

DRAFT GLASS MINIMUM POST-CONSUMER RECYCLED CONTENT MODEL LEGISLATION

A BILL

To incentivize the market for post-consumer recycled content (PCRC) glass, improve the economics of recovering rather than disposing of valuable material, and reduce the environmental impact of manufacturing.

WHEREAS, glass is a sustainable material that can be recycled over and over again; and,

WHEREAS, recycled glass—cullet—is integral to making new glass beverage and food containers; and

WHEREAS, the use of PCRC glass provides no compromise in safety or quality; and

WHEREAS, PCRC cullet has long been used as an alternative to sand in the manufacture of fiberglass insulation; and

WHEREAS, the use of PCRC cullet in these products saves energy during their production versus the use of virgin material, thereby reducing greenhouse gas emissions; and

WHEREAS, due to market issues the amount of PCRC cullet collected in recycling programs and then being discarded as waste has steadily increased; and

WHEREAS, stakeholders representing diverse interests in both the private and public sectors note that the use of PCRC cullet to produce new products is the highest-value end use for recovered glass; and

WHEREAS, one way states can foster these benefits is to incentivize the use of PCRC cullet in significant end markets—food and beverage containers and fiberglass insulation; as well as growing markets—foamed glass aggregate, and ground glass Pozzalon; and

WHEREAS, there is value to collecting data on major end destinations for PCRC cullet to better understand the quantity being used for manufacturing new products or being used for other applications or end uses, including but not limited to: glass food and beverage containers, fiberglass insulation, foamed glass aggregate, ground glass pozzalon, processed glass aggregate, alternative daily landfill cover; as well as the quantity being disposed of as waste.

THEREBY BE IT RESOLVED BY [THIS BODY] THAT requiring manufacturers and users to implement greater amounts of PCRC cullet is in the direct interest of the people of this state and their quality of life.

SECTION 1. INTENTIONS

- Develop markets for PCRC cullet.
- Expand use of PCRC cullet in the manufacture of new beverage and food containers, and fiberglass insulation.
- Reduce PCRC cullet disposed of as waste.

SECTION 2. DEFINITIONS

Beverage - means any liquid product in ready-to-drink form that is intended for human consumption.

Brand Owner or Licensee – means the owner or licensee of the brand under which the covered product is sold, offered for sale, or distributed, regardless of whether the trademark of the brand is registered.

Covered product - means a product in one of the following categories subject to minimum post-consumer recycled content requirements: (1) glass food container; (2) glass beverage container; and (3) fiberglass building insulation. [NOTE: If a state is aware of other products sold in the state that could utilize post-consumer recycled glass, they may add such products as additional covered products.]

Cullet – means recycled broken or waste glass used in manufacturing glass products.

Distributor - means a person that engages in the sale of a covered product as a retailer, to a retailer, or is a manufacturer selling a covered product in the state.

Fiberglass building insulation - means a fiberglass batt, blanket, loose fill or spray-in-place material primarily designed and used to resist heat flow, that is installed in roofs, ceilings, walls, and floors of buildings (source: fiberglass industry in work group)

Foam glass aggregate – means lightweight aggregate made from PCRC glass.

Food - means any substance that humans eat or drink to sustain life and growth.

Furnace ready – means material that has been processed to meet industry standards used by manufacturers.

Glass container - means a container made of glass that is filled or intended to be filled with a food or beverage.

Ground glass pozzolan – means a cement replacement in concrete made from PCRC glass.

Importer – means a person or company that brings in a covered product from abroad for sale or distribution.

Manufacturer – means any person, firm, association, partnership, or corporation producing a covered product.

Materials recovery facility (or MRF) - means a specialized recycling facility that receives, sorts, separates and prepares source-separated recyclable materials to be sold to end users.

Minimum recycled content requirement – means a minimum percentage of PCRC glass required to be in a new covered product, set as a percentage on a weight basis (e.g., 35% PCRC by weight).

Non-commercial personal use – means use of a product within one’s own household and not for commercial resale or for packaging of a product. Examples include home canning and preserving or the storage of food or other property in one’s home or business.

Post-consumer recycled content (or PCRC) - means material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of and that was originally sold for consumption. "Post-consumer recycled content" does not include post-industrial material, post-commercial material or pre-consumer material.

Post-industrial recycled material – means a new material produced using manufacturing waste material that has been reclaimed from a process generating the same or a similar product. Also called pre-consumer recycle content. For example, when glass is blown into bottles, scrap (often referred to as “pinch-off”) is left behind that doesn’t make it into the final bottles. If these scraps are saved, remelted and used again, it would be referred to as “post-industrial recycled material.”

Previously owned items – means items which may have been covered products at their initial point of sale, but which are being sold or transferred as “used” in a private transaction. Examples include consignment, “yard sales,” asset liquidations, donations, bequeathments, or gifts.

Processor – means a facility that processes glass-containing material into a marketable feedstock.

Ready-to-drink beverage – means a single-use beverage that is packaged ready for immediate consumption.

Refillable container – means a container that is intended to be returned to and refilled by the packer or manufacturer with the same or similar product.

Responsible party – means a person who first sells or distributes a covered product into a State. A responsible party is defined as a manufacturer, a brand owner or licensee, a distributor or an importer of a covered product. A responsible party is the person that must meet the minimum PCRC requirements of this rule. “Responsible party” does not include a person that sells, offers for sale, or distributes into the State less than one ton of covered product.

Third Party Program - means a corporation, nonprofit organization, or other legal entity created by a responsible party or group of responsible parties to implement, oversee, and ensure compliance with a statewide minimum recycled content requirement program.

SECTION 3. SCHEDULE

1. Minimum recycled content requirement.

The goal of this section is to set interval goals for the minimum amount of PCRC glass in covered products. In the final legislation, exact dates may take the place of year intervals.

- a. Beginning three years after the effective date of this act, each responsible party shall ensure that the aggregate amount of glass in a covered product category sold, offered for sale, or distributed into the State, measured by weight within a calendar year, shall contain on average at least 35% PCRC.
- b. Beginning five years after the effective date of this act, each responsible party shall ensure that the aggregate amount of glass in a covered products category sold, offered for sale, or distributed into the State, measured by weight within a calendar year, shall contain on average at least 40% PCRC.
- c. Beginning ten years after the effective date of this act, each responsible party shall ensure that the aggregate amount of glass in a covered products category sold, offered for sale, or distributed into the State, measured by weight within a calendar year, shall contain on average at least 50% PCRC.

- d. If, beginning three years after the effective date of this act, a responsible party ensures the state agency that its use of PCRC cullet is made up of at least 50% mixed-color cullet, then the covered products shall only be required to contain, on average, at least 20% post-consumer recycled content until ten years after the effective date of the legislation and at least 25% post-consumer recycled content thereafter.

2. Reporting schedule.

Beginning two years after the effective date of this act, and annually thereafter, each responsible party shall report to the state agency, on a form provided by the state agency.

SECTION 4. EXEMPTIONS

1. The following glass containers are exempt from the provisions of this Act:

- a. Glass containers used for packaging or distributing drugs, as such term is defined in the Federal Food, Drug, and Cosmetic Legislation, 21 U.S.C. s.301 et seq. (A food, dietary supplement, or dietary ingredient is not a drug and is not exempt from the provision.)
- b. Glass containers used for packaging toxic or hazardous products regulated under the “Federal Insecticide, Fungicide, and Rodenticide Legislation,” 7 U.S.C. s.136 et seq.
- c. Glass packaging manufactured for use in the shipment of hazardous materials and is: (a) prohibited from being manufactured with used material by federal packaging material specifications set forth in 49 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R. s.178.609, or (c) is subject to the recommendations of the United Nations on the transport of dangerous goods.
- d. Empty glass containers designed for the purpose of non-commercial personal use, as defined herein.
- e. Previously owned items transferred as “used” to another person, as defined herein.

SECTION 5. COMPLIANCE

The goal of the compliance section is to ensure major end market users of PCRC cullet, other responsible parties, and MRFs report their data to the state or third party program. Based on the data collected, industry, states, and other stakeholders can make informed decisions on how to ensure greater amounts of PCRC glass makes its way into manufacturing and in products, in the future.

In addition, the data collected will help prioritize the necessary investments critical to creating the infrastructure to improve the material flow in the most cost-effective way as possible. It will also show local, state and federal government agencies where the needs are and if there is a role for them to assist in some capacity.

Reporting.

- 1. Beginning two years after the effective date of this act, the manufacturer, distributor, brand owner or licensee, or importer shall report average PCRC glass for covered products to a third-party program manager or state agency on an annual basis. The responsible party will report PCRC glass as;
 - a. Average PCRC glass for covered products sold, offered for sale, or distributed into the State, measured by weight within a calendar year; **or**
 - b. Average PCRC glass for covered products sold, offered for sale, or distributed in United States, measured by weight within a calendar year; **or**
 - c. A list of the responsible party’s glass container suppliers for covered products sold, offered for sale, or distributed into the State, and an independently verified acknowledgement of compliance for each

glass container supplier being above the post-consumer recycle content standards, measured by weight within a calendar year.

2. Beginning two years after the effective date of this act, the MRFs operating within the state or importing glass from MRFs to be sent to landfills located in the state shall report annually to the third-party program manager or state agency:
 - a. The quantity of PCRC glass sent to landfill for disposal or for other uses not considered to be recycling, such as alternative daily cover, to a third-party program manager or state agency measured by weight within a calendar year; **and**
 - b. The quantity of PCRC glass sent to processors for recycling, measured by weight within a calendar year. The MRFs may apply a correction factor of 0.65 to account for non-glass residue, trash and other solid waste in the tonnage report or a mass balance calculation to reflect a more accurate estimate of PCRC cullet sent to landfills for disposal/alternative daily cover or to processors for recycling.
3. Beginning two years after the effective date of this act, the third-party program manager or state agency overseeing data reporting shall provide a public platform for providing data to consumers and other stakeholders on the average PCRC glass in covered products of responsible parties.
4. The state shall convene a special commission to investigate, analyze and study glass recycling in the state and identify any barriers and hindrances to developing infrastructure needed to obtain a higher percentage of PCRC cullet that would be available to manufacturers. The special commission may consist of representatives from the following: appointees by the governor, a regional glass recycling organization; the beer industry—a large brewer and a craft brewer; the wine and spirits industry; the state’s recycling department, the state’s economic development agency, a member of the state’s house/assembly, and a member of the state’s senate.

The commission study shall include, but not be limited to, any economic, technical, statutory or regulatory barriers or other hindrances that may prohibit glass infrastructure opportunities in the state. The Commission shall also consider information provided by previously completed glass studies. The commission shall submit its findings and recommendations, together with drafts of any needed legislation necessary to carry those recommendations.

SECTION 6. ENFORCEMENT

The goal of the enforcement section is to provide recommended methods and incentives for responsible parties and MRFs to meet or exceed requirements outlined in the compliance section above.

Consideration A: If direct financial penalties are added to the enforcement section, the penalties need to be applied to both responsible parties and MRFs which send waste streams with high content of PCRC cullet to the landfill.

Consideration B: If other major end markets for PCRC cullet exist in a state, they should be subject to similar requirements, especially if the PCRC cullet is not being applied to a beneficial use.

1. Hardship provisions.

- a. **Extension.** If one or more of the conditions in the following subsections are met, a responsible party may request an extension to the requirements of Section 2 for a period of up to two years for a particular covered product. The extension may be granted if:
 - i. The responsible party can demonstrate an unavoidable hardship in complying with these provisions; such hardships can be economic, market-based, or related to properties of the contents. Simple expense or other logistics generally associated with operating a business do not qualify. The

application must include information about how the responsible party will overcome these hardships within the period of the exemption; or,

- ii. The responsible party cannot produce a refillable product to specifications and comply with the PCRC content requirement.

An extension shall be evaluated and granted by the agency implementing this Act, with the condition that a container containing or intended to contain a ready-to-drink beverage shall not be eligible for the extension provided in this subsection.

- b. Temporary Deferment.** If for a period of six consecutive months, a responsible party is unable to meet the requirements of the provision due to an inability to source sufficient amounts of furnace ready cullet, the responsible party may apply for a temporary deferment of the requirements for that reporting period. The responsible party must demonstrate the hardship(s) and their efforts to comply with the requirements, and also describe a plan for corrective action, as provided for in Section 6, Enforcement. If the responsible party demonstrates sufficient furnace ready cullet is not available, no corrective action shall be necessary. Such deferment shall be determined by the agency implementing this Act.

- 2. Non-Compliance.** In the event the responsible party or MRF is not compliant with the PCR content or reporting standards outlined in the compliance and schedule sections, the third-party program manager or state agency shall provide the responsible parties or MRFs a notice of non-compliance within three months of receiving or expecting to receive the annual PCR report from the responsible party or MRF.

- 3. Corrective Action.** Within one year of receiving a notice of non-compliance, the responsible party or MRF shall demonstrate or propose corrective actions to the third-party program manager or state agency to return to a state of compliance by;

- a. Meeting or exceeding the relevant compliance and data reporting standards outlined in the compliance & schedule section; **or**

- b. Filing for an extension as outlined in the exemptions section; **or**

- c. Developing terms for and reaching mutual agreement with the third-party program manager or state agency upon, a memorandum of agreement that provides, for covered products sold, offered for sale, or distributed into the State, an acknowledgement of the reasons a responsible party or MRF is not able to achieve a state of compliance and a plan for completing alternative compliance activities which reduce glass waste in the state.

- i. In developing such terms, the responsible party or MRF shall identify the requisite parties to such an agreement and engage such parties in ongoing discussions concerning the establishment of systems and methods, pursuant to such an agreement, for the cost-effective and consumer-oriented state-wide glass waste reduction activities that will directly reduce glass waste or will yield sufficiently clean furnace-ready PCRC cullet.

- ii. Such memorandum of agreement shall include, but not be limited to, activities which: (1) Establish or expand glass waste prevention systems and methods, such as investing in PCRC glass collection or recycling infrastructure, (2) establishing or expanding products or processes enabling refillable containers or returnable beverage containers, and (3) developing covered products or processes with improved recyclability or durability in the state.

SECTION 7. STATE REVIEW

1. Program Performance Review

Within three years of enactment of this law, the third party or state agency shall report back to their states legislative body:

- a. The companies and types of products participating in the program.
- b. The increase in PCRC glass content of products sold or distributed in the state.
- c. The third party or state agency shall identify the companies that are making investments in infrastructure and/or programs that increase the usage of PCRC glass products and highlight them within the report.
- d. Within three years of the passage of this bill, the third party or state agency overseeing the program shall report back to their states legislative body additional industries that use reusable/durable products that should be included in the program. These products shall be included in the data being collected and their score shall be made public to highlight products being used that are designed for long-life times and for reuse applications.
- e. The third party or state agency overseeing the program shall track and report back to their legislative body any changes that could impact a company's or industry's ability to source recycled glass content. If another industry is purchasing greater amounts of PCRC glass and limits the ability of other industries to purchase the PCRC glass, the third party or state agency overseeing the program shall highlight this in their report and not harm these companies who are impacted by their inability to purchase the recycled glass.
- f. Identify companies that invest in infrastructure and/or programs that increase the usage of PCRC glass products.

SECTION 8. SEVERABILITY AND CONSTRUCTION

The provisions of this Legislation shall be severable, and if any court declares any phase, clause, sentence, or provision of this Legislation to be invalid, or its applicability to any government, agency, person, or circumstance is declared invalid, the remainder of the Legislation and its relevant applicability shall not be affected. The provisions of this Legislation shall be liberally construed to give effect to the purposes thereof.

SECTION 9. EFFECTIVE DATE.

This Legislation shall become effective immediately upon adoption.