

GLASS MINIMUM POST-CONSUMER RECYCLED CONTENT MODEL LEGISLATION

A BILL

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

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

WHEREAS, due to market issues, the amount of post-consumer glass collected in recycling programs and then discarded as waste has steadily increased; and

WHEREAS, post-consumer glass that has been processed to remove contaminants and is furnace ready, also known as post-consumer cullet, is integral to making new glass beverage and food containers; and

WHEREAS, the use of post-consumer cullet in manufacturing provides no compromise in safety or quality; and

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

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

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

WHEREAS, one way states can foster these benefits is to incentivize the use of post-consumer cullet in significant end markets—food and beverage containers and fiberglass insulation; as well as in emerging markets that have a significant positive net effect on climate change—ground glass pozzolan, and foamed glass aggregate; and

WHEREAS, there is value to collecting data on post-consumer cullet used by manufacturers (e.g., for glass food and beverage containers, fiberglass insulation, ground glass pozzolan, and foamed glass aggregate) and other end destinations of post-consumer glass handled by MRFs (e.g., used as processed glass aggregate, alternative daily landfill cover; as well as the quantity being disposed of as waste).

Whereas, this model legislation can be used concurrently and augment other programs, such as a beverage container redemption program, extended producer responsibility for packaging, or other legislative actions.

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

SECTION 1. INTENTIONS

- Develop markets for post-consumer glass.

- Expand use of post-consumer cullet in manufacturing new beverage and food containers, fiberglass insulation, ground glass pozzolan, and foamed glass aggregate.
- Reduce post-consumer glass 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 cullet and/or 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 post-consumer 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 material made from post-consumer 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 recycling facility at which primarily residential mixed recyclables, diverted from disposal by the generator and which are collected separately from municipal solid waste, are mechanically and/or manually sorted into commodities for further processing into specification-grade commodities and/or sales to end users. For the purposes of this rule, “materials recovery facility” does not mean a solid waste management facility which may process municipal solid waste to remove recyclable materials.

Minimum recycled content requirement – means a minimum percentage of post-consumer cullet 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 – pertains to materials that have been discarded by end users rather than generated during a manufacturing process.

Post-consumer recycled content (or PCRC) - means the amount of post-consumer glass used in cullet for manufacturing new products. "Post-consumer recycled content" does not include post-industrial 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 recycled 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 post-consumer glass into furnace ready cullet.

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 post-consumer cullet 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 cullet 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 cullet 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 40% PCRC.
- c. Beginning ten years after the effective date of this act, each responsible party shall ensure that the aggregate amount of cullet 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 50% PCRC.

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.
- e. Previously owned items transferred as “used” to another person.

SECTION 5. COMPLIANCE

The goal of the compliance section is to ensure responsible parties report data to the state or third party program manager. Based on the data collected, industry, states, and other stakeholders can make informed decisions on how to ensure greater amounts of post-consumer cullet 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 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 responsible party shall report the following to a third-party program manager or state agency on an annual basis:
 - a. The total amount by weight of all glass used in covered products sold, offered for sale, or distributed into the State and/or in the United States by the responsible party within a calendar year; **and**
 - b. The total amount by weight of post-consumer cullet used in covered products sold, offered for sale, or distributed into the State and/or in the United States by the responsible party within a calendar year; **and**
 - c. Average PCRC as a percentage of all covered products sold, offered for sale, or distributed into the State and/or in the United States, measured by weight within a calendar year; **or**
 - d. 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 PCRC standards, measured by weight within a calendar year.
2. 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 used in covered products of responsible parties.
3. The state shall convene a special commission to investigate, analyze and study the management of post-consumer glass in the state and identify any barriers and hindrances to developing infrastructure needed to obtain a higher percentage of post-consumer glass for processing into cullet for manufacturers. The special commission may consist of a diverse group which may include: the state’s recycling department, the state’s economic development agency, the glass manufacturing industry, the glass recycling industry, and the food glass industry. The commission’s study shall be submitted to the state organization and/or third party program manager. The 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 existing glass studies. The commission may include proposed legislative actions needed in its findings and recommendations.

SECTION 6. ENFORCEMENT

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

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 expenses 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 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 post-consumer 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 post-consumer 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 is not compliant with the PCRC or reporting standards outlined in the compliance and schedule sections, the third-party program manager or state agency shall provide the responsible parties a notice of non-compliance within three months of receiving or expecting to receive the annual PCRC report from the responsible party.

3. The State may consider the following factors for this section:

Consideration A: Direct financial penalties for non-compliance are added to the enforcement section, the penalties shall be considered for both responsible parties. **Consideration B:** If other major end markets for post-consumer glass and/or cullet exist in a state, they should be subject to similar reporting and compliance requirements, especially if the post-consumer glass and/or cullet is not being applied to a beneficial use.

Section 7. MRF OBLIGATIONS

MRF Reporting.

1. Beginning two years after the effective date of this act, MRFs operating within the state and/or accepting imported glass to be sent to landfills from out-of-state MRFs, shall report annually to the third-party program manager or state agency:

- a. The quantity of post-consumer glass sent to processors or directly to manufacturers for recycling, measured by weight within a calendar year; **and**
- b. The quantity of post-consumer glass commingled with non-glass residue, trash and other solid waste 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**

- c. To account for non-glass residue, trash and other solid waste commingled with the post-consumer glass, the MRFs may also apply a correction factor 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 post-consumer glass sent to landfills for disposal/alternative daily cover or to processors for recycling. The MRF would have to justify any correction factor used to the third party program manager or state agency.

All data submitted by MRFs to the third-party program manager or state agency will be shared publicly, in aggregate form only.

- 2. MRF Non-Compliance.** In the event that MRFs are not compliant with the reporting standards outlined in this section, the third party program manager or state agency shall issue a notice of non-compliance to the MRF.
- 3. Corrective Action.** Within 30 days of receiving a notice of non-compliance with regard to this section, a MRF shall demonstrate compliance or propose corrective actions to come into compliance to the third-party program manager or state agency. Financial penalties for non-compliance with this section may be considered by the state.

SECTION 8. STATE REVIEW

1. Program Performance Review

Within three years of enactment of this law, the third party program manager 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 post-consumer cullet of products sold or distributed in the state.
- c. The third party program manager or state agency shall identify the companies that are making investments in infrastructure and/or programs that increase the usage of post-consumer cullet in products and highlight them within the report.
- d. Within three years of the passage of this bill, the third party program manager 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 program manager 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 post-consumer cullet. If another industry is purchasing greater amounts of post-consumer cullet and limits the ability of other industries to purchase the post-consumer cullet, the third party program manager 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 post-consumer cullet.
- f. Identify companies that invest in infrastructure and/or programs that increase the usage of post-consumer cullet in products.

SECTION 9. 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 10. EFFECTIVE DATE.

This Legislation shall become effective immediately upon adoption.