

SUBCHAPTER I: COMPUTER EQUIPMENT RECYCLING PROGRAM
§§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145,
328.147, 328.149, 328.151, 328.153, 328.155
Effective June 12, 2008

§328.131. Purpose.

(a) The purpose of this subchapter is to:

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

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

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

Adopted May 21, 2008

Effective June 12, 2008

§328.133. Applicability and Effective Date.

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

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

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

(b) This subchapter does not apply to:

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

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

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

(1) manufacturers;

(2) retailers;

(3) consumers; and

(4) recyclers.

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

(e) Facilities involved, under this subchapter or otherwise, in the collection of used computer equipment for recycling or the recycling of used computer equipment must be in compliance with the following as applicable:

- (1) §330.11(e)(2) of this title (relating to Notification Required);
- (2) §335.6 of this title (relating to Notification Requirements);
- (3) Subchapter A of this chapter (relating to Purpose and General Information); and
- (4) §328.149 of this title (relating to Sound Environmental Management).

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§328.135. Definitions.

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

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

(2) **Computer** -- A desktop computer or notebook computer.

(3) **Computer equipment** -- A desktop or notebook computer, including a computer monitor or other display device that does not contain a tuner. Computer equipment includes its accompanying keyboard and mouse if the keyboard and mouse are from the same manufacturer as the computer equipment.

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

(5) **Desktop computer** -- An electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions; not including an automated typewriter or typesetter. A desktop computer has a main unit that is intended to be located in a permanent location, often on a desk or on the floor. A desktop computer is not designed for portability and generally utilizes an external monitor, keyboard, and mouse.

(6) **Laptop (or notebook) computer** -- An electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions; not including a portable handheld calculator, or a portable digital assistant or similar specialized device. A notebook computer has an incorporated video display greater than four inches in size and can be carried as one unit by an individual. A notebook computer is sometimes referred to as laptop computer, or tablet computer.

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

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

(i) the person owns or owned; or

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

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

(i) the person owns or owned; or

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

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

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

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

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

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

(8) **Notebook computer** -- See laptop computer.00

(9) **Recycler** -- A person who owns or operates a collection and processing point for computer equipment purchased by a consumer and intended for recycling.

(10) **Recycling** -- See definition of "recycling" in §330.3 of this title (relating to Definitions).

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

(12) **Reuse** -- The use of a used product or part of a used product, which has been recovered or diverted from the solid waste stream, for its original intended purpose.

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

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

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§328.137. Manufacturer Responsibilities.

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

(1) adopt and implement a recovery plan; and

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

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

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

(2) recycling or reuse of computer equipment collected under paragraph (1) of this subsection, including information for the consumer on how and where to return the computer 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 computer 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

(3) collection of computer equipment that is:

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

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

(c) Examples of collection methods that alone or combined meet the convenience requirements of this section follow. These are merely examples, meaning that other collection methods not mentioned, alone or combined, may meet the convenience requirements of this section:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail, without the consumer having to pay any mailing, shipping, handling, or any other cost directly related to mailing;

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

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

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

(e) The manufacturer:

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

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

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

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

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

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

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with §328.149 of this title (relating to Sound Environmental Management) and with §305.128 of this title (relating to Signatories to Reports). The certification required by §305.128(c) of this title must also state either at the beginning or end, "I, {name}, certify under penalty of law that all computer equipment collected by {company name} under 30 TAC Chapter 328, Subchapter I, has been recycled or reused in a manner that complies with federal, state, and local law."

(h) If more than one person is a manufacturer of a certain brand of computer equipment as defined by §328.135 of this title (relating to Definitions), any of those persons may assume responsibility

for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

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

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§328.139. Retailer Responsibilities.

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

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

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter unless the retailer is also a manufacturer as defined by §328.135(7) of this title (relating to Definitions). This does not mean that a retailer who is also a manufacturer has to collect computer equipment at a retail outlet.

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§328.141. Consumer Responsibilities and Commission Responsibilities.

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

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

(c) The commission shall educate consumers regarding the collection, recycling, and reuse of computer equipment.

(d) The commission shall host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including best management practices and information about, and links to, information on:

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

(2) computer equipment collection events, collection sites, and community computer equipment recycling and reuse programs.

(e) The commission shall enforce this subchapter per §328.143 of this title (relating to Enforcement).

(f) The commission shall compile information from 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 year, starting in 2011.

(g) The following list does not constitute a determination by the commission that the manufacturer's collection program and actual practices are in compliance with this subchapter or other law. The commission shall maintain an online list of manufacturers that:

(1) have recovery plans that comply with §328.137(b) of this title (relating to Manufacturer Responsibilities); and

(2) have notified the commission that they have a compliant collection program.

(h) This subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

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§328.143. Enforcement.

(a) The commission may conduct audits and inspections to determine compliance with this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by subsections (d) and (e) of this section, take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

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

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

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by §328.137 of this title (relating to Manufacturer Responsibilities)

must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

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§328.145. Financial and Proprietary Information.

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

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§328.147. Liability.

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

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

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§328.149. Sound Environmental Management.

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

(b) The commission adopts, as standards for recycling or reuse of computer equipment 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), Inc., April 25, 2006. The remaining portions are voluntary unless required by other law. The adopted standards apply to computer equipment used by an individual primarily for personal or home business use and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility. If at any time the United States Environmental Protection Agency (EPA) adopts standards for recycling or reuse of computer 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 computer equipment, the remaining computer equipment shall be manually dismantled for re-useable 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 computer-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 computer equipment intended for recycling, recyclers shall maintain commercial contracts, or equivalent commercial arrangements, that shall include:

- (i) computer-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 computer 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 computer equipment (refurbished, reuseable, recyclable, or to be determined); and

(II) if the computer 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 computer equipment is sent and the condition of the computer equipment (refurbished, reuseable, 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 computer 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 computer 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 computer equipment designated for processing in a manner that minimizes the potential for releases of hazardous substances during storage and transportation.

(H) The computer-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 computer-equipment recycling facility.

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

(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.

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§328.151. Federal Preemption; Expiration.

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

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

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Effective June 12, 2008

§328.153. Amount of Penalties.

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

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

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

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

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

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§328.155. Disposition of Penalty.

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

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