

Background Document: Post-Consumer Recycled Content in Plastic Beverage Containers - Reporting Requirements

The Department will hold stakeholder meetings on the topic of post-consumer recycled content in plastic beverage containers on March 13, 2025 and April 23, 2025 from 9:00 am to 12:00 pm EDT. As a reminder, both meetings provide an opportunity to share comments and allow for discussion of those comments. Stakeholder meetings will be held in Room 101 of the Deering Building at 90 Blossom Lane, Augusta, Maine, and will also be available virtually. To RSVP for a stakeholder meeting, please email recycledcontent@maine.gov to receive a registration link.

The Department will use these meetings to solicit and accept feedback from all interested parties regarding program and rule development.

Below are relevant excerpts from statute, contextual information, and questions for consideration. All excerpts are from 38 M.R.S. §1615 unless otherwise noted.

The Requirements

Currently, the only requirement of 38 M.R.S. § 1615 is for initiators of deposit and spirits manufacturers to report on PCR plastic usage in beverage containers. However, beginning in 2027 there will be a fee for those not meeting minimum content requirements during the previous calendar year.¹

Pursuant to 38 M.R.S. § 1615(2):

- From 2026 to 2030:

An initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 25% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by 38 M.R.S. § 1615(5); and

- From 2031 and onward:

An initiator of deposit or spirits manufacturer may not sell, offer for sale or distribute for sale in the State a plastic beverage container unless all of the plastic beverage containers sold, offered for sale or distributed for sale in the State by that initiator or spirits manufacturer contain, on average and in the aggregate, at least 30% post-consumer recycled plastic or the initiator or spirits manufacturer has paid the fee required by 38 M.R.S. § 1615(5)

38 M.R.S. § 1615(1)(J) defines a plastic beverage container as:

¹ 38 M.R.S. § 1615(6) does provide for waivers in cases of “anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic.”

A nonrefillable beverage container that is composed wholly or in large part of plastic. "Plastic beverage container" does not include a beverage label or a beverage cap that may be screwed onto or otherwise affixed to a nonrefillable beverage container.

38 M.R.S. § 1615(1)(K) defines post-consumer recycled plastic as:

Plastic produced from the recovery, separation, collection and reprocessing of plastic that was originally sold for consumption and that would otherwise be disposed of or processed as waste. "Post consumer recycled plastic" does not include post-industrial plastic or pre-consumer plastic.

1. Key Considerations for Calculating and Reporting Plastic Usage

Reporting PCR plastic usage accurately is critical for regulatory compliance, and consistency in reporting will allow the Department to maintain a level playing field. Annual reporting and fee determination will require an understanding of, and reporting on, PCR plastic percentages across product lines and sales data for various routes to market.

38 M.R.S. § 1615(3) puts forth the following regarding data determination:

For the purposes of determining an initiator of deposit's or spirits manufacturer's compliance with the post-consumer recycled plastic requirement in subsection 2, an initiator or spirits manufacturer may rely on Maine-specific data regarding plastic beverage container sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory in the United States that includes the State.

In the event an initiator of deposit or spirits manufacturer elects to rely on data derived from regional or territorial data, 38 M.R.S. § 1615(3)(A) states that the initiator of deposit or spirits manufacturer shall:

Prorate that regional or territorial data to determine Maine-specific figures based on market share or population in a manner that ensures that the percentage of post-consumer recycled plastic calculated for plastic beverage containers sold in the State is the same percentage as calculated for that larger region or territory; and [d]document the methodology used to determine those Maine-specific figures [...]

a. Sales to Maine.

As noted above, 38 M.R.S. § 1615(3)(A)(1) directs initiators of deposit and spirits manufactures to estimate Maine-specific figures using market-share or population data. At present, the Department is providing the following guidance for estimating Maine sales.

In the absence of Maine-specific sales data, an initiator of deposit or spirits manufacturer must separately estimate the number of beverage containers sold into Maine for each route to market that they may sell, offer for sale, or distribute for sale in or into the State, assuming equal per capita sales in each state included in the distribution area; and report, for each distribution network, the distributor, the distribution area, and the total number of units distributed through that network.

For example, an initiator of deposit or spirits manufacturer with multiple routes to market may estimate their sales data accordingly:

- Route 1 to market consists of direct-to-consumer sales of 1,000 units sold into Maine; no need to estimate.
- Route 2 to market consists of a regional retailer that received 100,000 units and has stores throughout New England (ME, NH, VT, MA, RI, and CT). To estimate the proportion of the 100,00 units that could have been sold to Maine, an initiator of deposit or spirits manufacturer would utilize the following formula:

$$\text{State Sales} = \text{Regional Sales} \times \frac{\text{State Population}}{\text{Regional Population}}$$

- Route 3 to market consists of a wholesaler that received 5,000,000 units that it resold throughout the country. To estimate the proportion of the 5,000,000 units that could have been sold to Maine, an initiator of deposit or spirits manufacturer would utilize the following formula:

$$\text{State Sales} = \text{National Sales} \times \frac{\text{State Population}}{\text{National Population}}$$

In this example, the reported Maine sales data would be the total estimated sales combined from the three routes to market.

Feedback from stakeholders is sought for the following questions:

- What complications might you encounter when calculating sales data using these methods?
- Do you currently have accurate Maine-specific sales data and/or sales data for each possible route to market?
- Are there best practices for tracking state sales or obtaining accurate sales data for various distribution routes?
- Is the estimation method above consistent with sales estimation methods required or allowed by other states with PCR plastic content laws? If not, how do the other states' methods differ?
- How might market share be used to prorate data? Are there widely accepted sources of market share data? If not, how might market share data be obtained and what amount of certainty with regard to the accuracy of that data is acceptable?

b. Quantities of plastic sent

As noted above, 38 M.R.S. § 1615(3)(A)(1) directs initiators of deposit and spirits manufactures to estimate the amount of total plastic and PCR plastic sent into the state such that the percentage in beverage containers estimated is the same as the percentage for the territory from which the estimate

is derived. At present, the Department is providing the following guidance for estimating the pounds of PCR and Non-PCR plastic sent to Maine.²

- Method 1: If you have data on the amount of PCR and Non-PCR plastic purchased to make beverage containers for the UPCs on which you are reporting, the total pounds of PCR plastic and Non-PCR sent to Maine is found by using the following equation:

$$\text{Lbs to ME} = \frac{(\text{lbs of material purchased}) \times (\# \text{ containers sent to ME})}{(\text{Total containers made with the material})}$$

Note: If PCR plastic content varies with geography, for instance if containers sent to Maine have a different percentage of PCR plastic than containers sent to other regions, PCR and Non-PCR plastic purchased must be specific to that purchased and used to manufacture the beverage containers that include those sent to Maine. For example, if you utilize two bottling manufacturers, one in Pennsylvania and one in Nevada, and Maine bottles come from the Pennsylvania manufacturer, then only PCR and Non-PCR plastic purchased for the Pennsylvania manufacturer should be included in your calculations.

- Method 2: If you have data on the percentage of PCR plastic in your plastic beverage containers, the total pounds of PCR plastic sent to Maine is found using the following equation.

$$\text{Lbs. to ME} = (\% \text{ PCR or NonPCR}) \times (\# \text{ of containers to ME}) \times (\text{lbs. per container})$$

Note: If the percentage of PCR plastic varies across containers, you need to perform this calculation separately for each set of containers with a given percentage of PCR plastic.

Feedback from stakeholders is sought for the following questions:

- Are there scenarios where multiple bottlers are using different amounts of PCR on the same UPC? Or are PCR percentages set standard for a product line despite which bottler produces them?
- Does the percentage of recycled content used for your plastic beverage containers change or fluctuate during the course of the year? How would that impact your ability to report accurately?
- If you report on containers made with different plastics resins, are there complications associated with accounting for multiple resins?

² See the “PCR Plastic Reporting Guidance Document” on the Department’s [website](#) for example calculations.

c. Acquisition

Feedback from stakeholders is sought for the following questions:

- Are there complications with acquiring PCR content currently? Are those complications specific to a certain type of plastic resin? If so, which ones?
- How might the department identify “anomalous market conditions consisting of a disruption in or lack of the supply of post-consumer recycled plastic”³?

2. Verification of PCR Content

Statute does not specifically require initiators of deposit and spirit manufacturers to utilize third-party post-consumer recycled content certification entities, but it appears certifications could be helpful tools when ensuring transparency and accuracy during PCR reporting.

a. Certification Standards:

Feedback from stakeholders is sought for the following questions:

- Does your company already utilize any recycled content certifications? If so, which ones?
- There appear to be certifications that show a bottle manufacturer is buying PCR content from a reclaimer (APR PCR certification, for example). Are there certifications verifying that PCR content is present in a given product?
- What are the pros and cons of PCR certifications? What are the possible implications of requiring PCR certifications? How would this impact your business or industry?

b. Auditing:

38 M.R.S. § 1615 (4)(C) states:

The department may conduct audits or take other necessary actions to verify the accuracy of initiator of deposit or spirits manufacturer data reported under this subsection.

Feedback from stakeholders is sought for the following questions:

- What documentation or record keeping is used to verify recycled content claims from manufacturers or plastic suppliers?
- What documentation can be provided to verify sales to Maine or estimates of sales into Maine?
- Should there be clear standards for the information that must be provided in the case of an audit? What might they look like? How long would companies need to provide such information upon request?
- Should certain information be provided with reporting?
- How might the Department identify companies to audit?

³ 38 M.R.S. § 1615(6)