing, within the  
23 period and in the manner prescribed by the commissioner, that the  
24 circumstances on which the grant was based have not changed.

25 (g) The commissioner shall reduce payments to a school  
26 district proportionately to the extent a teacher does not meet the  
27 requirements under Subsection (d)(2) for the entire school year. A

1 district that employs more certified master [~~reading~~] teachers than  
2 the number of grants available under this section shall select the  
3 certified master [~~reading~~] teachers to whom to pay stipends based  
4 on a policy adopted by the board of trustees of the district, except  
5 that a district shall pay a stipend for two additional consecutive  
6 school years to a teacher the district has selected for and paid a  
7 stipend for a school year, who remains eligible for a stipend under  
8 Subsection (d)(2), and for whom the district receives a grant under  
9 this section for those years. A decision of the district under this  
10 subsection is final and may not be appealed. The district may not  
11 apportion among teachers a stipend paid for with a grant the  
12 district receives under this section. The district may use local  
13 money to pay additional stipends in amounts determined by the  
14 district.

15 (j) A decision of the commissioner concerning the amount of  
16 money to which a school district is entitled under this section is  
17 final and may not be appealed. Each district shall, in the manner  
18 and at the time prescribed by the commissioner, provide to the  
19 commissioner proof acceptable to the commissioner of the master  
20 [~~reading~~] teacher certification of a teacher to whom the district  
21 is paying a stipend under this section.

22 ARTICLE 4. REPEALERS

23 SECTION 4.01. (a) The following provisions of the Education  
24 Code are repealed:

- 25 (1) Section 7.102(c)(9);  
26 (2) Sections 21.411, 21.412, and 21.413;  
27 (3) Section 29.007;

1           (4) Sections 29.095(a)(1), 29.096(a), and  
2 29.097(a)(1);

3           (5) Section 38.0081;

4           (6) Sections 39.401, 39.402, 39.403, 39.404, 39.405,  
5 39.406, 39.407, 39.409, 39.410, 39.411, 39.412, 39.413, 39.414,  
6 39.415, and 39.416;

7           (7) Section 44.903; and

8           (8) Section 45.208(e).

9           (b) Chapter 114, Health and Safety Code, is repealed.

10                               ARTICLE 5. EFFECTIVE DATE

11           SECTION 5.01. This Act applies beginning with the 2019-2020  
12 school year.

13           SECTION 5.02. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect September 1, 2019.



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1376 passed the Senate on April 17, 2019, by the following vote: Yeas 30, Nays 0, one present not voting.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1376 passed the House on May 17, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§328.200 - 328.204.

New §328.204 is adopted *with change* to the proposed text as published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 691). Sections 328.200 - 328.203 are adopted *without changes* to the proposed text and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

The adopted rulemaking adds rules that apply to certain governmental entities to establish recycling programs and purchasing preferences for products made of recycled materials.

Senate Bill (SB) 1376, 86th Texas Legislature, 2019, amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements, if the commission finds that compliance will create a hardship on the governmental entity. SB 1376 also requires the commission to exempt certain governmental entities from compliance with purchasing preferences for recycled materials, if the commission finds that compliance will create a hardship on the governmental entity.

The commission adopts new Chapter 328, Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to

products made of recycled materials, and to create an exemption that will apply to certain governmental entities, if compliance with Chapter 328, Subchapter K will create a hardship.

### **Section by Section Discussion**

#### *§328.200, Purpose*

The commission adopts new §328.200 which pertains to governmental entities and establishes a standard to implement a recycling program.

#### *§328.201, Definitions*

The commission adopts new §328.201 to define "Governmental entity," "Hardship," and "Recyclable materials" within the context of the requirements.

#### *§328.202, General Requirements*

The commission adopts new §328.202 to describe the responsibilities for governmental entities to establish a recycling program. Overall, the entity must consider how to collect and store recyclable materials, maintain containers for recyclable materials, create procedures with buyers of recyclable materials, evaluate and modify the recycling program, and create measures to encourage employee participation.

#### *§328.203, Exemptions*

The commission adopts new §328.203, which provides for specific exemptions that are

allowed under the rule as well as opportunities for an exemption request due to a hardship.

*§328.204, Purchasing Preference for Recycled Materials*

The commission adopts new §328.204, which requires certain governmental entities to give preference to purchase products made of recycled materials. At adoption, the commission revises §328.204 to provide consistency with Texas Government Code, §2155.445, which states that preference for the purchasing of products made of recycled materials will be given if the product meets applicable specifications as to quantity and quality, and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products.

**Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the Regulatory Impact Analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that 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. New §§328.200 - 328.204 are adopted in accordance with SB 1376 which amended THSC, Chapter 361, Subchapter N. The

adopted rules establish requirements for a governmental entity to create a recycling program and to give preference in purchasing to products made of recycled materials. 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 of the state or sector of the state. In addition, the adopted rules provide an exemption for the regulated community if compliance with the adopted rules will create a hardship on the regulated entity.

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. Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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; or adopt a rule solely under the general authority of the commission. Adopted new §§328.200 - 328.204 do not exceed an express requirement of state law or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority portion of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), a taking means: A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the United States Constitution, Fifth and Fourteenth Amendments or Texas Constitution, Article I, Section 17 or 19; or B) a governmental action that: i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the adopted rulemaking will be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 328 in accordance with the amendments to THSC, Chapter 361 as a result of SB 1376. The adopted rules will establish requirements for a governmental entity to create a recycling program and require certain governmental entities to give preference to purchase products made of recycled materials. The adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### **Consistency with the Coastal Management Program**

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

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency of the rules with the CMP.

### **Public Comment**

The commission offered a public hearing on February 27, 2020. The comment period closed on March 3, 2020. The commission received written comments from the State of Texas Alliance for Recycling (STAR) and the Texas Lone Star Chapter, Solid Waste Association of North America, Inc (TxSWANA). All commenters were in support of the rulemaking. Specific changes to the rules were suggested in TxSWANA's comments.

### **Response to Comments**

#### *Comment*

STAR stated that it supports the rulemaking and the Texas Legislature's vision of reducing hardship for Texas schools serving populations less than 5,000 individuals. TxSWANA commented that they support the goal to promote overall recycling within the state.

#### *Response*

**The commission acknowledges the comments.**

#### *Comment*

TxSWANA requested that the commission provide clarity on what constitutes a



hardship for the purposes of the exemption in proposed §328.203. TxSWANA elaborated that the only guidance in the legislation and proposed rulemaking on what constitutes a hardship appears to be the rulemaking's fiscal note, which implies that if the requirements fiscally impact a governmental entity, then the governmental entity qualifies for a hardship exemption. TxSWANA added that if this is the standard, the rule should explicitly define hardship and/or unreasonable burden. TXSWANA also requested clarification on whether a governmental entity may request a full or partial hardship exemption.

*Response*

**The commission's goal is to promote continued recycling efforts by governmental entities where feasible. The commission highly encourages entities to continue recycling efforts for materials that are viable in their market conditions. The commission will evaluate hardship on a case-by-case basis as needed.**

**Determinations of whether a governmental entity would qualify for a partial exemption from Chapter 328, Subchapter K will be made on a case-by-case basis.**

**THSC, §361.425 specifies certain commodities that should be recycled. The commission recognizes that not all communities have access to recycling some or all commodities. Therefore, entities without viable access to recycling may remove items from a program that would cause a hardship. The commission understands that each entity is unique and not all recycling programs are able to recycle one or multiple recyclable materials defined in §328.201. The commission will allow entities to exempt one, multiple, or all recyclable materials and suggests that**

**entities document the reason(s) for excluding one or multiple recyclable materials. For example, if aluminum and steel containers are not recycled by the entity, it should be documented with reason. Some examples to consider when documenting a hardship may include but are not limited to: fiscal limitations, viability of a solid waste provider or third party to recycle a given material, and whether an entity is or is not serviced by a solid waste provider or third party recycler. No changes were made to the rules as a result of this comment.**

*Comment*

TxSWANA requested clarity on whether exemptions would apply to all of the requirements of Chapter 328, Subchapter K or whether they would only apply to the portions for which the entity shows a specific hardship.

*Response*

**The exemptions found in §328.203 apply to Chapter 328, Subchapter K. No changes were made to the rules as a result of this comment.**

*Comment*

TxSWANA commented it has a concern of a potential conflict between the requirement to include a preference for recycled materials in bidding policies and existing requirements to accept low bids. TxSWANA requested that TCEQ provide clarification that it is sufficient to give preference to recycled materials when the costs are otherwise the same.

***Response***

**In order to provide additional clarity, the commission revises §328.204 to specify that preference for the purchasing of products made of recycled materials will be given if the product meets applicable specifications as to quantity and quality, and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. This language is consistent with Texas Government Code, §2155.445. The commission does not foresee any conflicts with existing agency guidance. Section 328.204 is to be applied in accordance with state procurement statutes and rules and is not intended to conflict with any other state requirements. The commission understands that materials with a dissimilar cost may not always be given preference and entities should continue to use best judgement in bidding policy decisions.**

**SUBCHAPTER K: GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF  
RECYCLED MATERIALS  
§§328.200 - 328.204**

**Statutory Authority**

The new rules are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also adopted under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The new rules are adopted to implement THSC, Chapter 361, Subchapter N, as amended by Senate Bill 1376, 86th Texas Legislature, 2019.

**§328.200. Purpose.**

The purpose of this subchapter is to establish requirements for a governmental

entity to create a recycling program and provide preference for purchasing recycled materials.

**§328.201. Definitions.**

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

(1) Governmental entity--A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.

(2) Hardship--A circumstance that causes unreasonable burden on the governmental entity.

(3) Recyclable material--A material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

**§328.202. General Requirements.**

A governmental entity shall:

(1) establish a program for the separation and collection of all recyclable materials generated by the entity's operations;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

**§328.203. Exemptions.**

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

**§328.204. Purchasing Preference for Recycled Materials.**

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality and the average price of the product is not more than 10% greater than the price of comparable nonrecycled products. Preferences will be applied in accordance with state procurement statutes and rules.

replace and recycle or scrap the vehicle and engine before a grant is awarded for that project.

(g) The commission may set cost-effectiveness limits as needed to ensure the best use of available funds. The commission may also base project selection decisions on additional measures to evaluate the effectiveness of projects in reducing NO<sub>x</sub> emissions in relation to the funds to be awarded.

(h) The executive director may waive eligibility requirements established under subsections (b) - (f) of this section on a finding of good cause, which may include a waiver of any ownership and use requirements established for replacement of a motor vehicle for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances. In determining good cause and deciding whether to grant a waiver, the executive director shall ensure that the emissions reductions that will be attributed to the project will still be valid and, where applicable, meet the conditions for assignment for credit to the state implementation plan.

(i) Projects funded with a grant from this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program except as provided under Texas Health and Safety Code, §386.056.

(j) A proposed project as listed in subsection (a) of this section is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(k) A proposed retrofit, repower, replacement, or add-on equipment project must achieve a reduction in NO<sub>x</sub> emissions to the level established in the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388)* for that type of project compared with the baseline emissions adopted by the commission for the relevant engine year and application.

(l) If a grant recipient fails to meet the terms of a project grant or the conditions of this division, the executive director can require that the grant recipient return some or all of the grant funding to the extent that emission reductions are not achieved or cannot be demonstrated.

(m) Criteria established in the guidelines, including revisions to the commission's *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants Program (RG-388)*, apply to the Texas Emissions Reduction Plan program. Regardless of [Notwithstanding] the provisions of this chapter, as authorized under Texas Health and Safety Code, §386.053(d), revisions to the guidelines may include, among other changes, adding additional pollutants; adding stationary engines or engines used in stationary applications; adding vehicles and equipment that use fuels other than diesel; or adjusting eligible program categories; as appropriate, to ensure that incentives established under this program achieve the maximum possible emission reductions.

§114.629. *Affected Counties and Implementation Schedule.*

(a) Applicable counties in the incentive program include: Bastrop, Bexar, Brazoria, Caldwell, Chambers, Collin, Comal, Dallas,

Denton, El Paso, Ellis, Fort Bend, Galveston, Gregg, Guadalupe, Hardin, Harris, [Hardin,] Harrison, Hays, Henderson, Hood, Hunt, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Rusk, San Patricio, Smith, Tarrant, Travis, Upshur, [Victoria,] Waller, Williamson, Wilson, Wise, and any other county located within an area of Texas designated as a nonattainment area for ground-level ozone under Federal Clean Air Act, §107(d), as amended.

(b) Equipment purchased before September 1, 2001 is not eligible for a grant under this program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000182

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 1, 2020

For further information, please call: (512) 239-6812

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**CHAPTER 328. WASTE MINIMIZATION AND RECYCLING**  
**SUBCHAPTER K. GOVERNMENTAL ENTITY RECYCLING AND PURCHASING OF RECYCLED MATERIALS**

**30 TAC §§328.200 - 328.204**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§328.200 - 328.204.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to add new rules that would apply to certain governmental entities to establish recycling programs and purchasing preferences for products made of recycled materials.

Senate Bill (SB) 1376, 86th Texas Legislature, 2019, amended Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements, if the commission finds that compliance would create a hardship on the governmental entity. SB 1376 also requires the commission to exempt certain governmental entities from compliance with purchasing preferences for recycled materials, if the commission finds that compliance would create a hardship on the governmental entity.

The rulemaking proposes new Chapter 328, Subchapter K, Governmental Entity Recycling and Purchasing of Recycled Materials, to establish requirements for a governmental entity to create a recycling program, to give preference in purchasing to products made of recycled materials, and to create an exemption that would apply to certain governmental entities, if compliance with these rules would create a hardship.

Section by Section Discussion



### §328.200, Purpose

The commission proposes new §328.200 which would pertain to governmental entities and establish a standard to implement a recycling program.

### §328.201, Definitions

The commission proposes new §328.201 to define governmental entity, hardship, and recyclable materials within the context of the requirements.

### §328.202, General Requirements

The commission proposes new §328.202 to describe the responsibilities for governmental entities to establish a recycling program. Overall, the entity must consider how to collect and store recyclable materials, maintain containers for recyclable materials, create procedures with buyers of recyclable materials, evaluate and modify the recycling program, and create measures to encourage employee participation.

### §328.203, Exemptions

The commission proposes new §328.203 to provide specific exemptions that are allowed under the rule as well as opportunities for an exemption request due to a hardship.

### §328.204, Purchasing Preference for Recycled Materials

The commission proposes new §328.204 to require certain governmental entities to give preference to purchase products made of recycled materials.

#### Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or for other units of state government. Fiscal implications are not anticipated for units of local government because the proposed rulemaking includes a process to apply for an exemption in the cases of a hardship.

This rulemaking addresses recent changes to THSC, §361.425, Governmental Entity Recycling. The proposed rulemaking is required by law and needed to create a process for units of government to apply for an exemption from the requirements.

#### Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rulemaking is in effect. The proposed rulemaking includes a process for an exemption if compliance with the pro-

posed rules and the associated state law is shown to create a hardship.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rulemaking is in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; the requirement for the government recycling program existed in state law. This proposed rulemaking does create a process for a unit of government to gain an exemption from the requirement if a hardship is found. The proposed rulemaking will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create or expand the regulation of units of government or individuals; the requirement for the recycling program existed in state law. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule with the specific intent 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. New §§328.200 - 328.204 are proposed in accordance with SB 1376, which amended THSC, Chapter 361, Subchapter N. The proposed rules establish requirements for a governmental entity to create a recycling program and to give preference in purchasing to products made of recycled materials. The proposed rules would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or sector of the state. In addition, the proposed rules provide an exemption for the regulated community if compliance with the proposed rules would create a hardship on the regulated entity.

In addition, a regulatory impact analysis is not required because the proposed rulemaking does not meet any of the applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law;

2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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, or; 4) adopt a rule solely under the general authority of the commission. Proposed new §§328.200 - 328.204 do not exceed an express requirement of state law, federal law, or a requirement of a delegation agreement and were not developed solely under the general powers of the agency but are authorized by specific sections of the THSC that are cited in the Statutory Authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination 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 the proposed rulemaking and performed an analysis of whether the proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007, does not apply.

Under Texas Government Code, §2007.002(5), taking means: (A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

Promulgation and enforcement of the proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. The primary purpose of the rulemaking is to amend Chapter 328 in accordance with the amendments to THSC, Chapter 361 as a result of SB 1376. The proposed rules would establish requirements for a governmental entity to create a recycling program and require certain governmental entities to give preference to purchase products made of recycled materials. The proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

#### Consistency with the Coastal Management Program

This rulemaking is not applicable to the 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.

#### Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking is not subject to requirements of the Federal Operating Permit program.

#### Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 27, 2020, 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 or 1 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

#### Submittal of Comments

Written comments may be submitted to Andreea Vasile, 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: <https://www6.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 2019-125-328-AD. The comment period closes on March 3, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Calen Roome, Public Education Unit, (512) 239-4621.

#### Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The new rules are also proposed under Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426 which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

The new rules are proposed as part of the implementation of THSC, Chapter 361, Subchapter N, as amended by Senate Bill 1376, 86th Texas Legislature, 2019.

#### §328.200. Purpose.

The purpose of this subchapter is to establish requirements for a governmental entity to create a recycling program and provide preference for purchasing recycled materials.

§328.201. Definitions.

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

(1) Governmental entity--A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district.

(2) Hardship--A circumstance that causes unreasonable burden on the governmental entity.

(3) Recyclable material--A material generated by the entity's operations, including aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard.

§328.202. General Requirements.

A governmental entity shall:

(1) establish a program for the separation and collection of all recyclable materials generated by the entity's operations;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

§328.203. Exemptions.

(a) This subchapter does not apply to:

(1) a school district with a student enrollment of less than 10,000 students; and

(2) a municipality with a population of less than 5,000, if compliance with this subchapter would create a hardship.

(b) A governmental entity may exclude one or more recyclable materials from their program if the commission finds that:

(1) a recycling program for a recyclable material is not available through their solid waste provider; or

(2) the inclusion of a recyclable material would create a hardship.

(c) A governmental entity may request additional consideration from the commission if compliance with this subchapter would create a hardship.

§328.204. Purchasing Preference for Recycled Materials.

A state agency, state court, or judicial agency not subject to Texas Government Code, Title 10, Subtitle D, and a county, municipality, school district, junior or community college, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Preferences will be applied in accordance with state procurement statutes and rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 16, 2020.

TRD-202000169

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 1, 2020

For further information, please call: (512) 293-1806

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CHAPTER 344. LANDSCAPE IRRIGATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§344.1, 344.20 - 344.22, 344.24, 344.30, 344.31, 344.33 - 344.38, 344.40, 344.42, 344.43, 344.50 - 344.52, 344.60 - 344.65, 344.70 - 344.72, and 344.80; to repeal §344.32; and new §344.66.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is in response to two petitions submitted by the Irrigator Advisory Council (IAC), which were approved by the commission on October 4, 2017, to initiate rulemaking with stakeholder involvement (Non-Rule Project Numbers 2017-041-PET-NR and 2017-042-PET-NR). The IAC requested that the commission classify all irrigation systems as health hazards; eliminate the use of double check valves; add the use of Spill Resistant Vacuum Breakers; require that the backflow prevention assembly be tested after repair, replacement, or relocation; require the use of in-line filters or strainers as recommended by the manufacturers; and change the term "Backflow prevention devices" to "Backflow prevention assemblies."

The executive director's staff collected stakeholder feedback on the proposed changes to the IAC's petitions. Public meetings were held in Austin, Corpus Christi, El Paso, Fort Worth, Harlingen, Houston, Lubbock, and San Antonio. In addition, written comments were received from 207 interested parties. The feedback from the meetings and comments were incorporated into the proposed draft rule language.

In 2007, the 80th Texas Legislature passed three bills directly affecting landscape irrigation. House Bill (HB) 4 and Senate Bill (SB) 3 directed the commission to adopt rules that govern: 1) the connection of an irrigation system to any water supply; 2) the design, installation, and operation of irrigation systems; 3) water conservation; and 4) the duties and responsibilities of irrigators. These rule changes were included in the most recent updates to Chapter 344 that were effective on January 1, 2009. HB 1656 added a new landscape irrigation license classification, irrigation inspector, and directs municipalities with a population of 20,000 or more to adopt ordinances that require irrigation inspectors to be licensed by the commission and irrigators to obtain a permit before installing an irrigation system. Municipalities were required to adopt standards and specifications for irrigation systems and include rules adopted by the TCEQ. Municipalities were required to exempt on-site sewage systems, agricultural irrigation systems, and irrigation systems connected to a well which is used for domestic purposes. HB 1656 gave water districts the option of adopting rules to govern landscape irrigation in their areas. These provisions were not included in the most recent update to Chapter 344 and are proposed to be added with this rulemaking.

This rulemaking would incorporate some of the requested changes made by the two IAC rule petitions, as well as, amend existing sections, repeal a section, and add a new section.

# Texas Commission on Environmental Quality



## ORDER ADOPTING NEW RULES

**Docket No. 2019-0963-RUL**

**Rule Project No. 2019-125-328-AD**

On June 10, 2020, the Texas Commission on Environmental Quality (Commission) adopted new §§ 328.200 - 328.204 in 30 Texas Administrative Code Chapter 328, Waste Minimization and Recycling. The proposed rules were published for comment in the January 31, 2020 issue of the *Texas Register* (45 TexReg 691).

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, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

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.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed