

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

The commission adopts new §§328.131, 328.143, 328.145, 328.147, 328.151 and 328.155 *without changes* to the proposed text as published in the December 21, 2007 issue of the *Texas Register* (32 TexReg 9536); these sections will not be republished. The commission adopts new §§328.133, 328.135, 328.137, 329.139, 328.141, 328.149, and 328.153 *with changes* to the proposed text.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2714, passed by the 80th Legislature, 2007, requires the commission to help implement a computer-recycling program based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state. The legislation authorizes the commission to adopt rules to help implement the program. The TCEQ will be able to help implement the program more efficiently with the adopted rules.

A stakeholder meeting was held on July 13, 2007. Since there was no draft rule before the stakeholder meeting, the proposed rules were based on stakeholder input, including much of the proposed rules that were essentially unchanged language from the legislation. The adopted rules reflect stakeholder input received both before and during the official comment period. Much of the adopted rule remains verbatim from the legislation. Per comments received, the commission's duties under HB 2714, proposed to be incorporated into procedures, are in the adopted rule.

SECTION BY SECTION DISCUSSION

§328.131, Purpose

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

§328.133, Applicability and Effective Date

Adopted new §328.133 seeks to clarify the legislation in two ways. Subsection (c) describes the persons to whom the subchapter applies; the adopted rule has been changed to make these descriptions more succinct and to clarify that the subchapter also has applicability to computer-equipment recyclers. Subsection (e) clarifies which rules apply to facilities involved, under this subchapter or otherwise, in the collection of used computer equipment for recycling or the recycling of used computer equipment. Regarding this, the wording from the proposal has changed to clarify which facilities the cited rules apply to. Also, the phrase "as applicable" has been added to §328.133(e) to clarify that not all of the rules listed in that section apply to all facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment. Additionally, language has been added to that of the proposal to emphasize that facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment also must comply with, as applicable, §328.149. Also note, pursuant to HB 2714, the effective date of the enforcement provisions of §328.143(d) and (e) and of the penalty provisions of §328.153 and §328.155 is September 1, 2008, regardless of the effective date of the rest of this rule.

§328.135, Definitions

Adopted new §328.135 defines terms. The commission adopts definitions in addition to those listed in HB 2714: for "computer," "desktop computers," "laptop computers," "notebook computers," "recycler," "recycling," "retailer," "reuse," and "tuner." This is because the terms, "computer" and "retailer," are used, but not defined, in HB 2714. The adopted definition of "computer" is different from the proposed definition and based on stakeholder input. The commission adopts a definition of "retailer" based on a definition submitted by the Honorable Kirk Watson, Texas Senate, the sponsor of HB 2714; the definition is unchanged from proposal. The term, "tuner," is uncommon enough in everyday dialect that defining it should be helpful. Its adopted definition is from the dictionary and unchanged from proposal. From the practical standpoint of discarding a "computer," keyboards and mice are essentially synonymous with "computer"; thus, the commission also adopts the addition of two items to the legislation's definition of "computer equipment:" a keyboard and a mouse. This aspect of the definition of "computer equipment" is unchanged from proposal. The commission has added definitions to those that were proposed, for desktop computers, laptop computers, notebook computers, recycler, recycling, and reuse. The commission added five of those definitions in response to commenter input. The commission has also added a sixth definition, for "recycler," to define the persons (recyclers) to whom the mandatory standards apply. At the April 2, 2008 agenda meeting, the commission instructed the executive director to draft certain standards, as approved by the board of directors of the Institute of Scrap Recycling Industries (ISRI), Inc., April 25, 2006, as mandatory for computer-equipment recyclers under this subchapter. The commission has renumbered the definitions section as a result.

§328.137, Manufacturer Responsibilities

Adopted new §328.137 lists the responsibilities of manufacturers under the adopted subchapter. The responsibilities are essentially unchanged from those listed in the legislation, with the exception of minor

reorganization, some clarifications, and a substitution for one term. The legislation uses the phrase, "computer equipment that has reached the end of its useful life," whereas §328.137(b)(1), incorporates the phrase, "used computer equipment." This is because computer equipment that has reached the end of its useful life for one consumer may still be useful for another. The adopted language is an effort to be consistent with the legislation's intent. In §328.137(b)(2), the commission has changed the term, "manufacturer's computer equipment" to "computer equipment labeled with the manufacturer's brand(s)." Due to the possibility of an Internet link changing, §328.137(b)(2) stipulates that if a manufacturer's Internet link to recovery information is going to change, the manufacturer notify the commission 30 days in advance of the change. In the adopted rule, the commission has rearranged part of §328.137 by moving subsection (c) to new paragraph (b)(3). The requirements in the proposal called for Texas manufacturers to provide collection of computer equipment that was reasonably convenient and designed to meet the needs of Texas consumers. The rearrangement does not change this requirement. The rearrangement simply requires manufacturers, in addition, to state in their recovery plans their obligation to provide reasonably convenient collection of computer equipment designed to meet the needs of Texas consumers. The commission has renumbered the rest of the section as a result of the rearrangement.

Adopted new §328.137(f)(1) requires a manufacturer to include, on its publicly available Internet site, a list of all of the manufacturer's brands, both those in use and no longer in use. Adopted new §328.137(f)(2) requires manufacturers to submit recovery plans and notifications to the commission by July 1, 2008. This will give manufacturers two months to prepare their recovery plans. The commission is offering Format for Computer Recycling Notification and Recovery Plan (see Figure: 30 TAC 328_preamble) as an example format for an acceptable plan. The example format includes a statement that was not in the proposal preamble, a restatement of a manufacturer's obligation to provide reasonably

convenient collection of computer equipment designed to meet the needs of Texas consumers. The commission will have from July 1, 2008, until September 1, 2008, to ensure that all recovery plans submitted are in accordance with adopted new §328.137(b). The commission's understanding is that adopted new §328.137(b) comprises the minimum content that a recovery plan has to include. Thus, the commission requests all manufacturers who submit recovery plans to submit them in the example format. The agency is exploring the use of its current electronic reporting systems to facilitate this requirement. At a minimum, manufacturers will be able to download an electronic form to send in. The commission prefers that any additional details not be in the recovery plan submitted to the TCEQ, but rather be available to the public and the commission through the required Internet link. Manufacturers should submit more detailed plans only if the commission requests that any further details be submitted as a separate attachment.

Figure: 30 TAC 328_preamble

Format for Computer Recycling Notification and Recovery Plan

Computer Recycling Notification and Recovery Plan

for

{Name of manufacturer}

{Street address (no PO Boxes)}

{Mailing address}

{Email address}

{Phone number}

Notification

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

Recovery Plan

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

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

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

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

{Name of manufacturer} provides for the recycling or reuse of used computer equipment.
{Name of manufacturer} provides for the collection of computer equipment that is reasonably convenient and available to consumers in this state, and designed to meet the collection needs of consumers in this state.

Consumers can find out specifically how and where to return computer equipment at {www.manufacturerlinktothisinformation.com, i.e. a direct link to the recycling information, not merely www.manufacturername.com}. }

Per comments received, adopted new §328.137(c) expands the proposed language to make it more clear that the examples of collection methods listed are in fact, examples, and that there are other collection methods not listed that may meet the convenience requirements of the section. Per comments received, §328.137(c)(1) adds to the proposed language, stating that if a manufacturer offered a mail-back option, a consumer would not have to pay mailing, shipping, handling, or any other costs directly related to mailing at the time of recycling.

Per comments received, §328.137(d) has language in addition to what was proposed, making it explicit that local governments are other suitable operations.

Adopted new §328.137(g)(2) includes a certification statement that will constitute the documentation verifying the collection, recycling, and reuse of computer equipment in a manner that complies with adopted new §328.149. Per request of HB 2714's author, The Honorable Dennis Bonnen, Texas House of Representatives (Representative Bonnen), and another commentor, the language in §328.137(g)(2) has been simplified from the proposal.

§328.139, Retailer Responsibilities

The adopted responsibilities in §328.139 are essentially unchanged from the retailer responsibilities listed in the legislation, except for minor reorganization and clarification. The legislation makes reference to two commission lists that a manufacturer would have to be on before retailers could sell that manufacturer's computer equipment. One list is of computer manufacturers with recovery plans, while the other is a list of computer manufacturers that have notified the commission that they have compliant collection programs. To minimize the steps needed for compliance, the commission has combined the two lists into one list: manufacturers that have recovery plans and have notified the commission that they have compliant collection programs.

Also, in §328.139(c), the commission has clarified at adoption that this subsection means that a retailer that is also a manufacturer is required to collect its computer equipment, although not at its retail outlets.

§328.141, Consumer Responsibilities and Commission Responsibilities

Adopted §328.141 contains the same consumer responsibilities as contained in the legislation, except in the adoption the term, "computer equipment that has reached the end of its useful life," is replaced with the term, "used computer equipment." Computer equipment that has reached the end of its useful life for one consumer may still be useful for another. The adopted language is an effort to be more consistent with the legislation's intent. In response to comments from Representative Bonnen and other stakeholders, at adoption, new §328.141 also conglomerates the duties of the commission under HB 2714.

§328.143, Enforcement

Adopted new §328.143 contains the enforcement provisions of the adopted subchapter, and follows the legislation's section on enforcement verbatim, except for section citations that need to be specific to the adopted rule.

§328.145, Financial and Proprietary Information

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

§328.147, Liability

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

§328.149, Sound Environmental Management

The commission adopts new §328.149 with significant differences from the proposed rule. HB 2714 requires the commission to adopt either the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc. (ISRI), April 25, 2006, or other standards from a comparable nationally recognized organization. The commission is exercising its authority to adopt certain portions of the ISRI standards. At the April 2, 2008, commissioners' agenda, the commissioners directed staff to draft rule language mandating the ISRI standards, except for the portions of the standards relating to export and prison labor, and other portions more appropriately left voluntary. The executive director has done this. The commission has also added language to reiterate the applicability section of this subchapter. Specifically, the language highlights that the adopted ISRI standards: 1) apply only to computer equipment used primarily for home or home-

business purposes and returned to the manufacturer by a consumer; and 2) do not impose any obligation on an owner or operator of a solid waste facility.

In addition, the adopted section includes a provision whereby, if the United States Environmental Protection Agency (EPA) adopted similar standards that were deemed to be an acceptable substitute by the commission, the commission could by rule revoke the ISRI standards and adopt the EPA standards. HB 2714 does not require this provision; a stakeholder suggested, prior to proposal, including a provision whereby, if the TCEQ deemed any future EPA standards to be an acceptable substitute for the ISRI standards, the ISRI standards would be automatically revoked and the EPA standards would be automatically adopted by this rule, with no further rulemaking necessary. Stakeholders voiced support for this provision during the comment period. This provision was proposed with acceptance of the EPA standards at the discretion of the executive director, rather than the commission, but in the adoption the acceptance of the EPA standards has been changed to be at the discretion of the commission. Also, the automatic-adoption provision has been removed.

In order to harmonize the ISRI standards with the commission's action on a motion for continuance and the adopted rules, the commission has redacted the ISRI standards. The commission is not adopting the PURPOSE section of the ISRI standards since it identifies all ISRI standards as voluntary. Due to differing subject matter and conflicts between definitions found in adopted §328.135 and those found in the DEFINITIONS section of the ISRI standards, the commission is not adopting the DEFINITIONS section of the ISRI standards. The commission has removed any inapplicable terms and replaced them with terms that are consistent with HB 2714 and the subject matter of the adopted rules.

In adopted §328.149(b)(1)(A), relating to the manual dismantling or processing of computer equipment, the commission is not adopting the phrase "all practicable" found in Subsection (a) of the GENERAL REQUIREMENTS section of the ISRI standards due to the term's ambiguity and potential to cause confusion. Instead, the commission uses §328.4(b) to provide more concrete, enforceable provisions.

Adopted §328.149(b)(1)(B), relating to the disposal of computer equipment that cannot be refurbished, reused, or recycled, elaborates on Subsection (b) of the GENERAL REQUIREMENTS section of the ISRI standards by referencing preexisting commission rules that govern recycling. Adopted

§328.149(b)(1)(C), relating to commercial contracts for the transfer of computer equipment intended for recycling, adopts as mandatory, Subsection (c) of the GENERAL REQUIREMENTS section of the ISRI standards with changes to this part of the ISRI standards to mirror HB 2714 and this rule.

Adopted §328.149(b)(1)(D), relating to the retention of business records, adopts as mandatory Subsection (d) of the GENERAL REQUIREMENTS section of the ISRI standards, except it reduces the record-keeping aspect of the subsection from potentially requiring cradle-to-grave tracking by each recycler to requiring tracking by recyclers such that a cradle-to-grave path could be deduced if needed. Adopted

§328.149(b)(1)(E), relating to the maintenance of written work practices addressing specific media, adopts as mandatory Subsection (e) of the GENERAL REQUIREMENTS section of the ISRI standards, while excluding work practices addressing toner or inks. The commission is not adopting as mandatory Subsection (f) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to liability insurance, because of excessive potential impact on small businesses. The commission is not adopting as mandatory Subsection (g) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to

workers' compensation insurance, since participation in a workers' compensation program in Texas is voluntary for most employers.

Adopted §328.149(b)(1)(F), relating to storage and processing of computer equipment, adopts as mandatory Subsection (h) of the GENERAL REQUIREMENTS section of the ISRI standards, with changes to the standards' terms to mirror HB 2714. The commission is not adopting as mandatory Subsection (i) of the GENERAL REQUIREMENTS section of the ISRI standards, relating to Environmental, Health and Safety Management Systems. The commission has chosen to not require environmental management systems due to the potential financial impact on computer-equipment recyclers that are small businesses. The commission encourages recyclers to implement performance-driven environmental management systems. Adopted §328.149(b)(1)(G), relating to the packaging of computer equipment designated for reuse or processing, adopts as mandatory Subsection (j) of the GENERAL REQUIREMENTS section of the ISRI standards, with changes to the standard's terms to mirror HB 2714. The commission is not adopting as mandatory Subsection (k) of the GENERAL REQUIREMENTS section of the ISRI standards pursuant to the commission's April 2, 2008 action on a motion of continuance, which specifically excluded the adoption of mandatory provisions relating to the use of prison labor. Adopted §328.149(b)(1)(H), relating to closure and financial assurance requirements, substitutes the standards found in Subsection (l) of the GENERAL REQUIREMENTS section of the ISRI standards with preexisting commission rules.

In adopted §328.149(b)(2)(A), relating to the manual dismantling and processing of computer equipment for useable components and/or commodities, the commission is not adopting the phrase "all practicable" found in Subsection (a) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING

section of the ISRI standards due to the term's ambiguity and potential to cause confusion. Instead, the commission uses §328.4 of this title and §328.149(b)(1)(B) of this title, to provide more concrete, enforceable provisions. Adopted §328.149(b)(2)(B) adopts as mandatory Subsection (b) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards with one change to match terminology used in the standard with terms used in HB 2714. The commission is not adopting as mandatory Subsection (c) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards due to the fact that the regulation of worker safety at non-permitted private entities and the enforcement of Occupational Safety and Health Association (OSHA) standards are outside of the TCEQ's jurisdiction.

The commission is not adopting as mandatory Subsection (d) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards, relating to pollution liability insurance, because of the potential financial impact on computer-equipment recyclers that are small businesses. The commission is not adopting as mandatory Subsections (e) and (f) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards due to the fact that the regulation of worker safety at non-permitted private entities is outside of the TCEQ's jurisdiction. In adopted §328.149(b)(2)(C), relating to the management, recycling, and disposal of hazardous substances, the commission substitutes standards found in Subsection (g) of the MANUAL E-DISMANTLING AND MECHANICAL E-PROCESSING section of the ISRI standards with preexisting commission rules.

The commission is not adopting as mandatory any portion of the EXPORTS section of the ISRI standards pursuant to the commission's April 2, 2008 action which specifically excluded the adoption of mandatory provisions relating to foreign exports. The commission is not adopting as mandatory any portion of the

DATA SANITIZATION section of the ISRI standards due to the fact that it conflicts with §328.141 of the adopted rules, §328.147 of this title, and HB 2714.

§328.151, Federal Preemption; Expiration

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

§328.153, Amount of Penalties

The commission adopts new §328.153 to describe, in a slightly more detailed, specific fashion, HB 2714, §2, 80th Legislature, 2007, relating to the amount of penalties. The commission has made a nonsubstantive change from the proposal, in §328.153(e), substituting the phrase, "Texas Health and Safety Code, Chapter 361, Subchapter Y" for the phrase, "this subchapter." The commission has also made a change to the proposed language adding an indication that the amount of penalty assessed against a recycling facility for a violation of Subchapter I of Chapter 328 shall be determined by the enforcement protocols established for the subchapter.

§328.155, Disposition of Penalty

Adopted new §328.155 follows HB 2714, §3, 80th Legislature, 2007, relating to disposition of penalty verbatim, except for section references that need to be specific to the adopted rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government

Code, §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 adopted rules is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes.

Furthermore, the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety. With the caveat that the collection of computer equipment must be reasonably convenient and available to the consumer, the adopted rules afford manufacturers the opportunity to establish collection programs tailored to their individual needs. The flexibility of the adopted rules will allow manufacturers to develop the most cost-effective means of meeting the recycling requirements. This should prevent the adopted rules from adversely affecting the economy in a material way. The commission concludes that the adopted rules do not meet the definition of a major environmental rule.

In addition to the fact that the adopted rules do not meet the definition of a major environmental rule, it is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is

specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) was adopted solely under the general powers of the agency instead of under a specific state law.

First, applicable federal standards for the collection and recycling of computer equipment do not currently exist and HB 2714, §4(a), 80th Legislature, 2007, authorizes the commission to adopt any rules required to implement the act. Second, the adopted rules are in direct response to HB 2714 and do not exceed its requirements. Third, the adopted rules do 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 adopted rules will be adopted under the authority of HB 2714, §4(a), 80th Legislature, 2007, which authorizes the commission to adopt any rules required to implement the act. Therefore, the commission does not adopt the rule solely under the commission's general powers.

The commission invited public comment regarding the Regulatory Impact Analysis determination during the comment period. No comments were received, regarding the determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that the adopted rules do not constitute a taking. The specific purpose of the adopted rules is to prevent lead and other wastes found in computer equipment from leaching into the state's soil or groundwater and to protect citizens from the well-documented health effects resulting from exposure to those wastes. This rulemaking

substantially advances this stated purpose by establishing a computer equipment recycling program, thereby reducing the adverse impact on human health and the environment that results from the improper disposal of those materials.

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

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

Promulgation and enforcement of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. These rules establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of used computer equipment based on individual manufacturer responsibility and shared responsibility among consumers,

retailers, and the government of this state. Since computers and related display devices are not real property, the adopted regulations do not affect a landowner's right in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to real property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rules and determined that the adopted rules are neither identified in, nor will they affect, any action/authorization identified in Coastal Coordination Act Implementation Rules in 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP). Therefore, the adopted rules are not subject to the CMP.

PUBLIC COMMENT

The commission held a public hearing on this proposal on January 14, 2008, in Austin at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The public comment period closed on February 4, 2008.

Oral comments were received from DonateIT, LLC and nine representatives from the Texas Campaign for the Environment at the public hearing.

Written comments were received from: The Honorable Dennis Bonnen, Texas House of Representatives (Representative Bonnen), the author of HB 2714; The Honorable Kirk Watson, Texas Senate (Senator Watson), the sponsor of HB 2714; The Honorable Allen Vaught, Texas House of Representatives

(Representative Vaught); the Texas Campaign for the Environment (TCE); Dell, Inc. (Dell); Hewlett Packard, Inc. (HP); The Honorable Pat Evans, Mayor of Plano, Texas (Mayor Evans); The Honorable Elizabeth 'Liz' Sumter, Hays County Judge (Judge Sumter); The Honorable Bill Magers, Mayor of Sherman, Texas (Mayor Magers); José R. Rodríguez, El Paso County Attorney (Mr. Rodriguez); J. Herbert Burkman and Associates (Burkman and Associates); the Law Offices of John B. Polk, P.C. (Polk); The Honorable Samuel T. Biscoe, Travis County Judge (Judge Biscoe); The Honorable Ron Davis, Travis County Precinct One Commissioner (Commissioner Davis); The Honorable Sarah Eckhardt, Travis County Precinct Two Commissioner (Commissioner Eckhardt); The Honorable Gerald Daugherty, Travis County Precinct Three Commissioner (Commissioner Daugherty); The Honorable Margaret Gómez, Travis Texas County Precinct Four Commissioner (Commissioner Gómez); DonateIT, LLC; the American Electronics Association (AEA); The Honorable Steve Swan, Mayor of Lakeway (Mayor Swan); Waste Management Recycle America; Citizens Against Montgomery Landfill; Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association; Mount Hutto Aware Citizens; Highway 359 Coalition; Luella Neighborhood Association; Citizens Against Ruffino Hills Transfer Station; Greater Fondren Southwest Super Neighborhood 36; Two Bush Community Action Group; Concerned Landfill Neighbors; Indian Creek Homeowners Association Landfill Committee; Sustainable Energy and Economic Development Coalition; Environmental Defense Texas Office; CLEAN Houston; the City of Houston; the Information Technology Industry Council (ITIC); The Honorable Linda L. Koop, Councilwoman, City of Dallas (Councilwoman Koop).

In addition, over 3,500 individuals provided both general and specific comments on the proposed rules.

RESPONSE TO COMMENTS

Many individuals made general comments encouraging environmental protection as a policy of the commission.

The commission agrees with these comments. However, the comments do not ask for any specific changes to the rule. No changes have been made in response to these comments.

Many individuals made comments that were not directly related to the rulemaking. Several examples follow. One individual urged the commission to make HB 2714 the standard for all states. Several individuals asked the commission to improve their local recycling options (for all recyclables, not just computer equipment). Several individuals asked the commission to "tell TV makers to help safely dispose of their products." Several individuals asked the commission to make the disposal of computers and televisions illegal. Several individuals expressed their wish for manufacturers to take a proactive stand on how their products are being recycled. Several individuals said the United States (U.S.) should ratify the Basel Convention and the Basel Ban amendment. Several individuals asked that the U.S. immediately comply with the 1986 Organization for Economic Co-operation and Development Council Decision.

The commission appreciates these comments, but they are beyond the scope of the rulemaking. No changes have been made in response to these comments.

Many individuals who submitted comments asked the commission to change or amend HB 2714 in one way or another.

The commission appreciates these comments, however, the commission does not have the authority to change or amend legislation. Nonetheless, the commission has responded to substantive comments asking for changes to HB 2714 in subsequent response to comments, to accommodate for the possibility that some individuals are not aware of the commission's inability to amend legislation or that they meant to refer to the rules instead of the legislation. The commission has treated requests for changes to the legislation as if they were requests for changes to the proposed rules.

The 3,500-plus individuals who sent in an identical form letter and Representative Vaught urged the commission "not to weaken the strong e-waste recycling standards set by HB 2714." Several individuals specifically asked the commission to strengthen the standards set by HB 2714.

The commission agrees with this comment. The commission has not weakened the standards set by HB 2714. The rules both adhere strictly to HB 2714's standards and, in some parts, strengthen the standards, e.g., by adding mice and keyboards made by the same manufacturer as the rest of the computer to the definition of computer equipment. The commission would like to point out that it prefers the use of the term "used electronics" to the term "e-waste." High percentages of used electronics are reusable and recyclable, and thus not waste unless disposed of in a landfill or abandoned. No changes have been made in response to this comment.

The 3,500-plus individuals who sent in the form letter and Representative Vaught asked the commission to "uphold the definitions outlining the types of electronics covered by the bill."

The commission agrees with this comment. In addition to upholding the definitions outlining the types of electronics covered by the bill, the commission has expanded the definition of computer equipment to include certain mice and keyboards. The commission has not made any changes in response to this comment.

The 3,500-plus individuals who sent in the form letter and Representative Vaught commented that "{d}isplay devices without a TV tuner are covered under the law, so producers should be responsible." Similarly, Mr. Rodríguez, Mr. Polk, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Texas Commissioner Daugherty, Commissioner Gómez, Judge Sumter, and over a dozen individuals urged the commission to include high definition televisions (HDTVs) in the definition of computer equipment because they understood that HDTVs were included under the definition in HB 2714 under the phrase "other display device that does not contain a tuner." As Judge Sumter expressed it, ". . . any 'display device that does not contain a tuner' is covered even if used like a television. Some new HDTV display devices do not meet the definition of a television; this equipment is therefore covered." Mayor Magers, Mayor Evans, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, two individuals, and DonateIT, LLC commented that "upholding the definitions of electronics covered by the bill ensures that the 'display devices without a tuner' will be recycled responsibly."

The commission respectfully disagrees with these comments. All display devices without a television tuner are not covered under the law. HB 2714's definition of computer equipment intends to cover other display devices that do not contain a tuner only if those display devices are used as part of a desktop or laptop computer. HDTVs and other display devices that are not used as part of a desktop or laptop computer are not covered under the law and are not covered under the adopted rule. The commission has changed the definition of "computer equipment" in §328.135(3) to clarify this applicability.

Representative Bonnen commented that the "... agency should not spend time and energy to review and approve/disapprove every recovery plan. Instead, the agency should focus its efforts on education and enforcement. The place for details about a manufacturer's recovery program is on the manufacturer's public Web site, not in the recovery plan itself." Dell made a comment to the same effect.

The commission agrees with these comments. The TCEQ will focus its efforts on education, compliance, and enforcement. The commission, before it puts a manufacturer on its Internet list of manufacturers with recovery plans, will ensure that a recovery plan is in accordance with the law. In the proposed rule, the place for details about a manufacturer's recovery program was on the manufacturer's public Web site, not in the recovery plan itself; in this regard, the adopted rule is the same. No changes have been made in response to this comment.

The 3,500-plus individuals who sent the form letter and Representative Vaught commented that the "{r}ules should require compliant recycling plans and reject those that do not provide convenient, responsible recycling for Texas consumers." Similarly, Mayor Evans, Mayor Magers, and Councilwoman

Koop commented that the TCEQ must determine whether recovery plans will provide convenient recycling for residents of Texas.

The commission agrees that the rules should require compliant "recycling" plans (called "recovery" plans in HB 2714 and the adopted rule). The commission has made no change in response to that part of the comment. HB 2714 does not require recovery plans to be convenient; Texas Health and Safety Code (THSC), §361.955(c) requires that the collection of computer equipment be reasonably convenient. Therefore, the commission respectfully disagrees that the rules should require the commission to reject recovery plans that do not provide convenient recycling for Texas consumers. Requirements for recovery plans are located in THSC, §361.955(b) and (f), where there is no mention of "reasonably convenient." Nonetheless, the commission agrees that the rules can require plans in which manufacturers restate their statutory obligation to provide convenient, responsible collection of computer equipment for Texas consumers. Section 328.137 has been changed to require recovery plans to include a provision for convenient, responsible collection of computer equipment for Texans.

Mr. Rodríguez and Judge Sumter commented that "exporting toxic e-waste does not violate U.S. laws, but it does violate the laws of many of the importing countries" The TCE, Mr. Rodríguez, the City of Houston, and Judge Sumter suggested that the TCEQ adopt a provision such as "A {recycler} must comply with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of {covered equipment}." Similarly, Mr. Rodríguez and Judge Sumter also commented that TCEQ rules should require "documentation that the laws of importing countries are followed." The 3,500-

plus individuals who sent in the form letter also commented that rules should require that the producer recycling programs do not violate the laws of importing countries.

While the commission is aware that certain foreign countries have limits on the importation of scrap electronics, the commission respectfully disagrees with incorporating the suggested language. Recyclers are required to comply with federal, state, and local law regardless of whether they operate within this subchapter. The commission agrees that all exporters of used electronics must abide by the laws of importing countries. The commission does not agree that TCEQ rules are the proper place to address this. Upon exporting used electronics, Texan and U.S. electronics recyclers must comply with the laws of the importing countries, regardless of whether the TCEQ rules restate this requirement. It would not be appropriate for the TCEQ rules to address this issue, because the TCEQ does not have the ability to enforce the laws of importing countries. If the TCEQ required documentation that the laws of importing countries be followed, the commission would not have the means to determine whether those laws were followed. No changes have been made in response to this comment.

Mr. Rodríguez and Judge Sumter commented that the ISRI standards preclude the use of prison labor and that the Texas rules should as well. Similarly, Burkman and Associates commented that the rules should not allow prison labor unless that labor is reasonably compensated with some wages set aside for use after release. DonateIT, LLC and Waste Management Recycle America commented that the rules should ban prison labor. The 3,500-plus individuals who sent in the form letter also commented that rules should require that the producer recycling programs do not use prison labor.

The commission respectfully disagrees with these comments. HB 2714 does not prohibit prison labor and the commission's action on a motion for continuance at their April 2, 2008 agenda meeting precluded making any portions of the ISRI standards relating to prison labor mandatory. No changes have been made in response to this comment.

Several individuals commented that they supported the use of prison labor in computer-equipment recycling programs. One individual suggested making prisoners available to staff call centers for electronics recycling companies.

Just as the commission understands (per the preceding response) that HB 2714 does not authorize the TCEQ to ban prison labor in computer-equipment recycling programs, neither does HB 2714 authorize the commission to support or require the use of prison labor in such programs. No changes have been made in response to this comment.

Representative Bonnen commented that he agrees that there should be no exemption for small businesses in the definition of "manufacturer," and that all manufacturers should offer consumers recycling programs. Senator Watson and Dell made comments with the same meaning.

The commission agrees with these comments. No such exemption exists in the rules. No changes have been made in response to this comment.

The TCE, Mr. Rodríguez, Mr. Polk, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Judge Sumter, Dell, DonateIT LLC, Mayor Evans,

Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and over a dozen individuals commented in favor of the inclusion in the rule proposal of mice and keyboards in the definition of computer equipment.

The commission agrees with this comment. The commission has not made any changes in response to the comment.

HP commented that they presume the commission, in proposed §328.133(e), is referring to: a) locations within Texas that; b) perform physical reuse or recycling activities (testing for reuse, disassembly for recovery of materials, etc.) for computer equipment that is subject to HB 2714; and that the commission may wish to define "computer recycling facilities" to make this clear.

The commission respectfully disagrees with the presumption. For example, a computer manufacturer that was not physically involved in the collection or recycling of computers would still have to be in compliance with 30 TAC §335.6, even if it were merely sending its off specification computers to a recycler. In order to clarify this point, language in §328.133(e) has been changed from "Computer recycling facilities must be in compliance with: . . ." to "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: . . ."

Dell suggested adding language to §328.133(e) clarifying that computer recycling facilities must be in compliance with §328.149.

The commission appreciates and agrees in part with this comment. Certain computer-equipment recyclers do have to be in compliance with §328.149. Section 328.133 addresses facilities involved in the collection of used computer equipment for recycling or the recycling of used computer equipment; the commission has added language to §328.133 specifying that those facilities, as applicable, must be in compliance with §328.149.

HP commented that significant questions and possible complications arise due to the addition of mice and keyboards to the definition of "computer equipment." HP raised the question of whether manufacturers who do not manufacture computers but do manufacture keyboards and mice are subject to HB 2714. HP also asked whether a computer manufacturer would have to take back any manufacturer's keyboard and mouse if they accompany the return of the computer manufacturer's computer. HP additionally wondered whether a manufacturer would have to take back a keyboard and mouse even if it is not accompanying a computer.

The commission agrees that additional language would help to avoid possible complications and has changed definition of "computer equipment" in §328.135(3) to this effect. Manufacturers who do not manufacture computers but do manufacture keyboards and mice are not subject to HB 2714,

nor to the adopted rules. A computer manufacturer may, but is not required to, take back any other manufacturer's keyboard and mouse, even if they accompany the return of the computer manufacturer's desktop computer, monitor, or laptop. A computer manufacturer will have to take back their own brand's or brands' keyboard and mouse accompanying the return of the computer manufacturer's desktop computer, monitor, or laptop. A computer manufacturer may, but are not required to, take back their own brand's or brands' keyboard or mouse, unless they accompany that computer manufacturer's desktop computer, monitor, or laptop.

The TCE recommended requiring that with each computer returned manufacturers accept at a minimum one keyboard and mouse, of any brand.

The commission respectfully disagrees with this suggestion. As explained in the response to the previous comment about this, a manufacturer will be required to accept with each desktop computer, laptop computer, or monitor one keyboard and mouse of the manufacturer's own brand(s). No changes have been made in response to this comment.

The TCE also recommended that manufacturers be required to accept any returned keyboard or mouse of their brand from any Texas citizen.

The commission respectfully disagrees with this comment. A manufacturer will only be required to collect keyboards and mice of its own brand(s) that accompany a desktop computer, laptop computer, or monitor of that manufacturer's brand(s). No changes have been made in response to this comment.

Dell and AEA suggested adding two definitions, one for "desktop computer" and one for "laptop computer," or "notebook computer."

The commission agrees with these suggestions and has added these definitions verbatim as suggested by the commenters to the adopted rule, except that the definition for "notebook computer" includes one more synonym than the AEA suggested. The synonym "tablet computer" is in Dell's suggested definition of "notebook computer" but is not included in the AEA's definition.

ITIC also suggested adding definitions for "desktop computer" and "notebook computer." Additionally, ITIC suggested defining a "computer" as a desktop or notebook computer.

The commission agrees with the latter suggestion and has changed the definition of "computer" accordingly. Although the definitions offered by ITIC contained all of the text of the definitions suggested by Dell and the AEA, the definitions also contained extensive specifics that the commission thinks are more technologically detailed than necessary for these rules. The commission has not integrated into the rule in their entirety the definitions suggested by ITIC.

Dell suggested adding definitions for "recycling" and "reuse" of computer equipment, and suggested specific language compiled from other states' programs.

The commission appreciates this comment and in response has added, in the definitions section of the rule, a reference to the already existing definition of "recycling" in 30 TAC Chapter 330. Also,

the commission has added a definition of "reuse." However, the definitions are of "recycling" and "reuse" in general, not definitions of the recycling and reuse of computer equipment in particular. The commission wants to be consistent with the already existing definition of recycling, and the meaning of reuse is not exclusive to computer reuse.

Dell commented that the proposed definition of "retailer" should be further narrowed to apply solely to direct, non-wholesale sales, and suggested a specific addition to the definition of "retailer."

The commission appreciates this comment. However, Senator Watson, the sponsor of the bill, suggested the definition of retailer that was in the proposed rule, and so the proposed definition would seem to best reflect the intent of HB 2714. No changes have been made in response to these comments.

Dell commented that although the definition of "television" follows HB 2714's language, televisions "receive," but do not and cannot, "broadcast."

The commission agrees with this comment and has changed the definition of "television" accordingly.

Dell commented that the definition of "tuner" is appropriate.

The commission agrees with this comment and has left the definition of "tuner" unchanged in response.

Dell commented that they are in agreement with the commission's use of the phrase, "used computer equipment," instead of "computer equipment that has reached the end of its useful life."

The commission appreciates this comment and has made no changes in response.

Dell suggested that, in §328.137(b)(2), the commission replace the term, "manufacturer's computer equipment," with the term, "computer equipment labeled with the manufacturer's brand(s)."

The commission agrees with this suggestion and has changed the adopted rule accordingly.

HP commented that §328.139(c) should be revised to make clear that it does not mean that a retailer that is also a manufacturer is not required to collect its computer equipment.

The commission agrees with this comment and has added language to §328.139(c) to this effect. The commission has also clarified that a retailer that is also a manufacturer is not required to collect its computer equipment at its retail outlets.

The TCE, Mayor Evans, Mr. Rodríguez, Judge Sumter, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Mayor Swan, Mayor Magers, DonateIT, LLC, the City of Houston, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer

Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that the rules should include an approval process for recycling plans. The TCE commented that a specific timeline for this approval process should be included in the rule-making. Dell commented that they agree that the proposed rule accurately reflects the legislature's intent that the TCEQ does not have the authority to approve or deny a recovery plan. The City of Houston echoed this sentiment by commenting that ". . . these manufacturer-created plans are not subject to any sort of approval process . . ."

The commission respectfully disagrees with these comments. The adopted rules include an approval process for "recycling" plans (called "recovery" plans in HB 2714 and the adopted rules) implicitly. The TCEQ is required to post an online list of manufacturers with recovery plans. The TCEQ does effectively have the authority to approve or deny a recovery plan. The TCEQ will have to assess whether recovery plans are in accordance with the law to carry out the TCEQ's duty to post an online list of manufacturers with recovery plans. The TCEQ will put on that list only manufacturers whose recovery plans the TCEQ has ensured are in accordance with the law. HB 2714 does not require the commission to have a timeline for any approval process. No changes have been made in response to these comments.

The TCE commented that they think it is imperative that rules ". . . contain minimum standards for commission approval of manufacturers' recovery plans. . ." and that ". . . mere submission of a recovery plan does not constitute a determination by the commission that the manufacturer's recovery plan or

actual practices are in compliance with this rule or other law. {TCE} believe{s} that the statute does require the commission to make this determination and that the rules should reflect it."

The commission agrees in part with these comments. The rules do contain minimum standards for a recovery plan to be acceptable for the commission's Web list of manufacturers with recovery plans. The commission agrees that the mere submission of a recovery plan does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this rule or other law. However, in determining whether a manufacturer's plan is in accordance with the rules, the TCEQ respectfully disagrees that the manufacturer's practices must be evaluated against these rules or other law. HB 2714 does not require this and thus neither do the adopted rules. No changes have been made in response to these comments.

Similarly, Mr. Rodríguez and Judge Sumter commented that "the bill . . . stipulates that the TCEQ determine whether {the recovery} plans are in compliance with the law," because of the following provision:

"Information . . . on a manufacturer's publicly available Internet site does not constitute a determination by the commission that a manufacturer's recovery plan or actual practices are in compliance."

The commission respectfully disagrees with this comment. This language means that a manufacturer's listing recycling information on its Web site does not equate to the TCEQ having determined that the manufacturer's plan or actions are in accordance with the law. As previously explained, THSC, §361.956(a), requires the TCEQ to post a list of manufacturers with recovery plans. The TCEQ will not put a manufacturer on that list without ensuring that the manufacturer's recovery plan is in accordance with the law. The adopted rule includes language in §328.137(b)

requiring that recovery plans include what the bill requires them to include. No changes have been made in response to this comment.

Dell commented that they appreciate the TCEQ proposing a simple and informative format for manufacturers to use for sending the TCEQ their recovery plans and notifying the TCEQ of their compliant collection programs.

The TCEQ appreciates this comment and has made no changes in response.

Dell suggested adding language to §328.137(g) stating that listing by the TCEQ of a manufacturer's recovery plan (or a link to that plan) does not constitute compliance by the manufacturer.

The commission agrees with this comment and has added language to this effect in §328.141(g) instead of in the section suggested by Dell.

The TCE suggested having manufacturers include in their recovery plans a specific baseline amount of computer equipment recovered, by weight in tons, in a given, recent year no earlier than the year 2000.

The TCEQ respectfully disagrees with this suggestion. HB 2714 does not require manufacturers to include in their recovery plans, as a baseline, tons of computer equipment recovered.

Manufacturers will be required to include the weight of computer equipment collected, recycled, and reused in the annual reports required by HB 2714 and the adopted rules. No changes have been made in response to these comments.

Representative Bonnen commented that ". . . the rule should not prescribe details about how manufacturers are to collect and recover computers, when and where collection events should be held, etc." Dell made a comment with the same meaning. Senator Watson commented that "As an author and sponsor of this legislation, it was my goal to create a flexible statutory framework that would encourage creativity and innovation for the computer recycling industry. It is not my intent to restrict how manufacturers go about recycling their equipment. I believe the industry will have good ideas on how to do this in the most efficient, least costly manner - while still achieving the intent of the legislation. I would encourage the agency to adopt rules accordingly."

The commission agrees with these comments. The rules do not prescribe such details or restrictions.

No changes have been made in response to these comments.

Dell suggested language to make it explicit that the list of examples of collection methods that alone or combined meet the convenience requirements of §328.137 is not an exclusive list.

The commission appreciates this comment. In the proposed language, the commission understood that it was implicit that the list was not exclusive because it was introduced by the phrase, "Examples of collection methods that alone or combined meet the convenience requirements of this section include:." To clarify the non-exclusive nature of this list, language has been added in §328.137(c) to that effect.

Dell suggested that the commission develop and issue guidance, by June 1, 2008, on appropriately convenient collection methods, and that the commission promote the guidance through manufacturer and consumer education and apply the guidance in determining manufacturer compliance with the subchapter.

The commission appreciates these suggestions. However, guidance does not have the force of rule. If the commission wrote guidance on convenience, the commission could not apply the guidance in determining manufacturer compliance with the subchapter. The author of HB 2714, Representative Bonnen, has requested, in written comments that specifics on convenience not be included in the rule and that "{w}ith a few years of collection data in hand, we can see how successful we have been and make changes, if necessary." The commission will consider placing links on its Web site to how other states have defined convenient collection of computer equipment to provide examples of how a computer manufacturer might meet the convenience requirements of the rules. No changes have been made in response to this comment.

Mr. Rodríguez, DonateIT LLC, Mayor Evans, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, an individual, and Judge Sumter commented that the bill requires producers to submit a recovery plan to the TCEQ that provides "reasonably convenient" recycling. Mayor Evans, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County,

Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals commented, regarding the recovery plans, that "there must be criteria by which to judge convenience and staff time allocated to see if the plans and programs measure up to that standard." The TCE and an individual commented that requirements that the recycling plan be convenient and free should be enforced during the approval process.

The commission respectfully disagrees with these comments. HB 2714 requires collection of computer equipment to be convenient, not recovery plans. HB 2714 does not require plans to cover or provide reasonably convenient recycling or to have criteria by which to judge convenience. Additionally, implementing such criteria would be possibly constraining, since the only statutory standards for convenience are offered as examples of methods that would meet the convenience requirements of the statute. This leaves open many other ways to meet the convenience requirements of the statute. The flexibility of meeting the convenience requirements of the rules will allow manufacturers to establish the most cost-effective means of meeting recycling requirements. No changes have been made in response to this comment.

The TCE suggested the recovery plans include some additional things, such as manufacturer goals for how much computer equipment they plan to collect and how they are meeting them on a year-to-year basis.

The commission respectfully disagrees with these suggestions. HB 2714 does not grant the commission the authority to require manufacturers to include these things in the recovery plans. No changes have been made in response to these suggestions.

The TCE, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, and Judge Sumter commented that the TCEQ rules should be changed to ensure recycling programs are actually convenient for consumers in Texas.

The commission respectfully disagrees with this comment. The adopted rules require that collection of computer equipment be convenient for consumers in Texas. Under HB 2714 and the adopted rules, ensuring that the collection of computer equipment actually is convenient for consumers will be a matter of enforcement by the commission and attorney general. The commission is authorized under HB 2714 and the adopted rules to conduct audits and inspections to determine compliance with this subchapter and to levy penalties for noncompliance. Consumers and consumer groups will be able to file complaints with the TCEQ's regional offices if they judge the collection of computer equipment to not actually be convenient. No changes have been made in response to this comment.

Mayor Evans, the City of Houston, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill

Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that the approval process for recovery plans must or should "guarantee that the goals of the law are met."

The commission respectfully disagrees with this comment. What HB 2714 requires recovery plans to cover is minimal compared with what it requires overall. The rest of the requirements in the law, combined with the approval process for recovery plans, will help ensure the goals of the law are met. No changes have been made in response to this comment.

The TCE, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, and Judge Sumter commented ". . . the proposed rules allow the manufacturers simply to declare that their recycling {i.e. recovery} plans are compliant."

The commission respectfully disagrees with this comment. The adopted rules require that, in order to sell computers in Texas, a manufacturer declare that its collection program (not recovery plan) is in compliance. The TCEQ will review a manufacturer's recovery plan to make sure it is in accordance with the law before the TCEQ places that manufacturer on the TCEQ's list of manufacturers with recovery plans. No changes have been made in response to this comment.

An individual commented that TCEQ needs to clearly define what a compliant collection program would be and reject any programs that fail to meet that definition.

The commission respectfully disagrees with this comment. The proposed rules made it clear what a compliant collection program would be: a collection program in compliance with the rules. And, as previously explained, the process is that the TCEQ will implement is to make sure that a recovery plan is in accordance with the law before the commission puts the manufacturer on its Internet list of manufacturers with recovery plans. HB 2714 does not give the commission the authority to approve or reject collection programs. No changes have been made in response to this comment.

The TCE commented that the rules need to spell out a process for removing plans from the list of compliant recycling plans that are not convenient for consumers to use.

The commission respectfully disagrees with this comment. HB 2714 stipulates that the TCEQ have a list, on its Web site, of manufacturers that have submitted recovery plans and registered a compliant collection program. HB 2714 does not give the commission the authority to remove manufacturers from the list if their collection programs are not convenient. No changes have been made in response to this comment.

The TCE commented in favor of a scalable system that will allow manufacturers to adjust the magnitude of the recovery programs based on their annual production volumes.

The commission appreciates this comment. The commission believes that the adopted rules allow manufacturers to develop such systems by mirroring the latitude that HB 2714 affords manufacturers in the development of their collection programs. By not mandating the magnitude of

collection programs, HB 2714 and the adopted rules allow manufacturers to adjust their programs as needed. No changes have been made in response to this comment.

Dell commented that they agreed that it is appropriate for a manufacturer to identify all its brands, those in use and those no longer in use, on its publicly available Internet site, in order to better inform consumers and the TCEQ about how and where to recover those products.

The commission appreciates this comment and has made no changes in response.

Dell commented that they believe that TCEQ has appropriately clarified the issue of whether TCEQ must have two different manufacturers' lists, by proposing to prepare a single list of those manufacturers that have both notified TCEQ they have a compliant collection program and submitted their recovery plan to TCEQ.

The TCEQ appreciates this comment and has made no changes in response to it.

Representative Bonnen commented that the ". . . lengthy {manufacturer} certification in the proposal looks unworkable . . ." and suggested a "much clearer, more concise approach."

The commission appreciates this comment. The commission has changed §328.137(g)(2), the section on certification, accordingly.

Similarly, Dell commented that the compliance certification requirement found in §328.137(h)(2) of the proposed rules (found in §328.137(g)(2) of the adopted rules) is far more onerous than the legislature envisioned, and does not work. Dell expressed concern regarding a manufacturer's ability to certify the accuracy and completeness of all documentation submitted to the commission, and compliance with all federal, state, and local laws. Dell also expressed concern about the length of the certification itself. Dell suggested alternative rule language.

The commission agrees in part with these comments. HB 2714 requires manufacturers to provide the commission with documentation verifying that computer equipment is collected, recycled, and reused in a manner that complies with federal, state, and local law. The adopted rules achieve this purpose. Dell's remaining concerns are addressed in the commission's response to Representative Bonnen's comments.

Mr. Rodríguez and Judge Sumter commented that under the proposed rules, manufacturers "... would simply sign a statement that the equipment 'has been recycled or reused in a manner that complies with federal, state, and local law.'"

The commission respectfully disagrees with this comment. The commission notes that falsifying this statement could lead to fines and imprisonment. Secondly, the act of signing is the least of this requirement. The most important part of this requirement is the verification that manufacturers will have to perform in order to be in a position to honestly sign the statement. No changes have been made in response to this comment.

Mr. Rodríguez and Judge Sumter commented that ". . . the proposed rules would make compliance with these {the ISRI} recycling standards purely voluntary." The TCE commented that they feel very strongly that defining the ISRI standards as voluntary, as is stated in the ISRI standards' "Purpose" statement, would cripple the entire program. Waste Management Recycle America suggested the commission "set strong standards for Environmental {sic} Sound Management equal to ISRI's recycler's standards adopted in 2006."

The commission appreciates these comments. At public agenda on April 2, 2008, the commission directed staff to propose portions of the ISRI standards as mandatory. The commission has made changes to §328.149, incorporating portions of the ISRI standards, regarding best practices, record-keeping, and the protection of the environment from hazardous substances, as mandatory. The commission has not adopted mandatory standards regarding export and OSHA, for example, due to the TCEQ's lack of authority to enforce them. The commission has not adopted other standards as mandatory, for example, insurance, due to the standard's potential financial impact on computer-equipment recyclers that are small businesses. There is a more thorough discussion of what ISRI standards the commission is not adopting as mandatory in the Section by Section Discussion in this preamble.

Mayor Evans, Mayor Magers, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable

Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and several individuals commented that the "TCEQ rules must ensure collected e-waste is handled responsibly" by adopting "the standards of the Electronics Recyclers Pledge of True Stewardship" Furthermore, Mr. Rodríguez and Judge Sumter commented that the TCEQ should enforce the standards of the Electronics Recyclers Pledge of True Stewardship as mandatory. Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the "... TCEQ rules should be changed to adopt the Electronics Recycler's Pledge of True Stewardship for the manufacturers programs in addition to the ISRI standard and enforce both standards as mandatory." The TCE and DonateIT LLC commented they would like to see the use of the Electronics Recycler's Pledge of True Stewardship.

The commission respectfully disagrees with these suggestions. The commission acknowledges that it has discretion, under the statute, to adopt a recycling standard other than the ISRI standards. However, in fashioning HB 2714, the legislature looked at various standards for recycling and singled out the ISRI standards as meeting the intent of the legislation. The commission feels obligated to uphold that legislative determination in the absence of standards from a comparable nationally recognized organization. Regarding the suggestion to adopt both standards, HB 2714 does not authorize the commission to adopt more than one standard. No changes have been made in response to these comments.

The TCE commented that the executive director should not be given sole authority to reject, accept, or adopt federal standards, and that such decisions should lie with the commission.

The commission agrees with this comment. The commission has changed §328.149 to give the commission, not the executive director, the authority to replace the ISRI standards with EPA standards. The commission has also changed §328.149 to: 1) remove the proposed option of automatic adoption, by this rule, of EPA standards that may in the future be deemed by the commission to be an acceptable substitute and 2) make explicit the authority the commission has to, by rule, revoke the ISRI standards and adopt EPA standards that may in the future be deemed by the commission to be an acceptable substitute for the ISRI standards.

At the April 2, 2008, commissioners' agenda meeting, the Texas Campaign for the Environment commented that the rules should make the EPA's "Plug-In To eCycling: Guidelines for Materials Managements" mandatory.

The commission respectfully disagrees with this comment. The commission has chosen to adopt 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, as mandatory. However, the commission encourages computer-equipment manufacturers to voluntarily participate in EPA's Plug-In To eCycling Campaign by becoming Plug-In partners and following the Plug-In To eCycling Guidelines for Materials Management.

The TCE, Mayor Evans, Mr. Rodríguez, Judge Sumter, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super

Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals commented that TCEQ should provide rules that require manufacturer plans to address the household and home-office e-waste that is received by local governments. Similarly, the TCE, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the ". . . TCEQ should establish rules that explicitly require manufacturer recovery plans to address the option of recovering household and home office e-waste through local waste and recycling programs."

The commission respectfully disagrees with these comments. The TCEQ recognizes the merit of the suggestions; however, these suggestions are not sanctioned in the scope of the legislation. The bill requires manufacturers to offer free recycling to consumers, who are defined as individuals who use computer equipment that is purchased primarily for personal or home business use (THSC, §361.952). Notably, HB 2714 and the adopted rules explicitly allow manufacturers to make use of existing collection and consolidation infrastructure for handling used computer equipment. Manufacturers are allowed to meet the recycling requirements of the statute and rules in the most cost-effective means possible. For a manufacturer, this may mean reaching agreements with one or more local governments to recycle some, most, or all computers collected by those local governments. For a local government, this may mean reaching agreements with one or more manufacturers to recycle computers collected by the local government in a manner most workable for the local government. No changes have been made as a result of these comments.

The City of Houston commented that "the proposed rules should clarify that programs operated by local governments are 'other suitable operations' as contemplated in §328.137(e). Additionally, the TCEQ should provide guidance that clarifies the interplay between manufacturer-proposed recycling plans and existing municipal collection programs." Councilwoman Koop commented that the TCEQ should "provide the opportunity for local governments to continue to collect used units (via existing E-waste Collection Events). . ."

The commission appreciates the first comment and has clarified that local governments are other suitable options under what now, in the adopted rule, is §328.137(d). The TCEQ offers the following guidance to clarify the interplay between manufacturer-proposed recycling plans and existing municipal collection programs: These rules allow a manufacturer to include existing municipal collection programs in its collection program. These rules allow a municipality to continue to collect computer equipment as before. The nature of the interplay between a manufacturer's recovery plan and an existing municipal collection program is a matter between manufacturers and municipalities, to be agreed upon between them.

The TCE, Mayor Evans, Mayor Swan, Mayor Magers, the City of Houston, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals asked that the

commission "provide the opportunity for local governments and others to give input on the law's implementation," by, for instance, including in the rules a "standard method for local governments and other stakeholders to provide 'Satisfaction Reports' to the TCEQ on the implementation of the law." Furthermore, the TCE, Mayor Evans, Mayor Swan, Mayor Magers, DonateIT LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals suggested that a summary of this feedback be incorporated into the Annual Report the TCEQ will provide the legislature. The TCE urged the commission to include a "Comment" section on the TCEQ Web page that will be the central information source for this program.

The commission appreciates these suggestions. The commission welcomes any input on the implementation of the law at any time and will gladly provide feedback to the legislature regarding any aspect of the implementation upon the request of the legislature. However, the statute does not require the TCEQ to accept input in the manner suggested, nor to include that input in the TCEQ's report to the legislature. The commission will consider including a "comments" section on its future Web page on computer equipment recycling. No changes have been made in response to these comments.

The TCE urged the commission to have a staffed, toll-free phone line available to consumers to answer questions and identify computer recycling options in their area.

The commission appreciates this comment. The commission does offer and will continue to offer a free website for consumers to identify computer recycling options in their area. The Web site is www.recycletexasonline.org. A toll-free, nationally available phone number for this purpose is 1-800-CLEANUP. Additionally, consumers can find similar information at 1-800-CLEANUP's companion website, www.cleanup.org. The commission will consider having a toll-free phone line available to consumers to answer questions, although HB 2714 does not require this. Although consumers are welcome to call their local TCEQ office with questions, they should be better served by calling the manufacturer of their brand of computer, as manufacturers are responsible for their collection programs and should be better able to answer questions regarding those programs. No changes have been made in response to these comments.

The TCE, Mayor Evans, Mayor Magers, Mr. Rodríguez, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, Commissioner Gómez, Mayor Swan, Judge Sumter, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals commented that if "federal legislation is passed that is weaker than the Texas law, the TCEQ

must uphold our stronger standards." Over 30 individuals asked the commission to defend HB 2714 from any attempts at the federal level to undermine bills passed by Texas and other states.

The commission respectfully disagrees with these comments. THSC, Chapter 361, Subchapter Y, authorizes the TCEQ to adopt an agency statement that interprets a federal law as preemptive of the subchapter if the commission determines that the federal law substantially meets the purposes of the subchapter. "Substantially meets" is not as stringent as "is as strong as." No changes have been made in response to this comment.

The TCE, Mayor Evans, Judge Sumter, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, and two individuals also requested that if the TCEQ did adopt federal legislation to preempt Texas law, the TCEQ should be required to determine whether a federal law "substantially meets the purposes" of free and convenient producer take-back requirements and environmentally responsible recycling.

The commission agrees with this comment. The impetus of this comment is required by HB 2714 and is implicit in the adopted rule. No changes have been made in response to the comment.

Regarding this same issue, Judge Biscoe, Commissioner Davis, Commissioner Eckhardt, Commissioner Daugherty, and Commissioner Gómez commented that the ". . . TCEQ rules should provide guidance on the meaning of 'substantially meets the purposes' to ensure that there is no erosion of the legislative intent to provide both free and convenient producer take-back requirements and environmentally responsible recycling."

The commission appreciates this comment. However, if the commission evaluated whether a federal law substantially met the purposes of Subchapter I of Chapter 328, the commission would decide, with public comment, the meaning of "substantially meets the purposes." No changes have been made in response to this comment.

Representative Bonnen commented that "{s}everal provisions in the law spell out the TCEQ's responsibilities. The rules also should include each of those provisions, so it is easier for the public, manufacturers, and even agency staff to know the full extent of the agency's role in implementing this law." The TCEQ echoed this sentiment.

The commission agrees with this comment. The commission has included in the adopted rule each of the provisions in HB 2714 that spell out the commission's responsibilities.

Dell echoed Representative Bonnen's comments on including TCEQ duties in the rule and suggested some additions to the TCEQ's legislatively mandated duties.

The commission appreciates these suggestions. Again, the TCEQ has included all of its legislatively mandated duties in the rule. However, the commission has chosen to limit the TCEQ duties listed in the rule to those listed in HB 2714.

Dell commented that they agree with the commission's proposed language for adopting the ISRI standards while allowing the TCEQ to adopt EPA standards later if they are developed and considered appropriate. Dell also commented that if the TCEQ adopted EPA standards, they would be the law and not voluntary.

The commission appreciates these comments. The commission has made changes to the proposed rule language in response to these and other comments, to adopt ISRI standards as mandatory. If the TCEQ adopted EPA standards to replace the ISRI standards, the commission would decide, with public comment, how to apply and implement those standards. No changes have been made in response to these comments.

Mayor Swan, Mayor Evans, DonateIT, LLC, Mayor Magers, the City of Houston, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and three individuals commented on the TCEQ's legislated public education efforts. Mayor Evans, Mayor Magers, DonateIT, LLC, Citizens Against Montgomery Landfill, Citizens to Save Palo Pinto County, Hutto

Citizens Group and Heritage Homeowners Association, Mount Hutto Aware Citizens, Highway 359 Coalition, Luella Neighborhood Association, Citizens Against Ruffino Hills Transfer Station, Greater Fondren Southwest Super Neighborhood 36, Two Bush Community Action Group, Concerned Landfill Neighbors, Indian Creek Homeowners Association Landfill Committee, Sustainable Energy and Economic Development Coalition, Environmental Defense Texas Office, CLEAN Houston, Councilwoman Koop, and two individuals urged the commission to increase its commitment to public education and look into creative ways for collaboration between state and local governments as well as Councils of Government. Councilwoman Koop commented, "{b}y combining forces, we could create a vibrant public education effort." On the same subject, an individual commented that the only way to effectively get the message to the general public was through a "TV station such as Discovery Channel." The TCE suggested the TCEQ make available, at least electronically, program materials about recycling computer equipment, to include fact sheets, fliers, pamphlets, camera-ready logos, and/or others. Waste Management Recycle America commented that the commission should include a public relations program that will not only inform Texas citizens of their obligations under this bill, but also teach them why it is important to recycle their used electronics. Another individual commented that it would be beneficial if information about the computer-equipment recycling program could be included with people's electric and/or gas bills.

The commission appreciates these comments. The commission will implement practices to fulfill its public education mandate under HB 2714 and in doing so is open to looking into creative ways for collaboration between state and local governments as well as councils of government (COG). The commission will use multiple methods to fulfill the public education mandate and will consider television, fact sheets, fliers, pamphlets, camera-ready logos, electric bills, gas bills, and other

means, as options. The educational efforts of the commission will include not only informing Texas citizens of their obligations under this bill, but also teaching them why it is important to recycle their used electronics. No changes have been made in response to these comments.

Similarly, the TCE commented that the TCEQ can help make this program more user-friendly by identifying on the TCEQ Web site which producer is responsible for which brands of computer equipment. That way, a consumer would not have to check multiple manufacturers' Web sites to try to figure out which manufacturer pertains to the brand he or she is trying to recycle.

The commission agrees with this comment. The TCEQ will place such a list on its Web site. No changes have been made in response to this comment.

The TCE also commented that the TCEQ should "provide information for consumers about what options are available for orphan electronics {electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer}." Waste Recycle America suggested that the commission "include a mechanism to handle orphan electronics." The TCE asked that the commission include a list of brands on its computer-recycling Web page that no longer exist and were not bought out by an existing manufacturer.

The commission appreciates these comments. The commission already provides information for consumers about what options are available for any used electronics, including electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer, and will continue to do so. Hence, a mechanism does exist for handling electronics whose original

manufacturers no longer exist and were not bought out by an existing manufacturer. Although HB 2714 does not require it, the commission will consider putting a list on its Web site of brands that no longer exist and were not bought out by an existing manufacturer. No changes have been made in response to these comments.

The TCE suggested other approaches to deal with electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer: encouraging more electronics recycling companies to accept all brands of computer equipment; and allowing companies to charge for accepting such computer equipment for recycling.

The commission appreciates these comments. HB 2714 does encourage electronics recycling companies to accept all brands of computer equipment: THSC, §361.965(d) requires the state, in considering bids for a contract for computer equipment, to give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers. However, the Texas Comptroller of Public Accounts (comptroller) and the Department of Information Resources implement the statute pertinent to this. Therefore, the TCEQ rules are not the appropriate place to express this encouragement. HB 2714 and the adopted rule, although not explicitly, do allow companies to charge for accepting electronics whose original manufacturers no longer exist and were not bought out by an existing manufacturer. No changes have been made in response to these comments.

The TCE commented that the ". . . TCEQ must devise a plan to let manufacturers know they must have a recovery plan by September 1, 2008, if they plan to continue selling the covered electronic devices in the

state." Similarly, Representative Bonnen commented, "I envision that TCEQ, manufacturers, recyclers, communities, and non-profit organizations will work together to educate each other and assist in compliance."

The commission agrees with these comments. The commission will post information on its Web site concerning these rules. Also, the commission will do a mail-out to all the computer manufacturers registered with the comptroller, notifying them of the requirements. In addition, the commission is open to working together with manufacturers, recyclers, communities, and non-profit organizations to notify and educate not only manufacturers, but everyone affected by these rules. No changes have been made in response to these comments.

The TCE commented that the "TCEQ must devise creative ways for collaboration between state and local government and councils of government to receive funding to augment this effort and challenge private stakeholders, including producers, recyclers, retailers, and nonprofit organizations, to create a vibrant public education effort." The TCE suggested some potential sources of funding: tipping fees, hazardous household waste funds used by COG, and Texas Country Cleanup funds from water fees. The TCE additionally commented that a public-education effort is needed that uses, from the Solid Waste Fund, at least two to three million dollars annually and is sustained for at least four to five years. The TCE suggested that a portion of the funding be used by TCEQ in collaboration with interested parties for costs such as Web-site and materials development, professional services, paid advertising, and other costs. The TCE suggested that the remainder be allocated as grants to municipalities, county governments and COGs for their promotion of computer-equipment recycling in their jurisdictions. The TCE commented that

these efforts should include a baseline survey to determine what Texans know about their options for discarding used electronics and a tracking survey to determine the success of the public campaigns.

The commission respectfully disagrees with these comments. HB 2714 does not authorize the TCEQ to fund implementation in any of the suggested ways. No changes have been made in response to these comments.

Dell commented that they did not understand why the penalty assessed against a recycling facility would not be the same \$1,000/\$2,000 as applies to retailers.

The commission appreciates this comment. The maximum penalty for recycling facilities comes under Texas Water Code, §7.052(c), which limits administrative penalties to a maximum of \$10,000 per day. Actual penalties, up to that amount, are calculated according to the Penalty Policy of the Texas Commission on Environmental Quality (RG-253, September 2002). Limiting the amount of penalty assessed against a recycling facility in this rulemaking is beyond the scope of HB 2714, and would make penalties assessed against computer-recycling facilities inconsistent with other recycling facilities in Texas. No changes have been made in response to this comment.

One individual suggested the commission "increase penalties/fines on . . . corporations . . ."

The commission appreciates this suggestion. However, the dollar amounts of the penalties the commission can levy under these rules are in statute. The commission is not authorized to increase them. No changes have been made in response to this comment.

One individual asked, "Would printers be considered a ' . . . other display device that does not contain a tuner?" The same individual also asked, "Would the Computer Recovery Plan not cover scanners, notebook docking stations, fingerprint scanners, card readers, speakers, joysticks, or game controllers?"

Printers would not be considered an "other display device that does not contain a tuner." Likewise, neither the recovery plan nor any of these rules applies to scanners, notebook docking stations, fingerprint scanners, card readers, speakers, joysticks, or game controllers. No changes have been made in response to this comment.

Several individuals and Waste Management Recycle America commented that the rules should require television manufacturers to recycle televisions.

The commission appreciates this comment. However, HB 2714 does not grant the TCEQ the authority to require television manufacturers to recycle televisions. No changes have been made in response to this comment.

Similarly, several individuals suggested that the rule's coverage be expanded to include more or all electronics.

The commission appreciates these comments. However, HB 2714 does not grant the TCEQ the authority to require the manufacturers of electronics to recycle electronics other than computer equipment. No changes have been made in response to this comment.

Several individuals requested that computer recycling under these rules be free.

The commission appreciates this comment. However, HB 2714 stipulates that the recycling of computer equipment be free at the time of recycling. This means manufacturers may charge a fee for recycling in the original price of computer equipment. No changes have been made in response to this comment.

Waste Management Recycle America urged the commission to consider allowing electronics manufacturers to be able to charge for postage when recycling computer electronics by mail, to allow smaller companies to compete more easily. The TCE requested that the rules include a specific clarification that manufacturers cannot charge consumers for returning computer equipment by mail.

The commission appreciates these comments. HB 2714 clearly states that manufacturers must offer recycling to consumers that is free at the time of recycling. If consumers had to pay postage upon recycling computer equipment by mail, the recycling would not be free at the time of recycling. The commission has added language in §328.137(c)(1) to make explicit that if a manufacturer's collection program includes a mail-back option, consumers will not have to pay mailing, shipping, handling, or any other costs related directly to mailing at the time of recycling.

One individual commented that a rebate program should be made available for consumers. The same individual commented that a financial incentive should be provided for persons of low income and persons with disabilities.

The commission appreciates these comments. However, HB 2714 does not give the commission the authority to make a rebate program available to consumers or to provide a financial incentive for persons of low income and persons with disabilities. No changes have been made as a result of these comments.

One individual commented that the commission should monitor existing computer-equipment recycling programs and commend cooperative producers who are exemplary models in the Texas community.

The commission agrees with these comments. The commission will be monitoring computer--equipment recycling programs when receiving the annual reports from manufacturers, which will include certifications of sound environmental management. Also, the commission will respond to any complaints received about computer-equipment recycling programs. Although the commission will have no formal way to commend manufacturers who comply with these rules, the commission recognizes that manufacturers who do comply with these rules will be models worthy of emulating. For those manufacturers, or any entity involved in implementing HB 2714, whose contribution is outstanding, the commission encourages them to apply for a Texas Environmental Excellence Award, which are annual awards of recognition given out by the Governor and the commission. No changes have been made in response to this comment.

One individual urged the commission to create policies and procedures that will insure that it is reasonably easy for consumers to get electronic equipment to recycling centers.

The commission agrees and believes that the policies and procedures that these rules create can and should insure that it is reasonably easy for consumers to get electronic equipment to recycling centers. No changes have been made in response to this comment.

The TCE commented that the TCEQ needs to set standards for convenience in its rulemaking. The TCE and one individual commented that the goal should be to make it as easy to recycle electronic equipment as it is to buy it. Waste Management Recycle America suggested that the commission set standards for convenience "along the lines of so many collection sites/opportunities within x% of the population." The TCE commented that the rules should require manufacturers that rely on a system of collection sites to have a collection site for every town or county or a certain sized population, or a certain number of sites for every COG area since COGs have some responsibility for solid waste planning. Or, commented the TCE, if a manufacturer relied entirely on a system of collection events, the manufacturer could be required to hold an event in every town or county of a certain size and a certain number in every COG region. The TCE commented that manufacturers should include in their recovery plans whether they have a mail-back program and how much is coming through a mail-back program. The TCE also commented that the rules must clarify that a system in a state the size of Texas needs a variety of sites or events. The TCE specifically suggested that convenience requirements include--for any municipality or county, or in the case of any COG region with no city or county with a population of 10,000 or more--that the jurisdiction host either a physical collection site as described in §328.137(d)(2) or at least two, preferably three, annual, day-long collection events as described in §328.137(d)(3). Two individuals specifically requested computer drop-off locations within ten miles of their respective homes. One individual asked that the commission require manufacturers to provide an at-home pick-up service such that an elderly person would not have to move a computer in order to recycle it.

Regarding the use of the general term, "consumer electronics," or "electronic equipment," the commission notes that HB 2714 applies to computer equipment, not all electronics. Concerning the convenience of computer-equipment recycling, HB 2714 does not authorize the commission to require such specific definitions of convenience. To the contrary, HB 2714's definition of convenience is quite broad, allowing flexibility for manufacturers to develop and refine how their collection methods will be convenient. No changes have been made in response to this comment.

The TCE suggested that the rules require more vibrant reporting from manufacturers that breaks out the reuse, the recycling, and the disposal.

The commission appreciates this comment. However, the rules already do require reporting that emulates that suggested by the TCE. Section 328.137(g) requires that manufacturers submit an annual report to the TCEQ including the weight of computer equipment collected, recycled, and reused during the preceding calendar year. HB 2714 does not require disposal to be reported. No changes have been made in response to this comment.

One individual asked that the commission not allow HB 2714 to be "watered down by non-enforcement."

The commission will respond to any complaint filed regarding non-compliance with these rules as it does to any complaint filed regarding non-compliance with any rule. The enforcement of these rules will be treated equally with the enforcement of all other rules. No changes have been made in response to this comment.

One individual commented that some type of tax break or special incentives should be given to companies that follow these rules.

The commission appreciates this comment. Although companies are expected to comply with these rules without being given tax breaks or special incentives, companies may be eligible for tax relief for pollution control equipment under 30 TAC Chapter 17. No changes have been made in response to this comment.

One individual asked why the state cannot work with local municipalities to include TVs and computers with other recyclable items. The same individual suggested the possibility of including some small token tax with the sale of TVs and computers.

The state does work with local municipalities to encourage them to recycle TVs and computers. However, no state law requires this partnership. HB 2714 does not authorize the TCEQ to add a tax to the sale of televisions or computers. No changes have been made in response to this comment.

One individual suggested, in the context of HB 2714, subsidizing businesses to recycle products that will produce items that the U.S. is now importing from other countries.

The commission appreciates this suggestion. However, HB 2714 does not authorize the commission to subsidize any businesses. No changes have been made in response to this comment.

One individual commented that she supported a "producer take-back policy that holds electronics manufacturers responsible for providing recycling for consumers to force companies to manufacture a safer product."

The commission has no authority under HB 2714 to force computer-equipment manufacturers, or electronics manufacturers, to make safer products. No changes have been made in response to this comment.

One individual asked that the commission keep HB 2714 as is with no changes.

The commission decided to write rules, with unanimous stakeholder-group support, because depending solely on the wording in HB 2714 was not the most efficient, effective way to implement HB 2714. No changes have been made in response to this comment.

One individual encouraged the commission to promote proper recycling of electronics with some sort of reward system, or at a minimum some sort of system that is adequately communicated to our citizens.

The commission respectfully disagrees with the first part of this comment. HB 2714 does not authorize the commission to promote the recycling of electronics with some sort of reward system. The commission has not made any changes in response to this comment. Under HB 2714, the commission is responsible for educating the public on computer-equipment recycling, and will promote the proper recycling of computer equipment with a system that is communicated to the citizens of Texas. Although the commission is not responsible under HB 2714 for educating the

public on the recycling of all electronics, the commission already does and will continue to do this through its Web pages on used-electronics recycling.

One individual commented that the rules should only allow electronics manufacturers to generate a minimal amount of waste at their assembly plants and have to recycle most of it.

The commission respectfully disagrees with this comment. The commission supports efforts to minimize waste. However, HB 2714 does not authorize the commission to regulate the amount of waste generated by manufacturers at their assembly plants. No changes have been made in response to this comment.

One individual commented that the ". . . recycling of electronic waste in ordinary landfills seems hazardous and should not be allowed. Please continue the efforts to get the practice stopped."

The commission respectfully disagrees with these comments. The commission supports the recycling of used electronics done in accordance with law. The commission is unaware of any current efforts to stop the practice of recycling of used electronics at "ordinary" (municipal solid waste) landfills. HB 2714 does not authorize the commission to ban the recycling of used electronics at municipal solid waste landfills. No changes have been made in response to this comment.

Dell agreed that THSC, §361.954(b)(3) should not be included in the rule, but asked that it be addressed in the preamble. Dell feels that manufacturers that do not sell computer equipment to consumers as defined by the rule should still have the ability to participate in government procurement contracts, even

though they would not have a recovery plan in place or notification of that plan on file with the TCEQ. Dell also felt that HB 2714 did not require such manufacturers to recover computer equipment from governments and businesses.

The commission agrees with these comments. HB 2714 does not apply to the sale or lease of computer equipment to an entity (such as a government or business) when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of used computer equipment. The commission addresses this issue here in the preamble as follows.

Manufacturers that do not sell computer equipment to consumers as defined in the rule can continue to bid on state procurement contracts for computer equipment by certifying that all of their contracts, with all customers, for the sale or lease of computer equipment effectively address the collection, recycling, and reuse of used computer equipment. The commission agrees that in general, HB 2714 does not require manufacturers to recover computer equipment from governments and businesses. HB 2714 does require manufacturers who: 1) do not sell computer equipment to consumers, as defined in the rule; and 2) wish to sell to Texas state governmental entities; to enter into contracts that effectively address the collection, recycling, and reuse of used computer equipment. No changes to the rule were made in response to this comment.

Lenovo was concerned about the law's effect on the sale or licensing of trademarks on personal computers and monitors. Lenovo recently purchased the IBM trademark for a limited period of time. Lenovo was concerned about the law's effect on party obligations and liabilities under existing licensing or sales agreements, but acknowledged that future contracts would have to take HB 2714 into consideration.

Lenovo was concerned that the law allowed existing manufacturers who are still doing business in Texas to get out of any obligation to recycle their historic waste by passing their responsibility to licensees.

Lenovo wanted the commission to interpret the law to apply only in cases where the original brand owner is no longer in business.

The commission respectfully disagrees with this comment. Legislative intent is embodied in the clear language of the bill. The obligations under the law extend "to all computer equipment bearing that brand regardless of its date of manufacture." The obligations or liabilities of parties to the sale or licensing of a trademark or brand are matters between the parties to that contract. If more than one person has manufactured a particular trademark or brand of computer equipment, any of those persons may assume responsibility for and satisfy the obligations under the law. If none of those persons assumes responsibility for or satisfy the obligations under the law, the commission may consider any of those persons to be liable for enforcement. The commission will not expand on the legislation's language on its intent. No changes have been made in response to these comments.

Dell commented that the TAKINGS IMPACT ASSESSMENT section of the preamble to the proposed rules deviates from the legislature's stated intent in passing HB 2714 by focusing on potential health and safety issues not raised in the bill. Dell comments that these concerns were not identified by the legislature, and that they are not necessary to the TAKINGS IMPACT ASSESSMENT section of the preamble.

The commission respectfully disagrees with this comment. The commission acknowledges one concern addressed by HB 2714 is that many used computers and related display devices can be

refurbished and reused. However, HB 2714 also addresses health and safety concerns by removing used electronics from the municipal solid waste stream. The AUTHOR'S/SPONSOR'S STATEMENT OF INTENT section of the Bill Analysis for HB 2714 reads, "Most electronic equipment contains toxic substances that need to be disposed of properly, but only a small fraction of the e-waste that is generated is recycled. Currently, firms are not held responsible for the ewaste they help to produce. HB 2714 provides for e-waste recycling in a manner that seeks to combine the important principals of manufacturer responsibility, consumer convenience, accountability, transparency, education and enforcement into a simple, effective, and efficient information technology collection and recovery system." (Senate Commission On Natural Resources, Bill Analysis, HB 2714, 80th Legislature, 2007.)

The Private Real Property Rights Preservation Act regulates the takings of real private property by governmental entities (Texas Government Code, §§2007.001 - 2007.045). Actions taken in response to a real and substantial threat to human health and safety, designed to significantly achieve that health and safety purpose, that do not impose a greater burden than is necessary to achieve that health and safety purpose are not considered subject to the Private Real Property Rights Preservation Act (Texas Government Code, §2007.003(b)(13)). Therefore, discussing the proposed rules' impact on human health and safety was appropriate in the TAKINGS IMPACT ASSESSMENT of the preamble. No changes have been made in response to these comments.

Dell commented that §328.137(h) of the proposed rules (found in §328.137(g) of the adopted rules) covers all manufactures subject to Subchapter I. Dell stated that all covered manufacturers should have to

submit an annual recycling report, not just those who have submitted a recovery plan. Dell suggested that the proposed language be altered as follows: "Each manufacturer shall submit . . ."

The commission respectfully disagrees with this comment. Manufacturers subject to Subchapter I are required to both adopt and implement a recovery plan and submit an annual recycling report to the commission. These obligations are not mutually exclusive. Section 328.137(g) of the adopted rules does not limit a manufacturer's duty to submit an annual recycling report to the commission in any way. No changes have been made in response to this comment.

Dell commented that the commission should clarify that a violation by a retailer for noncompliance for some or all its inventory should be considered a single violation if the noncompliance is found during a single inspection and covers a discrete period of time.

The commission respectfully disagrees with this comment. The evaluation of violations is already addressed by the Penalty Policy of the Texas Commission on Environmental Quality (RG-253, second revision, September 2002). The number and duration of violations for the purpose of penalty assessment are evaluated in accordance with this policy. No changes have been made in response to these comments.

SUBCHAPTER I: COMPUTER EQUIPMENT RECYCLING PROGRAM

§§328.131, 328.133, 328.135, 328.137, 328.139, 328.141, 328.143, 328.145,

328.147, 328.149, 328.151, 328.153, and 328.155

STATUTORY AUTHORITY

The new rules are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority to carry out its jurisdiction; TWC, §5.103, which requires the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; and TWC, §5.105, which authorizes the commission to adopt rules as necessary to carry out its powers and duties under the TWC.

The new sections are also adopted under Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the THSC, Texas Solid Waste Disposal Act, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste, and THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th Legislature, which authorizes the commission to help create a recycling program for used computer equipment.

The adopted new rules implement THSC, §§361.951 - 361.966 and TWC, §7.052(b-1) and (b-2), as amended by the 80th Legislature.

§328.131. Purpose.

- (a) The purpose of this subchapter is to:

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

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

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

§328.133. Applicability and Effective Date.

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

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

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

(b) This subchapter does not apply to:

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

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

(c) This subchapter applies to 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).

§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.

(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.

§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.

§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.

§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.

§328.143. Enforcement.

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

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

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

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

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by §328.137 of this title (relating to Manufacturer Responsibilities) must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

§328.145. Financial and Proprietary Information.

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

§328.147. Liability.

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

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

§328.149. Sound Environmental Management.

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

(b) The commission adopts, as standards for recycling or reuse of computer equipment 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.

§328.151. Federal Preemption; Expiration.

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

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

§328.153. Amount of Penalties.

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

(b) The amount of 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 .

§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.