

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, 328.197
Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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) **Collector**--A person who receives covered television equipment from consumers and arranges for the delivery of the covered television equipment to a recycler. A collector is prohibited from acting as a recycler unless registered as a recycler.

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

(4) **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.

(5) **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).

(6) **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 sorts television equipment prior to shipment for recycling.

(7) **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.

(8) **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.

(9) **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.

(10) **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.

Adopted March 28, 2012

Effective May 1, 2012

§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).

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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).

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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 or volume 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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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 §328.177 of this title (relating to Recycling Leadership Program Collection Report), 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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012

§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.

Adopted March 28, 2012

Effective May 1, 2012