

STATE OF NEW YORK

5322--B

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. GLICK, BURDICK, L. ROSENTHAL, THIELE, PAULIN, SHIMSKY, COLTON, REYES, CARROLL, DARLING, RAJKUMAR, DICKENS, GONZALEZ-ROJAS, LUNSFORD, GALLAGHER, BURKE, STECK, KELLES, LEVENBERG, RAGA, SIMON, CUNNINGHAM, SIMONE, SHRESTHA, DE LOS SANTOS, TAPIA, O'DONNELL, FAHY, EACHUS, LAVINE, SEAWRIGHT, DINOWITZ, EPSTEIN, HEVESI, ALVAREZ, FORREST, OTIS, GIBBS, STIRPE, ARDILA, RIVERA, CRUZ, ANDERSON, SILLITTI, AUBRY, RAMOS, WEPRIN, ZINERMAN, MAMDANI, GUNTHER, MITAYNES, BICHOTTE HERMELYN, LEE, BARRETT, JACOBSON, STERN, ROZIC, McMAHON, KIM, TAYLOR, CLARK, BURGOS, SAYEGH, SOLAGES, WALLACE, BENEDETTO, JACKSON, PRETLOW, MEEKS, CONRAD, McDONALD, DAVILA, WILLIAMS, BORES, K. BROWN -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to enacting the packaging reduction and recycling infrastructure act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "packaging reduction and recycling infrastructure act".

3 § 2. Article 27 of the environmental conservation law is amended by
4 adding a new title 34 to read as follows:

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.

8 27-3403. Selection of the packaging reduction organization.

9 27-3405. Responsibilities of packaging reduction organization.

10 27-3407. Packaging reduction and recycling organization plan.

11 27-3409. Packaging reduction and recycling plan approval.

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

LBD08868-08-4

1 27-3411. Packaging reduction and recycling advisory council.
2 27-3413. Funding mechanism.
3 27-3415. Collection and convenience.
4 27-3417. Producer responsibilities.
5 27-3419. Department responsibilities.
6 27-3421. Statewide packaging reduction, reuse, and recycling
7 needs assessment.
8 27-3423. Education and outreach program.
9 27-3425. Prohibition on certain toxic substances and materials.
10 27-3427. Non-reusable packaging reduction standards.
11 27-3429. Recycled content standards.
12 27-3431. Recyclability criteria and packaging recycling require-
13 ments.
14 27-3433. Establishment of the office of recycling inspector
15 general.
16 27-3435. Penalties and enforcement.
17 27-3437. Rules and regulations.
18 27-3439. State preemption.
19 27-3441. Other assistance programs.
20 27-3443. Severability.

21 § 27-3401. Definitions.

22 As used in this title:

23 1. "Advisory council" or "council" means the packaging reduction and
24 recycling advisory council established under section 27-3411 of this
25 title.

26 2. "Beverage container" shall have the same meaning as is set forth in
27 subdivision two of section 27-1003 of this article.

28 3. "Brand" means any mark, word, name, symbol, design, device, or
29 graphical element or a combination thereof, including a registered or
30 unregistered trademark, that identifies and distinguishes a product from
31 other products.

32 4. "Contamination" means:

33 (a) the presence of materials in a given collected material stream
34 that are not on the minimum recyclables list maintained by the depart-
35 ment; or

36 (b) the presence of materials in a given recycled material delivered
37 as a feedstock or commodity that are not specified or accepted as a
38 component of the feedstock or commodity.

39 5. "Discarded", "discards", "generated" or "generation" means packag-
40 ing material that has been used for its intended purpose and is no long-
41 er needed by consumers, businesses, institutions, and other users, and
42 can be managed through reuse, recycling, or disposal.

43 6. "Disposal" means the landfilling or incineration of material or
44 products. "Disposal" shall also include energy recovery or energy
45 generation by any means, including, but not limited to, incineration,
46 combustion, pyrolysis, gasification, or solvolysis, waste-to-energy, or
47 waste-to-fuel, or any other chemical conversion process. "Disposal"
48 shall also include the use of materials as landfill cover.

49 7. "Eco-modulation" means structuring program fees in a way to provide
50 producers with financial incentives to reduce waste at the source,
51 increase recyclability of packaging materials, promote reusable packag-
52 ing products, including those that are contained within a reuse and
53 refill system, discourage and decrease contamination, disincentivize
54 designs or practices that increase the costs and adverse environmental
55 impacts of managing the packaging materials, and encourage designs and

1 processes that improve and facilitate development of infrastructure and
2 systems for source reduction, reuse, recycling, and composting.

3 8. "Disadvantaged community" shall have the same meaning as is set
4 forth in subdivision five of 75-0101 of this chapter.

5 9. "Local government" means any municipal corporation, governmental
6 subdivision of the state, local government unit, special district,
7 school, local or regional board, commission, or authority authorized by
8 law to plan or provide for waste management services for a specific
9 geographical area.

10 10. "Packaging material" or "material" means a discrete material or
11 category of material, regardless of recyclability, including but not
12 limited to such material types that are flexible, foam, or rigid materi-
13 al, including paper, cardboard, plastic, glass, metal, or multi-materi-
14 al, that is used for the containment, protection, handling, delivery,
15 transport, distribution, or presentation of another product that is
16 sold, offered for sale, imported, or distributed in the state, including
17 through an internet transaction, and single-use plastic products that
18 frequent the residential waste stream or are plastic products that have
19 the effect of disrupting recycling processes, including, but not limited
20 to, single-use plastic items such as straws, utensils, cups, plates, and
21 plastic bags. Packaging material does not include:

22 (a) Medical devices and packaging which are included with products
23 regulated as a drug, medical device, or dietary supplement by the United
24 States food and drug administration under the federal food, drug, and
25 cosmetic act, 21 U.S.C. 321 et seq., Sec. 3.2(E) of 21 U.S. code of
26 federal regulations, or the dietary supplement health and education act;

27 (b) Animal biologics, including vaccines, bacterins, antisera, diag-
28 nostic kits, and other products or biological origin, and other packag-
29 ing materials regulated by the United States department of agriculture
30 under the virus, serum, toxin act, 21 U.S.C. 151-159;

31 (c) Packaging regulated by the Federal Insecticide, Fungicide, and
32 Rodenticide Act, 7 U.S.C. Sec. 136 et seq. or other applicable federal
33 law, rule, or regulation;

34 (d) Packaging used to contain hazardous or flammable products regu-
35 lated by the 2012 federal Occupational Safety and Health Administration
36 Hazard Communications Standard (29 C.F.R. 1910.1200);

37 (e) Beverage containers subject to a returnable container deposit
38 under title ten of this article;

39 (f) Infant formula as defined in section 321(z) of title 21 of the
40 United States code of federal regulations;

41 (g) Medical foods as defined in section 360ee(b)(3) of title 21 of the
42 United States code of federal regulations; and

43 (h) Architectural paint containers collected and managed pursuant to
44 title twenty of this article.

45 11. "Packaging reduction and recycling organization" or "organization"
46 means a registered 501(c)(3) not-for-profit charitable organization,
47 pursuant to 26 U.S.C. 501(c)(3) under contract with the department and
48 authorized to collect producer fees, assist producers with compliance
49 with the requirements of this title, provide technical assistance to
50 producers and implement the program.

51 12. "Packaging reduction and recycling plan" or "plan" means a docu-
52 ment in which an organization describes the efforts it will undertake to
53 comply with the requirements of this title.

54 13. "Packaging reduction and recycling program" or "program" means the
55 program implemented by an organization, and overseen by the department,
56 to comply with and implement the provisions of this title.

1 14. "Post-consumer recycled material" means new material produced
2 using material resulting from recycling.

3 15. "Primary packaging" means the packaging in direct contact with the
4 product itself, also sometimes referred to as a consumer unit.

5 16. "Producer" means the following entities, other than local govern-
6 ments, state governments and the federal government, for compliance with
7 the requirements for packaging materials sold, offered for sale, or
8 distributed to consumers in or into this state:

9 (a) For packaging materials sold or served to consumers at a physical
10 retail location in this state:

11 (i) If the packaging materials are sold or served under the manufac-
12 turer's own brand or are sold or served in packaging materials that lack
13 identification of a brand, the producer of the packaging materials is
14 the person that manufactures the product;

15 (ii) If subparagraph (i) of this paragraph does not apply, the produc-
16 er of the packaging materials is the person that is the licensee of a
17 brand or trademark under which a product is sold or served to a consumer
18 in or into this state, whether or not the trademark is registered in
19 this state, unless the manufacturer of the packaging materials has
20 agreed to accept responsibility; where the producer is a business oper-
21 ated wholly or in part as a franchise, the producer is the franchisor,
22 if such franchisor has franchisees that are resident in the state;

23 (iii) If there is no person as described in subparagraph (i) or (ii)
24 of this paragraph within the United States, the producer of the packag-
25 ing material is the person who imports the product into the United
26 States for use in a commercial enterprise that sells, offers for sale,
27 or distributes the product to consumers in this state.

28 (b) For products sold or distributed to consumers in packaging materi-
29 als in or into this state via remote sale or distribution:

30 (i) The producer of packaging materials used to directly protect or
31 contain the product is the same as the producer defined in paragraph (a)
32 of this subdivision.

33 (ii) The producer of packaging materials used to ship the product to a
34 consumer is the person that manufactures the shipping material.

35 17. "Product line" means a group of related products all marketed
36 under a single brand that is sold by the same producer to distinguish
37 products from each other for better usability for customers.

38 18. "Recyclable" means a packaging material that meets the criteria in
39 section 27-3431 of this title.

40 19. "Recycled" means the use of discarded packaging materials or
41 products in the production of a new product or packaging in place of
42 virgin materials. "Recycled" material does not include contaminants,
43 residues, and other process losses or use of materials as landfill
44 cover.

45 20. "Recycling" means to separate, dismantle or process the materials,
46 components or commodities contained in discards for the purpose of
47 preparing the materials, components, or commodities for use or reuse in
48 new products or components. "Recycling" does not include: (a) energy
49 recovery or energy generation by any means, including but not limited
50 to, combustion, incineration, pyrolysis, gasification, solvolysis, or
51 waste-to-fuel; (b) any chemical conversion process; or (c) landfill
52 disposal.

53 21. "Recycling rate" means the percentage of any given packaging type
54 that is ultimately recycled. The recycling rate for any packaging mate-
55 rial shall be calculated as the total weight of packaging that is recy-
56 clcd in a given year divided by the total weight of packaging material

1 generated in that year. Material losses, including contaminants and
2 residues, accruing during collection, processing and manufacturing new
3 products do not count as recycled and shall not be included in the
4 numerator of the equation.

5 22. "Reuse" means the return of packaging back into the economic
6 stream for use in the same kind of application intended for the original
7 packaging, without effectuating a change in the original composition of
8 the package, the identity of the product, or the components thereof.

9 23. "Reuse and refill system" means a program or set of mechanisms
10 designed to facilitate multiple uses of packaging. Mechanisms may
11 include, but are not limited to, deposits, incentives, curbside
12 collection, collection kiosks, refill stations, dishwashing facilities,
13 and re-distribution networks.

14 24. "Reusable or refillable packaging and containers" means packaging
15 material and containers that are specifically designed and manufactured
16 to maintain shape and structure, and be materially durable for repeated
17 sanitizing, washing, and reuse.

18 25. "Toxic packaging task force" means the toxic packaging task force
19 established by subdivision two of section 27-3425 of this title.

20 26. "Toxic substances" means a chemical or chemical class identified
21 by a state agency, federal agency, international intergovernmental agen-
22 cy, accredited research university, or other scientific entity deemed
23 authoritative by the department on the basis of credible scientific
24 evidence as being one or more of the following:

25 (a) A chemical or chemical class that is a carcinogen, mutagen, repro-
26 ductive toxicant, immunotoxin, neurotoxicant, or endocrine disruptor.

27 (b) A chemical or chemical class that is persistent or bioaccumula-
28 tive.

29 (c) A chemical or chemical class that may harm the normal development
30 of a fetus or child or cause other developmental toxicity in humans or
31 wildlife.

32 (d) A chemical or chemical class that may harm organs or cause other
33 systemic toxicity.

34 (e) A chemical or chemical class that may have adverse air quality
35 impacts, adverse ecological impacts, adverse soil quality impacts, or
36 adverse water quality impacts.

37 (f) A chemical or chemical class that the department has determined
38 has equivalent toxicity to the above criteria.

39 § 27-3403. Selection of the packaging reduction organization.

40 1. Until the date which is ten years after the effective date of this
41 title, there shall be only one packaging reduction organization and all
42 producers shall be required to register with such packaging reduction
43 organization.

44 2. Consistent with the requirements of this title, within fifteen
45 months of the effective date of this title, the department shall select
46 and enter into a contract with a not-for-profit organization to act as
47 the initial organization in order to operate the packaging reduction and
48 recycling program.

49 3. Within nine months of the effective date of this title and consist-
50 ent with applicable competitive bidding requirements under state
51 purchasing laws, the department shall issue a request for proposals for
52 the operation of the packaging reduction and recycling program. The
53 successful bidder shall be required to include, at a minimum, the
54 following information:

1 (a) A description of how the bidder will administer the program,
2 including the mechanisms and processes for providing assistance to
3 producers to comply with the reporting requirements of this title;

4 (b) The mechanisms and processes the bidder will use to compile infor-
5 mation from producers;

6 (c) How the bidder intends to manage and account for all program
7 related funds which pass through the organization, including how timely
8 reimbursements to local governments will be provided;

9 (d) A financial assurance plan that ensures all program funds held by
10 the organization are immediately and exclusively forfeited and trans-
11 ferred to or otherwise made immediately available to the department if
12 the organization's contract with the department is terminated by the
13 department, or expires;

14 (e) A proposed budget outlining the anticipated costs of operating the
15 program and a description of the method by which the bidder intends to
16 determine and collect producer payments during the initial startup peri-
17 od; and

18 (f) Any other additional information required by the department.

19 4. If, at the close of the competitive bidding process under subdivi-
20 sion three of this section, the department determines that no bidder has
21 submitted, in accordance with such subdivision, a proposal that meets
22 the requirements of this section, the department shall operate the
23 program by itself or designate a state public body to operate the
24 program.

25 5. If after recommendation by the advisory council pursuant to subdivi-
26 sion ten of section 27-3411 of this title the department determines
27 that it would be beneficial for there to be additional organizations
28 implementing the program, beginning ten years after the effective date
29 of this title, the department may issue a request for proposals for
30 additional organizations in a manner consistent with the provisions of
31 this section. Should the department determine to have additional organ-
32 izations, the department shall promulgate regulations to ensure
33 consistency and coordination between all organizations.

34 § 27-3405. Responsibilities of packaging reduction organization.

35 1. Producers shall register with a packaging reduction organization to
36 meet the responsibilities of the program pursuant to the provisions of
37 this section.

38 2. Each packaging reduction organization shall:

39 (a) Develop a packaging reduction and recycling plan and submit such
40 plan to the advisory council for review and comment, and after any
41 modifications in response to such comments, submit the plan to the
42 commissioner for approval pursuant to section 27-3407 of this title;

43 (b) Collect and compile data from producers as required by section
44 27-3417 of this title;

45 (c) Collect fees due from producers as required by section 27-3413 of
46 this title;

47 (d) Reimburse the department and any other relevant state agencies for
48 the costs associated with conducting the statewide needs assessment
49 required by section 27-3421 of this title, the administration of the
50 program by the department, and the expenses of the advisory council and
51 the toxic packaging task force;

52 (e) Distribute funds to reimburse local governments and private compa-
53 nies for the costs associated with the implementation of reduction,
54 refill, and reuse programs, and the collection, transportation and recy-
55 cling, disposal or other processing of packaging materials;

1 (f) Offer technical support to producers, with an emphasis on support
2 to small businesses, to assist them with compliance with the require-
3 ments of this title, including information about procuring affordable
4 alternatives to non-compliant packaging and reducing packaging.

5 3. Annually, each organization shall submit a report to the department
6 that, at a minimum, must include the following information:

7 (a) Contact information for the organization;

8 (b) A list of all (i) producers, (ii) brands, and (iii) products that
9 each producer sells, offers for sale, or distributes into the state that
10 are contained, protected, delivered, presented, or distributed in or
11 using packaging, in each case identified by the Universal Product Code
12 (UPC) if the product has one;

13 (c) The total amount, by both weight and number of units, of each type
14 of packaging material used to contain, protect, handle, deliver, trans-
15 port, distribute, or present products sold, offered for sale, or
16 distributed into the state by each individual producer during the prior
17 calendar year;

18 (d) The total amount, by both weight and number of units, of each
19 material used to contain, protect, handle, deliver, transport, distrib-
20 ute, or present products sold, offered for sale, or distributed into the
21 state by all producers during the prior calendar year;

22 (e) A complete accounting of all payments made to and by the organiza-
23 tion during the prior calendar year;

24 (f) A list of producers reasonably believed to be out of compliance
25 with the requirements of this title, and the reason the organization
26 reasonably believes the producer to be out of compliance. Information
27 on non-compliant producers shall be provided to the commissioner and
28 recycling inspector general's office in a timely fashion and for possi-
29 ble enforcement action by the office;

30 (g) A description of the educational and outreach efforts made by the
31 organization in the prior calendar year, and how those efforts were
32 designed to reduce packaging waste, and increase reuse and recycling of
33 packaging materials;

34 (h) An assessment of whether the fee structure adopted by the depart-
35 ment pursuant to section 27-3413 of this title has been effective in
36 incentivizing improvements to the design of packaging material, includ-
37 ing actual reduction of packaging, increases in reusable and refillable
38 packaging, recycling rates for packaging materials, and decreases in the
39 amount of packaging;

40 (i) A description of the reimbursements and expenditures made pursuant
41 to section 27-3413 of this title;

42 (j) Audited financial statements;

43 (k) The results of the review conducted pursuant to subdivision four
44 of this section; and

45 (l) Any additional information required by the department.

46 4. Each organization shall conduct an annual review process to deter-
47 mine whether packaging materials are recyclable. This review shall be
48 conducted in consultation with representatives of end markets, including
49 recycled commodities brokers and manufacturers who purchase post-consum-
50 er material for use in manufacturing new products, and in consultation
51 with local governments. For the purposes of calculating producer
52 payments and local government reimbursements in accordance with this
53 title, this annual process shall include a transitional period between
54 the date the determination is finalized and the date it goes into
55 effect.

1 5. Each organization shall conduct public outreach and provide consum-
2 ers with educational and informational materials related to reducing the
3 amount of packaging discarded, recycled, and disposed of in the state as
4 outlined in section 27-3423 of this title.

5 6. Each organization shall operate a program that provides for
6 collection convenience as described in section 27-3415 of this title.

7 7. Each organization shall not spend funds on lobbying or campaign
8 contributions to any candidates running for office.

9 8. An organization shall not share, except with the department, the
10 advisory council, and the toxic packaging task force, or as required by
11 law, any proprietary information that is identified by a producer as
12 proprietary information.

13 § 27-3407. Packaging reduction and recycling organization plan.

14 1. Within two years of the effective date of this title, the initial
15 packaging reduction organization, shall develop and submit a packaging
16 reduction and recycling plan on implementation of the rules and regu-
17 lations of this title, including ensuring timely disbursements to local
18 governments, to the department for approval. The plan shall be submitted
19 to the advisory council for review pursuant to section 27-3411 of this
20 title prior to the department's approval. Any subsequent or additional
21 organization shall develop and submit a packaging reduction and recycl-
22 ing plan and comply with all the requirements of this section, and have
23 such plan approved pursuant to section 27-3409 of this title.

24 2. The plan shall cover five years and be updated every five years
25 following the approval of the original plan. The department shall have
26 the discretion to require the plan to be reviewed or revised prior to
27 the five-year period pursuant to section 27-3419 of this title.

28 3. Each producer shall begin program implementation within six months
29 after the date the plan for the initial organization is approved and in
30 no event later than three years of the effective date of this title. If
31 no plan is approved by that timeframe, the producer shall be subject to
32 penalties for noncompliance.

33 4. Any person that becomes a producer after the plan for the initial
34 organization is approved shall register with a packaging reduction
35 organization and begin program implementation within six months thereof
36 or be subject to penalties for noncompliance.

37 5. The submitted plan shall include, but not be limited to:

38 (a) contact information, including the name, electronic and physical
39 address, and telephone number of the authorized representative of the
40 producer or producers;

41 (b) the identity of the producer or producers participating in the
42 plan;

43 (c) a comprehensive list of the types and brands of covered materials
44 for which the producer or producers are responsible for;

45 (d) a description of (i) the proposed funding mechanism, identified in
46 section 27-3413 of this title, that meets the requirements of this
47 title, and (ii) how the organization will maintain a financial reserve
48 sufficient to operate the program in a fiscally prudent and responsible
49 manner;

50 (e) an objective formula establishing a reimbursement rate, which
51 covers obligations identified in the needs assessment and takes into
52 account variable regional costs, for participating local governments or
53 private sector service providers;

54 (f) a description of the process for participating local governments
55 or private sector service providers to recoup reasonable costs as estab-
56 lished by the objective formula, from the producer or organization,

1 including, as applicable, any administrative, sorting, collection,
2 transportation, public education, or processing costs, if the organiza-
3 tion uses existing services through a local government or obtains such
4 services from a private sector service provider, which process and
5 recoupment may be structured to incentivize improvements in management
6 of materials including without limitation in the manner described in
7 paragraph (i) of this subdivision;

8 (g) a description of the characteristics of each type of packaging
9 material that is relevant to the eco-modulating factors set forth pursu-
10 ant to section 27-3413 of this title;

11 (h) if the local government does not elect to provide service, a
12 description of the process used for contracting with a private sector
13 entity to provide such services and the recoupment of reasonable costs,
14 including procedures to ensure that such private sector entity is not
15 compensated for such services by both the organization and the consumer
16 for the same service;

17 (i) how the producers and/or organization will work with existing
18 waste haulers, material recovery facilities, recyclers, and local
19 governments to operate or expand current collection programs to address
20 material collection methods, improve efficiency and yield of processing
21 materials from separate collection streams, and increase packaging
22 reduction and reuse;

23 (j) a description of how the producers or organization will use open,
24 competitive, and fair procurement practices should they directly enter
25 into contractual agreements with service providers, including munici-
26 palities and private entities;

27 (k) a description of how a local government will participate, on a
28 voluntary basis, with collection and how existing local government recy-
29 cling processing and collection infrastructure will be used;

30 (l) a description of how the producers or organization plans to meet
31 the convenience requirements set forth in this title;

32 (m) a description of the process for end-of-life management, including
33 recycling and disposal of residuals collected for recycling, using envi-
34 ronmentally sound management practices;

35 (n) a description of how the organization shall provide the option to
36 purchase recycled materials from processors;

37 (o) a description of how producers are complying with and exceeding
38 the waste reduction, toxics, recycling and post-consumer content
39 requirements of the title;

40 (p) a description of how the organization will strategically invest in
41 existing and future reuse and recycling infrastructure and market devel-
42 opment in the state in consultation with the department and in a manner
43 not inconsistent with the needs assessment, including, but not limited
44 to, installing or upgrading equipment to improve sorting of covered
45 materials or mitigating the impacts of materials to other commodities at
46 existing sorting and processing facilities, and capital expenditures for
47 new technology, equipment, and facilities;

48 (q) a process to address concerns and questions from customers and
49 residents;

50 (r) a description of the organization's public outreach education
51 program for consumers and other stakeholders;

52 (s) a description of how comments of stakeholders were considered and
53 addressed in the development of the plan; and

54 (t) a detailed description of how the organization consulted with the
55 advisory council, the public, and other stakeholders in the development
56 of the plan prior to its submission to the department, and to what

1 extent the organization specifically incorporated the advisory council's
2 input into the plan.

3 6. The organization shall also provide the advisory council a reason-
4 able period of time to review and comment upon the draft plan prior to
5 its submission to the department in accordance with section 27-3409 of
6 this title which shall in no event be less than sixty days. The organ-
7 ization shall make an assessment of comments received and shall provide
8 a summary and an analysis of the issues raised by the advisory council
9 and significant changes suggested by any such comments, a statement of
10 the reasons why any significant changes were not incorporated into the
11 plan, and a description of any changes made to the plan as a result of
12 such comments.

13 § 27-3409. Packaging reduction and recycling plan approval.

14 1. Before approval or denial of a packaging reduction and recycling
15 plan can be made in accordance with this title, the producer or organ-
16 ization shall submit the plan to the packaging reduction and recycling
17 advisory council. The advisory council shall then make a recommendation
18 regarding approval or disapproval of the plan in accordance with section
19 27-3411 of this title.

20 2. Within sixty days of the advisory council making a recommendation
21 to the department, the department shall make a determination to approve
22 the plan as submitted; approve the plan with conditions; or deny the
23 plan, with reasons for the denial.

24 3. The department may establish additional plan requirements in addi-
25 tion to those identified herein to fulfill the intent of this title;
26 provided, however, that any additional requirements shall be established
27 one year prior to a required submission of a plan unless such additional
28 requirements are in relation to the power granted to the department
29 section 27-3419 of this title.

30 4. No later than six months after the date the plan is approved, the
31 organization shall implement the approved plan. The department may
32 rescind the approval of an approved plan at any time for cause and with
33 documented justification.

34 § 27-3411. Packaging reduction and recycling advisory council.

35 1. There is hereby established within the department a packaging
36 reduction and recycling advisory council to receive and review the pack-
37 aging reduction and recycling plans required under section 27-3407 of
38 this title, to make recommendations to the department regarding approval
39 of the plans, and to review the annual reports produced by organizations
40 and to make recommendations to the department and organizations as
41 required by this section.

42 2. The advisory council shall convene for the first time no later than
43 one year after the effective date of this title. The advisory council
44 shall be composed of thirteen members. Seven shall be appointed by the
45 commissioner, three shall be appointed by the speaker of the assembly,
46 and three shall be appointed by the temporary president of the senate.
47 The advisory council shall include at least one member from each of the
48 following:

49 (a) a local government association or local government program,
50 including an additional local government representative from cities with
51 a population of one million or more residents;

52 (b) a statewide environmental organization;

53 (c) a representative of an environmental justice community affected by
54 solid waste infrastructure;

55 (d) an environmental justice organization;

56 (e) a statewide waste disposal or recycling association;

1 (f) a materials recovery facility located within the state;
2 (g) a recycling collection provider;
3 (h) a manufacturer of packaging materials utilizing post-consumer
4 recycled content;
5 (i) a consumer advocate;
6 (j) a retailer;
7 (k) a public health specialist; and
8 (l) a producer and an organization established under this title as
9 non-voting members.

10 3. Appointments to the advisory council are term-limited to ten
11 consecutive years of service; the chair shall be chosen through a major-
12 ity vote of its members and shall serve no longer than three consecutive
13 years.

14 4. Advisory council members shall serve without compensation, except
15 that a member of the committee who is a state officer or employee may
16 receive his or her regular compensation while engaging in the business
17 of the committee, but shall be entitled to receive reimbursement for any
18 actual, necessary expenses incurred in the course of performing business
19 for the committee.

20 5. All decisions made by the advisory council shall be decided by
21 voting and votes shall only be valid when a quorum is present. A quorum
22 shall exist when greater than fifty percent of voting members are pres-
23 ent. The advisory council shall meet at least once a year by the call of
24 the chair or by request of more than half the members. The decisions of
25 the advisory council shall be by vote of the majority of its membership.

26 6. The council shall determine whether the plan submitted under
27 section 27-3409 of this title meets the criteria and objectives under
28 such section in making its recommendation.

29 7. The advisory council shall, within ninety days of the submission of
30 a packaging reduction and recycling plan, either:

31 (a) forward the plan to the commissioner with its recommendation for
32 approval; or

33 (b) forward the plan to the commissioner with its disapproval and
34 stated reasons therefor, including any recommended changes to the plan
35 necessary for approval.

36 8. An organization may resubmit a packaging reduction and recycling
37 plan for approval at any time. Upon such resubmission, the advisory
38 council shall, within ninety days, forward the plan to the commissioner
39 with its recommendation for approval or disapproval.

40 9. The advisory council shall review the submitted annual reports and
41 make such recommendations to the department and the organization for
42 improving future administration of the program and compliance with this
43 title.

44 10. Thirty months from the date the department adopts rules and regu-
45 lations pursuant to this title, and every three years thereafter, the
46 advisory council shall conduct a review of all relevant data, including
47 annual reports, the latest scientific data available, any pertinent
48 statewide waste and reuse data, and any other information deemed impor-
49 tant, to make recommendations to the following:

50 (a) organizations for any changes in administration of the program,
51 including feedback on the education and outreach program as outlined in
52 section 27-3423 of this title;

53 (b) the department for any necessary changes to regulations, the fund-
54 ing mechanism, reimbursement and expenditure policies or whether it
55 would be beneficial for there to be additional organizations implement-
56 ing the program; and

1 (c) the legislature for recommended statutory changes. Such recommen-
2 dations shall include a recommendation as to whether to modify the defi-
3 nition of recycling under this title.

4 § 27-3413. Funding mechanism.

5 1. All costs of the program, including administration, enforcement,
6 and all other state costs of the program and organizations' costs of the
7 program, including but not limited to those costs described in subdivi-
8 sion three of this section shall be covered by producer payments. The
9 department shall promulgate rules and regulations in the manner required
10 by section 27-3419 of this title setting forth the manner in which
11 producer payments on packaging materials shall be calculated and
12 assessed. Payments shall be calculated based on:

13 (a) The packaging material type;

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

16 (c) Eco-modulation, including as described in subdivision seven of
17 this section.

18 2. The list of packaging material types for which there is a specific
19 fee shall include, at a minimum, the following material types:

20 (a) Paper;

21 (b) Cardboard;

22 (c) Corrugated cardboard;

23 (d) Wood;

24 (e) Glass;

25 (f) Polyethylene terephthalate (PET);

26 (g) High density polyethylene (HDPE);

27 (h) Expanded polystyrene (EPS);

28 (i) Polystyrene;

29 (j) Bio-plastics;

30 (k) Generic plastics;

31 (l) Plastic film;

32 (m) Other plastics;

33 (n) Steel or ferrous;

34 (o) Aluminum;

35 (p) Tinsplate;

36 (q) Generic metals; and

37 (r) Mixed materials including laminates and packaging containing more
38 than one of the above materials.

39 3. Packaging fees shall be designed to cover, at minimum, the total
40 costs associated with:

41 (a) Costs to provide curbside collection or other form of residential
42 service that is, at minimum, as convenient as detailed in section
43 27-3415 of this title;

44 (b) The department's and other state agencies' administration of this
45 title;

46 (c) Organizations' administration of this title;

47 (d) The cost associated with the development of the needs assessment,
48 as required in section 27-3421 of this title;

49 (e) The costs associated with the advisory council and the toxic pack-
50 aging task force;

51 (f) The costs associated with establishing packaging reduction and
52 reuse infrastructure;

53 (g) The cost of providing recycling services, including the collection
54 cost, processing cost for each recyclable material, cost of handling
55 non-recyclable material types collected as part of a recycling opera-
56 tion, transportation cost of recycling for each material type; and

1 (h) Any other factors determined by the department.

2 4. The department may adjust fees to be paid by producers based on
3 factors that affect system costs. At a minimum, fees shall be variable
4 based on:

5 (a) costs to process packaging materials for acceptance by secondary
6 material markets;

7 (b) whether the packaging material would typically be readily-recycla-
8 ble as determined by the department after consultation with the advisory
9 council, except that as a consequence of the packaging design, the pack-
10 aging product has the effect of disrupting recycling processes or the
11 product includes labels, inks, and adhesives containing heavy metals or
12 other toxic substances that would result in contamination of the recycl-
13 ing process;

14 (c) whether the packaging material is specifically designed to be
15 reusable or refillable and has high reuse or refill rate;

16 (d) the commodity value of a packaging material, as determined by the
17 department after consultation with the advisory council; and

18 (e) any other factors determined by the department.

19 5. The fees shall be adjusted, or the producers may be provided a
20 credit, based upon the percentage of post-consumer recycled material
21 content and such percentage of post-consumer recycled content shall be
22 verified by the organization or through an independent third party
23 approved to perform verification services to ensure that such percentage
24 exceeds the minimum requirements in the packaging, as long as the recy-
25 cled content does not, in the determination of the department, disrupt
26 the potential for future recycling.

27 6. In addition to the annual schedule of fees, the department fee
28 schedule may include a special assessment on specific categories of
29 packaging materials at the request of responsible entities representing
30 and approved by the advisory council if the nature of the packaging
31 material imposes unusual costs in collection or processing or requires
32 special actions to address effective access to recycling or successful
33 processing in local government recycling facilities, as determined by
34 the department after consultation with the advisory council.

35 7. The program charges shall be structured to provide producers with
36 financial incentives to encourage:

37 (a) A reduction in total packaging as measured by unit weight used by
38 producers, and discarded by consumers, businesses, institutions, and
39 other users. Weight reductions shall not be achieved by substituting
40 plastic for other materials types;

41 (b) An increase in the proportion of a producer's total packaging that
42 is managed within a reuse and refill system;

43 (c) An increase in the proportion of a producer's total packaging that
44 is deemed recyclable as determined by an annual review process as
45 described in section 27-3405 of this title;

46 (d) An increase in the proportion of a producer's total packaging that
47 is ultimately recycled;

48 (e) A reduction in toxic components in packaging materials; and

49 (f) A reduction in litter from packaging materials.

50 8. There shall be no fee assessed on packaging that is designed for
51 reuse and refill and contained within a reuse or refill system.

52 9. Any funds directly collected pursuant to this title shall not be
53 used to carry out lobbying activities on behalf of an organization.

54 10. No retailer may charge a point-of-sale or other fee to consumers
55 to facilitate a producer to recoup the costs associated with meeting the
56 obligations under this title.

1 11. Nothing in this title shall require a local government to partic-
2 ipate in the program.

3 12. The department shall update and revise the fees with input from
4 the advisory council every three years.
5 § 27-3415. Collection and convenience.

6 1. The program shall provide for widespread, convenient, and equitable
7 access to collection opportunities for recyclable packaging materials at
8 no additional cost. Such opportunities shall be provided to all resi-
9 dents of the state in a manner that is as convenient as the collection
10 of municipal solid waste.

11 2. Participation in the program shall not restrict a jurisdiction's
12 consumer's ability to contract directly with third parties to obtain
13 recycling collection services if consumers have the option to enter into
14 such contracts as of the effective date of this title, as long as the
15 consumer still voluntarily chooses to contract directly with the third
16 party. The local government shall not provide disbursement to such
17 third party should the local government provide widespread recycling
18 services either directly or through a contract that is different from
19 the contract with such third party, and there shall be procedures in
20 place to ensure that no service provider is compensated more than once
21 for the same service.

22 3. All local government or private recycling service providers shall
23 provide for the collection and recycling of all packaging materials
24 contained on the minimum recyclables lists, based on geographic regions,
25 in order to be eligible for reimbursement; provided, however, nothing
26 shall penalize a local government or private recycling service for
27 recovering and recycling materials that are generated in the local
28 government or geographic region that are not included on the minimum
29 recyclables lists as long as it can be demonstrated that such materials
30 have a consistent regional market for purchase as determined by the
31 department in consultation with the producer or organization.

32 4. Reimbursement shall cover reduction, as contemplated by section
33 27-3413 of this title, collection, processing, transportation, and recy-
34 cling and disposal of all packaging materials so long as the program
35 includes at least the minimum recyclables list. The department may grant
36 an exception of the requirements in this subdivision upon a written
37 showing by the local government or private recycling service that
38 compliance with the requirements is not practicable for a specific iden-
39 tified product or material and if the department finds it is in the best
40 interest of the intent of this title to grant an exception; provided,
41 however, that any such exception granted by the department shall not
42 exceed twelve months.

43 5. The department shall promulgate rules and regulations to ensure
44 that program funds shall be used for investment in collection systems,
45 transportation systems, reuse systems, washing systems, redistribution
46 systems, technology for tracking and data collection, capital expendi-
47 tures on new and emerging technology that is focused on reusable and
48 refillable packaging, as well as equipment, and facilities, and other
49 projects determined by the department to facilitate the goals and
50 objectives of this title.

51 6. Nothing in this title shall be deemed to automatically void or
52 nullify any collection contracts in effect as of the effective date of
53 this title.

54 § 27-3417. Producer responsibilities.

55 1. Beginning thirty months after the effective date of this title, a
56 producer shall not sell, offer for sale, or distribute into the state a

1 product contained, protected, delivered, presented, or distributed in
2 packaging unless the producer is registered with an organization and in
3 full compliance with all requirements of this title.

4 2. Either when the producer registers, or within thirty months of the
5 effective date of this title, whichever is later and annually thereaft-
6 er, each producer shall provide the organization with the following
7 information:

8 (a) Contact information, including the name, electronic and physical
9 address, and telephone number of the authorized representative of the
10 producer;

11 (b) A comprehensive list of the types and brands of packaging materi-
12 als for which the producer or producers are responsible for;

13 (c) The total amount, in units and weight, of each type of packaging
14 material sold, offered for sale, or distributed for sale into the state
15 by the producer in the prior calendar year; and

16 (d) Any other information required by the department.

17 3. Producers are responsible for payment of fees, through an organiza-
18 tion, based on the quantity, type of packaging used in the state, and
19 other factors.

20 4. Producers are responsible for meeting the toxic substances, packag-
21 ing reduction, post-consumer content, and recycling standards under this
22 title.

23 5. A producer shall electronically submit annually, to both the
24 department and the packaging reduction and recycling organization, a
25 written declaration signed by its chief executive officer, verifying the
26 producer's compliance with:

27 (a) The packaging material reduction requirements of this title;

28 (b) The packaging material recycled content requirements of this
29 title;

30 (c) The packaging material recycling requirements of this title;

31 (d) The toxic substance reduction requirements of this title; and

32 (e) Any reimbursement obligations they have to local governments or
33 third party service providers in connection with this title.

34 6. A producer is exempt from the requirements and prohibitions of this
35 title in a calendar year in which:

36 (a) The producer realized less than five million dollars in total
37 gross revenue during the prior calendar year; or

38 (b) The producer sold, offered for sale, or distributed for sale
39 products contained, protected, delivered, presented, or distributed in
40 or using less than two tons of packaging material in total during the
41 prior calendar year.

42 7. A producer claiming an exemption pursuant to subdivision six of
43 this section shall provide the department with sufficient information to
44 demonstrate that the claimant is eligible for an exemption.

45 8. Nothing in this title shall impair a producer's eligibility for tax
46 credits or other business incentives for which they would otherwise
47 qualify.

48 § 27-3419. Department responsibilities.

49 1. Within eighteen months of the effective date of this title, the
50 department shall, in accordance with section 27-3437 of this title,
51 promulgate all rules and regulations necessary to implement, administer,
52 and enforce the provisions of this title, including setting standards
53 for consumer protection when the organization directly disburses funds
54 to third parties. These rules and regulations shall include prohibiting
55 certain packaging toxins pursuant to section 27-3425 of this title and
56 setting recommended producers' program fees, after consulting with

1 multiple stakeholders, including local governments, businesses, insti-
2 tutions, and other extended producer responsibility programs. Program
3 fees shall be set as required by section 27-3413 of this title.

4 2. The department shall revise recommended program fees every three
5 years, beginning three years after the first set of program fees is
6 established, to reflect new data received about material use and manage-
7 ment, or whenever the targets set in this title are not met, to drive
8 compliance with such targets.

9 3. Beginning two years after the effective date of this title, and
10 annually thereafter, the department shall work with each organization
11 to:

12 (a) Calculate the amount of packaging that was generated during the
13 prior calendar year;

14 (b) Calculate the recycling rate for all packaging during the prior
15 calendar year;

16 (c) Calculate the recycling rate for each packaging material type
17 during the prior calendar year;

18 (d) Develop a list of producers reasonably believed to be out of
19 compliance with the requirements of this title; and

20 (e) Utilize this information with input from the advisory council to
21 produce an annual report to be shared with the legislature and posted
22 publicly on the department's website.

23 4. In the event that the department determines that the organization
24 no longer meets the requirements of this title, or fails to implement
25 and administer the requirements of this title in a manner that effectu-
26 ates the purposes of this title, after reasonable opportunity to cure
27 such deficiencies, the department shall revoke its approval of such
28 organization and shall either select a new organization pursuant to
29 section 27-3403 of this title or elect to operate the program itself.

30 § 27-3421. Statewide packaging reduction, reuse, and recycling needs
31 assessment.

32 1. No later than one year after the effective date of this title and
33 every five years thereafter, the department shall complete or cause to
34 be completed a statewide packaging reduction, reuse, and recycling needs
35 assessment to determine the current state of packaging reuse, recycling,
36 and disposal, and identify barriers and opportunities to reduce the
37 amount of packaging discarded and disposed of, and increase the reusa-
38 bility and recyclability of packaging.

39 2. The needs assessment, at a minimum, shall cover the following:

40 (a) The current recycling rate for each type of packaging material
41 material;

42 (b) The amount, by weight and material type, of packaging material
43 recycled at each recycling facility that accepts discarded packaging
44 generated in the state;

45 (c) The processing capacity, market conditions, and opportunities in
46 the state and regionally for recyclable materials generally, and packag-
47 ing material categories specifically;

48 (d) The net cost of end-of-life management of discarded packaging
49 material in the state, including the cost associated with the
50 collection, transportation, sorting, recycling, littering, landfill-
51 ing, or incineration of discarded packaging;

52 (e) The availability of opportunities in the recycling and reuse
53 system for minority- and women-owned businesses;

54 (f) Current barriers affecting recycling access and availability in
55 the state;

1 (g) Current barriers to the marketability of recyclable materials
2 generated in the state;

3 (h) Opportunities for the creation of packaging material reuse and
4 refill programs in the state;

5 (i) Opportunities for the improvement of packaging material recycling
6 in the state, including the development of end markets for recycled
7 packaging materials.

8 (j) Current barriers affecting the creation and implementation of
9 packaging material reuse and refill programs;

10 (k) Consumer education needs in the state with respect to packaging
11 material waste reduction, recycling, and reducing contamination in recy-
12 cling, and reuse and refill systems for packaging material; and

13 (l) Landfill capacity.

14 3. The cost incurred by the department associated with conducting the
15 needs assessment shall be paid for by the organization.

16 4. The department shall report the results of the needs assessment to
17 the public, the state legislature, and the governor, and shall post the
18 results on its website.

19 § 27-3423. Education and outreach program.

20 1. The organization shall develop and implement an educational
21 outreach program designed to educate the public about waste reduction
22 and improve the effectiveness of local government recycling and, at a
23 minimum, include:

24 (a) Educational and informational materials for consumers related to
25 reducing the amount of packaging discarded, recycled, and disposed of in
26 the state;

27 (b) A description of the environmental, social, economic, and environ-
28 mental justice impacts associated with improper disposal of packaging
29 material and failure to reuse or recycle packaging materials;

30 (c) Information on the proper end-of-life management of packaging
31 material, including reuse, recycling, composting, and disposal;

32 (d) The location and availability of curbside collection and addi-
33 tional drop-off collection opportunities for packaging material, includ-
34 ing deposit and take-back programs;

35 (e) How to prevent litter of packaging material in the process of
36 collection;

37 (f) Recycling instructions that are consistent statewide, except as
38 necessary to take into account differences among local laws and process-
39 ing capabilities, easy to understand, and easily accessible; and

40 (g) Any other information required by the department.

41 2. The educational outreach program shall incorporate, at a minimum,
42 electronic, print, web-based and social media elements, including for
43 use by local governments at their discretion, as well as including a
44 variety of outreach and education tools. Such educational outreach
45 programs shall ensure materials are widely accessible and available in
46 multiple languages.

47 3. The educational outreach program shall be coordinated with and
48 assist local government programs, local government contracted programs,
49 solid waste collection companies, and other entities providing services.

50 4. The educational outreach program shall be developed to ensure envi-
51 ronmental justice communities receive targeted outreach and support.

52 5. The educational outreach program shall include a plan to work with
53 producers to label or mark packaging material, in accordance with
54 reasonable labeling standards, with information to assist consumers in
55 responsibly managing and recycling covered products.

6. The organization shall consult with local governments on the development of educational materials and may coordinate with local governments on outreach and communication.

7. The organization shall be authorized to provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging material. The educational and informational materials provided to the retailer under this subdivision may include, but need not be limited to, printed materials, signage, templates of materials that can be reproduced by retailers and provided thereby to consumers at the time of a product's purchase, and advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of packaging material.

8. The organization shall make information on relevant tax credits and other business incentives available to producers.

§ 27-3425. Prohibition on certain toxic substances and materials.

1. Beginning two years after the promulgation of rules and regulations pursuant to this title, no person or entity shall sell, offer for sale, or distribute into the state any packaging containing any of the following toxic substances:

- (a) Ortho-phthalates;
- (b) Bisphenols;
- (c) Per- and polyfluoroalkyl substances (PFAS);
- (d) Heavy metals and compounds, including lead, hexavalent chromium, cadmium, and mercury;
- (e) Benzophenone and its derivatives;
- (f) Halogenated flame retardants;
- (g) Perchlorate;
- (h) Formaldehyde;
- (i) Toluene;
- (j) Antimony and compounds;
- (k) Carbon black;
- (l) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol);
- (m) Polyvinyl chloride, including polyvinylidene chloride;
- (n) Polystyrene; or
- (o) Polycarbonate.

2.(a) There is hereby established within the department a toxic packaging task force to review the toxicity in packaging in the state, and to recommend to the department the designation of additional toxic substances which shall be subject to the same prohibition as those substances listed in subdivision one of this section.

(b) The toxic packaging task force shall have seven members, one of whom shall be the commissioner or their designee who shall be chair, and one of whom shall be the commissioner of health or their designee. The other members shall include: (i) a representative of the packaging industry; (ii) a representative of an environmental justice organization; and (iii) a representative from the chemical industry; all of whom shall be appointed by the commissioner. The remaining members shall be persons with significant professional or academic expertise in public health and toxicology, one of whom shall be appointed by the temporary president of the senate and one of whom shall be appointed by the speaker of the assembly. Appointments to the toxic packaging task force are term limited to five consecutive years of service.

(c) The task force shall meet at least twice per year to review and recommend to the department whether there are additional toxic substances or classes of toxic substances for use in packaging that

1 should no longer be sold, offered for sale, distributed for sale, or
2 distributed for such use in this state.

3 3. Within one hundred eighty days of the toxic packaging task force
4 recommending the designation of an additional toxic substance, the
5 department shall adopt rules and regulations to designate such substance
6 as a toxic substance under this section and prohibit the use of such
7 toxic substance in packaging in the same manner as those toxic
8 substances listed in subdivision one of this section, with an effective
9 date no later than two years after the date of such recommendation.

10 4. Any producer that violates this section, or any rules or regu-
11 lations promulgated pursuant to this section, shall be subject to a fine
12 for each violation not to exceed ten thousand dollars per violation. For
13 the purposes of this section, each product line that is sold, offered
14 for sale, or distributed to consumers, via retail commerce, in the
15 state, including through an internet transaction shall be considered a
16 separate violation.

17 § 27-3427. Non-reusable packaging reduction standards.

18 1. Each individual producer is required to meet the following packag-
19 ing reduction requirements:

20 (a) Beginning three years after a producer first registers with an
21 organization, such producer shall reduce the amount of primary plastic
22 packaging and the amount of non-primary packaging for all materials used
23 to contain, protect, deliver, present, or distribute the products they
24 sell, offer for sale, or distribute for sale into the state, by ten
25 percent by unit weight.

26 (b) Beginning five years after a producer first registers with an
27 organization, such producer shall reduce the amount of primary plastic
28 packaging and the amount of non-primary packaging for all materials used
29 to contain, protect, deliver, present, or distribute the products they
30 sell, offer for sale, or distribute for sale into the state, by twenty
31 percent by unit weight.

32 (c) Beginning eight years after a producer first registers with an
33 organization, such producer shall reduce the amount of primary plastic
34 packaging and the amount of non-primary packaging for all materials used
35 to contain, protect, deliver, present, or distribute the products they
36 sell, offer for sale, or distribute for sale into the state, by thirty
37 percent by unit weight.

38 (d) Beginning ten years after a producer first registers with an
39 organization, such producer shall reduce the amount of primary plastic
40 packaging and the amount of non-primary packaging for all materials used
41 to contain, protect, deliver, present, or distribute the products they
42 sell, offer for sale, or distribute for sale into the state, by forty
43 percent by unit weight.

44 (e) Beginning twelve years after a producer first registers with an
45 organization, such producer shall reduce the amount of primary plastic
46 packaging and the amount of non-primary packaging for all materials used
47 to contain, protect, deliver, present, or distribute the products they
48 sell, offer for sale, or distribute for sale into the state, by fifty
49 percent by unit weight.

50 2. The reductions required by this section shall be measured against
51 the total amount of packaging the producer used to contain, protect,
52 deliver, present, or distribute the products they sold, offered for
53 sale, or distributed for sale, during the first year such producer
54 registered with the packaging reduction organization.

55 3. These reductions shall be achieved by eliminating single-use pack-
56 aging, including secondary or tertiary packaging, elimination of packag-

ing components, reduction of packaging components, or by transitioning to reusable or refillable packaging systems.

4. The reductions required by this section shall not be achieved by substituting non-plastic materials with plastic materials or substituting recyclable materials with non-recyclable materials.

5. In the case of a producer for which, as of the effective date of this title or upon entry into the market after such effective date, a portion of its packaging is reusable and contained within a reuse and refill system, such producer may apply to the department for a waiver from the packaging reduction requirements set forth in subdivision one of this section with respect to that percentage of its packaging, by unit weight, which is contained within a reuse and refill system.

6. In the case of a producer that demonstrates in a manner satisfactory to the department that, for the period beginning five years prior to the effective date of this title and ending on the date which is two years after the effective date of this title, the producer reduced the amount of packaging used to contain, protect, deliver, present, or distribute the products the producer sells, offers for sale, or distributes for sale into the state, such producer may apply to the department for a waiver from the packaging reduction requirements of this section with respect to that percentage of its packaging, by unit weight, which was reduced during such five-year period.

7. A producer may apply to the department for a waiver from the reduction requirements of this section if compliance is impossible due to federal law. Such waiver must be applied for annually. In such application the producer shall provide the department and the advisory council with sufficient information, in the determination of the department in consultation with the advisory council, to make a determination on such application, including proof that the producer has taken all feasible actions to achieve the reductions required by this section.

8. Nothing in this section shall preclude a producer from going beyond the reduction standards in subdivision one of this section.

§ 27-3429. Recycled content standards.

1. Each individual producer shall meet the recycling content targets contained in this section.

2. Beginning two years after the effective date of this section:

(a) all glass containers manufactured in the state used by the producer shall contain, on average, at least thirty-five percent post-consumer recycled content;

(b) all paper carryout bags sold, offered for sale, or given away free in the state by a producer shall contain, on average, at least forty percent post-consumer recycled content; except that a paper carryout bag that holds eight pounds or less shall only be required to contain, on average, at least twenty percent post-consumer recycled content; and

(c) all plastic trash bags sold or offered for sale in the state by a producer shall contain, on average, at least twenty percent post-consumer recycled content.

3. The requirements of this section shall not apply to reusable or refillable packaging or containers.

4. Beginning two years after plan implementation begins for the initial organization, the department is authorized, in consultation with the advisory council, to:

(a) establish content requirements for materials not listed in subdivision two of this section; and

(b) modify the post-consumer recycled content targets for the materials set forth in subdivision two of this section, provided that modifi-

1 cations do not result in a lesser percentage or an earlier year for the
2 respective target.

3 § 27-3431. Recyclability criteria and packaging recycling requirements.

4 1. Beginning two years after the effective date of this section, pack-
5 aging materials used by a producer shall meet the following recyclabili-
6 ty criteria:

7 (a) be capable of being sorted by entities that process recyclable
8 material generated in the state;

9 (b) has a consistent regional market for purchase, by end users in the
10 production of new products;

11 (c) does not contain the following:

12 (i) non-detectable pigments, including but not limited to carbon
13 black;

14 (ii) the toxic substances set forth in subdivision one of section
15 27-3425 of this title and those designated by the toxic packaging task
16 force pursuant to subdivision two of section 27-3425 of this title;

17 (iii) opaque or pigmented polyethylene terephthalate;

18 (iv) oxo-degradable additives, including oxo-biodegradable additives;

19 (v) polyethylene terephthalate glycol in rigid packaging;

20 (vi) label constructions, including adhesives, inks, materials and
21 formats, or features that render a package non-recyclable or disruptive
22 to the recycling process, as determined by the department in consulta-
23 tion with the advisory council; and

24 (vii) DoPS - polystyrene, including EPS (expanded polystyrene);

25 (d) meets the post-consumer content requirements of this title; and

26 (e) any other criteria determined by the department.

27 2. The department shall maintain a list of packing material that meet
28 these criteria and are deemed to be recyclable. The department shall
29 update this list annually.

30 3. Each individual producer shall be required to meet the following
31 recycling rate standards:

32 (a) With respect to the producer's non-plastic packaging:

33 (i) Beginning January first, two thousand twenty-eight, a minimum of
34 thirty-five percent of packaging material reported by the producer or an
35 organization as supplied into the state shall be reused or recycled,
36 with a minimum of five percent being reused;

37 (ii) Beginning January first, two thousand thirty-five, a minimum of
38 fifty percent of packaging material reported by the producer or an
39 organization as supplied into the state shall be reused or recycled,
40 with a minimum of ten percent being reused; and

41 (iii) Beginning January first, two thousand fifty, a minimum of seven-
42 ty-five percent of packaging material reported by the producer or an
43 organization as supplied into the state shall be reused or recycled,
44 with a minimum of twenty percent being reused.

45 (b) With respect to plastic packaging:

46 (i) Beginning January first, two thousand twenty-eight, a minimum of
47 twenty-five percent of plastic packaging material reported by the
48 producer or an organization as supplied into the state shall be reused
49 or recycled;

50 (ii) Beginning January first, two thousand thirty-five, a minimum of
51 fifty percent of plastic packaging material reported by the producer or
52 an organization as supplied into the state shall be reused or recycled;
53 and

54 (iii) Beginning January first, two thousand fifty, a minimum of seven-
55 ty-five percent of plastic packaging material reported by the producer

1 or an organization as supplied into the state shall be reused or recycled.
2

3 4. The department may adjust the recycling rates in subdivision three
4 of this section by rulemaking based on information gathered through the
5 needs assessment or provided in producer plans and reports, or based on
6 consideration of environmental, technical and economic conditions. An
7 adjustment to the statewide recycling and reuse performance targets may
8 not adjust the recycling rate target to less than thirty-five percent or
9 more than seventy-five percent.

10 5. A producer may apply to the department for a waiver from the
11 reduction requirements of this section if compliance is impossible due
12 to federal law. Such waiver shall be applied for annually. In such
13 application the producer shall provide the department and the advisory
14 council with sufficient information, in the determination of the depart-
15 ment in consultation with the advisory council, to make a determination
16 on such application, including proof that the producer has taken all
17 feasible actions to achieve the reductions required by this section.

18 6. The requirements of subdivision three of this section shall not
19 apply to reusable or refillable packaging or containers.

20 § 27-3433. Establishment of the office of recycling inspector general.

21 1. The commissioner shall establish an independent office of recycling
22 inspector general within the department. The recycling inspector general
23 shall evaluate the programs created pursuant to this title on an annual
24 basis and shall ensure such programs are functioning properly, and that
25 all producers are in compliance with the requirements of this title.

26 2. The recycling inspector general shall have the authority to inves-
27 tigate the compliance of producers and the organization with all
28 provisions of this title and to bring enforcement actions for violations
29 of this title pursuant to the provisions of section 27-3435 of this
30 title.

31 § 27-3435. Penalties and enforcement.

32 1. Failure to comply with the requirements of this title shall subject
33 the organization or an individual producer to penalties for violations.
34 The department, recycling inspector general, or attorney general, may
35 conduct investigations, including inspecting operations, facilities, and
36 records of producers and organizations, and performing audits of produc-
37 ers and organizations, to determine whether such producers and organiza-
38 tions are complying with the requirements of this title.

39 2. The department, the recycling inspector general, or the attorney
40 general, shall notify an organization or producer of any conduct or
41 practice that does not comply with the requirements of this title and of
42 any inconsistencies identified in an audit.

43 3. The department, the recycling inspector general, and the attorney
44 general, may issue a notice of violation to, and impose an administra-
45 tive civil penalty not to exceed one thousand dollars per day per
46 violation on any entity not in compliance with this title or any of the
47 regulations the department adopts to implement this title. For the
48 purposes of this section, each product line that is sold, offered for
49 sale, or distributed to consumers via retail commerce in the state,
50 including through an internet transaction, shall be considered a sepa-
51 rate violation.

52 4. Civil penalties under this section shall be assessed by the depart-
53 ment after an opportunity to be heard pursuant to the provisions of
54 section 71-1709 of this chapter, or by the court in any action or
55 proceeding pursuant to section 71-2727 of this chapter, and in addition
56 thereto, such person or entity may by similar process be enjoined from

1 continuing such violation and any permit, registration or other approval
2 issued by the department may be revoked or suspended or a pending
3 renewal denied.

4 § 27-3437. Rules and regulations.

5 1. Within eighteen months after the effective date of this section,
6 the department shall promulgate all rules and regulations necessary to
7 implement, administer, and enforce the provisions of this title.

8 2. When promulgating rules pursuant to the provisions of this section,
9 the department shall solicit input from the public of any draft rule or
10 regulation to implement this section, including at a minimum a ninety-
11 day comment period and one public hearing on such draft rules.

12 § 27-3439. State preemption.

13 Jurisdiction in all matters pertaining to costs and funding mechanisms
14 of packaging reduction and recycling organizations relating to the
15 recovery of packaging materials shall, by this title, be vested exclu-
16 sively in the state; provided, however, that nothing in this title shall
17 preclude any city, town, village or other local planning units from
18 determining what materials shall be included for recycling in a local
19 government recycling collection program or shall preclude any person
20 from coordinating, for recycling or reuse, the collection of packaging
21 materials and products.

22 § 27-3441. Other assistance programs.

23 Nothing in this title shall impact any producer eligibility for any
24 state or local incentive or assistance program to which they are other-
25 wise eligible.

26 § 27-3443. Severability.

27 The provisions of this title shall be severable and if any phrase,
28 clause, sentence or provision of this title or the applicability thereof
29 to any person or circumstance shall be held invalid, the remainder of
30 this title and the application thereof shall not be affected thereby.

31 § 3. The environmental conservation law is amended by adding a new
32 section 37-0202 to read as follows:

33 § 37-0202. Applicability.

34 This article shall only have effect to the extent that the prohibi-
35 tions in this title are not otherwise substantially given effect or in
36 conflict with the provisions of title thirty-four of article twenty-sev-
37 en of this chapter.

38 § 4. This act shall take effect immediately.