

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §328.7, Definitions of Terms and Abbreviations. The amendments are adopted with changes to the proposed text as published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10514).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

This rule fulfills a legislative mandate under Texas Health and Safety Code, §361.427, concerning Specifications for Recycled Products. This rule will work in tandem with rulemaking at the General Services Commission (GSC) to implement Senate Bill (SB) 1127. The 76th Legislature, 1999 amended Texas Government Code, §2155.445, relating to purchasing by state agencies, which requires GSC to publish rules for state agencies to give preference to recycled, remanufactured, or other environmentally sensitive products.

The purpose of this rule is to add the definition of “recycled product” for state agency purchasing purposes. In accordance with Texas Health and Safety Code, §361.427, concerning Specifications for Recycled Products, the commission, not GSC, is mandated to establish a rule which specifies what percent of the total content of a product must consist of recycled material for the product to be a “recycled product.” In accordance with §361.427, the commission must consult with the GSC in providing this rule.

The Texas Government Code, §2155.445, relating to purchasing by state agencies, was amended by SB 1127, 76th Legislature, 1999 requiring GSC to publish rules to require state agencies to give preference to recycled, remanufactured, or other environmentally sensitive products. If GSC rules are adopted,

state agencies will be required to justify purchases of non-recycled, non-remanufactured, or non-environmentally sensitive products to the GSC, and will have to document their purchase of recycled products in their annual financial reports. In accordance with the Texas Government Code, §2155.445, “recycled product” must be defined by rule. The Texas Health and Safety Code, §361.427 requires the commission, not GSC, to define “recycled product.” Hence the commission is providing this rule as required by the Texas Health and Safety Code, §361.427. Pursuant to SB 1127, which amended the Texas Government Code, §2155.445, the definition in the commission’s rule will work in parallel with the GSC’s rules.

SECTION BY SECTION DISCUSSION

Section 328.7(4), Definitions of Terms and Abbreviations, is amended to add the definition of “recycled product.” A “recycled product” is a product which conforms to the minimum content requirements for recycled materials published by the United States Environmental Protection Agency (EPA) in its Comprehensive Procurement Guidelines (CPG) and Recovered Materials Advisory Notice (RMAN). For products for which no EPA guidelines exist, states may use guidelines from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist. Changes have been made to the language as proposed. The reference in §328.7(4)(G) regarding CPG III has been changed to indicate that it is no longer a proposed guideline because EPA has recently finalized this guideline. Similarly, the reference in §328.7(4)(H) regarding RMAN III has been changed to indicate that it has been published as a final guideline. Also, the format of each the references to EPA guidelines has been changed slightly to be consistent with other commission rules.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225, and it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means 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 rulemaking is not a major environmental rule because merely adopting this definition will not 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 this rule is to add the definition of "recycled product" to Chapter 328, Waste Minimization and Recycling. "Recycled product" will be defined as a product which conforms to the minimum content requirements for recycled materials published by the EPA in its CPG and RMAN. For products for which no EPA guidelines exist, states may use guidelines from the FTC or the ASTM for those products for which FTC or ASTM guidelines exist. As such, the rule indirectly relates to the protection of the environment or human health because it facilitates the implementation of a state law that encourages recycled products to be purchased by state agencies.

This rulemaking does not 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, because the amendment will only add a definition of “recycled product” in order to encourage recycled products to be used by state agencies and will result in a potential decrease in waste deposited in waste disposal facilities.

This proposal does not exceed a standard set by federal law and is specifically mandated by state law. In accordance with Texas Health and Safety Code, §361.427, Specifications for Recycled Products, the commission is mandated to establish a rule which specifies the percent of the total content of a product which must consist of recycled material for the product to be a “recycled product.”

This rule does not exceed the requirements of a delegation agreement or contract between the state and federal government, as there is no agreement or contract between the commission and the federal government concerning recycled product definition.

This rule is adopted under a specific state law and not under the general powers of the commission. The commission must create a rule to define “recycled product” under the authority of Texas Health and Safety Code, §361.427.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment:

The purpose of this rulemaking is to modify Chapter 328, Waste Minimization and Recycling, by adding the definition of “recycled product.”

The promulgation and enforcement of this rule will not burden private real property nor adversely affect property values because the rule will merely add a definition of “recycled product” to Chapter 328 to be used for state agency purchasing purposes.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), because this rule is neither identified in the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), nor in the commission’s rules in 30 TAC Chapter 281, Subchapter B, Consistency with the CMP. This rule will merely encourage recycling by adding the definition of “recycled product” and, thereby, assist the GSC in requiring state agencies to give preference in purchasing recycled products. Therefore, the rule is not subject to the CMP. The commission requested public comment on the consistency of the rule with the CMP and no comments were received.

HEARING AND COMMENTORS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rule closed at 5:00 p.m. on December 27, 1999. No comments were received on the rule.

STATUTORY AUTHORITY

The amended section is adopted under the authority of the Texas Water Code, §5.103 and §5.105, which authorize the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024, which provides the commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

SUBCHAPTER B : RECYCLING, REUSE, AND MATERIALS RECOVERY

§328.7

§328.7. Definitions of Terms and Abbreviations.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Base year** - The year 1990 used as a reference for recycling credit limits and for determining the amount of waste reduced at the source.

(2) **Municipal sludge** - Any solid, semisolid, or liquid waste generated from a municipal wastewater treatment plant, water supply treatment plant, or any other such waste having similar characteristics and effect, exclusive of the treated effluent from a wastewater treatment plant.

(3) **Net tons of waste exported** - The difference between that portion of the municipal waste stream generated within specific geographic boundaries and exported for disposal and that portion which is generated outside the boundaries and imported for disposal during a specified time period.

(4) **Recycled product** - A product which conforms to the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials

Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA). The following is a list of the EPA guidelines:

(A) CPG I, as amended through May 1, 1995, at 60 Federal Register (FR) 21370;

(B) RMAN I, as amended through May 1, 1995, at 60 FR 21386;

(C) RMAN (update), as amended through May 29, 1996, at 61 FR 26985;

(D) CPG II, as amended through November 13, 1997, at 62 FR 60962;

(E) RMAN II, as amended through November 13, 1997, at 62 FR 60975;

(F) RMAN (update), as amended through June 8, 1998, at 63 FR 31214;

(G) CPG III, as amended through January 19, 2000, at 65 FR 3069;

(H) RMAN III, as amended through January 19, 2000, 65 FR 3082. For products for which no EPA guidelines exist, states may use guidelines from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist. The FTC guideline is found in Code of Federal Regulations, Title 16, Volume 1, Parts

0 to 999, Revised January 1, 1999. The ASTM guideline can be found in the 1999 Annual Book of ASTM Standards, Volumes 1-15.

(5) **Recycling rate** - That percentage of the municipal solid waste stream which is recovered or diverted for recycling.

(6) **Source-reduced waste** - A material or product, previously or typically entering the municipal solid waste stream, which has been prevented from entering that stream through source reduction.

(7) **Source reduction** - Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or packaging so that less material is used, voluntary or imposed behavioral changes in the use and reuse on site of materials or products, or increasing durability or reusability of materials or products.

(8) **Total municipal solid waste stream** - The sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(9) **Waste stream reduction rate** - That percentage of the municipal solid waste stream which is source-reduced or recovered or diverted for recycling.

