

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, and 328.155.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2714, passed by the 80th Legislature, 2007, requires the commission to help implement a computer-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. The TCEQ would be able to help implement the program more efficiently if rules were adopted. The legislation also states that any rules the commission does adopt must be adopted by May 1, 2008.

#### SECTION BY SECTION DISCUSSION

A stakeholder meeting was held on July 13, 2007. Since there was no draft rule before the stakeholder meeting, the proposed rules have been based directly on stakeholder input, including much of the proposed rules that are essentially unchanged language from the legislation. The proposed rules reflect stakeholder input made at the meeting and up until July 21, 2007. The commission's duties under HB 2714 will be incorporated into procedures.

##### *§328.131, Purpose*

Proposed new §328.131 explains the purpose of proposed new Subchapter I, Computer Equipment Recycling Program, which is to help establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment.

*§328.133, Applicability and Effective Date*

Proposed new §328.133 seeks to clarify the legislation in two ways. One, in proposed subsection (c) of this section, it adds a description of the persons to whom the subchapter would apply. Two, it makes clear in proposed subsection (e) which rules apply to computer recyclers. Also note, pursuant to HB 2714, the effective date of the enforcement provisions of §328.143(d) and (e) and of the penalty provisions of §328.153 and §328.155 is September 1, 2008, regardless of the effective date of the rest of this rule.

*§328.135, Definitions*

Proposed new §328.135 defines terms. The commission proposes to include three definitions in addition to those listed in HB 2714: for “computer,” “retailer,” and “tuner.” This is because the terms, “computer” and “retailer,” are used, but not defined, in HB 2714. The proposed definition of “computer” is from the dictionary. The commission proposes a definition of “retailer” based on stakeholder input. The term, “tuner,” is uncommon enough in everyday dialect that defining it would be helpful. Its proposed definition is from the dictionary. The commission also proposes to add two items to the legislation’s definition of “computer equipment:” a keyboard and a mouse. From the practical standpoint of discarding one’s “computer,” keyboards and mice are essentially synonymous with “computer.”

*§328.137, Manufacturer Responsibilities*

The commission proposes new §328.137 to list the responsibilities of manufacturers under the proposed subchapter. The proposed responsibilities are essentially unchanged from those listed in the legislation, with the exception of minor reorganization and a substitution for one term. The legislation uses the

phrase, “computer equipment that has reached the end of its useful life,” whereas the proposed rules, in §328.137(b)(1), incorporate the phrase, “used computer equipment.” This is because computer equipment that has reached the end of its useful life for one consumer may not have reached the end of its useful life for another. The proposed language is an effort to be consistent with the legislation’s intent. Due to the possibility of an Internet link changing, §328.137(b)(2) proposes that if a manufacturer’s Internet link to recovery information is going to change, the manufacturer notify the commission 30 days in advance of the change.

Proposed new §328.137(f)(1) requires a manufacturer to include, on its publicly available Internet site, a list of all of the manufacturer’s brands, both those in use and no longer in use. The legislation requires any rules required for implementation to be adopted by May 1, 2008. Proposed new §328.137(f)(2) requires manufacturers to submit recovery plans and notifications to the commission by July 1, 2008. That would give manufacturers two months to prepare their recovery plans. The commission is offering *Format for Computer Recycling Notification and Recovery Plan* (see figure) as an example format for an acceptable plan. Similarly, the commission would have from July 1, 2008, until September 1, 2008, to ensure that all recovery plans submitted were in accordance with proposed new §328.137(b). The commission’s understanding is that proposed new §328.137(b) comprises the minimum content that a recovery plan has to include. Thus, the commission requests all manufacturers who submit recovery plans to submit them in the example format. (The agency is exploring the use of its current electronic reporting systems to facilitate this requirement.) The commission prefers that any additional details not be in the recovery plan submitted to the TCEQ, but rather be available to the public and the commission through the required Internet link. Manufacturers should submit more detailed plans only if the commission requests that any further details be submitted as a separate attachment.

Figure: 30 TAC 328\_preamble

### **Format for Computer Recycling Notification and Recovery Plan**

Computer Recycling Notification and Recovery Plan  
for  
{Name of manufacturer }

{Street address (no PO Boxes)}  
{Mailing address}  
{Email address}  
{Phone number}

#### Notification

{Name of manufacturer} has {or “will have, starting on September 1, 2008”} a compliant collection program.

#### Recovery Plan

All of the following applies exclusively to computer equipment that has been:

- labeled with {name of manufacturer}'s brands, both those in use and no longer in use and
- purchased by an individual primarily for personal or home business use.

Consumers do not have to pay a separate fee at the time of recycling to recycle used computer equipment.

{Name of manufacturer} provides for the collection from a consumer of any used computer equipment.

{Name of manufacturer} provides for the recycling or reuse of used computer equipment.

Consumers can find out specifically how and where to return computer equipment at

{www.manufacturerlinktothisinformation.com, i.e. a direct link to the recycling information, not merely www.manufacturername.com). }

Proposed new §328.137(h)(2) includes a statement that would constitute the documentation verifying the collection, recycling, and reuse of computer equipment in a manner that complies with proposed new §328.149.

#### *§328.139, Retailer Responsibilities*

The proposed responsibilities are essentially unchanged from the retailer responsibilities listed in the legislation, except for minor reorganization. The legislation seems to make reference to two commission

lists that a manufacturer would have to be on before retailers could sell that manufacturer's computer equipment. One list is of computer manufacturers with recovery plans, while the other is a list of computer manufacturers that have notified the commission that they have compliant collection programs. The commission proposes to have one list: manufacturers that have recovery plans and have notified the commission that they have compliant collection programs.

*§328.141, Consumer Responsibilities*

The commission proposes the same consumer responsibilities as contained in the legislation, except the proposed section would replace the term, "computer equipment that has reached the end of its useful life," with the term, "used computer equipment." This is because computer equipment that has reached the end of its useful life for one consumer may not have reached the end of its useful life for another. The proposed language is an effort to be more consistent with the legislation's intent.

*§328.143, Enforcement*

Proposed new §328.143 would contain the enforcement provisions of the proposed subchapter, and follows the legislation's section on enforcement verbatim, except for section references that need to be specific to the proposed rule.

*§328.145, Financial and Proprietary Information*

Proposed new §328.145 follows the legislation's section on financial and proprietary information verbatim.

*§328.147, Liability*

Proposed new §328.147 follows the legislation's section on liability verbatim.

*§328.149, Sound Environmental Management*

The commission proposes new §328.149 with one minor difference from the legislation's section on sound environmental management. HB 2714 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 exercise the option to adopt the ISRI standards. In addition, the proposed section includes a provision whereby if the EPA adopts similar standards that were deemed to be an acceptable substitute by the TCEQ's executive director, those EPA standards would be automatically adopted and the ISRI standards would be automatically revoked, with no further rulemaking necessary.

*§328.151, Federal Preemption; Expiration*

Proposed new §328.151 follows the legislation's section on federal preemption and expiration verbatim.

*§328.153, Amount of Penalties*

The commission proposes new §328.153 to describe, in a slightly more detailed, specific fashion, the legislation's section on the amount of penalties (Section 2 of HB 2714, 80th Legislature, 2007).

*§328.155, Disposition of Penalty*

Proposed new §328.155 follows the legislation's section on disposition of penalty (Section 3) verbatim, except for section references that need to be specific to the proposed rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules would be in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would establish a program for the collection, recycling, and reuse of used computer equipment.

HB 2714, 80th Legislature, Regular Session, amended Texas Health and Safety Code, Chapter 361 to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment used by an individual primarily for personal or home-business use. The proposed rules would add a subchapter to Chapter 328, to establish the regulatory framework for such a program. The agency anticipates that it will expend greater effort during the first two years the proposed rules are implemented to educate the public, perform minimal review of required plans from manufacturers, and ensure compliance with program requirements among computer manufacturers and retailers. However, the agency anticipates using available resources to implement the proposed rules.

The proposed rules would require manufacturers to adopt and implement a recovery plan and affix a brand label to computer equipment. A manufacturer's plan must provide a consumer with a method of recycling used computer equipment at no cost to the consumer at the time of recycling. The manufacturer's collection program must be reasonably convenient for consumers to use. The proposed rules would provide several alternatives for meeting the convenience requirements of a recycling program and specify that the manufacturer's website must contain pertinent information for consumers regarding

the program. The flexibility of meeting the convenience requirements of the proposed rules will allow manufacturers to establish the most cost-effective means of meeting recycling requirements. Retailers selling computers would not be allowed to sell computer equipment made by any manufacturer that does not implement such a program.

The proposed rules may affect the public works departments, environmental departments, and solid waste services departments of local governments if manufacturers enlist their aid in implementing computer recovery programs. If local governments participate in these programs, the proposed rules are not anticipated to have a significant fiscal impact on them, since manufacturers will be responsible for the recycling programs. The proposed rules may benefit local governments that already have collection and recycling programs for used computer equipment since manufacturers will be tasked with this responsibility and provide relief or assistance to these local government efforts.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules would be in effect, the public benefit anticipated from the changes seen in the proposed rules would be greater protection of public health and safety because of increased collection and recycling of used computer equipment.

Staff estimates that there may be as many as 150 manufacturers and 3,000 retailers affected by the proposed rules. A portion of these manufacturers and retailers may be small businesses, and the fiscal impact of the proposed rules on these entities is discussed in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of this fiscal note.

The proposed rules would require manufacturers to establish comprehensive, convenient, and environmentally sound programs for the collection, recycling, and reuse of used computer equipment at no cost to the consumer at the time of recycling. The flexibility of the proposed rules should ensure that there not be any significant fiscal implications for individuals or large businesses that manufacture computer equipment. In addition, the reuse and recycling of used computer equipment is considered to be an economically viable activity, and recycling programs may pay for themselves because of the marketability of materials recovered during the recycling process.

Retailers selling computer equipment would be prohibited from selling computers made by manufacturers that did not comply with the recycling requirements of the proposed rules. The proposed rules would not be expected to have a significant fiscal impact on retailers since the majority of manufacturers are expected to comply with the requirements of the proposed rules.

#### **SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT**

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Staff estimates that there may be as many as 40 Texas small businesses that manufacture computer equipment and 2,300 small retail businesses selling computer equipment that may be affected by the proposed rules. The proposed rules would give flexibility to manufacturers in establishing such programs. This flexibility should ensure minimal fiscal impact to manufacturers and ensure that retailers have an ample supply of computer equipment to sell. In addition, computer recycling programs have been known to be economically viable enterprises and are not expected to increase costs for either manufacturers or retailers.

#### 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 proposed rules would not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

#### 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 would not adversely affect a local economy in a material way for the first five years that the proposed rules were 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 prevent lead and other wastes found in computer equipment from leaching into the state’s soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. 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. With the caveat that the collection of computer equipment must be reasonably convenient and available to the consumer, the proposed rulemaking affords 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 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(a) 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 computer equipment do not currently exist and Texas HB 2714, Section 4(a), 80th Legislature, 2007, authorizes the commission to adopt any rules required to implement the act. 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 Texas HB 2714, Section 4(a), 80th Legislature, 2007, which authorizes the commission to adopt any rules required to implement the act. Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination.

#### 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 the proposed rulemaking is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety, that is designed to significantly advance the health and safety purpose, and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13).

Nevertheless, the commission further evaluated these proposed rules and performed an assessment of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. These rules establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. Since computers and related display devices are not real property, the proposed regulations 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 regulations.

#### CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and determined that the proposed rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation

Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the proposed rulemaking action is not subject to the CMP.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 14, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, agency staff 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 Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

In addition to comments on the proposed sections, the TCEQ invites any other comments appropriate to the effective implementation of the program consistent with the statute. Written comments may be submitted to Kristin Smith, MC 205, Texas Register Team, 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.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-036-328-AS. Comments must be received no later than February 4,

2008. Copies of the proposed rule can be obtained from the commission's Web site at

*[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html)*. For further information, please contact G.

Michael Lindner, Small Business and Environmental Assistance, at (512) 239-3045.

**SUBCHAPTER I: COMPUTER EQUIPMENT RECYCLING PROGRAM**

**§§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145, 328.147, 328.149, 328.151, 328.153, and 328.155**

STATUTORY AUTHORITY

The new rules 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 rules 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 amended 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 THSC, Texas Solid Waste Disposal Act, §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, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th legislature, which authorizes the commission to help create a recycling program for used computer equipment.

The proposed amendments implement THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th legislature.

**§328.131. Purpose.**

(a) The purpose of this subchapter is to:

(1) help establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment; and

(2) establish requirements for persons that manufacture or sell new computer equipment.

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

**§328.133. Applicability and Effective Date.**

(a) The collection, recycling, and reuse provisions of this subchapter:

(1) apply exclusively to computer equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer in this state; and

(2) do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal digital assistant, or a telephone;

or

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement.

(c) This subchapter applies to persons, as defined in §328.135 of this title (relating to Definitions), that:

(1) manufacture computer equipment; or

(2) sell computer equipment; or

(3) purchase computer equipment primarily for personal or home business use.

(d) The effective date of the enforcement provisions of §328.143(d) or (e) of this title (relating to Enforcement) and of the penalty provisions of §328.153 of this title (relating to Amount of Penalties) and §328.155 of this title (relating to Disposition of Penalty) is September 1, 2008.

(e) Computer recycling facilities must be in compliance with:

(1) §330.11(e)(2) of this title (relating to Notification Required);

(2) §335.6 of this title (relating to Notification Requirements); and

(3) Subchapter A of this chapter (relating to Purpose and General Information).

**§328.135. 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) **Computer** -- A high-speed electronic device that processes, retrieves, and stores programmed information.

(3) **Computer equipment** -- A desktop or notebook computer, its accompanying keyboard and mouse, or a computer monitor or other display device that does not contain a tuner.

(4) **Consumer** -- An individual who uses computer equipment that is purchased primarily for personal or home business use.

(5) **Manufacturer** -- A person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured computer equipment without affixing a label with a brand;

(D) who manufactures or manufactured computer equipment to which the person affixes or affixed a label with a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States, unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(6) **Retailer** -- A person who owns or operates a business that sells new computer equipment, including sales through a sales outlet, the Internet, or a catalog, whether or not the seller has a physical presence in this state.

(7) **Television** -- Any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

(8) **Tuner** -- An electronic device or circuit used to select signals at a specific frequency for amplification and conversion to pictures or sound.

**§328.137. Manufacturer Responsibilities.**

(a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer shall:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand(s).

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any used computer equipment labeled with the manufacturer's brand(s); and

(2) recycling or reuse of computer equipment collected under paragraph (1) of this subsection, including information for the consumer on how and where to return the manufacturer's computer equipment. This information must include, at a minimum, an Internet link that consumers can access to find out specifically how and where to return the manufacturer's computer equipment. 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;

(c) The collection of computer equipment provided under the recovery plan must be:

(1) reasonably convenient and available to consumers in this state; and

(2) designed to meet the collection needs of consumers in this state.

(d) Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(e) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site, including a list of all of the manufacturer's brands both in use and no longer in use;

(2) shall provide to the commission a recovery plan in accordance with subsection (b) of this section and notification that the manufacturer has, or will have by September 1, 2008, a compliant collection program. In order to be eligible for the September 1, 2008 commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program, a manufacturer must submit its recovery plan and notification no later than July 1, 2008; and

(3) may include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(g) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Each manufacturer that has submitted a recovery plan shall submit an annual recycling report to the commission by January 31, 2010, or by January 31 of each year after submitting a recovery plan, that includes:

(1) the weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with §328.149 of this title (relating to Sound Environmental Management) and with §305.128 of this title (relating to Signatories to Reports), except that the

certification must state, “I, {name}, certify under penalty of law that all computer equipment collected by {company name} under 30 TAC Chapter 328, Subchapter I, has been recycled or reused in a manner that complies with federal, state, and local law and 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.”

(i) If more than one person is a manufacturer of a certain brand of computer equipment as defined by §328.135 of this title (relating to Definitions), any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(j) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extend to all computer equipment bearing that brand regardless of its date of manufacture.

**§328.139. Retailer Responsibilities.**

(a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's brand(s) and the manufacturer is included on the commission's list of manufacturers that have recovery plans and have notified the commission that they have a compliant collection program.

(b) Retailers can go to the commission's Internet site and view all manufacturers that are listed as having recovery plans and having notified the commission that they have a compliant collection program. Computer equipment from manufacturers on that list may be sold in or into the state of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

**§328.141. Consumer Responsibilities.**

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

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of used computer equipment by visiting the commission's and manufacturers' Internet sites.

**§328.143. Enforcement.**

(a) The commission may conduct audits and inspections to determine compliance with 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 any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) The attorney general may file suit under Texas Water Code, §7.032, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a manufacturer on the manufacturer's first violation of this subchapter. The manufacturer 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 computer equipment from a manufacturer that has not submitted the recovery plan required by §328.137 of this title (relating to Manufacturer Responsibilities) must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

**§328.145. 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.

**§328.147. Liability.**

(a) A manufacturer or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter.

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

**§328.149. Sound Environmental Management.**

(a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission adopts, as standards for recycling or reuse of computer equipment in this state, the standards in "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006. If at any time the EPA adopts standards for recycling or reuse of computer equipment that are determined by the executive director to be an acceptable substitute, by this rule the commission will have automatically adopted those standards and revoked the ISRI standards.

**§328.151. Federal Preemption; Expiration.**

(a) If federal law establishes a national program for the collection and recycling of computer 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.

**§328.153. Amount of Penalties.**

(a) The amount of the penalty assessed against a manufacturer that does not label its computer equipment or adopt and implement a recovery plan as required by §328.137 of this title (relating to Manufacturer Responsibilities), may not exceed \$10,000 for the second violation or \$25,000 for each subsequent violation.

(b) The amount of the penalty assessed against a recycling facility for a violation of Subchapter A of this chapter (regarding Purpose and General Information) shall be determined by enforcement protocols established for that subchapter.

(c) Except as provided by subsections (a) and (b) of this section, the amount of the penalty assessed against a manufacturer for any other violation of this subchapter may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation.

(d) The amount of the penalty assessed against a retailer for a violation of this subchapter may not exceed \$1,000 for the second violation or \$2,000 for each subsequent violation.

(e) A penalty under this section is in addition to any other penalty that may be assessed for a violation of this subchapter.

**§328.155. Disposition of Penalty.**

A penalty collected under §328.153(d) or (e) of this title (relating to Amount of Penalties) shall be paid to the commission and deposited to the credit of the waste management account.