

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §328.7; and new §§328.301 - 328.304.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of “recycled material” and “recycled plastics” in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

As part of this rulemaking, the commission is proposing revisions to 30 Texas Administrative Code (TAC) Chapter 281, Applications Processing; Chapter 330, Municipal Solid Waste; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the Texas Register.

Section by Section Discussion

Subchapter B: Recycling, Reuse, and Materials Recovery Goals and Rates

§328.7, Definitions of Terms and Abbreviations

The commission proposes to amend §328.7(4) by replacing existing subparagraphs (A) - (H) with clauses (i) - (viii) in subparagraph (A) and adding clauses (ix) - (xii) to update the definition of “Recycled product” to reference current Environmental Protection Agency Comprehensive

Procurement Guidelines and Recovered Materials Advisory Notices. The definition would also be revised by reorganizing text in current subparagraph (H) under new subparagraph (B), by updating references to the Federal Trade Commission and the American Society for Testing Materials guidelines, and adding new subparagraph (C) to exclude a product sold as fuel from the definition. The amendments would implement HB 3060 which amended the definition of “Recycled product” in THSC, §361.421 by replacing the phrase “which meets the requirements for recycled material content as prescribed by” with the phrase “that is eligible to be considered a recycled product under,” and by clarifying that the term does not include a product sold as fuel.

Subchapter L: Third-party Certification Systems for Mass Balance Attribution

§328.301, Purpose and Applicability

The commission proposes new §328.301 to establish the purpose and applicability of the subchapter.

§328.302, Definitions

The commission proposes new §328.302 to implement HB 3060 by adopting definitions of the terms “Recycled material,” “Recycled plastics,” and “Recycling” to implement the definitions in THSC, §361.421; and adopting definitions of the terms “Mass balance attribution,” and “Third-party certification system” to implement §361.4215.

§328.303, Third-Party Certification Systems for Mass Balance Attribution

The commission proposes new §328.303 to implement THSC, §361.4215, as promulgated by HB 3060, which requires the commission to adopt rules to identify third-party mass balance attribution certification systems.

§328.304, Recycled Products

The commission proposes new §328.304 to implement THSC, §361.427, as amended by HB 3060. HB 3060 amended THSC, §361.427 by clarifying that the guidelines the commission establishes in rule for determining whether a product is eligible to be considered to be a recycled product must be based on the percent of the total content of a product that consists of recycled material or the portion determined to consist of recycled material according to a third-party certification system for mass balance attribution, and by clarifying that post-use polymers be included among recycled material in these guidelines.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency with state law, specifically HB 3060 from the 88th Regular Legislative Session (2023). The proposed rulemaking is not anticipated to result in costs to businesses and individuals. The proposed rulemaking provides an alternate approach to classify materials as “recycled products” (§328.303). The public may benefit from this rulemaking if more plastic wastes and potentially other materials are diverted from disposal because of increased recycling.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government

program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law, and it does not create, expand, repeal, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish

guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental

rule,” nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of promulgating rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of “recycled material” and “recycled plastics” in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). HB 3060 amended THSC, §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the

purposes of the definitions of “recycled material” and “recycled plastics” in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(4).

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the

rulemaking would not have direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments would not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 20, 2024, at 10:00am in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30am.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 14, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 18, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the

hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_Zjg1MDI0YmYtNGYwYi00ZWU4LTg5MWYtMDg3MTBiNTc1ODc4%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&byb t=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at:

<https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-135-330-WS. The comment period closes on June 24, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER B: RECYCLING, REUSE, AND MATERIALS RECOVERY GOALS AND RATES

§328.7

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic

monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6-a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed amendments to §328.302 would implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material," "Recycled plastics," and "Recycling" so that they are consistent with the definitions under THSC, §361.421. The proposed amendments to §328.302 would also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, respectively.

§328.7. Definitions of Terms and Abbreviations

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

(1) Base year--The year 1990 used as a reference for recycling credit limits and for determining the amount of waste reduced at the source.

(2) Municipal sludge--Any solid, semisolid, or liquid waste generated from a municipal wastewater treatment plant, water supply treatment plant, or any other such waste having similar characteristics and effect, exclusive of the treated effluent from a wastewater treatment plant.

(3) Net tons of waste exported--The difference between that portion of the municipal waste stream generated within specific geographic boundaries and exported for disposal and that portion which is generated outside the boundaries and imported for disposal during a specified time period.

(4) Recycled product--

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

(i) [(A)] CPG I, as amended through May 1, 1995, at 60 Federal Register (FR) 21370;

(ii) [(B)] RMAN I, as amended through May 1, 1995, at 60 FR 21386;

(iii) [(C)] RMAN (update), as amended through May 29, 1996, at 61
FR 26985;

(iv) [(D)] CPG II, as amended through November 13, 1997, at 62 FR
60962;

(v) [(©)] RMAN II, as amended through November 13, 1997, at 62 FR
60975;

(vi) [(F)] RMAN (update), as amended through June 8, 1998, at 63
FR 31214;

(vii) [(G)] CPG III, as amended through January 19, 2000, at 65 FR
3069;

(viii) [(H)] RMAN III, as amended through January 19, 2000, 65 FR
3082;

(ix) CPG IV, as amended through April 30, 2004, at 69 FR 24028;

(x) RMAN IV, as amended through April 30, 2004, at 69 FR 24039;

(xi) CPG V, as amended through September 14, 2007, at 72 FR 52475; and

(xii) RMAN V, as amended through September 14, 2007, at 72 FR 52561.

(B) For products for which no EPA guidelines exist, states may use guidelines from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist. The FTC guideline is found in 16 Code of Federal Regulations Part 260 and 16 CFR §260.13 [Code of Federal Regulations, Title 16, Volume 1, Parts 0 to 999, Revised January 1, 1999]. The ASTM guidelines are available online at ASTM's website, www.astm.org [guideline can be found in the 1999 Annual Book of ASTM Standards, Volumes 1-15].

(C) The term does not include a product sold as fuel.

(5) Recycling r—e--That percentage of the municipal solid waste stream which is recovered or diverted for recycling.

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

(7) Source reduct—n--Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or

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

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

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

SUBCHAPTER L: THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE

ATTRIBUTION

§§328.301, 328.302, 328.303, 328.304

Statutory Authority

The new sections are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic

monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6)(a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed new §328.302 would implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material." "Recycled plastics." And "Recycling." so that they are consistent with the definitions under THSC, §361.421. The proposed new §328.302 would also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, respectively.

§328.301. Purpose and Applicability.

(a) Purpose. The purpose of this subchapter is to:

(1) establish guidelines by which a product is eligible to be considered a recycled product;

(2) identify what is not eligible to be considered a recycled product; and

(3) identify third-party certification systems for mass balance attribution to certify:

(A) "Recycled material";

(B) "Recycled plastics"; and

(C) the portion of the total content of a product that consists of recycled material.

(b) Applicability. This subchapter is applicable to determining that a product is eligible to be considered a recycled product and third-party certification systems for mass balance attribution.

§328.302. Definitions.

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

(1) Mass balance attribution--A chain of custody accounting methodology with rules defined by a “Third-party certification system” that enables the attribution of “Recycled material” and “Recycled plastics,” as those terms are defined in this section, to a “Recycled product,” as described in §328.304 of this title (relating to Recycled Products).

(2) Recycled material--Materials, goods, or products that consist of recovered “Recyclable material,” as defined in §330.3 of this title (relating to Definitions), materials derived from "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, or postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section. The term includes "Recycled plastics" as defined in this section.

(3) Recycled plastics--Products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section.

(4) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new

products. The term includes the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization, but does not include waste-to-energy processes or incineration of plastics in an incinerator as defined in §335.1 of this title (relating to Definitions).

(5) Third-party certification system--An international or multinational third-party certification system that consists of a set of rules to implement “Mass balance attribution” approaches for attribution of “Recycled material” to a “Recycled product” as these terms are defined in this section.

§328.303. Third-Party Certification Systems for Mass Balance Attribution.

(a) The commission shall:

(1) maintain a list that identifies third-party certification systems for mass balance attribution; and

(2) provide a copy of that list to any person on request.

(b) Recyclable materials, as defined in §330.3 of this title (relating to Definitions), converted to fuels may not be considered for mass balance attribution for the purpose of this subchapter.

§328.304. Recycled Products.

(a) A product is eligible to be considered a recycled product when it conforms with the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA) as described in §328.7(4) of this title (relating to Definitions of Terms and Abbreviations).

(b) Manufacturers may use a third-party certification system for mass balance attribution as identified under §328.303 of this title (relating to Third-party Certification Systems for Mass Balance Attribution) to identify the portion of the total content of a product which consists of recycled material and recycled plastics.