STATE OF NEW YORK

9493

IN SENATE

July 5, 2022

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to establishing an extended producer responsibility program for packaging; and to amend the state finance law, in relation to establishing the packaging responsibility fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 27 of the environmental conservation law is amended by adding a new title 33 to read as follows:

TITLE 33

EXTENDED PRODUCER RESPONSIBILITY PROGRAM FOR PACKAGING

Section 27-3301. Definitions.

27-3303. Responsibilities of producers.

27-3305. Producer responsibility program plan.

27-3307. Collection and convenience.

27-3309. Responsibilities of the department.

27-3311. Funding mechanism.

27-3313. Non-reusable packaging reduction requirements.

27-3315. Recycling or post-consumer recycled material requirements.

27-3317. Toxic substances in packaging.

27-3319. Biennial producer responsibility program report.

27-3321. Producer compliance information.

27-3323. Enforcement.

27-3325. Labeling.

27-3327. Regulations.

§ 27-3301. Definitions.

As used in this title:

1. "Compost" means the biologically stable humus-like material derived from composting or the aerobic, thermophilic decomposition of organic matter but shall not mean sewage, septage, or materials derived from sewage or septage.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15702-01-2

2. "Compostable" means amenable to the controlled aerobic biological decomposition of organic matter through active management to produce compost as certified by a third-party certifier and accepted and processed into compost by at least eighty percent of commercial compost facilities within the state.

3. "Curbside recycling" means a recycling program that serves residential units, or schools, state or local agencies, or institutions where such entities were eligible to be served under a contract with a municipality by a municipality or a private sector hauler as of the effective date of this title, and such recycling program is operated by a municipality or pursuant to a contract with a municipality, private sector hauler, or other public agency or through approved solid waste management plans.

4. "Municipality" means a county, city, town, village, local public authority or public benefit corporation, or solid waste management district, that provides waste management services for a specific geographical area.

5. "Non-reusable packaging" means packaging material that does not meet the definition of "reusable".

6. "Packaging material" means any part of a package or container, regardless of recyclability or compostability, including but not limited to such material types as paper, plastic, glass or metal, that is used for the containment, protection, handling, delivery, transport, distribution, and presentation of a product that is sold, offered for sale, or distributed in the state. Bags and secondary or transport packaging shall be included within this definition. Packaging material does not include:

(a) material, or a category of material, intended to be used for long-term storage or protection of a durable product that can be expected to be usable for that purpose for a period of at least five years as defined by the department pursuant to regulations;

(b) beverage containers subject to title 10 of this article;

(c) packaging that is reusable;

(d) medical devices and packaging which are included with products regulated as a drug, medical device or dietary supplement by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 et seq., sec. 3.2(e) of 21 U.S. Code of Federal Regulations or the Dietary Supplement Health and Education Act;

(e) animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other covered materials regulated by the United States Department of Agriculture under the Virus, Serum, Toxin Act, 21 U.S.C. 151-159; and

(f) packaging products used to contain substances hazardous to the environment, regulated pursuant to section 37-0103 of this chapter, or packaging products regulated by the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. sec. 136 et seq. or other applicable federal law, rule or regulation.

7. "Post-consumer recycled material" means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. Post-consumer recycled material does not include post-industrial material or pre-consumer material, or material generated by means of combustion, incineration, pyrolysis, gasification, solvolysis, chemical recycling and any high-heat or chemical conversion process.

8. "Producer" means a person who:

(a) manufactures or uses in a commercial enterprise, sells, offers for sale, or distributes the packaging material in the state under the brand of the manufacturer; or

(b) if paragraph (a) of this subdivision does not apply, an entity that is not the manufacturer of the packaging material but is the owner or licensee of a trademark under which the packaging material is used in commercial enterprise, sold, offered for sale, or distributed in the state, whether or not the trademark is registered; or

(c) if paragraphs (a) and (b) of this subdivision do not apply, an entity that sells packaging in the state which is intended to be filled at the point of sale; or

(d) if paragraphs (a), (b) and (c) of this subdivision do not apply, an entity that imports the packaging material into the United States or the state for use in a commercial enterprise, sale, offer for sale, or distribution in the state.

"Producer" includes a franchisor of a franchise located in the state but does not include the franchisee operating that franchise.

9. "Readily-recyclable" means that the department has determined that the packaging material:

(a) can be sorted by entities that process recyclable material generated in the state; and

(b) has a consistent market for purchase, as based on data from the prior two calendar years, meaning that with respect to a type of packaging material, entities processing recyclable material are willing to purchase full bales of that type of fully sorted packaging material in quantities equal to or in excess of the supply of that fully sorted packaging material. "Readily-recyclable" does not include packaging material that facilities accept in low qualities or sort out of material during additional processing steps or if facilities cannot sell a full bale due to a lack of market or inability to feasibly separate those materials during additional processing steps. Packaging material categories or types shall not be considered readily-recyclable, generally recyclable, compostable, or reusable if they contain a toxic substance.

10. "Recycling" means the series of activities by which material is:

(a) collected, sorted, and processed; (b) converted into a raw material with minimal loss of material quality; and (c) used in the production of a new product to replace the use of virgin materials, including the original material. "Recycling" does not include energy recovery or energy generation by any means, including but not limited to combustion, incineration, pyrolysis, gasification, solvolysis, waste to fuel or any chemical conversion process, or landfill disposal of discarded material or discarded product component materials.

11. "Reusable" means:

(a) designed to be used repeatedly for a number of use cycles that exceeds the minimum number of times necessary to achieve the same overall environmental impact as the non-reusable or disposable product it replaces, based on a life cycle assessment of the product's impacts from extraction through production and through disposal or end of life management;

(b) compliant with any statutory or regulatory requirements for toxic substances;

(c) safe for washing and sanitizing according to applicable state food safety laws; and

(d) capable of being recycled at the end of use, with the exception of ceramic products.

12. "Reuse and refill system" means a set of mechanisms designed to facilitate multiple uses of a reusable container, in order to, at a minimum, achieve the breakeven point for such reusable container. Mechanisms may include, but are not limited to, deposits, incentives, curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution networks.

13. "Toxic substance" means a chemical substance identified in section 27-3317 of this title, or a chemical substance designated by the department on the basis of identification by a government entity and/or identification on the basis of credible scientific evidence as being:

(a) a carcinogen, mutagenic, or reproductive or developmental toxicant;

(b) endocrine disruptor;

(c) damaging to the nervous system, immune system, or organs or causing other systemic toxicity;

(d) persistent, bioaccumulative and toxic;

(e) highly persistent and highly mobile;

(f) persistent, mobile and toxic; or

(g) persistent and very bioaccumulative.

14. "Unit" means each discrete component of a package or container.

15. "Universal product code" or "UPC" shall have the same meaning as subdivision 13 of section 27-1003 of this article.

16. "Waste reduction" means any action which causes a net reduction in the generation of solid waste and includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, and increasing the efficiency of the use of materials. Waste reduction does not include replacing a recyclable material with a nonrecyclable material or a material that is less likely to be recycled, and does not include a shift from a nonplastic material that currently is recyclable to a plastic material.

§ 27-3303. Responsibilities of producers.

1. There is hereby established a packaging producer responsibility program by which producers, participating individually or collectively, shall be required to make changes to their product design to reduce packaging consumption and increase waste reduction, shall be required to pay fees based on the amount, by weight and type, of packaging material sold, offered for sale, or distributed for sale in the state and shall be responsible for packaging waste disposal.

2. The producer or producers shall provide all information necessary for the determination of the producer's payment obligations and the determination of the producer's compliance with respect to this title.

3. Within six months of the effective date of this title, the department, or a third party, shall conduct a statewide reduction, reuse and recycling needs assessment, hereafter "needs assessment", to identify barriers and opportunities for reducing, reusing, and recycling packaging. The needs assessment shall at a minimum include an evaluation of capacity costs, gaps and needs for the following factors:

(a) current barriers affecting the creation of reduction, reuse and refill programs;

(b) opportunities for the creation of reduction, reuse and refill programs;

(c) current municipal funding needs, both operational and capital, impacting recycling access and availability and reuse and refill;

(d) existing state statutory provisions and funding sources for recycling, reuse, reduction, and recovery;

(e) the existing collecting and hauling system for recyclable materials;
(f) opportunities to improve access to recycling;
(g) the capacity, cost, and needs associated with the collection and transportation of recyclable materials in the state;
(h) the processing capacity, market conditions, and infrastructure for recyclable materials in the state and regionally;
(i) current state packaging product recovery rates, recycling rates, and post-consumer recycled content rates, by material type;
(j) accounting of greenhouse gas emissions associated with collection, processing, and marketing of packaging products;
(k) an evaluation of state and regionally accepted recycling practices;
(l) current barriers affecting equitable access to recycling and reuse programs;
(m) barriers to the marketability of recyclable materials generated in the state, and potential solutions;
(n) the amount, by weight, of material that is recycled by each recycling facility that accepts packaging material;
(o) consumer education needs for reuse and refill systems, recycling, and reducing contamination in collected recyclable material that reduces its suitability for recycling;
(p) the net cost of curbside collection, commercial collection, or transfer station operation, on-site processing cost for each readily-recyclable packaging material types, management cost of non-readily-recyclable packaging, transportation cost for each packaging material, and any other cost factors determined by the department;
(q) the availability of opportunities in the recycling and reuse systems for minority- and women-owned business enterprises; and
(r) the location of landfills, incinerators and transfer stations within the state, the socio-economic conditions where such facilities are sited and the permitted pollution levels at each facility.
3. The department shall be responsible for updating and revising the needs assessment every three years.
4. The department shall post the results of the needs assessment on its website and issue a report to the legislature.
§ 27-3305. Producer responsibility program plan.
1. Within six months of the effective date of this title, each producer shall register with the department.
2. Within eighteen months of the effective date of this title, each producer, either individually or acting collectively, shall submit a producer responsibility program plan (hereinafter "plan") to the department for approval. A producer may satisfy its obligations under this title individually or collectively.
3. Each producer shall begin program implementation within six months after the date the plan is approved or no later than two years of the effective date of this title. If no plan is approved by that timeframe, the producer shall be subject to penalties for noncompliance.
4. Any person that becomes a producer after the effective date of this title shall submit an individual plan, or join with other producers, within six months and begin program implementation within six months of plan approval or be subject to penalties for noncompliance.
5. The submitted plan shall, at a minimum, address the following:
(a) Contact information, including the name, electronic and physical address, and telephone number of the authorized representative of the producer or producers.

(b) Identify the producer or producers participating in the plan.

(c) A description of how the non-reusable packaging reduction requirements and recycling or post-consumer recycled material requirements are addressed.

(d) A comprehensive list of the types and brands of packaging products for which the producer or producers are responsible for, including the UPCs of the products associated with each type of packaging material.

(e) A description of the proposed funding mechanism, identified in section 27-3311 of this title that meets the requirements of this title and is sufficient to cover the cost of operating the program, updating the plan, and maintaining a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner. At a minimum, the following funding mechanism details shall be provided in the plan:

(i) proposed program fees, listed by producer, which are based on an objective formula establishing a reimbursement rate, which covers obligations identified in the needs assessment and takes into account variable regional costs (including at a minimum those identified in clause (A) of subparagraph (iv) of this paragraph, for participating municipalities or private sector haulers, approved by the department.

(ii) program fees determined based on eco-modulation. For purposes of this title, "eco-modulation" shall provide that program charges are structured to provide producers with financial incentives that reward reduction of waste at the source and recycling compatibility innovations and practices, reward producers for reusable packaging products, including those that are contained within a reuse and refill system and that disincentivize designs or practices that increase costs of managing the packaging products.

(iii) the producer or producers may adjust charges to be paid by participating producers, or may include a credit, based on factors that affect system costs.

(iv) program fees shall also be variable based on:

(A) costs to provide recycling collection or other form of consumer service that is, at minimum, as convenient as the previous waste collection schema in the particular jurisdiction for all consumers;

(B) costs to process a producer's packaging products for sale to secondary material markets;

(C) whether the packaging product would typically be readily-recyclable except that as a consequence of the product's design, the product has the effect of disrupting recycling processes or the product includes labels, inks, or adhesives containing heavy metals that would contaminate the recycling process;

(D) whether the packaging is specifically designed to be reusable or refillable, is contained within a reuse or refill system, and has a high reuse or refill rate;

(E) the commodity value of packaging products; and

(F) contributions to greenhouse gas emissions from the production, use, collection, processing, and marketing of the packaging product.

(f) A description of the process for participating municipalities or private sector haulers to recoup reasonable costs as established by the needs assessment from the producer, including, as applicable, any administrative, sorting, collection, transportation, public education or processing costs if the producer uses services through a municipality or obtains such services from a private hauler;

(g) A description of the characteristics of each type of packaging material that are relevant to the eco-modulating factors set forth pursuant to section 27-3311 of this title,

(h) A description of the producer's or producers' public outreach education program for consumers and other stakeholders that will at a minimum:

(i) be designed to achieve the management goals of packaging products under this title, including the prevention of contamination of products;

(ii) incorporate, at a minimum, electronic, print, web-based and social media elements that municipalities could utilize at their discretion;

(iii) consult with municipalities and other stakeholders, coordinate with and assist local municipal programs, municipal contracted programs, solid waste collection companies, and other entities providing services, and develop and provide outreach and education to the diverse populations in the state, including utilizing a variety of outreach and education tools and ensuring materials are widely accessible and available in multiple languages;

(iv) label or mark packaging information in accordance with the requirements of section 27-3325 of this title;

(v) include details on the following components of the outreach and education program provided in the plan and make such details available to consumers and other stakeholders on the producer's or producers' public education program website:

(A) proper end-of-life management of packaging;

(B) the location and availability of recycling collection;

(C) how to prevent litter of packaging products; and

(D) a description of the process for answering stakeholder questions and resolving any issues.

6. A producer implementing an individual extended producer responsibility program or producers acting cooperatively shall undertake outreach, education, and communications that assist in attaining or exceeding the minimum post-consumer content, minimum recovery rates, and minimum recycling rates, as specified by the department in regulation.

7. No later than ninety days after the submission of the plan, the department shall determine whether to approve the plan as submitted; approve the plan with conditions; or deny the plan.

8. The department shall consider the following in determining whether to approve a plan:

(a) whether the plan adequately addresses all elements described in this section;

(b) whether the producer or producers have undertaken satisfactory consultation with the public and municipalities and have provided an opportunity for input in the development of the plan prior to submission of the plan;

(c) whether the plan adequately provides for:

(i) the producer or producers collecting and funding the costs of collecting and processing packaging materials covered by the plan and reimbursing municipalities or private haulers providing such services;

(ii) the funding mechanism to cover the entire cost of the producer or producers' program and whether such mechanism provides for an equitable distribution of funding;

(iii) an evaluation system for the program charge structure, which shall be evaluated on an annual basis and resubmitted to the department annually;

(iv) effective consumer outreach and education;

(v) whether the plan satisfactorily provides for how the producer or producers implementing an individual extended producer responsibility program will meet the minimum post-consumer content rates, recovery

rates, and recycling rates, which will create or enhance markets for recycled materials; and

(vi) whether the plan creates a convenient system for consumers to recycle packaging products that meets or exceeds the convenience criteria set forth in section 27-3307 of this title.

10. The department may deny a plan. (a) If a plan is denied, the department shall inform the producer or producers implementing an individual extended producer responsibility program in writing as to any deficiencies in such plan. The producer or producers implementing the plan shall amend and resubmit any denied plans for reconsideration within sixty days of notification of the denial of such plan. The department shall approve or deny such plan within thirty days of resubmission.

(b) If a plan is denied a second time, the department shall provide the producer or producers with direction for meeting any additional required elements of the plan it deems necessary. If such requirements are not met within thirty days, the producer or producers shall be subject to penalties for each day such plan is delayed.

11. The department may rescind the approval of an approved plan at any time for just cause. If a plan is rescinded, the department shall inform the producer or producers in writing as to any and all reasons why the plan was rescinded. The producer or producers implementing the plan shall amend and resubmit any rescinded plans for reconsideration within sixty days of such notification. The department shall approve or reject any such amended plan within thirty days of resubmission.

12. The producer or producers shall notify the department of any proposed modification to the program. If the department determines that the plan has been substantially modified, the producer or producers shall submit a proposed plan amendment describing the changes to the department within ninety days of the determination. Within ninety days of receipt of a proposed amended plan, the department shall determine whether the amended plan complies with this title. The department shall send a letter notifying the producer or producers of: (a) approval; or (b) disapproval, including the reasons for rejecting the plan. The producer or producers shall submit a revised plan within sixty days after receipt of the letter of disapproval.

13. The producer or producers shall reimburse the department annually at the time of annual reporting for all administrative costs associated with implementation and oversight of the program.

14. Beginning two calendar years following the effective date of this title, a producer shall not:

(a) sell, offer for sale, or distribute, in the state, a product contained, protected, delivered, presented or distributed in or using packaging material for which the producer has not complied with all applicable requirements of this title; or

(b) sell, offer for sale, or distribute packaging for use in New York unless such packaging products are in compliance with all applicable requirements of this title.

15. No person may charge a consumer point-of-sale or point of collection fee to recoup the costs associated with meeting the obligations under this title.

16. A producer or producers shall annually report to the department:

(a) the total amount of packaging material, by weight, sold, offered for sale, or distributed into the state by the producer or producers in the prior calendar year;

(b) the total amount of packaging material, by unit, sold, offered for sale, or distributed into the state by the producer or producers in the prior calendar year;

(c) the percentage of all packaging material the producer or producers sold, offered for sale, or distributed for sale in the state through internet transactions; and

(d) the following financial information:

(i) the total costs of implementing the program, as determined by an independent financial audit;

(ii) a copy of the independent audit; and

(iii) a detailed description of whether the program compensates municipalities, solid waste collection, sorting and processing facilities and other approved entities for their recycling efforts and other related services provided and any amount of reimbursement provided.

17. In accordance with the regulations adopted by the department, a producer or producers shall annually report to the department information necessary for the department to make a determination of the producer's or producers' compliance with:

(a) the non-reusable packaging reduction requirements of section 27-3313 of this title;

(b) the reuse and refill system requirements of section 27-3313 of this title;

(c) the recycling or post-consumer recycled material requirements of section 27-3315 of this title;

(d) the toxic substances in packaging requirements of section 27-3317 of this title; and

(e) the labeling requirements of section 27-3325 of this title.

18. Each producer shall pay fees, associated with the cost of the needs assessment required by section 27-3311 of this title.

19. Notwithstanding any provision of this title to the contrary, a producer shall be exempt from the requirements and prohibitions of this title:

(a) in any calendar year in which the producer realized less than two million dollars in total gross revenue during the prior calendar year; or

(b) in any calendar year in which the producer sold, offered for sale, or distributed for sale in the state during the prior calendar year packaging materials/products contained, protected, delivered, presented, or distributed in or using less than one ton of packaging material in total; or

(c) if the producer is a municipality.

20. A producer claiming an exemption under this section shall provide to the department sufficient information to demonstrate that the claimant meets the requirements for an exemption under this section within thirty days of receiving a request from the department.

§ 27-3307. Collection and convenience.

A producer or producers shall provide for widespread, convenient, and equitable access to collection opportunities for the packaging materials identified under the producer or producers' plan at no additional cost to residents. Such opportunities shall be provided to all residents of New York in a manner that is as convenient as the collection of municipal solid waste. A producer or producers shall ensure services continue for curbside recycling programs that a municipality serves as of the effective date of this title, either directly or through a contract to provide services, and that such services are continued through the plan. A plan may not restrict a resident's ability to contract directly

with third parties to obtain recycling collection services if residents have the option to enter into such contracts as of the effective date of this title, as long as the resident still voluntarily chooses to contract directly with the third party. A producer or producers may rely on a range of means to collect various categories of packaging so long as options for packaging material include curbside recycling collection services provided by municipal programs, municipal contracted programs, solid waste collection companies, or other approved entities as identified by the department if:

1. The category of packaging materials is suitable for residential curbside recycling collection and can be effectively sorted by the facilities receiving the curbside collected material.

2. The recycling facility providing processing and sorting service agrees to include the category of packaging materials as an accepted material.

3. The packaging material is not handled through a deposit and return scheme or buy back system that relies on a collection system other than curbside or multi-family collection.

4. The provider of the residential curbside recycling service agrees to participate.

5. (a) The producer or producers shall adopt a list of minimum types of readily recyclable materials and products based on the department's identification of available collection and processing infrastructure and recycling markets for packaging materials. The producer or producers shall update and adopt the list on an annual basis, in consultation with the department, in response to collection and processing improvements and changes in recycling end markets. If there are multiple lists, the department shall compile the lists and shall publish a compiled list to the public. Such lists may vary by geographic region depending on regional markets and regional collection and processing infrastructure.

(b) All municipalities or private recycling service providers shall provide for the collection and recycling of all identified materials and products contained on the list of minimum recyclables, based on geographic regions, in order to be eligible for reimbursement; provided, however, nothing shall penalize a municipality or private recycling service for packaging materials that are generated in the municipality or geographic region that are not included on the list of minimum types of recyclable packaging materials or products as long as it can be demonstrated that such materials have a market as determined by the department in consultation with the producer or producers. Reimbursement shall cover recycling of all packaging materials so long as the program includes at least the minimum recyclable list.

§ 27-3309. Responsibilities of the department.

1. Within one year of the effective date of this title, the department shall promulgate regulations setting recommended program fees for producers to pay after consulting with multiple stakeholders, including municipalities, businesses, institutions, and other extended producer responsibility programs. Program fees shall be set at a rate that will drive reductions in overall packaging, incentivize adoption of reuse systems, increase post-consumer recycled material, and promote the use of recyclable packaging.

2. The department shall revise recommended program fees every three years, beginning three years after the first set of program fees is established to reflect new data received about material use and management, or whenever the targets set in sections 27-3313 and 27-3315 of this title are not met to drive compliance with such targets.

3. The department shall annually compile a list of any producer noncompliance, and the steps being taken to bring noncompliant producers into compliance.

4. The department shall annually provide a description of the infrastructure and education investments made by producers in prior calendar years and an evaluation of how those investments were designed to increase access to recycling and refill or reuse systems in the state.

5. The department shall provide an annual assessment of the progress made toward the achievement of any program goals, including but not limited to the requirements under sections 27-3313 and 27-3315 of this title.

6. The department shall provide an annual assessment of the payment schedule adopted by producers pursuant to section 27-3311 of this title.

7. The department shall provide an annual assessment of whether the plan has been successful in increasing the amount of packaging material that is readily recyclable, increasing the transition from non-reusable to reusable packaging, and incentivizing improvements to the design of packaging material.

8. The department shall consider any proposals for changes to the program or investments in education and infrastructure designed to reduce the amount of packaging material used, increase access to recycling, increase the recycling of or recyclability of packaging material, reduce program costs, or otherwise increase program efficiency, which may include an analysis of best practices for municipal recycling programs and material recovery facilities.

9. The department shall consider the results of representative inbound and outbound audits of recyclable material processed and sold by materials recycling facilities in the state and waste characterization of municipal solid waste.

10. The department shall review the results of a producers' third-party financial audits.

§ 27-3311. Funding mechanism.

1. The department shall promulgate regulations setting forth the manner in which recommended producer program fees on packaging materials shall be calculated. Payments shall be calculated based on:

(a) the packaging material type; and

(b) the quantity of each packaging material type, by weight, that the producer sells, offers for sale, or distributes in the state.

2. The list of packaging material types shall include, at a minimum, the following materials:

(a) paper;

(b) cardboard;

(c) corrugated cardboard;

(d) generic paper/cardboard;

(e) wood;

(f) glass;

(g) polyethylene terephthalate (PET);

(h) high density polyethylene (HDPE);

(i) expanded polystyrene (EPS);

(j) polystyrene;

(k) bio-plastics;

(l) generic plastics;

(m) plastic film;

(n) other plastics;

(o) steel or ferrous;

(p) aluminum;

(q) tinplate; and

(r) generic metals.

3. (a) Program fees shall at a minimum include:

(i) costs to provide curbside collection or other form of residential service that is, at minimum, as convenient as curbside collection or as convenient as the previous recycling collection plan in the particular jurisdiction or as convenient as the previous refuse collection plan in the particular jurisdiction should recycling collection not be provided;

(ii) costs to process packaging materials for acceptance by secondary material markets;

(iii) whether the packaging materials would typically be readily-recyclable except that as a consequence of the product's design, the product has the effect of disrupting recycling processes or the product includes labels, inks, and adhesives containing heavy metals or other toxic substances that would contaminate the recycling process;

(iv) whether the packaging materials or product is specifically designed to be reusable or refillable and has high reuse or refill rate;

(v) the commodity value of a packaging material or product.

The charges shall be adjusted, or the producers may be provided a credit, based upon the percentage of post-consumer recycled material content and such percentage of post-consumer recycled content shall be verified by an independent third party approved to perform verification services to ensure that such percentage exceeds the minimum requirements in the packaging material, as long as the recycled content does not disrupt the potential for future recycling.

(b) Fees shall be higher for packaging material that is not readily-recyclable.

(c) The fees for each type of packaging material shall be eco-modulated and structured to promote the environmental beneficial packaging design in accordance with the following:

Fees	Type of packaging
Fees are increased	Packaging is not readily-recyclable
Fees are lowered	Packaging is readily-recyclable
	Packing is compostable
	Packing incorporates post-consumer recycled material
No fee	Reusable or refillable packaging contained within a reuse/refill system

§ 27-3313. Non-reusable packaging reduction requirements.

1. A producer shall reduce the total amount by unit, on average and in the aggregate, of non-reusable packaging across its brand in accordance with the following schedule:

(a) by ten percent two years after the implementation of the producer plan pursuant to section 27-3305 of this title;

(b) by at least twenty percent four years after plan implementation;

(c) by at least thirty percent six years after plan implementation;

(d) by at least forty percent eight years after plan implementation; and

(e) by at least fifty percent ten years after plan implementation.

2. The reductions required by subdivision one of this section shall be measured against the total amount of packaging the producer sold, offered for sale, or distributed for sale in the state during the respective calendar year. For producers who did not sell, offer for

sale, or distribute for sale any packaging during the calendar year, the reductions required by subdivision one of this section shall be measured against the first calendar year for which there is data regarding the amount of packaging the producer sold, offered for sale, or distributed for sale in the state.

3. These reductions may be achieved by eliminating non-reusable packaging, including secondary packaging, or by transitioning away from non-reusable packaging to a reuse and refill system.

4. The department shall promulgate regulations that address the manner in which each producer will report its compliance with the requirements of this section.

§ 27-3315. Recycling or post-consumer recycled material requirements.

1. Each producer shall ensure that all non-reusable packaging in the aggregate, across its entire brand, either:

(a) is recycled at a rate consistent with the following schedule:

(i) fifty percent five years after implementation of the producer plan pursuant to section 27-3305 of this title;

(ii) eighty percent eight years after plan implementation;

(iii) ninety percent twelve years after plan implementation; or

(b) incorporates, on average and in the aggregate, the following amount by weight of post-consumer recycled material:

(i) fifty percent five years after plan implementation;

(ii) eighty percent five years after plan implementation; or

(iii) ninety percent twelve years after plan implementation.

2. Any producer that enters the market after the effective date of this title shall meet the recycling requirements required by subdivision one of this section as measured against the first calendar year for which there is data regarding the amount of packaging the producer sold, offered for sale, or distributed for sale in the state.

3. (a) For the purpose of determining a producer's compliance with the post-consumer recycled material requirements of this section, a producer shall rely on New York data regarding packaging sales and material use, if available, or may alternatively rely on the same type of data applicable to a region or territory of the United States that includes the state of New York.

(b) If a producer elects to rely on data regarding packaging sales and materials derived from data applicable to a region or territory of the United States that includes the state of New York, the producer shall:

(i) pro-rate the regional or territorial data to determine New York specific figures based on market share or population in a manner that ensures that the percentage of post-consumer recycled material calculated for packaging material sold in New York is the same percentage as calculated for that larger region or territory; and

(ii) document the methodology used to determine such New York specific figures calculated under subparagraph (i) of this paragraph.

4. If a producer elects to comply with the provisions of this section by meeting the post-consumer recycled material requirements, the department may assess against a producer that fails to comply with those requirements an administrative penalty calculated as follows:

(a) The department shall add the total amount by weight in pounds of post-consumer recycled material and the total amount by weight in pounds of material that is not post-consumer recycled material used by the producer in all the packaging it sold, offered for sale, or distributed for sale in the state during the prior calendar year. Unless otherwise determined by the department, the figure calculated under this paragraph shall be calculated using the information reported by the manufacturer.

(b) The department shall multiply the figure calculated under paragraph (a) of this subdivision by the minimum post-consumer recycled material percentage required under paragraph (b) of subdivision one of this section during the prior calendar year.

(c) The department shall subtract from that figure calculated under paragraph (b) of this subdivision the total amount by weight in pounds of post-consumer recycled material used by the producer in all products it sold, offered for sale, or distributed for sale in packaging in the state during the prior calendar years.

(d) The department shall multiply that figure calculated under paragraph (c) of this subdivision by twenty cents. If the figure calculated under this paragraph is less than or equal to zero, the department may not assess an administrative penalty.

§ 27-3317. Toxic substances in packaging.

1. Beginning December thirty-first, two thousand twenty-four, in addition to the requirements of title two of article thirty-seven of this chapter, no person may sell, offer for sale, distribute for sale, or distribute for use in this state, any packaging material containing the following toxic substances above the practical quantification limit, as such term is defined in section 37-0901 of this chapter:

(a) ortho-phthalates;

(b) bisphenols;

(c) per- and polyfluoroalkyl substances (PFAS);

(d) lead and lead compounds;

(e) hexavalent chromium and compounds;

(f) cadmium and cadmium compounds;

(g) mercury and mercury compounds;

(h) benzophenone and its derivatives;

(i) halogenated flame retardants;

(j) perchlorate;

(k) formaldehyde; and

(l) toluene.

2. Beginning one year after the effective date of this title, no person may sell, offer for sale, distribute for sale, or distribute for use in this state, any packaging products containing the following toxic substances above the practical quantification limit, as such term is defined in section 37-0901 of this chapter:

(a) polyvinyl chloride;

(b) polystyrene; or

(c) polycarbonate.

3. Beginning three years after the effective date of this title, and every three years thereafter, the department shall designate at least ten additional toxic substances, unless it determines there are not ten chemicals that meet the definition of toxic substances. If the department determines there are not ten toxic substances that meet such definition, it shall publish a detailed statement of findings and conclusions supporting such determination.

4. Within one hundred eighty days of designating a toxic substance, the department shall adopt regulations to prohibit the newly designated toxic substance in packaging, with an effective date no later than two years after such regulations are finalized.

6. Any producer that violates this section shall be subject to a fine for each violation not to exceed twenty-five thousand dollars for each violation.

§ 27-3319. Biennial producer responsibility program report.

1. Beginning one year after the implementation of the producer plan pursuant to section 27-3305 of this title, and every two years thereafter, the department shall generate a producer responsibility program report.

2. The report shall include, at a minimum, the following information:

(a) a list of all participating producers and the brands of products associated with those producers;

(b) a baseline report of the number of units of packaging and type of packaging products, both non-reusable and reusable, that were sold, offered for sale, or distributed into the state;

(c) a list of all materials that are readily-recyclable in the state;

(d) results of an audit of inbound and outbound recyclable material processed and sold within the state;

(e) a waste characterization study that specifies the quantity in tons of packaging material in the waste stream according to types of uses;

(f) a statewide litter survey that identifies the quantity of packaging material in litter according to types of packaging material and the brands which produce the material;

(g) a list of the amount of packaging material and packaging material type sold or offered for sale within the state that year;

(h) a description of all funding issued pursuant to the plan; and

(i) the compliance of producers with the toxic substances prohibition provided in section 27-3317 of this title.

§ 27-3321. Producer compliance information.

1. The department shall make available on its publicly accessible website a regularly updated list of UPCs of products for which the department has determined the producer has complied with all applicable requirements of this title and a list of producers and, where applicable, specific products and the UPCs of those products, for which the department has determined the producer has not complied with all applicable requirements of this title.

2. Each producer shall annually provide to the department a certificate of compliance signed by an authorized official stating that all packaging materials meet the requirements of this title provided however, where compliance is achieved under an exemption provided in section 27-3305 of this title, the certificate shall state the specific basis upon which the exemption is claimed.

§ 27-3323. Enforcement.

1. The department may bring an administrative enforcement action against any producer or other entity to enjoin activity in violation of any provision of this title, and to assess and recover penalties as provided in this title.

2. The office of the attorney general may bring an action in any court of competent jurisdiction to enjoin any violation of the requirements of this title, and to recover penalties as provided in this title.

3. All penalties recovered pursuant to this section shall be deposited in the packaging responsibility fund.

§ 27-3325. Labeling.

1. Producers shall indicate on all packaging material sold, offered for sale, or distributed for sale in or into the state either:

(a) the percentage of post-consumer recycled material;

(b) whether the packaging material is readily-recyclable and how to recycle such unit; or

(c) whether the unit is compostable.

2. Such labels shall be in a form deemed appropriate by the department pursuant to regulations.

3. All packaging material sold in the state shall conform with the labeling requirements in this section within two years of the effective date of this title. Packaging that does not meet the requirements of this section may not be sold, offered for sale, or distributed for sale into the state.

§ 27-3327. Regulations.

1. The department shall promulgate regulations as necessary to implement and administer this title.

2. The department shall solicit input from interested parties in the development of any draft regulations to implement this title, solicit public comment on such draft regulations for a period of at least sixty days, and hold at least one public hearing on such draft regulations.

3. The regulations adopted by the department pursuant to this title shall include, at a minimum:

(a) a process for annually determining a schedule of producer payments, which shall include, but not be limited to, provisions regarding the timing of producer payments.

(i) The payment schedule adopted under this paragraph shall delineate criteria to be used to adjust producer payments in a manner that complies with section 27-3311 of this title; and

(ii) Shall include a description of the methods to be used to determine the amount reported for each type of packaging material associated with its products.

(b) a process for a producer or producers that are unable to fully satisfy the reporting requirements due to a failure to obtain sufficient information regarding the characteristics of the packaging of the producer's products that are sold, offered for sale, or distributed for sale in or into the state to, alternatively, report to the department an estimate of the total amount of such packaging based on unit quantities, as long as such alternative reporting includes a description of methods used by the producer to calculate the estimate;

(c) a process for determining on an annual basis those types of packaging materials that are readily-recyclable which shall at a minimum involve consultation with the municipalities and recycling establishments and shall include a transitional period between the time that the type of packaging material is determined to be recyclable or to not be recyclable and the time that such determination shall be in effect for the purposes of calculating producer payments;

(d) requirements for the assessment of program performance, including:

(i) the non-reusable packaging reduction requirements set forth in section 27-3313 of this title;

(ii) standards for reuse and refill systems to ensure they achieve the break-even point for reusable packaging;

(iii) the recycling or post-consumer recycled material requirements set forth in section 27-3315 of this title;

(iv) the toxic substances in packaging requirements set forth in section 27-3317 of this title;

(v) the labeling requirements set forth in section 27-3325 of this title; and

(vi) material-specific recycling rates for each type of packaging material for which a fee has been set pursuant to section 27-3311 of this title. The material specific recycling rate goals shall reflect the following recycling standards:

(A) sorted glass shall be considered recycled if it does not require further processing before entering a glass furnace or before use in the

production of filtration media, abrasive materials, glass fiber insulation or construction;

(B) sorted metal shall be considered recycled if it does not require further processing before entering a smelter or furnace;

(C) sorted paper shall be considered recycled if it does not require further processing before entering a pulping operation; and

(D) plastic separated by polymer shall be considered recycled if it does not require further processing before entering a pelletization, extrusion or molding operation, or in the case of plastic flakes, does not require further processing before use in a final product;

(e) requirements for the producer to conduct representative audits of recyclable material processed and sold by facilities that process recyclable material generated in the state, of municipal solid waste disposed of in the state, and waste littered in the state, which shall include, at minimum:

(i) provisions regarding the sampling techniques to be used in those audits, which must include random sampling; and

(ii) for audits of recyclable materials, provisions regarding:

(A) how such audits shall be designed to collect information regarding the extent to which recycled material processed and sold by those facilities reflects the tons of each type of packaging material collected in the state for recycling and the amount of each type of packaging material recycled in the state, as well as the ultimate destination of and intended use for such recycled material;

(B) how such audits shall be designed so that information collected through the audit of one facility shall not be used to infer information about a different facility that uses different processing equipment, different sorting processes, or different staffing levels to conduct processing;

(C) for audits of municipal solid waste, provisions regarding how such audits will be designed to collect information regarding the types and amount, by weight, of packaging in the waste stream and the percentage by weight of the waste stream that is composed of packaging; and

(D) for audits of waste littered in the state, provisions regarding how such audits will be designed to collect information regarding the packaging material type by amount, weight, in sampled litter, identification of the producer or producers of the packaging in sampled litter, if identifiable, and an evaluation based on those audits regarding the areas of the state in which litter accumulation is greatest;

(f) a process by which the producer or producers shall develop and submit for department review and a process by which the department shall review and approve or deny: (i) a proposed investment in recycling infrastructure and education and (ii) a proposed investment in reusable or refillable infrastructure and education. The process shall set forth the manner in which the producer or producers are required to solicit and incorporate input in the development of proposed investments from producers, recycling establishments, and municipalities;

(g) a process for soliciting information necessary for, and a process for rendering a determination regarding:

(i) a producer's compliance with the non-reusable packaging reduction requirements of section 27-3313 of this title;

(ii) a producer's compliance with the reuse and refill system requirements of section 27-3313 of this title;

(iii) a producer's compliance with the recycling or post-consumer recycled material requirements of section 27-3315 of this title;

(iv) a producer's compliance with the toxic substances in packaging requirements of section 27-3317 of this title; and

(v) a producer's compliance with the labeling requirements of section 27-3325 of this title;

(h) a process for determining how the producer or producers will distribute funds to municipalities; and

(i) a process for determining the minimum number of reuse or refill cycles required for each type of packaging material to be considered reusable or refillable, pursuant to section 27-3313 of this title.

§ 2. The state finance law is amended by adding a new section 92-kk to read as follows:

§ 92-kk. Packaging responsibility fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of the department of taxation and finance a special fund to be known as the packaging responsibility fund.

2. Such fund shall consist of all penalties collected pursuant to title thirty-three of article twenty-seven of the environmental conservation law, and any other monies deposited into the fund pursuant to law.

3. Moneys of the fund shall be made available to fund third-party, independent audits of both inbound and outbound recyclable material generated in the state, disposal of both inbound and outbound materials, and litter audits. Such audits shall be conducted at least every two years and shall be posted on the department of environmental conservation's website.

§ 3. The department of health shall, within one year of the effective date of this act, examine its rules and regulations to identify any barriers to the implementation of refill systems, including in food production and wineries.

§ 4. This act shall take effect immediately.