

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §328.7, concerning Definitions of Terms and Abbreviations.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

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

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

The Texas Government Code, §2155.445, relating to purchasing by state agencies, was amended by Senate Bill (SB) 1127, 76th Legislature (1999) requiring GSC to publish rules to require state agencies to give preference to recycled, remanufactured, or other environmentally sensitive products. If proposed GSC rules are adopted, state agencies will be required to justify purchases of non-recycled,

non-remanufactured, or non-environmentally sensitive products to the GSC, and will have to document their purchase of recycled products in their annual financial reports. In accordance with the Texas Government Code, §2155.445, “recycled product” must be defined by rule. The Texas Health and Safety Code, §361.427 requires the commission, not GSC, to define “recycled product.” Hence the commission is proposing this rule as required by the Texas Health and Safety Code, §361.427.

Pursuant to SB 1127, which amended the Texas Government Code, §2155.445, the definition in the commission’s proposed rule will work in parallel with the GSC’s rules.

SECTION BY SECTION ANALYSIS

Section 328.7(4), concerning Definitions of Terms and Abbreviations, is proposed to be amended to add the definition of “recycled product.” A “recycled product” is proposed to be that which conforms to the minimum content requirements for recycled materials published by the Environmental Protection Agency (EPA) in its Comprehensive Procurement Guidelines (CPG) and Recovered Materials Advisory Notice (RMAN). For products for which no EPA guidelines exist, guidelines may be used from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist.

FISCAL NOTE

Mr. Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five years this proposed section is in effect, there will be no significant fiscal implications for state and

local government as a result of administering and enforcing this section. This rule would implement the provisions of the Texas Health and Safety Code, §361.427, which requires the commission to define “recycled product.” Thereby, the commission will assist the GSC with rules required under the Texas Government Code, §2155.445.

Specifically, this proposed rule will define “recycled product” which will allow the GSC to implement the SB 1127 requiring state agencies to give preference to recycled, remanufactured, or environmentally sensitive products. Ultimately, state agencies, under GSC’s rule, will be required to justify purchases of non-targeted recycled, remanufactured, or environmentally sensitive products to the GSC, and will have to document their purchase of recycled materials in their annual financial reports.

It is anticipated that there would be no fiscal implications to the state or units of local government to implement this proposed rule.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that, for the first five years this proposed rule is in compliance with GSC rules, if adopted, the anticipated public benefit will be a decrease in the demand for certain raw materials and increased purchase of recycled products by state government, and a potential decrease of waste materials disposed of in waste disposal facilities. It is also anticipated that this rule will impose no significant adverse economic affect on businesses.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

It is anticipated that this proposed rule will have no significant adverse economic effect on small businesses or micro-businesses as defined in the Texas Government Code. Small and micro-businesses will have the same opportunity to offer recycled products to state agencies as will larger businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking is not a major environmental rule because merely adopting this definition will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of this rule is to add the definition of "recycled product" to Chapter 328 concerning Waste Minimization and Recycling. "Recycled product" will be defined as a product which conforms to the minimum content requirements for recycled materials published by the EPA in its CPG and RMAN. For products for which no EPA guidelines exist, guidelines maybe used from the FTC or the ASTM for

those products for which FTC or ASTM guidelines exist. As such, the proposal is not directly related to the protection of the environment or human health because it facilitates the implementation of a state law that encourages recycled products to be purchased by state agencies.

This rulemaking does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the amendment will only add a definition of “recycled product” in order to encourage recycled products to be used by state agencies and will result in a potential decrease in waste deposited in waste disposal facilities.

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

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

This rule is proposed under a specific state law and not under the general powers of the commission.

The commission must create a rule to define “recycled product” under the authority of §361.427 of the Texas Health and Safety Code.

TAKINGS IMPACT ASSESSMENT

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

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

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

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is not subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), because this rule is neither identified in the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), nor in the commission’s rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. This rule will merely encourage recycling by adding the definition of “recycled product” and, thereby, assist the GSC in requiring state agencies to give preference in purchasing recycled products. Therefore, the proposed rule is not subject to the CMP. The commission seeks public comment on the consistency of the proposed rule with the CMP.

PUBLIC HEARING

A public hearing on this proposal will not be held unless one is requested.

SUBMITTAL OF COMMENTS

Written comments regarding this proposal and request for alternatives may be mailed to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. The fax must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. All comments should reference Rule Log Number 99032-328-WS. Comments must be received by 5:00 p.m., December 27, 1999. For further information or questions concerning this proposal, contact Wayne Lee of the Policy and Regulations Division, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6815.

STATUTORY AUTHORITY

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

The amended and section implements Texas Health and Safety Code, §361.427, concerning Specifications for Recycled Products.

SUBCHAPTER B : RECYCLING, REUSE, AND MATERIALS RECOVERY

§328.7

§328.7. Definitions of Terms and Abbreviations.

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

(1) - (3) (No change.)

(4) **Recycled product** - A product which conforms to the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA). The following is a list of the EPA guidelines:

(A) CPG I, 60 Federal Register (FR) 21370 (May 1, 1995)

(B) RMAN I, 60 FR 21386 (May 1, 1995)

(C) RMAN (update), 61 FR 26985 (May 29, 1996)

(D) CPG II, 62 FR 60962 (November 13, 1997)

(E) RMAN II, 62 FR 60975 (November 13, 1997)

(F) RMAN (update), 63 FR 31214 (June 8, 1998)

(G) CPG III (proposed), 63 FR 45558 (August 26, 1998)

(H) RMAN III (proposed), 63 FR 45580 (August 26, 1998). For products for which no EPA guidelines exist, guidelines should be used from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist. The FTC guideline is found in Code of Federal Regulations, Title 16, Volume 1, Parts 0 to 999, Revised January 1, 1999. The ASTM guideline can be found in the 1999 Annual Book of ASTM Standards, Volumes 1-15.

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

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

(7) [(6)] **Source reduction** - Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or packaging so that less

material is used, voluntary or imposed behavioral changes in the use and reuse on site of materials or products, or increasing durability or reusability of materials or products.

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

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