

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Proposed Rulemaking

**AGENDA REQUESTED:** December 17, 2025

**DATE OF REQUEST:** November 25, 2025

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Vanessa Onyskow-Lang, Rule/Agenda Coordinator, (512) 239-0682

**CAPTION: Docket No. 2025-1339-RUL.** Consideration for publication of, and hearing on, proposed amended Sections 328.301, 328.302, and 328.304 of 30 TAC Chapter 328, Waste Minimization and Recycling.

The proposed rulemaking would implement House Bill 4413 from the 89th Legislature, 2025, Regular Session, relating to mass balance attribution of renewable chemicals. (Jarita Sepulvado, Matt Hopper; Rule Project No. 2025-026-328-WS)



---

**Director**



---

**Division Deputy Director**

---

**Vanessa Onyskow-Lang**  
**Agenda Coordinator**

Copy to CCC Secretary? NO ☒ YES ☐

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** November 25, 2025

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** Beth Seaton, Director  
Office of Waste

**Docket No.:** 2025-1339-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 328, Waste Minimization and Recycling  
House Bill 4413 Implementation  
Rule Project No. 2025-026-328-WS

**Background and reason(s) for the rulemaking:**

The rulemaking is needed to implement House Bill (HB) 4413 passed by the 89th Texas Legislature, 2025.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking would do:**

The rulemaking would implement HB 4413 by expanding the purpose of 30 (Texas Administrative Act) TAC Chapter 328, Subchapter L (Third-Party Certification Systems for Mass Balance Attribution) to include the identification of renewable chemicals in §328.301, adopting new and amended terms related to mass balance attribution of renewable chemicals in §328.302, and amending §328.304 to include mass balance attribution of renewable chemicals to recycled products.

**B.) Scope required by federal regulations or state statutes:**

HB 4413 amended Texas Health and Safety Code (THSC), Chapter 361, Subchapter N (Waste Reduction Programs, Disposal Fees) by adding definitions for “renewable biomass” and “renewable chemical,” and requiring the Texas Commission on Environmental Quality (TCEQ) to adopt rules to identify third-party mass balance attribution certification systems for the purpose of identifying renewable chemicals.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

The rule change would be proposed under the statutory authority of Texas Water Code, §5.103 (relating to Rules), and THSC, §361.421 (relating to Definitions) and §361.4215 (relating to Mass Balance Attribution).

**Effect on the:**

**A.) Regulated community:**

The rulemaking does not create new requirements or obligations for the regulated community but may incentivize the use of more biomass materials in manufacturing processes, diverting these materials from disposal in landfills.

**B.) Public:**

The rulemaking does not create a group of affected persons who were not impacted previously. The public is not expected to be affected by this rulemaking.

Re: Docket No. 2025-1339-RUL

**C.) Agency programs:**

The agency programs affected by this rulemaking include the Waste Permits Division and External Relations Division. No fiscal impacts are anticipated.

**Stakeholder meetings:**

While no additional stakeholder involvement is planned for this legislation implementation, there will be an opportunity for public comments and a public hearing during the rulemaking process.

**Public Involvement Plan**

A public involvement plan is required.

**Alternative Language Requirements**

Spanish language documents are required for this statewide rulemaking.

**Potential controversial concerns and legislative interest:**

Representative Dennis Paul authored the legislation. No controversial concerns are anticipated.

**Would this rulemaking affect any current policies or require development of new policies?**

This rulemaking would not affect current policies or require the development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The Waste Permits Division has not identified alternatives to rulemaking. TCEQ is required by HB 4413 Section 3 to adopt rules necessary to implement the changes in law.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** December 17, 2025

**Anticipated *Texas Register* publication date:** January 2, 2026

**Anticipated public hearing date:** January 27, 2026

**Anticipated public comment period:** January 2 - February 2, 2026

**Anticipated adoption date:** June 17, 2026

**Agency contacts:**

Jarita Sepulvado, Rule Project Manager, Waste Permits Division, (512) 239-4413

Matt Hopper, Staff Attorney, Environmental Law Division, (512) 239-5771

Vanessa Onyskow-Lang, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-0682

**Attachments:**

HB 4413 (Enrolled)

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
Jessie Powell  
Farrah Court  
Office of General Counsel  
Jarita Sepulvado  
Matt Hopper  
Gwen Ricco

AN ACT

relating to mass balance attribution of renewable biomass feedstocks used to produce renewable chemicals.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 361.421, Health and Safety Code, is amended by adding Subdivisions (8-a) and (8-b) to read as follows:

(8-a) "Renewable biomass" means:

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands, as that term is defined by 43 U.S.C. Section 1702, that:

(i) are byproducts of preventive treatments that are removed:

(a) to reduce hazardous fuels;

(b) to reduce or contain disease or insect infestation; or

(c) to restore ecosystem health;

(ii) would not otherwise be used for higher value products; and

(iii) are harvested in accordance with:

(a) applicable law and land management plans; and

(b) requirements for old growth stand maintenance, restoration, and management direction and large tree retention under Sections 102(e) and (f), Healthy Forests

Restoration Act of 2003 (16 U.S.C. Sections 6512(e) and (f)); or

(B) any organic matter that is available on a renewable or recurring basis from nonfederal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) renewable plant material, including:

(a) feed grains and other agricultural commodities;

(b) plants and trees;

(c) algae; and

(d) microorganisms; and

(ii) waste material, including:

(a) crop residue;

(b) vegetative waste material, including wood waste and wood residue;

(c) animal waste and byproducts, including fats, oils, greases, and manure;

(d) food waste and yard waste;

(e) plant-derived waste oils;

(f) municipal solid waste; and

(g) waste derived from a wastewater treatment facility.

(8-b) "Renewable chemical" means a monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass feedstocks or certified under a third-party certification system for mass balance attribution identified by the

1 commission under Section 361.4215.

2       SECTION 2. Section 361.4215, Health and Safety Code, is  
3 amended to read as follows:

4       Sec. 361.4215. MASS BALANCE ATTRIBUTION. The commission by  
5 rule shall identify third-party certification systems for mass  
6 balance attribution that may be used for the purposes of Sections  
7 361.421(6), ~~and~~ (6-a), and (8-b).

8       SECTION 3. As soon as practicable after the effective date  
9 of this Act, the Texas Commission on Environmental Quality shall  
10 adopt rules necessary to implement the changes in law made by this  
11 Act.

12       SECTION 4. This Act takes effect September 1, 2025.

H.B. No. 4413

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 4413 was passed by the House on May 13, 2025, by the following vote: Yeas 139, Nays 0, 2 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 4413 was passed by the Senate on May 23, 2025, by the following vote: Yeas 30, Nays 1.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §§328.301, 328.302, and 328.304.

### **Background and Summary of the Factual Basis for the Proposed Rules**

The commission proposes this rulemaking to implement House Bill (HB) 4413, 89th Texas Legislature, 2025. HB 4413 amended Texas Health and Safety Code (THSC), §361.421 (Definitions) by adding definitions for “renewable biomass” and “renewable chemical,” and §361.4215 (Mass Balance Attribution) by requiring TCEQ to adopt rules to identify third-party mass balance attribution certification systems for the purpose of identifying a renewable chemical.

Although renewable biomass feedstocks may be used to produce a renewable chemical, HB 4413 does not exempt renewable biomass from regulation as a solid waste or any other applicable statutes or rules.

### **Section by Section Discussion**

#### *§328.301, Purpose and Applicability*

The commission proposes to amend §328.301(a)(3) by including recycled plastics and a renewable chemical as recycled material in subparagraph (A) and replacing subparagraph (B) with the content of subparagraph (C). This amendment would expand the purpose of the subchapter to include the identification of a renewable chemical and clarify that the term recycled material includes both recycled plastics and a renewable chemical.

#### *§328.302, Definitions*

The commission proposes to amend §328.302(1), the definition of "mass balance attribution,"



by applying the term to a renewable chemical.

The commission proposes to amend §328.302(2), to expand the definition of "recycled material," to include a renewable chemical.

The commission proposes new §328.302(5) to add the definition of "renewable biomass or renewable biomass feedstocks."

The commission proposes new §328.302(6) to add the definition of "renewable chemical."

The commission proposes to amend renumbered §328.302(7), the definition of "third-party certification system", by including recycled plastics and a renewable chemical as recycled material for the purpose of third-party certification.

#### *§328.304, Recycled Products*

The commission proposes to amend §328.304(b) by adding a renewable chemical to the materials that may be included when determining the minimum content of a recycled product using mass balance attribution certified by a third-party certification system.

#### **Fiscal Note: Costs to State and Local Government**

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications 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 compliance with state law, specifically HB 4413 from the 89th Regular Legislative Session (2025). The proposed rulemaking is not anticipated to result in fiscal implications for individuals or businesses during the first five-year period the proposed rule is in effect.

### **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, and it does not create, expand, repeal, or limit this 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.

“Written comments concerning the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.”

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking under 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."

The 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 that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

Additionally, the 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. The cost of complying with the proposed rules is not anticipated to be significant with respect to the economy as a whole or with respect to a sector of the economy, and therefore the rulemaking will not adversely affect the economy in a material way.

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 that: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421.

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 4413 amended THSC, §361.421 (Definitions) and §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: (1) establish a renewable chemical as eligible to be considered part of a recycled product in accordance with THSC, §361.4215 and §361.427; and (2) identify third-party certification systems for mass balance attribution in THSC, §361.421, 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).

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

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 January 27, 2026 at 10:00am in Building E, Conference Room E201S 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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by January 23, 2026. To register for the hearing, please email [Rules@tceq.texas.gov](mailto: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 January 26, 2026, 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\\_OTA1YTllYjEtYmIxMi00M2MzLTThiYmMtY2NmNDg3NDQ3MzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%223aa8b0dc-fc48-48e4-98da-84f3b2eb020c%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTA1YTllYjEtYmIxMi00M2MzLTThiYmMtY2NmNDg3NDQ3MzQ4%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%223aa8b0dc-fc48-48e4-98da-84f3b2eb020c%22%7d)

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 Vanessa Onyskow-Lang, 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 2025-026-328-WS. The comment period closes on February 2, 2026. 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](https://www.tceq.texas.gov/rules/propose_adopt.html)*. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.



**SUBCHAPTER L: THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE**

**ATTRIBUTION**

**§§328.301 - 328.302, 328.304**

**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 §§328.301 – 328.302, 328.304, would implement House Bill (HB) 4413, 89th Texas Legislature, 2025, by adding the definitions of "Renewable biomass" and "Renewable chemical" so that they are consistent with the definitions under THSC, §361.421. The proposed amendments to §§328.302, 328.304 would also implement HB 4413 by amending the definition of "Mass balance attribution" so that it is consistent with the definitions under THSC, §361.4215.

#### **§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," including "Recycled plastics" and a "Renewable chemical"; and

(B) the portion of the total content of a product that consists of 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," including "Recycled plastics," and a "Renewable chemical]" 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" and a "Renewable chemical" 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) Renewable biomass or renewable biomass feedstocks--

(A) materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands, as that term is defined by 43 U.S.C. Section 1702, that:

(i) are byproducts of preventive treatments that are removed:

(I) to reduce hazardous fuels;

(II) to reduce or contain disease or insect infestation;

or

(III) to restore ecosystem health;

(ii) would not otherwise be used for higher value products;

and

(iii) are harvested in accordance with:

(I) applicable law and land management plans; and

(II) requirements for old growth stand maintenance, restoration, and management direction and large tree retention under Sections 102(e) and (f), Healthy Forests Restoration Act of 2003 (16 U.S.C. Sections 6512(e) and (f)); or

(B) any organic matter that is available on a renewable or recurring basis from nonfederal land or land belonging to an Indian or Indian tribe that is held

in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) renewable plant material, including:

(I) feed grains and other agricultural commodities;

(II) plants and trees;

(III) algae; and

(IV) microorganisms; and

(ii) waste material, including:

(I) crop residue;

(II) vegetative waste material, including wood waste and wood residue;

(III) animal waste and byproducts, including fats, oils, greases, and manure;

(IV) food waste and yard waste;

(V) plant-derived waste oils;

(VI) municipal solid waste; and

(VII) waste derived from a wastewater treatment facility.

(6) Renewable chemical--A monomer, polymer, plastic, formulated product, or chemical substance produced from renewable biomass feedstocks or certified under a "Third-party certification system" for "Mass balance attribution" as these terms are defined in this section.

(7) [(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," including "Recycled plastics," and a "Renewable chemical," to a "Recycled product" as these terms are defined in this section.

#### **§328.304. Recycled Products.**

(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, recycled plastics, and renewable chemicals and recycled plastics].