

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

Background and Summary of the Factual Basis for the Proposed Rules

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

Section by Section Discussion

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

§328.161, Purpose

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

collection and recycling of television equipment.

§328.163, Applicability and Effective Dates

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

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

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

§328.165, Definitions

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

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

§328.167, Sales Prohibition

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

§328.169, Manufacturer's Labeling Requirement

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

§328.171, Manufacturer's Registration and Reporting

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

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

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

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

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

§328.173, Manufacturer's Recovery Plan and Related Responsibilities

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

§328.175, Manufacturer Recycling Leadership Program

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

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

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

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

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

§328.177, Recycling Leadership Program Collection Report

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

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

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

§328.179, Retailer Responsibilities

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

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

§328.181, Recycler Responsibilities

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

Proposed new §328.181(b)(5) clarifies the language of SB 329 by requiring recyclers to report to the commission by January 31 the total weight of covered television equipment "received, recycled, and disposed of" during the preceding "calendar year;" SB 329 requires the report to document the total weight of covered television equipment

"received and recycled" during the preceding "year" only. The addition of the word "calendar" will ensure that all recyclers report for the same time period. Requiring recyclers to report the amount of covered television equipment that was disposed of will help the commission ensure recycler compliance with this subchapter.

§328.183, Liability

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

§328.185, Commission Responsibilities

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

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

Proposed new §328.185(e) adds language to SB 329, stating that inclusion on the commission's Internet Web site list does not constitute a determination by the commission that a television manufacturer's actual practices are in compliance with this subchapter or other law.

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

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

references that are specific to the proposed rules.

§328.187, Enforcement

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

§328.189, Financial and Proprietary Information

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

§328.191, Consumer Responsibilities

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

§328.193, Management of Collected Television Equipment

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

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

TCEQ staff researched standards from other nationally recognized organizations, including the R2, RIOS, and e-Stewards standards. The RIOS standards were last revised in March of 2006, making them less current than the proposed April 2006 ISRI standards. Staff also determined that much of the R2 and e-Stewards standards fall

outside of the commission's jurisdiction. The commission could not require a recycler to attain certification from an entity if the commission does not have jurisdiction over all standards used for the certification.

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

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

§328.195, Federal Preemption; Expiration

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

Subchapter J as preemptive of Subchapter J.

§328.197, Amount of Penalties

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

Fiscal Note: Costs to State and Local Government

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

The proposed rulemaking would specify requirements for the new television equipment collection and recycling program. Even though the rulemaking would specify requirements for the implementation of the program, the proposed rules generally mirror requirements that already exist in statute. In order to implement SB 329, the TCEQ would be required to: 1) maintain a public Internet Web site and toll-free telephone number; 2) educate consumers; 3) provide information to counties and

municipalities regarding the collection and recycling of television equipment; 4) determine the annual state recycling rate of covered television equipment and provide registered television manufacturers with their annual market share allocation; 5) ensure that manufacturers, retailers, and recyclers are in compliance with the proposed rules and statutory requirements; 6) adopt standards for the recycling or reuse of covered television equipment; and 7) provide biennial reports on the program to the commission's legislative oversight committees.

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

The proposed rules require the commission to maintain a toll-free telephone number that provides consumers with information about television recycling opportunities in the state. The proposed rules also require the commission to publish on the Internet a list of television manufacturers whose recovery plans have been approved by the commission, who have certified that their public education programs are in full compliance with commission rules, and who are in compliance with the registration and fee requirements. Costs for the commission to maintain a toll-free telephone number and to maintain a public Internet Web site are not expected to be significant and would be

funded through the newly created Television Recycling Account. SB 329 established a new Television Recycling Account in the General Revenue Fund. This account would consist of an annual \$2,500 registration fee paid by television manufacturers that would be collected by the commission and deposited into the new account. Use of the funds in the new account is restricted by statute to the operation of a public Internet Web site and a toll-free telephone number. The registration fee would not be collected from manufacturers who choose to participate in an RLP.

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

Some local governments offer television equipment recycling as a service to their residents. Local governments may benefit from being able to set up partnerships with

manufacturers to collect television equipment and thus decrease the amount of collections by those local governments. Any costs savings are not expected to be significant.

Public Benefits and Costs

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

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

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

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

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

Each manufacturer of covered television equipment sold in Texas who does not participate in an RLP must submit to TCEQ a recovery plan to collect, reuse, and recycle covered television equipment. Each individual or group that submits a recovery plan must collect, reuse, and recycle the quantity of covered television equipment computed by TCEQ as the market share allocation. The television manufacturer may collect and

recycle its market share allocation through operation of its program individually or in partnership with other television manufacturers as long as the collection methods allow a consumer to recycle television equipment without paying a separate fee at the time of recycling. It is assumed there will be costs to develop and implement the recovery plan, but the commission is not able to determine what those costs would be for an individual manufacturer. It is further assumed that if it is more cost effective to participate in an RLP, the manufacturer would choose that option.

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

Fiscal implications for retailers of covered television equipment are not expected to be significant. Retailers include those who sell televisions in Texas, as well as Internet retailers. The rules would prohibit retailers from selling products from manufacturers who are not on TCEQ's list of registered manufacturers. The proposed rules require a person who is a retailer of covered television equipment to provide to consumers in

writing the information published by TCEQ regarding the legal disposition and recycling of television equipment. This information can be included with the sales receipt, as part of the packaging of the equipment, or through a toll-free telephone number and address of an Internet Web site provided to consumers. The proposed rules do not require a retailer to collect covered television equipment for recycling.

Some new costs for recyclers engaged in the business of recycling covered television equipment in the state may be anticipated, though in general they are not expected to be significant. The rules would require recyclers to register with the TCEQ, certify that they are in compliance with TCEQ standards, and certify that they recycle all accepted covered television equipment in accordance with TCEQ standards. Recyclers would also be required to maintain a written record of the weight of all covered television equipment received under the television equipment recycling program and the disposition of that equipment. Finally, the rules would require recyclers to annually report to the TCEQ the total weight of covered television equipment received and recycled under the television equipment recycling program within the preceding 12 months. Any additional costs would depend on what steps, if any, the recycler would have to take to come into compliance with these requirements.

Small Business and Micro-Business Assessment

Adverse fiscal implications may be anticipated for some small or micro-businesses under

the proposed rules, but these fiscal implications are not expected to be significant.

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

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

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the rules are proposed in

order to comply with the legislative requirements of the new television equipment recycling program created by SB 329.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

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

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

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

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

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

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

Takings Impact Assessment

The commission evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the proposed rulemaking does not constitute a taking. The specific

purpose of these proposed rules is to help establish a comprehensive, convenient, and economically sound program for the collection and recycling of television equipment. This rulemaking substantially advances that stated purpose by establishing specific requirements for the collection, reuse, and recycling of covered television equipment.

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

Consistency with the Coastal Management Program

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

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

this preamble.

Announcement of Hearing

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

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

Submittal of Comments

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference

Rule Project Number 2011-028-328-AD. The comment period closes December 19, 2011.

Copies of the proposed rulemaking can be obtained from the commission's Web site at

http://www.tceq.texas.gov/nav/rules/propose_adopt.html. For further information,

please contact Cynthia Carter, Pollution Prevention and Education Section, (512)

239-3143.

SUBCHAPTER J: TELEVISION EQUIPMENT RECYCLING PROGRAM

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

Statutory Authority

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

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

§328.161. Purpose.

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

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

§328.163. Applicability and Effective Dates.

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

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

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

(b) This subchapter does not apply to:

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

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

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

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

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

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

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

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§328.165. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§328.167. Sales Prohibition.

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

§328.169. Manufacturer's Labeling Requirement.

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

§328.171. Manufacturer's Registration and Reporting.

(a) General provisions.

(1) A television manufacturer of covered television equipment shall register with the agency, on authorized agency forms or electronic submission in accordance with

subsection (c) of this section, except as provided by §328.175 of this title (relating to Manufacturer Recycling Leadership Program). Initial registration is required by January 31, 2013.

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

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

(4) The registration or registration renewal must include:

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

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

(b) Changes or additional information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§328.175. Manufacturer Recycling Leadership Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§328.177. Recycling Leadership Program Collection Report.

(a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under §328.175 of this title (relating to Manufacturer Recycling Leadership

Program) shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

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

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

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

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

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

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

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

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the

recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

§328.179. Retailer Responsibilities.

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

(b) A retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may

provide the information required by this subsection through a toll-free telephone number and address of an Internet Web site provided to consumers.

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

§328.181. Recycler Responsibilities.

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

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

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

(A) All certifications shall be signed as follows:

(i) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this clause, a responsible corporate officer

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

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

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

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

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

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

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

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

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

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

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

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

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

§328.183. Liability.

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

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

§328.185. Commission Responsibilities.

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

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

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

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

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

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

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

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

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

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

the preceding year.

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

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

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

(j) Biennial Report to Legislature.

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

(2) The report must include:

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

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

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

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

§328.187. Enforcement.

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

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

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

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

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

§328.189. Financial and Proprietary Information.

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

§328.191. Consumer Responsibilities.

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

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

§328.193. Management of Collected Television Equipment.

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

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

(1) General requirements for recyclers.

(A) Following all efforts to refurbish or reuse covered television equipment, the remaining covered television equipment shall be manually dismantled

for reusable components or processed for recycling either in accordance with §328.4(b) of this title (relating to Limitations on Storage of Recyclable Materials) for those facilities subject to and not exempted from that section, or in accordance with the following conditions for those facilities exempt from or not subject to §328.4(b) of this title.

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

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

(B) Recyclers shall only dispose of covered television equipment that cannot be refurbished; reused; or, in accordance with Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), §330.11(e) of this title (relating

to Notification Required), and Subchapter A of this chapter (relating to Purpose and General Information), recycled.

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

(i) covered television equipment quantity and type;

(ii) packaging requirements; and

(iii) recycling methods and specifications.

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

(i) manifests;

(ii) bills of lading;

(iii) waste disposal records; and

(iv) records that document:

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

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

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

(i) lead;

(ii) mercury;

(iii) beryllium;

(iv) cadmium;

(v) batteries;

(vi) polychlorinated biphenyls; and

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

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

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

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

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

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

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

(ii) Every six months, the amount of material that is processed for recycling (as defined in §328.2 of this title), or transferred to a different site for recycling, equals at least 50% by weight or volume of the material accumulated at

the beginning of the six-month period. "Every six months" starts, for a new recycling facility, 180 days after opening; for an existing recycling facility, 180 days after the facility, under this subchapter, starts providing services to a manufacturer. In calculating the percentage of turnover, the percentage requirements shall be applied to each material of the same type.

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

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

§328.195. Federal Preemption; Expiration.

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

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

§328.197. Amount of Penalties.

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

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

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