

# STATE OF NEW YORK

4246

2023-2024 Regular Sessions

## IN SENATE

February 6, 2023

Introduced by Sen. HARCKHAM -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to enacting the packaging reduction and recycling infrastructure act; and the state finance law, in relation to creating the waste reduction and reuse infrastructure fund

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. Responsibilities of the packaging reduction and recycl-  
9 ing organization.

10 27-3405. Packaging reduction and recycling organization plan.

11 27-3407. Packaging reduction and recycling plan approval.

12 27-3409. Packaging reduction and recycling advisory council.

13 27-3411. Funding mechanism.

14 27-3413. Collection and convenience.

15 27-3415. Producer responsibilities.

16 27-3417. Department responsibilities.

17 27-3419. Statewide packaging reduction, reuse, and recycling  
18 needs assessment.

19 27-3421. Education and outreach program.

20 27-3423. Waste reduction and reuse infrastructure fund.

21 27-3425. Prohibition on certain toxic substances and materials.

22 27-3427. Packaging reduction standards.

23 27-3429. Recycled content standards.

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

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27-3431. Recyclability criteria.

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

27-3435. Penalties and enforcement.

27-3437. Rules and regulations.

27-3439. State preemption.

27-3441. Other assistance programs.

27-3443. Severability.

§ 27-3401. Definitions.

As used in this title:

1. "Advisory council" or "council" means the packaging reduction and recycling advisory council established under section 27-3409 of this title.

2. "Beverage container" means a container used to contain all drinks in liquid form and intended for human consumption.

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

4. "Curbside recycling" means a recycling program that serves residential units, or schools, state or local agencies, or institutions where such schools, state or local agencies, or institutions 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 the municipality, private sector hauler, or other public agency or through approved local solid waste management plans.

5. "Discarded", "discards", "generated" or "generation" means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.

6. "Disposal" means the landfilling or incineration of material or products. "Disposal" shall also include energy recovery or energy generation by any means, including, but not limited to, combustion, pyrolysis, gasification, or solvolysis. "Disposal" shall also include the use of materials as landfill cover.

7. "Eco-modulation" means program fees that are structured in a way to provide producers with financial incentives to reduce waste at the source, increase recyclability of covered materials, promote reusable packaging products, including those that are contained within a reuse and refill system and that disincentivize designs or practices that increase costs and environmental impacts of managing the packaging materials.

8. "Environmental justice community" means any neighborhood or community which is composed predominantly of persons of color or persons below the poverty line, that is subject to a disproportionate burden of environmental hazards.

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

10. (a) "Covered packaging material and products" or "covered materials" means the following:

(i) a discrete material or category of material, regardless of recyclability, including but not limited to such material types that are flex-

1 ible, foam, or rigid material, including paper, plastic, glass, metal,  
2 or multi-material, that is used for the primary, secondary, tertiary  
3 containment, protection, handling, delivery, transport, distribution, or  
4 presentation of another product that is sold, offered for sale,  
5 imported, or distributed in the state, including through an internet  
6 transaction.

7 (ii) printed paper of any description, including but not limited to:  
8 (1) flyers; (2) brochures; (3) booklets; (4) catalogs; (5) telephone  
9 directories; (6) paper fiber; and (7) paper used for writing or any  
10 other purpose;

11 (iii) single-use plastic products that frequent the residential waste  
12 stream or are plastic products that have the effect of disrupting recy-  
13 cling processes, including, but not limited to, single-use plastic items  
14 such as straws, utensils, cups, plates, and plastic bags.

15 (b) Covered materials does not include:

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

21 (ii) Animal biologics, including vaccines, bacterins, antisera, diag-  
22 nostic kits, and other products or biological origin, and other covered  
23 materials regulated by the United States department of agriculture under  
24 the virus, serum, toxin act, 21 U.S.C. 151-159;

25 (iii) Packaging regulated by the Federal Insecticide, Fungicide, and  
26 Rodenticide Act, 7 U.S.C. Sec. 136 et seq. or other applicable federal  
27 law, rule, or regulation;

28 (iv) Newspapers and magazines; and

29 (v) Beverage containers subject to a returnable container deposit  
30 under title ten of this article.

31 11. "Packaging reduction and recycling organization" or "organization"  
32 means a registered 501(c)(3) non-profit charitable organization, pursu-  
33 ant to 26 U.S.C. 501(c)(3), designated by a group of producers to act as  
34 an agent on behalf of each producer to develop and implement a packaging  
35 reduction and recycling plan pursuant to section 27-3405 of this title  
36 and comply with the organization responsibilities under section 27-3403  
37 of this title.

38 12. "Packaging reduction and recycling plan" or "plan" means a docu-  
39 ment in which individual producers or the organization describe the  
40 efforts they will undertake to comply with the requirements of this  
41 title.

42 13. "Packaging reduction and recycling program" or "program" means a  
43 program by which producers who sell, offer for sale, or distribute  
44 covered packaging materials and products shall register with the depart-  
45 ment, either individually or through a packaging reduction and recycling  
46 organization, to comply and implement the provisions of this title. The  
47 program is overseen by the department.

48 14. "Post-consumer recycled material" means new material produced  
49 using material resulting from the recovery, separation, collection and  
50 reprocessing of material that would otherwise be disposed of or proc-  
51 essed as waste and that was originally sold for consumption. "Post-con-  
52 sumer recycled material" does not include post-industrial material or  
53 pre-consumer material, or material generated by means of advanced recy-  
54 cling, chemical recycling, combustion, gasification, incineration, pyro-  
55 lysis, solvolysis, waste-to-energy, waste-to-fuel, or any other chemical  
56 or molecular conversion process.

1 15. "Producer" means the following entities for compliance with the  
2 requirements for covered materials sold, offered for sale, or distrib-  
3 uted to consumers in or into this state:

4 (a) For covered materials sold or served to consumers at a physical  
5 retail location in this state:

6 (i) If the covered materials are sold or served under the manufactur-  
7 er's own brand or are sold or served in covered materials that lacks  
8 identification of a brand, the producer of the covered materials is the  
9 person that manufactures the product;

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

18 (iii) If there is no person as described in subparagraph (i) or (ii)  
19 of this paragraph within the United States, the producer of the covered  
20 material is the person who imports the product into the United States  
21 for use in a commercial enterprise that sells, offers for sale, or  
22 distributes the product to consumers in this state.

23 (b) For products sold or distributed to consumers in covered materials  
24 in or into this state via remote sale or distribution:

25 (i) The producer of covered materials used to directly protect or  
26 contain the product is the same as the producer defined in paragraph (a)  
27 of this subdivision.

28 (ii) The producer of covered materials used to ship the product to a  
29 consumer is the person that manufactures the shipping material.

30 16. "Product line" means a group of related products all marketed  
31 under a single brand name that is sold by the same producer to distin-  
32 guish products from each other for better usability for customers.

33 17. "Recyclable" means a covered material that meets the criteria in  
34 section 27-3431 of this title.

35 18. "Recycled" means the use of discarded packaging materials or  
36 products in the production of a new product or packaging in place of  
37 virgin materials. "Recycled" material does not include contaminants,  
38 residues, and other process losses or use of materials as landfill  
39 cover.

40 19. "Recycling" means the series of activities by which material is:  
41 (a) collected, transported, sorted, and processed; or (b) used in indus-  
42 trial feedstocks in place of virgin materials to manufacture new  
43 products with minimal loss of material quality and quantity. "Recycl-  
44 ing" does not include energy recovery or energy generation by any means,  
45 combustion, gasification, incineration, pyrolysis, solvolysis, or any  
46 other chemical conversion process or creation of a hazardous substance.  
47 It also does not include landfill disposal of discarded material or  
48 discarded product component materials, including the use of materials as  
49 landfill cover.

50 20. "Recycling rate" means the percentage of any given packaging type  
51 that is ultimately recycled. The recycling rate for any covered material  
52 shall be calculated as the total weight of packaging that is recycled in  
53 a given year divided by the total weight of covered material generated  
54 in that year. Material losses, including contaminants and residues,  
55 accruing during collection, processing and manufacturing new products do

1 not count as recycled and should not be in the numerator of the  
2 equation.

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

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

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

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

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

23 (b) A chemical or chemical class that is persistent or bioaccumula-  
24 tive.

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

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

30 (e) A chemical or chemical class that may have adverse air quality  
31 impacts, adverse ecological impacts, adverse soil quality impacts, or  
32 adverse water quality impacts.

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

35 § 27-3403. Responsibilities of the packaging reduction and recycling  
36 organization.

37 1. Producers shall either form a packaging reduction and recycling  
38 organization individually or collectively to meet the responsibilities  
39 of the program pursuant to the provisions of this section.

40 2. Each packaging reduction and recycling organization, or individual  
41 producers as applicable, shall establish consistency among programs so  
42 that all materials that can be sorted and sold to market are collected  
43 and processed for recovery. If more than one packaging reduction and  
44 recycling organization is registered within the state, each organization  
45 and producer shall coordinate with all other such organizations and  
46 producers to ensure that the collection convenience requirements in  
47 section 27-3413 of this title and educational requirements in section  
48 27-3421 of this title are met and are consistent and seamless to resi-  
49 dents, that government agencies and service providers are reimbursed for  
50 recycling services as required under this chapter, and that covered  
51 products are not reported as generated, supplied or managed by more than  
52 one organization.

53 3. Each packaging reduction and recycling organization in adminis-  
54 tration of the program shall:



1 (a) Develop a packaging reduction and recycling plan and submit such  
2 plan to the advisory council for review and comment, and submit to the  
3 commissioner for approval pursuant to section 27-3407 of this title;

4 (b) Collect and compile data from producers as required by section  
5 27-3415 of this title;

6 (c) Calculate reasonable reimbursement rates through an objective  
7 formula approved by the department for curbside recycling;

8 (d) Collect fees due from producers as required by section 27-3411 of  
9 this title;

10 (e) Reimburse the department for the costs associated with conducting  
11 the statewide needs assessment required by section 27-3411 of this title  
12 and the administration and enforcement of the program;

13 (f) Distribute funds to reimburse local governments and private compa-  
14 nies for the costs associated with the implementation of reduction and  
15 recycling programs, including collection, transportation and processing  
16 as required to meet the collection convenience standards in section  
17 27-3413 and other requirements of this title;

18 (g) Make recommendations to the department regarding investments  
19 toward packaging reduction and reuse and make disbursements into the  
20 waste reduction and reuse infrastructure fund pursuant to section  
21 27-3423 of this title;

22 (h) Undertake an effective statewide education and public outreach  
23 program required by section 27-3421 of this title;

24 (i) Offer technical support to participating producers, with an empha-  
25 sis on support to small businesses, to assist them with compliance with  
26 the requirements of this title, including information about procuring  
27 affordable alternatives to non-compliant packaging and reducing packag-  
28 ing.

29 4. Annually, each packaging reduction and recycling organization shall  
30 submit a report to the department that, at a minimum, must include the  
31 following information:

32 (a) Contact information for the organization;

33 (b) A list of all participating producers, brands, and products;

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

39 (d) The total amount, by weight, of each material category recycled in  
40 the state, and out of state, as a result of activities undertaken by the  
41 organization, either directly or through reimbursement or contractual  
42 arrangement;

43 (e) A calculation of the recycling rate of each material category  
44 which is derived by dividing the amount of each material category recy-  
45 cled, as reported in paragraph (d) of this subdivision by the amount of  
46 each material category generated, as reported in paragraph (c) of this  
47 subdivision;

48 (f) A complete accounting of all payments made to and by the organiza-  
49 tion during the prior calendar year;

50 (g) A list of producers believed to be out of compliance with the  
51 requirements of this title, and the reason the organization believes the  
52 producer to be out of compliance. Information on non-compliant produc-  
53 ers shall be provided to the attorney general's office in a timely fash-  
54 ion;

55 (h) A description of the educational and outreach efforts made by the  
56 organization in the prior calendar year, and how those efforts were

1 designed to reduce packaging waste, and increase reuse and recycling of  
2 packaging materials;

3 (i) An assessment of whether the fee structure pursuant to section  
4 27-3411 of this title has been effective in incentivizing improvements  
5 to the design of packaging material, including actual reduction of pack-  
6 aging, increases in reusable and refillable packaging, recycling rates  
7 for packaging materials, and decreases in the amount of packaging;

8 (j) A description of the reimbursements and expenditures made pursuant  
9 to section 27-3411 of this title;

10 (k) A recommendation to the department to add or remove covered  
11 products from the list of recyclable materials, based on information  
12 gathered from end markets, including commodity brokers and manufacturers  
13 who purchase post-consumer materials for use in manufacturing new  
14 products;

15 (l) Audited financial statements; and

16 (m) Any additional information required by the department.

17 5. The packaging reduction and recycling organization shall operate a  
18 program that provides for collection convenience as described in section  
19 27-3413 of this title.

20 6. The packaging reduction and recycling organization shall not spend  
21 funds on lobbying federal, state, or local governments or campaign  
22 contributions to any candidates running for office.

23 § 27-3405. Packaging reduction and recycling organization plan.

24 1. Within eighteen months of the effective date of this title, each  
25 packaging reduction and recycling organization, shall develop and submit  
26 a packaging reduction and recycling plan to the department for approval.  
27 The plan shall be submitted to the advisory board for review pursuant to  
28 section 27-3409 of this title prior to the department's approval.

29 2. The plan shall cover five years and be updated every five years  
30 following the approval of the original plan. The department shall have  
31 the discretion to require the plan to be reviewed or revised prior to  
32 the five-year period pursuant to section 27-3417 of this title.

33 3. Each producer shall begin program implementation within six months  
34 after the date the plan is approved or no later than two years of the  
35 effective date of this title. If no plan is approved by that timeframe,  
36 the producer shall be subject to penalties for noncompliance.

37 4. Any person that becomes a producer after the effective date of this  
38 title shall submit an individual plan, or join a packaging reduction and  
39 recycling organization, within six months and begin program implementa-  
40 tion within six months of plan approval or be subject to penalties for  
41 noncompliance.

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

43 (a) contact information, including the name, electronic and physical  
44 address, and telephone number of the authorized representative of the  
45 producer or producers;

46 (b) the identity of the producer or producers participating in the  
47 plan;

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

50 (d) a description of the proposed funding mechanism, identified in  
51 section 27-3411 of this title, that meets the requirements of this title  
52 and is sufficient to cover the cost of operating the program, updating  
53 the plan, and maintaining a financial reserve sufficient to operate the  
54 program in a fiscally prudent and responsible manner;

55 (e) an objective formula establishing a reimbursement rate, which  
56 covers obligations identified in the needs assessment and takes into

1 account variable regional costs, for participating municipalities or  
2 private sector service providers;

3 (f) a description of the process for participating municipalities or  
4 private sector service providers to recoup reasonable costs as estab-  
5 lished by the objective formula, from the producer or organization,  
6 including, as applicable, any administrative, sorting, collection,  
7 transportation, public education, or processing costs, if the organiza-  
8 tion uses existing services through a municipality or obtains such  
9 services from a private sector service provider;

10 (g) at a minimum, the following funding mechanism details shall be  
11 provided in the plan:

12 (i) proposed program fees, provided as a table listing the rate paid  
13 for each material category, which in sum, will generate sufficient fund-  
14 ing to cover obligations identified in the needs assessment and the  
15 requirements of this title; and

16 (ii) proposed program fee adjustments to incorporate eco-modulation  
17 factors;

18 (h) a description of the characteristics of each type of packaging  
19 material that are relevant to the eco-modulating factors set forth  
20 pursuant to section 27-3411 of this title;

21 (i) a description of the process used for the contracting with a  
22 private sector entity to provide such services to recoup reasonable  
23 costs if the municipality does not elect to provide service;

24 (j) how the producers or organization will work with existing waste  
25 haulers, material recovery facilities, recyclers, and municipalities to  
26 operate or expand current collection programs to address material  
27 collection methods;

28 (k) a description of how the producers or organization will use open,  
29 competitive, and fair procurement practices should they directly enter  
30 into contractual agreements with service providers, including munici-  
31 palities and private entities;

32 (l) a description of how a municipality will participate, on a volun-  
33 tary basis, with collection and how existing municipal recycling proc-  
34 essing and collection infrastructure will be used;

35 (m) a description of how the producers or organization plans to meet  
36 the convenience requirements set forth in this title;

37 (n) a description of the process for end-of-life management, including  
38 recycling and disposal of residuals collected for recycling, using envi-  
39 ronmentally sound management practices;

40 (o) a description of how the organization shall provide the option to  
41 purchase recycled materials from processors;

42 (p) a description of how producers are complying with and exceeding  
43 the waste reduction, toxics, and post-consumer content requirements of  
44 the title;

45 (q) a description of how the organization will strategically invest in  
46 existing and future reuse and recycling infrastructure and market devel-  
47 opment in the state, including, but not limited to, installing or  
48 upgrading equipment to improve sorting of covered materials or mitigat-  
49 ing the impacts of covered materials to other commodities at existing  
50 sorting and processing facilities, and capital expenditures for new  
51 technology, equipment, and facilities;

52 (r) a process to address concerns and questions from customers and  
53 residents;

54 (s) a description of the producer or organization's public outreach  
55 education program for consumers and other stakeholders;



1 (t) a description of how comments of stakeholders were considered and  
2 addressed in the development of the plan; and

3 (u) a detailed description of how the producers or organization  
4 consulted with the advisory board, the public, and other stakeholders in  
5 the development of the plan prior to its submission to the department,  
6 and to what extent the producers or organization specifically incorpo-  
7 rated the advisory board's input into the plan.

8 6. The producers or organization shall also provide the advisory board  
9 a reasonable period of time to review and comment upon the draft plan  
10 prior to its submission to the department. The producers or organization  
11 shall make an assessment of comments received and shall provide a summa-  
12 ry and an analysis of the issues raised by the advisory board and  
13 significant changes suggested by any such comments, a statement of the  
14 reasons why any significant changes were not incorporated into the plan,  
15 and a description of any changes made to the plan as a result of such  
16 comments.

17 § 27-3407. Packaging reduction and recycling plan approval.

18 1. Before approval or denial of a packaging reduction and recycling  
19 plan can be made in accordance with this title, the producer or organ-  
20 ization shall submit the plan to the packaging reduction and recycling  
21 advisory council.

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

26 3. The advisory council in recommending, and the department in approv-  
27 ing or denying a plan, shall consider that:

28 (a) the plan adequately addresses all elements described in section  
29 27-3405 of this title with sufficient detail to demonstrate that the  
30 plan will be met;

31 (b) the producer has undertaken satisfactory consultation with the  
32 advisory council, the public, and other stakeholders on the draft plan  
33 pursuant to subdivision six of section 27-3405 of this title and has  
34 provided an opportunity for the advisory council's input in the imple-  
35 mentation and operation of the plan prior to submission of the plan, and  
36 has thoroughly described how the advisory council's input will be  
37 addressed by and incorporated into the plan;

38 (c) the plan also adequately provides for:

39 (i) the producer collecting and funding the costs of collecting and  
40 processing covered materials by contracting with private sector service  
41 providers or reimbursing municipalities;

42 (ii) the funding mechanism to cover the cost of the program, including  
43 administration, enforcement, the statewide needs assessment, and  
44 disbursements into the waste reduction and recycling infrastructure  
45 fund;

46 (iii) convenient and free consumer access to collection facilities or  
47 collection services;

48 (iv) a formulaic system for equitable distribution of funds;

49 (v) comprehensive public education and outreach;

50 (vi) an evaluation system for the fee structure, which shall be evalu-  
51 ated on an annual basis by the organization and resubmitted and approved  
52 by the department annually;

53 (vii) a convenient system for consumers to recycle that is, at mini-  
54 mum, as convenient as curbside collection or as convenient as the previ-  
55 ous waste collection system in the particular jurisdiction; and

1 (viii) adequate consideration of the state's solid waste management  
2 policy set forth in section 27-0106 of this article.

3 4. The department may establish additional plan requirements in addi-  
4 tion to those identified herein to fulfill the intent of this title;  
5 provided, however, that any additional requirements shall be established  
6 one year prior to a required submission of a plan unless such additional  
7 requirements are in relation to the power granted to the department  
8 section 27-3417 of this title.

9 5. No later than six months after the date the plan is approved, the  
10 organization shall implement the approved plan. The department may  
11 rescind the approval of an approved plan at any time with cause and  
12 documented justification.

13 § 27-3409. Packaging reduction and recycling advisory council.

14 1. There is hereby established within the department a packaging  
15 reduction and recycling advisory council to receive and review the pack-  
16 aging reduction and recycling plans required under section 27-3405 of  
17 this title, to make recommendations to the department regarding approval  
18 of the plans, and to review the annual reports produced by organiza-  
19 tions.

20 2. No later than one year after the effective date of this section,  
21 the commissioner shall appoint the members of the advisory council. The  
22 advisory council shall be composed of thirteen members, and the commis-  
23 sioner shall appoint at least one member from each of the following:

24 (a) a municipality association or municipal recycling program, includ-  
25 ing an additional municipal representative from cities with a population  
26 of one million or more residents;

27 (b) a statewide environmental organization;

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

30 (d) an environmental justice organization;

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

32 (f) a materials recovery facility located within the state;

33 (g) a recycling collection provider;

34 (h) a manufacturer of packaging materials utilizing post-consumer  
35 recycled content;

36 (i) a consumer advocate;

37 (j) a retailer;

38 (k) a public health specialist; and

39 (l) a producer or producer responsibility organization established  
40 under this title as non-voting members.

41 4. Appointments to the advisory council are term-limited to five  
42 consecutive years of service; the chair shall be chosen through a major-  
43 ity vote of its members and shall serve no longer than one consecutive  
44 year;

45 5. Any member of the advisory council who represents a registered  
46 501(c)(3) non-profit charitable organization, pursuant to 26 U.S.C.  
47 501(c)(3), shall be provided a stipend for their work as an advisory  
48 council member at an amount equal to two hundred forty hours, multiplid  
49 by double the prevailing minimum wage;

50 6. All decisions made by the advisory council shall be decided by  
51 voting and votes shall only be valid when a quorum is present. A quorum  
52 shall exist when greater than fifty percent of voting members are pres-  
53 ent. The advisory council shall meet at least once a year by the call of  
54 the chair or by request of more than half the members. The decisions of  
55 the advisory council shall be by vote of the majority of its membership;

1 7. The council shall determine whether the plan submitted under  
2 section 27-3407 of this title meets the criteria and objectives under  
3 this section in making its recommendation.

4 8. The advisory council shall, within ninety days of the submission of  
5 a packaging reduction and recycling plan, either:

6 (a) forward the plan to the commissioner with its recommendation for  
7 approval; or

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

11 9. An organization may resubmit a packaging reduction and recycling  
12 plan for approval at any time. Upon such resubmission, the advisory  
13 council shall, within ninety days, forward the plan to the commissioner  
14 with its recommendation for approval or disapproval.

15 10. The advisory council shall review the submitted annual reports and  
16 make such recommendations to the department and the organization for  
17 improving future plans.

18 § 27-3411. Funding mechanism.

19 1. A packaging reduction and recycling organization shall establish  
20 program participation fees for producers through the plan pursuant to  
21 section 27-3405 of this title, which shall be sufficient to cover all  
22 costs of the program, including administration, enforcement, the state-  
23 wide needs assessment, and disbursements into the waste reduction and  
24 reuse infrastructure fund established pursuant to section ninety-seven-  
25 bbbbbb of the state finance law.

26 2. A packaging reduction and recycling organization shall structure  
27 program charges to provide producers with financial incentives through  
28 eco-modulation, to reward waste and source reduction and recycling  
29 compatibility innovations and practices, and to disincentivize designs  
30 or practices that increase costs of managing the products or which  
31 contain toxic substances.

32 3. A packaging reduction and recycling organization may adjust fees to  
33 be paid by participating producers based on factors that affect system  
34 costs. At a minimum, fees shall be variable based on:

35 (a) costs to provide curbside collection or another form of residen-  
36 tial service that is, at minimum, as convenient as curbside collection  
37 or as convenient as the previous recycling collection plan in the  
38 particular jurisdiction or as convenient as the previous refuse  
39 collection plan in the particular jurisdiction should recycling  
40 collection not be provided;

41 (b) costs to process covered materials for acceptance by secondary  
42 material markets;

43 (c) whether the covered material would typically be readily-recyclable  
44 except that as a consequence of the packaging design, the packaging  
45 product has the effect of disrupting recycling processes or the product  
46 includes labels, inks, and adhesives containing heavy metals or other  
47 toxic substances that would contaminate the recycling process;

48 (d) whether the packaging material is specifically designed to be  
49 reusable or refillable and has high reuse or refill rate; and

50 (e) the commodity value of a packaging material.

51 4. The fees shall be adjusted, or the producers may be provided a  
52 credit, based upon the percentage of post-consumer recycled material  
53 content and such percentage of post-consumer recycled content shall be  
54 verified by the organization or through an independent third party  
55 approved to perform verification services to ensure that such percentage

1 exceeds the minimum requirements in the packaging, as long as the recy-  
2 cled content does not disrupt the potential for future recycling.

3 5. In addition to the annual schedule of fees approved in the plan,  
4 the organization fee schedule may include a special assessment on  
5 specific categories of packaging materials at the request of responsible  
6 entities representing and approved by the advisory council if the nature  
7 of the packaging material imposes unusual costs in collection or proc-  
8 essing or requires special actions to address effective access to recy-  
9 cling or successful processing in municipal recycling facilities.

10 6. The revenue from any special assessment shall be used to make  
11 system improvements for the specific packaging materials or products on  
12 which the special assessment was applied.

13 7. A packaging reduction and recycling organization shall be responsi-  
14 ble for calculating and dispersing funding at a reasonable recycling  
15 program funding rate through an objective formula approved by the  
16 department, and such reasonable rate may be varied based on population  
17 density rates, for municipal services utilized by a packaging reduction  
18 and recycling organization if the municipality elects to be compensated  
19 by the packaging reduction and recycling organization in the collection,  
20 recovery, recycling, and processing of covered materials and products,  
21 whether such services are provided directly by the municipality or  
22 through a contracted service provider.

23 8. If a municipality does not elect to provide service, and has given  
24 notice to the department of its intent, the packaging reduction and  
25 recycling organization shall be responsible for contracting with a  
26 private entity for services and shall be responsible for calculating and  
27 disbursing funding at a reasonable recycling program rate for  
28 collection, recycling, recovery, and processing services provided by the  
29 private sector entity contracted to provide such services.

30 9. The program funding mechanism shall be based on the cost of provid-  
31 ing recycling services, including the cost of curbside containers where  
32 relevant, as well as the processing cost for each recyclable material,  
33 cost of handling non-recyclable material types collected as part of a  
34 recycling operation, transportation cost of recycling for each material  
35 type, and any other cost factors as determined by the department.

36 10. To facilitate a packaging reduction and recycling organization's  
37 determination of the reasonable cost of recycling, participating munici-  
38 palities and private sector haulers contracting with the packaging  
39 reduction and recycling organization shall report data related to their  
40 costs and the value of materials to the packaging reduction and recycl-  
41 ing organization. Cost calculations shall take into consideration the  
42 amount received from the sale of source separated materials.

43 11. Any funds directly collected pursuant to this title shall not be  
44 used to carry out lobbying activities on behalf of a packaging reduction  
45 and recycling organization.

46 12. No retailer may charge a point-of-sale or other fee to consumers  
47 to facilitate a producer to recoup the costs associated with meeting the  
48 obligations under this title.

49 13. Nothing in this title shall require a municipality to participate  
50 in the packaging reduction and recycling program.

51 § 27-3413. Collection and convenience.

52 1. A producer or organization shall provide for widespread, conven-  
53 ient, and equitable access to collection opportunities for recyclable  
54 covered materials at no additional cost. Such opportunities shall be  
55 provided to all residents of the state in a manner that is as convenient  
56 as the collection of municipal solid waste. A producer or organization

1 shall ensure services continue for curbside recycling programs that a  
2 municipality serves as of the effective date of this title, either  
3 directly or through a contract to provide services, and that such  
4 services are continued through such producer or organization's plan  
5 pursuant to section 27-3405 of this title.

6 2. A plan shall not restrict a jurisdiction's resident's ability to  
7 contract directly with third parties to obtain recycling collection  
8 services if residents have the option to enter into such contracts as of  
9 the effective date of this title, as long as the resident still volun-  
10 tarily chooses to contract directly with the third party.

11 3. An organization may rely on a range of means to collect various  
12 categories of covered materials so long as covered materials collection  
13 options include curbside recycling collection services provided by  
14 municipal programs, municipal contracted programs, solid waste  
15 collection companies, or other approved entities as identified by the  
16 department if:

17 (a) The category of covered materials is defined by the department as  
18 recyclable, and is suitable for residential curbside recycling  
19 collection and can be effectively sorted by the facilities receiving the  
20 curbside collected material;

21 (b) The recycling facility providing processing and sorting service  
22 agrees to include the category of covered materials as an accepted mate-  
23 rial;

24 (c) The covered materials category is not handled through a deposit  
25 and return scheme or buy back system that relies on a collection system  
26 other than curbside or multi-family collection; and

27 (d) The provider of the residential curbside recycling service agrees  
28 to the organization's service provider costs arrangement.

29 4. The producer or organization shall include, at a minimum, those  
30 materials designated by the department as recyclable materials, and may  
31 add covered products based on available collection and processing  
32 infrastructure and recycling markets for covered materials.

33 5. The producer or organization shall update and adopt the list on an  
34 annual basis, in consultation with the advisory board and the depart-  
35 ment, in response to collection and processing improvements and changes  
36 in recycling end markets. If there are multiple lists, the department  
37 shall compile the lists and shall publish a compiled list to the public.  
38 Such lists may vary by geographic region depending on regional markets  
39 and regional collection and processing infrastructure.

40 6. All municipalities or private recycling service providers shall  
41 provide for the collection and recycling of all covered materials  
42 contained on the list of minimum recyclables, based on geographic  
43 regions, in order to be eligible for reimbursement; provided, however,  
44 nothing shall penalize a municipality or private recycling service for  
45 recovering and recycling materials that are generated in the munici-  
46 pality or geographic region that are not included on the list of minimum  
47 types of recyclable covered materials or products as long as it can be  
48 demonstrated that such materials have a market as determined by the  
49 department in consultation with the producer or organization.

50 7. Reimbursement shall cover recycling of all covered materials so  
51 long as the program includes at least the minimum recyclables list. The  
52 department may grant an exception of the requirements in this subdivi-  
53 sion upon a written showing by the municipality or private recycling  
54 service that compliance with the requirements is not practicable for a  
55 specific identified product or material and if the department finds it  
56 is in the best interest of the intent of this title to grant them an



1 extension; provided, however, that the extension granted by the depart-  
2 ment shall not exceed twelve months.

3 § 27-3415. Producer responsibilities.

4 1. Beginning one year after the effective date of this title, a  
5 producer shall not sell, offer for sale, or distribute into the state a  
6 product contained, protected, delivered, presented, or distributed in  
7 packaging unless the producer is registered with a packaging reduction  
8 and recycling organization and in full compliance with all requirements  
9 of this title.

10 2. Producers are responsible for payment of fees, through an organiza-  
11 tion, based on the quantity, type of packaging used in the state, and  
12 other factors.

13 3. Producers are responsible for meeting the toxic substances, packag-  
14 ing reduction, and post-consumer content standards under this title.

15 4. A producer shall annually report to the packaging reduction and  
16 recycling organization:

17 (a) The total amount, in units and by weight, of each type of covered  
18 material sold, offered for sale, or distributed for sale into the state  
19 by the producer in the prior calendar year; and

20 (b) All information necessary for the producer and organization to  
21 meet their obligations required under this title.

22 5. A producer shall submit all fees assessed on the producer by the  
23 packaging reduction and recycling organization.

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

28 (a) The covered product reduction requirements of this title;

29 (b) The covered product recycled content requirements of this title;  
30 and

31 (c) The toxic substance reduction requirements of this title.

32 7. A producer is exempt from the requirements and prohibitions of this  
33 title in a calendar year in which:

34 (a) The producer realized less than one million dollars in total gross  
35 revenue during the prior calendar year; or

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

40 8. A producer claiming an exemption pursuant to subdivision seven of  
41 this section shall provide the department with sufficient information to  
42 demonstrate that the claimant is eligible for an exemption.

43 § 27-3417. Department responsibilities.

44 1. The department shall determine the effectiveness of outreach and  
45 education efforts pursuant to section 27-3421 of this title to determine  
46 whether changes are necessary to improve such outreach and education  
47 efforts and develop information that may be used by organizations to  
48 improve future outreach and education efforts.

49 2. The department shall maintain a list of materials and covered  
50 products that meet the standard to be considered recyclable pursuant to  
51 section 27-3431 of this title to be used as the minimum recyclables  
52 list.

53 3. In the event that the department determines that a packaging  
54 reduction and recycling organization no longer meets the requirements of  
55 this title, or fails to implement and administer the requirements of  
56 this title in a manner that effectuates the purposes of this title, the

1 department shall revoke its approval of such organization's packaging  
2 reduction and recycling organization plan, and may elect to operate the  
3 program itself.

4 § 27-3419. Statewide packaging reduction, reuse, and recycling needs  
5 assessment.

6 1. No later than one year after the effective date of this section,  
7 the department shall complete or cause to be completed a statewide pack-  
8 aging reduction, reuse, and recycling needs assessment to determine the  
9 current state of packaging reuse, recycling, and disposal, and identify  
10 barriers and opportunities to reduce the amount of packaging discarded  
11 and disposed of, and increase the reusability and recyclability of pack-  
12 aging.

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

14 (a) The current recycling rate for each type of covered product mate-  
15 rial;

16 (b) The amount, by weight and material type, of covered product recy-  
17 cled at each recycling facility that accepts discarded packaging gener-  
18 ated in the state;

19 (c) The processing capacity, market conditions, and opportunities in  
20 the state and regionally for recyclable materials generally, and covered  
21 product material categories specifically;

22 (d) The net cost of end-of-life management of discarded covered  
23 products in the state, including the cost associated with the  
24 collection, transportation, sortation, recycling, littering, landfill-  
25 ing, or incineration of discarded packaging;

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

28 (f) Current barriers affecting recycling access and availability in  
29 the state;

30 (g) Current barriers to the marketability of recyclable materials  
31 generated in the state;

32 (h) Opportunities for the creation of covered product reuse and refill  
33 programs in the state;

34 (i) Opportunities for the improvement of covered product recycling in  
35 the state, including the development of end markets for recycled covered  
36 materials.

37 (j) Current barriers affecting the creation and implementation of  
38 covered product reuse and refill programs;

39 (k) Consumer education needs in the state with respect to covered  
40 product waste reduction, recycling, and reducing contamination in recy-  
41 cling, and reuse and refill systems for covered products; and

42 (l) Any other information the department considers necessary.

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

45 4. The department shall report the results of the needs assessment to  
46 the public, the state legislature, the governor, the comptroller and the  
47 attorney general.

48 § 27-3421. Education and outreach program.

49 1. Each packaging reduction and recycling organization shall develop  
50 and implement an educational outreach program designed to educate the  
51 public about waste reduction and improve the effectiveness of municipal  
52 recycling and, at a minimum, include:

53 (a) Educational and informational materials for consumers related to  
54 reducing the amount of packaging discarded, recycled, and disposed of in  
55 the state;

1 (b) A description of the environmental, social, economic, and environ-  
2 mental justice impacts associated with improper disposal of covered  
3 products and failure to reuse or recycle packaging materials;

4 (c) Information on the proper end-of-life management of covered  
5 products, including reuse, recycling, composting, and disposal;

6 (d) The location and availability of curbside recycling and additional  
7 drop-off collection opportunities for covered products, including depos-  
8 it and take-back programs;

9 (e) How to prevent litter of covered products in the process of  
10 collection;

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

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

15 2. Educational outreach programs shall incorporate, at a minimum,  
16 electronic, print, web-based and social media elements that munici-  
17 palities can utilize at their discretion, as well as including a variety  
18 of outreach and education tools and ensuring materials are widely acces-  
19 sible and available in multiple languages.

20 3. The educational outreach program shall be coordinated with and  
21 assist local municipal programs, municipal contracted programs, solid  
22 waste collection companies, and other entities providing services.

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

25 5. The educational outreach program shall include a plan to work with  
26 participating producers to label or mark packaging material, in accord-  
27 ance with reasonable labeling standards, with information to assist  
28 consumers in responsibly managing and recycling covered products.

29 6. Each packaging reduction and recycling organization shall consult  
30 with municipalities on the development of educational materials and may  
31 coordinate with municipalities on outreach and communication.

32 7. A packaging reduction and recycling organization shall be author-  
33 ized to provide producers and retailers with educational materials  
34 related to the responsible reduction, reuse, recycling, or disposal of  
35 discarded covered products. The educational and informational materials  
36 provided to the retailer under this subdivision may include, but need  
37 not be limited to, printed materials, signage, templates of materials  
38 that can be reproduced by retailers and provided thereby to consumers at  
39 the time of a product's purchase, and advertising materials that promote  
40 and encourage consumers to properly reuse, recycle, or dispose of  
41 covered products.

42 § 27-3423. Waste reduction and reuse infrastructure fund.

43 1. The department shall oversee the waste reduction and reuse infras-  
44 tructure fund established pursuant to section ninety-seven-bbbbbb of the  
45 state finance law, which is to pay for investments in reuse and refill  
46 and waste reduction infrastructure.

47 2. Each packaging reduction and recycling organization shall deposit  
48 into the fund no less than five percent of the total payments received  
49 from producers pursuant to the provisions of this title.

50 3. Funds shall be used for investment in collection systems, transpor-  
51 tation systems, reuse systems, washing systems, redistribution systems,  
52 technology for tracking and data collection, capital expenditures on new  
53 and emerging technology that is focused on reusable and refillable pack-  
54 aging, as well as equipment, and facilities, and other projects deter-  
55 mined by the department to facilitate the goals and objectives of this  
56 title.

4. Funds may also be used for investment in public outreach and education in ways that increase public participation in recycling programs, and access and participation in packaging reduction, reuse, and refill systems throughout the state.

5. The packaging reduction and recycling organizations shall prioritize investments for projects and programs that will directly benefit environmental justice communities, including, but not limited to, communities that are home to a landfill, incinerator, transfer station, or waste-to-energy facility.

6. Any investments made pursuant to this section must be approved by the department. The department shall approve or deny proposed investments within ninety days of receipt of a proposal from a packaging reduction and recycling organization. Such investments may be approved, at the discretion of the department, so long as the proposed investment shall, at a minimum:

(a) Increase the transition of packaging from non-reusable to reduced, reusable or refillable packaging;

(b) Increase access to reuse and refill infrastructure in the state;

(c) Increase the capacity of reuse and refill infrastructure in the state;

(d) Provide reuse and refill instructions that are, to the extent practicable, consistent statewide, easy to understand, translated into various commonly-used languages, and easily accessible; and

(e) Provide for outreach and education that are coordinated across programs or regions to avoid confusion for residents, and developed in consultation with local government and the public.

§ 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; and

(l) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol).

2. 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 for use in this state any packaging containing:

(a) Polyvinyl chloride;

(b) Polystyrene; or

(c) Polycarbonate.

3. Beginning three years after the promulgation of rules and regulations pursuant to this title, and every three years thereafter, the department shall designate at least ten additional toxic substances or classes of toxic substances that may no longer be sold, offered for sale, distributed for sale, or distributed for use in packaging in this state unless it determines there are not ten chemicals that meet the

1 definition of toxic substances. If the department determines there are  
2 not ten toxic substances that meet such a definition, it shall publish a  
3 detailed statement of its findings and conclusions supporting such  
4 determination.

5 4. Within one hundred eighty days of designating a toxic substance,  
6 the department shall adopt rules and regulations to prohibit the newly  
7 designated toxic substance in packaging, with an effective date no later  
8 than two years after such designation.

9 5. Any producer that violates this section shall be subject to a fine  
10 for each violation not to exceed fifty thousand dollars per violation.  
11 For the purposes of this section, each product line that is sold,  
12 offered for sale, or distributed to consumers, via retail commerce, in  
13 the state, including through an internet transaction shall be considered  
14 a separate violation.

15 § 27-3427. Packaging reduction standards.

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

18 (a) Beginning three years after a producer first registers with a  
19 packaging reduction and recycling organization, such producer shall  
20 reduce the amount of packaging used to contain, protect, deliver, pres-  
21 ent, or distribute the products they sell, offer for sale, or distribute  
22 for sale into the state, by ten percent by weight.

23 (b) Beginning five years after a producer first registers with a pack-  
24 aging reduction and recycling organization, such producer shall reduce  
25 the amount of packaging used to contain, protect, deliver, present, or  
26 distribute the products they sell, offer for sale, or distribute for  
27 sale into the state, by twenty percent by weight.

28 (c) Beginning eight years after a producer first registers with a  
29 packaging reduction and recycling organization, such producer shall  
30 reduce the amount of packaging used to contain, protect, deliver, pres-  
31 ent, or distribute the products they sell, offer for sale, or distribute  
32 for sale into the state, by thirty percent by weight.

33 (d) Beginning ten years after a producer first registers with a pack-  
34 aging reduction and recycling organization, such producer shall reduce  
35 the amount of packaging used to contain, protect, deliver, present, or  
36 distribute the products they sell, offer for sale, or distribute for  
37 sale into the state, by forty percent by weight.

38 (e) Beginning twelve years after a producer first registers with a  
39 packaging reduction and recycling organization, such producer shall  
40 reduce the amount of packaging used to contain, protect, deliver, pres-  
41 ent, or distribute the products they sell, offer for sale, or distribute  
42 for sale into the state, by fifty percent by weight.

43 2. The reductions required by this section shall be measured against  
44 the total amount of packaging the producer used to contain, protect,  
45 deliver, present, or distribute the products they sold, offered for  
46 sale, or distributed for sale, during the first year such producer  
47 registered with the packaging reduction and recycling organization.

48 3. These reductions shall be achieved by eliminating single-use pack-  
49 aging, including secondary or tertiary packaging, elimination of packag-  
50 ing components, reduction of packaging components, or by transitioning  
51 to reusable or refillable packaging systems.

52 4. The reductions required by this section shall not be achieved by  
53 substituting plastic for other materials or substituting a non-recycla-  
54 ble material for a recyclable material.

55 5. In the case of a producer that enters the market with fifty percent  
56 or more by weight of its packaging being reusable and contained within a



1 reuse and refill system, such producer may apply to the department for a  
2 waiver from the packaging reduction requirements.

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

5 § 27-3429. Recycled content standards.

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

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

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

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

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

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

21 § 27-3431. Recyclability criteria.

22 1. Beginning two years after the effective date of this section,  
23 covered materials used by a producer shall meet the following recyla-  
24 bility criteria:

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

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

29 (c) does not contain the following:

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

32 (ii) toxic substances as defined in this title or rules and regu-  
33 lations promulgated thereto;

34 (iii) opaque or pigmented polyethylene terephthalate;

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

36 (v) polyethylene terephthalate glycol in rigid packaging;

37 (vi) label constructions, including adhesives, inks, materials and  
38 formats, or features that render a package detrimental or non-recycla-  
39 ble;

40 (vii) DoPS - polystyrene, including EPS (expanded polystyrene); and

41 (viii) polyvinyl chloride, including polyvinylidene chloride;

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

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

44 2. The department shall maintain a list of covered products that meet  
45 this criteria and are deemed to be recyclable. The department shall  
46 update this list annually.

47 § 27-3433. Establishment of the office of recycling inspector general.

48 1. The commissioner shall establish an independent office of recycling  
49 inspector general within the department. The recycling inspector general  
50 shall evaluate the programs created pursuant to this title on an annual  
51 basis to ensure such programs are functioning properly, and all produc-  
52 ers are in compliance with the requirements of this title.

53 2. The recycling inspector general shall have the authority to inves-  
54 tigate the compliance of producers with all provisions of this title and  
55 to bring enforcement actions for violations of this title pursuant to  
56 the provisions of section 27-3435 of this title.

1 § 27-3435. Penalties and enforcement.

2 1. Failure to comply with the requirements of this title shall subject  
3 the organization or an individual producer to penalties for violations.  
4 The department, recycling inspector general, or attorney general, may  
5 conduct investigations, including inspecting operations, facilities, and  
6 records of producers and organizations, and performing audits of produc-  
7 ers and organizations, to determine whether such producers and organiza-  
8 tions are complying with the requirements of this title.

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

13 3. The department, the recycling inspector general, and the attorney  
14 general, may issue a notice of violation to, and impose an administra-  
15 tive civil penalty not to exceed one hundred thousand dollars per day  
16 per violation on any entity not in compliance with this title or any of  
17 the regulations the department adopts to implement this title. For the  
18 purposes of this section, each product line that is sold, offered for  
19 sale, or distributed to consumers via retail commerce in the state,  
20 including through an internet transaction, shall be considered a sepa-  
21 rate violation.

22 4. All producers registered in a packaging reduction and recycling  
23 organization shall be jointly and severally liable for any penalties  
24 assessed against the packaging reduction and recycling organization  
25 pursuant to this title.

26 5. Civil penalties under this section shall be assessed by the depart-  
27 ment after an opportunity to be heard pursuant to the provisions of  
28 section 71-1709 of this chapter, or by the court in any action or  
29 proceeding pursuant to section 71-2727 of this chapter, and in addition  
30 thereto, such person or entity may by similar process be enjoined from  
31 continuing such violation and any permit, registration or other approval  
32 issued by the department may be revoked or suspended or a pending  
33 renewal denied.

34 6. All monies collected pursuant to the provisions of this section  
35 shall be deposited into the waste reduction and reuse infrastructure  
36 fund established pursuant to section ninety-seven-bbbbb of the state  
37 finance law.

38 § 27-3437. Rules and regulations.

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

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

46 § 27-3439. State preemption.

47 Jurisdiction in all matters pertaining to costs and funding mechanisms  
48 of packaging reduction and recycling organizations relating to the  
49 recovery of covered materials shall, by this title, be vested exclusive-  
50 ly in the state; provided, however, that nothing in this section shall  
51 preclude any city, town, village or other local planning units from  
52 determining what materials shall be included for recycling in a municip-  
53 al recycling collection program or shall preclude any person from coor-  
54 dinating, for recycling or reuse, the collection of covered materials  
55 and products.

56 § 27-3441. Other assistance programs.

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

4 § 27-3443. Severability.

5 The provisions of this title shall be severable and if any phrase,  
6 clause, sentence or provision of this title or the applicability thereof  
7 to any person or circumstance shall be held invalid, the remainder of  
8 this title and the application thereof shall not be affected thereby.

9 § 3. The state finance law is amended by adding a new section 97-bbbbbb  
10 to read as follows:

11 § 97-bbbbbb. Waste reduction and reuse infrastructure fund. 1. There  
12 is hereby created in the joint custody of the state comptroller and the  
13 commissioner of taxation and finance a fund to be known as the "waste  
14 reduction and reuse infrastructure fund".

15 2. Such fund shall consist of all moneys required to be deposited into  
16 the fund pursuant to the provisions of title thirty-four of article  
17 twenty-seven of the environmental conservation law. Nothing contained  
18 herein shall prevent the state from receiving grants, gifts or bequests  
19 for the purposes of the fund as defined in this section and depositing  
20 them into the fund according to law.

21 3. Moneys of the fund shall be made available pursuant to the  
22 provisions of section 27-3423 of the environmental conservation law,  
23 subject to the approval of the commissioner of environmental conserva-  
24 tion, and on the audit and warrant of the comptroller.

25 § 4. This act shall take effect immediately.