

Draft Model Legislation for Minimum Recycled Content Plastic in Certain Products



Development of the Model Legislation

- Collaborative effort by NERC & NEWMOA,
- Spring 2020, several members of NEWMOA & NERC asked them to work together to develop model legislation with mandates for post-consumer recycled content
- Formed a committee of state agency representatives
 - CT DEEP
 - ME DEP
 - Mass DEP
 - NJ DEP
 - NYSDEC
 - VT DEC



NERC & NEWMOA

NERC is a multi-state 501 (c) (3) non-profit organization whose programs emphasize source reduction, reuse, recycling, composting, environmentally preferable purchasing (EPP), & decreasing the toxicity of the solid waste stream in the 11-state region comprised of CT, DE, ME, MA, NH, NJ, NYS, MD, PA, RI, & VT. <https://nerc.org/>

NEWMOA is a 501 (c) (3) non-profit, non-partisan, interstate association whose membership is composed of the state environment agency programs that address pollution prevention, toxics use reduction, sustainability, materials management, hazardous waste, solid waste, emergency response, waste site cleanup, underground storage tanks, & related environmental challenges in CT, ME, MA, NH, NJ, NYS, RI, & VT. www.newmoa.org



NERC – NEWMOA Partnership

- Formalized in 2014 with a MOU
- Have developed two 5-year strategic action plans
- Priority – Increasing Use of Recycled Content in Products



Why Model Legislation

- Increasing costs for recycling (2019-2020)
- Improve market value of “blue bin” materials
- Desire to increase sustainability of recycling
- Manufacturers prefer consistency; not a patchwork of laws
 - Opportunity for an 11-state region to introduce this consistency



Process

- Formed committee & held monthly virtual meetings
- Researched existing & proposed US laws
- Determined products to focus on
- Held informational meetings with experts
- Developed draft model legislation
- Seeking public comment
- Review comments, finalize, & publish

As non-advocacy groups, neither NEWMOA nor NERC will engage in promoting the use of the model.



Framing the Model Legislation

- Selected plastic products because:
 - Heightened focus on plastic
 - Recycling programs dropping/limiting plastic due to cost
 - Sector with strong potential for increased use of post-consumer content
 - Laws already passed or proposed that the model could leverage & expand upon
- Set aspirational standards that manufacturers/ brands can meet
- Develop model that state legislatures could adapt/adopt – similar but not necessarily identical requirements across region





The Draft Model Legislation



Definitions §II

- **Covered Product**
- **Post-consumer Recycled Content**
- **Producer**
- **Recycled Content**
- **Plastic Beverage Container**
- **Beverages**
- **Carry-out Bags**
- **Rigid Plastic Container**
- **Trash Bags**
- **Retail Establishment**
- **Medical Beverage**
- **Plastic**



Definition – Covered Product

- Food & beverage containers, and household cleaning & personal care product packaging
- Trash bags
- Carry-out bags



Definition – Post-consumer Recycled Content

Includes: Products from households, and commercial, industrial, & institutional facilities that have been separated from solid waste for collection & recycling.

Excludes: Pre-consumer or post-industrial secondary material or by-products generated from an original manufacturing process.



Definition – Producer (Includes)

- ▶ Manufacturer of a covered product sold, offered for sale, or distributed in or into this State:
 - If the covered product is manufactured by a person other than the brand owner, the producer is the person who is the licensee of a brand or trademark under which a covered product is sold, offered for sale, or distributed in or into this State;
- ▶ If no person described in subsection over whom State can exercise jurisdiction, producer is the person who imports or distributes covered product in/into the State.



Definition – Producer (Excludes)

- De Minimis producers that annually sell, offer for sale, distribute, or import for sale in the State:
 - Less than 1,000 units of a single category of covered products; or
 - A single category of a covered product that in aggregate generates less than \$1,000,000/year in revenue in the State;
- Government agencies, municipalities, or other political subdivisions of the State; or
- Registered 501 (c)(3) organizations & 501 (c)(4) social welfare organizations



Post-consumer Recycled (PCR) Content Requirements §III

	2 years	Every 3 years	5 years	10 years	
Carry-out bags	20%		40%		
Beverage containers	15%		25%	50%	
Rigid plastic containers	25%	+5% until 50%			
Trash bags	10%		30%	Option meeting requirement by averaging total PCR content from all trash bags sold into State rather than per product.	



Definition – Recycled Content

Portion of a covered product's total weight that is composed of post-consumer recycled material, as determined by a material balance approach that calculates total post-consumer recycled material in the package as a percentage of the total weight of the covered product.



Definition – Plastic Beverage Container

Includes: individual, sealable, separate bottle, can, jar, carton, or other plastic container intended to contain a beverage up to 2 gallons.

Excludes:

- Refillable beverage containers, such as containers sufficiently durable for multiple rotations of original or similar purpose & intended to function in a reuse system;
- Rigid plastic containers used for medical devices, medical products that are required to be sterile, nonprescription & prescription drugs, or dietary supplements;
- Liners, bladders, caps, corks, closures, labels, & other items added but otherwise separate from structure of bottle or container;
- Containers certified by the Biodegradable Products Institute (BPI) as compostable.



Definition - Beverages

Includes:

- Water & flavored water;
- Beer, wine, distilled spirits, & all other alcoholic beverages;
- Mineral & soda water, and all carbonated/non-carbonated soft drinks;
- Milk & non-dairy milks;
- All other beverages

Excludes: Infant, medical food, fortified oral nutritional supplements for persons requiring supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the Department.



Definition - Carry-out Bag

Includes: Film plastic bag of any thickness provided/made available by retail establishment to customer at point of sale for purpose of transporting groceries or retail goods.

Excludes: Bag provided to contain meat, seafood, loose produce or other unwrapped food items; a newspaper bag; or a laundry or garment cleaning bag.



Definition – Rigid Plastic Container

Includes:

- Any non-durable plastic container used for food, beverages, household cleaning or personal care products.
 - "Household cleaning & personal care products" means bottle, jug, or other rigid container with a neck or mouth narrower than base, and:
 - Capable of maintaining its shape when empty;
 - Comprised solely of plastic resins; &
 - Contains a household cleaning or personal care product.

Excludes:

- Refillable household cleaning & personal care product containers, such as containers that are sufficiently durable for multiple rotations of original or similar purpose & intended to function in a reuse system;
- Rigid plastic containers or plastic bottles that are medical devices, medical products required to be sterile, nonprescription & prescription drugs, & dietary supplements.



Definition – Trash Bags

Includes: Plastic bags designed & manufactured for use as a container to hold, store, or transport materials to be discarded or recycled, & includes, but is not limited to, a garbage bag, recycling bag, lawn or leaf bag, can liner bag, kitchen bag, or compactor bag.

Excludes: Bags certified by the Biodegradable Products Institute (BPI) as compostable.



Definition – Retail Establishment

Includes:

- Any person, corporation, partnership, business, facility, vendor, organization, or individual that sells or provides merchandise, goods, or materials directly to a customer.
- Food service businesses, grocery stores, department stores, hardware stores, home delivery services, pharmacies, liquor stores, restaurants, catering trucks, convenience stores, or other retail stores or vendors, including temporary stores or vendors at farmers markets, street fairs, & festivals.



Definition – Medical Beverage

Any beverage as defined in 21 U.S.C. Sec. 17321 (z) or 21 U.S.C. Sec. 360ee(b)(3).





Definition - Plastic

A manufactured or synthetic material made from fossil fuels that link monomers through a chemical reaction to create a hydrocarbon polymer chain that can be molded or extruded at high heat into various solid forms.



Compliance with PCR Requirements §IV

- ▶ Producer may rely on state-specific data regarding covered product sales & material use, or
- ▶ If approved by Department, may rely on regional or national data.



Registration §V

Annual registration must include:

- \$1,000 fee
- List producers & brand names of covered products represented in registration submittal;
- Number of items of each category sold into State in previous 12 months;
- Average percentage of PCR content for each category sold into State in previous 12 months; &
- Proof of third-party certification of compliance of PCR requirements



Third-Party Certification §V

- Begins 36 months after implementation & annually thereafter
- Acceptable certifications will be determined by Department
- Shall include pounds of virgin plastic & pounds PCR for each covered product



Waivers §V

Available subject to proof.



Interstate Coordination Clearinghouse §V

Authorizes state to participate in multi-state clearinghouse to assist in carrying out requirements of law:

- Help coordinate review of producers' registrations, waiver requests, & certifications;
- Implement education & outreach activities; &
- Ability to register on a centralized portal rather than a state-specific portal.



Process for Finalizing Model – What's Next

- Comments due February 11
- Considered by committee, revised draft produced
- NERC & NEWMOA Boards approve publication
- Publication by NERC & NEWMOA is *neither* an endorsement *nor* an official position regarding the merits of the legislation.



Late Breaking News

- As of 1/10/2022 NJ Senate & Assembly passed S2515 – Recycled Content Bill
- With Governor for signature or veto
- Contains some amendments:
 - Modified schedule for rigid plastic containers
 - 30% recycled content cap for hot filling packaging
 - Adjusts plastic bag standard
 - Exemption for food containers for special dietary uses
 - New schedule for trash bags

