

STATE OF NEW YORK

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IN ASSEMBLY

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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, JEAN-PIERRE, BRONSON, LUCAS -- 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 -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- again reported from said committee with amendments, 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:

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

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TITLE 34PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACTSection 27-3401. Definitions.

27-3403. Selection of packaging reduction and recycling organizations.

27-3405. Responsibilities of packaging reduction and recycling organizations.

27-3407. Packaging reduction and recycling organization plan.

27-3409. Packaging reduction and recycling plan approval.

27-3411. Packaging reduction and recycling advisory council.

27-3413. Funding mechanism.

27-3415. Collection and convenience.

27-3417. Producer responsibilities.

27-3419. Department responsibilities.

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

27-3423. Education and outreach program.

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

27-3427. Non-reusable packaging reduction standards.

27-3429. Recycled content standards.

27-3431. Recyclability criteria and packaging recycling requirements.

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. Antitrust protections.

27-3445. 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 27-3411 of this title.

2. "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a producer.

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

4. "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.

5. "Contamination" means:

(a) the presence of materials in a given collected material stream that are not on the minimum recyclables list maintained by the department; or

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

6. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of (a) the management and policies of a person, (b) the operation of a person, or (c) substan-

1 tially all of the assets of a person, whether through the ownership of
2 voting securities, by contract, or otherwise.

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

7 8. "Disposal" means the landfilling or incineration of material or
8 products. "Disposal" shall also include energy recovery or energy
9 generation by any means, including, but not limited to, incineration,
10 combustion, pyrolysis, gasification, or solvolysis, waste-to-energy, or
11 waste-to-fuel, or any other chemical conversion process. "Disposal"
12 shall also include the use of materials for landfill cover.

13 9. "Eco-modulation" means structuring program fees in a way to provide
14 producers with financial incentives to reduce waste at the source,
15 increase recyclability of packaging materials, promote reusable packag-
16 ing products, including those that are contained within a reuse and
17 refill system, discourage and decrease contamination, disincentivize
18 designs or practices that increase the costs and adverse environmental
19 impacts of managing the packaging materials, and encourage designs and
20 processes that improve and facilitate development of infrastructure and
21 systems for source reduction, reuse, recycling, and composting.

22 10. "Disadvantaged community" shall have the same meaning as is set
23 forth in subdivision five of 75-0101 of this chapter.

24 11. "Intentionally added substance" means a substance or material that
25 serves an intended function or technical effect in the product or prod-
26 uct component, including as an intentional breakdown product of an
27 added chemical that also has a functional or technical effect in the
28 product or product component.

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

34 13. "Minimum recyclables list" means a list of those materials that,
35 identified by the department in regulations, must be managed through the
36 packaging reduction and recycling program and by the local governments
37 and service providers that receive funding or reimbursement from the
38 program as approved by the department in accordance with section 27-3419
39 of this title.

40 14. "Packaging material" or "material" means a discrete material or
41 category of material, regardless of recyclability, including but not
42 limited to such material types that are flexible, foam, or rigid materi-
43 al, including paper, cardboard, plastic, glass, metal, or multi-materi-
44 al, that is used for the containment, protection, handling, delivery,
45 transport, distribution, or presentation of another product that is
46 sold, offered for sale, imported, or distributed in the state, including
47 through an internet transaction, and single-use plastic products. Pack-
48 aging material does not include:

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

54 (b) Animal biologics, including vaccines, bacterins, antisera, diag-
55 nostic kits, and other products of biological origin, and other packag-

ing materials regulated by the United States department of agriculture under the virus, serum, toxin act, 21 U.S.C. 151-159;

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

(d) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard, 29 C.F.R. 1910.1200;

(e) Plastic packaging containers used to contain and ship products that are classified for transportation as dangerous goods or hazardous materials under 40 C.F.R. 178;

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

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

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

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

15. "Packaging reduction and recycling organization" or "organization" means a not-for-profit organization registered pursuant to 26 U.S.C. 501(c)(3) designated by the department for the initial organization, or by a group of producers for subsequent organizations, to act as an agent on behalf of each producer to develop and implement a packaging reduction and recycling plan pursuant to section 27-3407 of this title and comply with the organization's responsibilities under section 27-3405 of this title.

16. "Packaging reduction and recycling plan" or "plan" means a document in which an organization describes the efforts it will undertake to comply with the requirements of this title.

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

18. "Post-consumer recycled material" means new material produced using material resulting from recycling.

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

20. "Producer" means the following entities, other than local governments, state governments and the federal government, for compliance with the requirements for packaging materials sold, offered for sale, or distributed to consumers in or into this state:

(a) For products sold or served to consumers at a physical retail location in this state which are not single use plastics:

(i) If the product is sold or served in or with packaging under the product manufacturer's own brand or is sold or served in packaging materials that lack identification of a brand, the producer is the person who manufactures the packaged product;

(ii) If there is no person to which subparagraph (i) of this paragraph applies, the producer is the person who is licensed to manufacture and sell or serve the packaged product under the brand or trademark of another manufacturer or person, whether or not the trademark is registered in this state, unless the manufacturer of the packaging materials has agreed to accept responsibility;

(iii) If there is no person to which subparagraph (i) or (ii) of this paragraph applies, the producer is the brand owner of the product that is packaged;

(iv) If there is no person described in subparagraph (i), (ii) or (iii) of this paragraph within the United States, the producer is the person who is the importer of record for the packaged product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product in this state; or

(v) If there is no person to which subparagraph (i), (ii), (iii) or (iv) of this paragraph applies, the producer is the person who first distributes the packaged product in or into the state.

(b) For single use plastics and for products sold or distributed to consumers in packaging materials in or into this state via remote sale or distribution:

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

(ii) For packaging materials used to ship the product to a consumer, the producer is the person who packages the item to be shipped to the consumer.

(c) For any single use plastic product:

(i) If the single use plastic product is sold under the manufacturer's own brand, the producer is the person who manufactures the single use plastic product;

(ii) If there is no person to which subparagraph (i) of this paragraph applies, the producer is the person who is the owner or licensee of a brand or trademark under which the single use plastic product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state;

(iii) If there is no person to which subparagraph (i) or (ii) of this paragraph applies, the producer is the brand owner of the single use plastic product;

(iv) If there is no person described in subparagraph (i), (ii), or (iii) of this paragraph within the United States, the producer is the person who imports the single use plastic product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the single use plastic product in this state; or

(v) If there is no person described in subparagraph (i), (ii), (iii) or (iv) of this paragraph, the producer is the person who first distributes the single use plastic product in or into this state.

(d) Where the producer pursuant to paragraph (a) or (c) of this subdivision is a business operated wholly or in part as a franchise, the producer is the franchisor, if such franchisor has franchisees that have a commercial presence in the state.

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

22. "Recyclable" means a packaging material that meets the criteria in subdivision one of section 27-3431 of this title.

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

24. "Recycling" means to separate, dismantle or process the materials, components or commodities contained in discards for the purpose of preparing the materials, components, or commodities for use or reuse in new products or components. "Recycling" does not include: (a) energy

1 recovery or energy generation by any means, including but not limited
2 to, combustion, incineration, pyrolysis, gasification, solvolysis, or
3 waste-to-fuel; (b) any chemical conversion process; or (c) landfill
4 disposal.

5 25. "Recycling rate" means the percentage of any given material or
6 category of material that is ultimately recycled. The recycling rate for
7 any packaging material shall be calculated as the total weight of pack-
8 aging material that is recycled in a given year divided by the total
9 weight of packaging material generated in that year.

10 26. "Reuse" means the return of packaging material back into the
11 economic stream for use in the same kind of application intended for the
12 original packaging, without effectuating a change in the original compo-
13 sition of the package, the identity of the product, or the components
14 thereof.

15 27. "Reuse and refill system" means a program or set of mechanisms
16 designed to facilitate multiple uses of packaging. Mechanisms may
17 include, but are not limited to, deposits, incentives, curbside
18 collection, collection kiosks, refill stations, dishwashing facilities,
19 and re-distribution networks.

20 28. "Reusable or refillable packaging and containers" means packaging
21 material and containers that are specifically designed and manufactured
22 to maintain shape and structure, and be materially durable for repeated
23 sanitizing, washing, and reuse; provided, however, that such packaging
24 and containers must comply with the high reuse and refill rate as set
25 forth in the plan and approved by the department.

26 29. "Single use plastic" means single use plastic products that
27 frequent the residential waste stream or are plastic products that have
28 the effect of disrupting recycling processes, including, but not limited
29 to, single use plastic items such as straws, utensils, cups, plates, and
30 plastic bags.

31 30. "Toxic packaging task force" means the toxic packaging task force
32 established by subdivision two of section 27-3425 of this title.

33 31. "Toxic substances" means a chemical or chemical class identified
34 by a state agency, federal agency, international intergovernmental agen-
35 cy, accredited research university, or other scientific entity deemed
36 authoritative by the department on the basis of credible scientific
37 evidence as being one or more of the following:

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

40 (b) A chemical or chemical class that is persistent or bioaccumula-
41 tive.

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

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

47 (e) A chemical or chemical class that may have adverse air quality
48 impacts, adverse ecological impacts, adverse soil quality impacts, or
49 adverse water quality impacts.

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

52 32. "Unit weight" means the weight of packaging material per unit of
53 product sold.

54 § 27-3403. Selection of packaging reduction and recycling organizations.

55 1. Until the date which is ten years after the effective date of this
56 title, there shall be only one packaging reduction organization and all

1 producers shall be required to register with such packaging reduction
2 organization.

3 2. Within six months of the effective date of this title, any not-for-
4 profit seeking to serve as the initial packaging reduction and recycling
5 organization shall submit an application on a form and format prescribed
6 by the department.

7 3. Consistent with the requirements of this title, within nine months
8 of the effective date of this title, the department shall select a not-
9 for-profit organization applicant to act as the initial packaging
10 reduction and recycling organization to operate the packaging reduction
11 and recycling program, and such organization shall then register with
12 the department in the manner prescribed by the department.

13 4. Regulations promulgated pursuant to this title may provide for
14 additional organizations beginning ten years after the effective date of
15 this title if, after ten years and the recommendation by the advisory
16 council pursuant to subdivision ten of section 27-3411 of this title,
17 the department determines that it would be beneficial for there to be
18 additional organizations implementing the program, such regulations
19 shall ensure:

20 (a) consistency and coordination between all organizations;
21 (b) responsibilities carried out are consistent and seamless;
22 (c) local governments and service providers are reimbursed for recycl-
23 ing services as required under this title; and
24 (d) that packaging material requirements are not reported as gener-
25 ated, supplied or managed by more than one organization.

26 § 27-3405. Responsibilities of packaging reduction and recycling organ-
27 izations.

28 1. Producers shall register with a packaging reduction organization to
29 meet the responsibilities of the program pursuant to the provisions of
30 this section, and each organization shall be responsible for implementa-
31 tion of the program on behalf of producers registered with such organ-
32 ization.

33 2. Each organization involved in the administration of the program
34 shall:

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

39 (b) Collect and compile data from producers as required by section
40 27-3417 of this title;

41 (c) Calculate reimbursement rates through the objective formula
42 approved by the department as contemplated by paragraph (e) of subdivi-
43 sion four of section 27-3407 of this title for the costs associated
44 with this title, the implementation of reduction, refill, and reuse
45 programs, and the collection, transportation and recycling, or other
46 processing of packaging materials;

47 (d) Collect fees due from producers as required by section 27-3413 of
48 this title;

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

54 (f) Distribute funds to reimburse local governments and private compa-
55 nies for the costs associated with this title, including the implementa-
56 tion of reduction, refill, and reuse programs, and the collection,

1 transportation and recycling, disposal or other processing of packaging
2 materials;

3 (g) Undertake an effective statewide education and public outreach
4 program as required by section 27-3423 of this title;

5 (h) Offer technical support to producers, with an emphasis on support
6 to small businesses, to assist them with compliance with the require-
7 ments of this title, including information about procuring affordable
8 alternatives to non-compliant packaging material and reducing packaging
9 material; and

10 (i) Make recommendations to the department regarding investments in
11 reduction, refill, reuse, collection, transportation, recycling,
12 disposal, and other processing of packaging materials consistent with
13 this title.

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

16 (a) Contact information for the organization;

17 (b) A list of all (i) producers, (ii) brands, and (iii) products that
18 each producer sells, offers for sale, or distributes into the state that
19 are contained, protected, delivered, presented, or distributed in or
20 using packaging material, in each case identified by the Universal Prod-
21 uct Code (UPC) if the product has one;

22 (c) The total amount, by both weight and number of units, which may be
23 estimated if an exact amount is infeasible to provide, of each type of
24 packaging material used to contain, protect, handle, deliver, transport,
25 distribute, or present products sold, offered for sale, or distributed
26 into the state by each individual producer during the prior calendar
27 year;

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

32 (e) The total amount, by weight, of each material category recycled as
33 a result of activities undertaken by the organization, either directly
34 or through reimbursement or contractual arrangement;

35 (f) A calculation of the recycling rate of each material category
36 which is derived by dividing the amount of each material category recy-
37 cled, as reported in paragraph (e) of this subdivision by the amount of
38 each material category generated, as reported in paragraph (d) of this
39 subdivision;

40 (g) A complete accounting of all payments made to and by the organiza-
41 tion during the prior calendar year;

42 (h) An analysis of the average time it took to reimburse munici-
43 palities during the prior calendar year;

44 (i) A list of producers reasonably believed to be out of compliance
45 with the requirements of this title, and the reason the organization
46 reasonably believes the producer to be out of compliance. Information
47 on non-compliant producers shall be provided to the commissioner and
48 recycling inspector general's office in a timely fashion and for possi-
49 ble enforcement action by the office;

50 (j) A description of the educational and outreach efforts made by the
51 organization in the prior calendar year, and how those efforts were
52 designed to reduce packaging waste, and increase reuse and recycling of
53 packaging materials;

54 (k) An assessment of whether the fee structure adopted by the organ-
55 ization pursuant to section 27-3413 of this title has been effective in
56 incentivizing improvements to the design of packaging material, includ-

1 ing actual reduction of packaging material, increases in reusable and
2 refillable packaging material, recycling rates for packaging materials,
3 and decreases in the amount of packaging material;

4 (l) A description of the reimbursements and expenditures, including
5 the timeliness of such reimbursements, made pursuant to section 27-3413
6 of this title;

7 (m) A recommended minimum recyclables list that meets the requirements
8 of subdivision one of section 27-3431 of this title, based on the needs
9 assessment, information gathered from end markets, including commodity
10 brokers and manufacturers who purchase post-consumer materials for use
11 in manufacturing new products, and available collection and processing
12 infrastructure information;

13 (n) Audited financial statements;

14 (o) The results of the review conducted pursuant to subdivision four
15 of this section; and

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

17 4. Each organization shall conduct an annual review process to deter-
18 mine whether packaging materials are recyclable. This review shall be
19 conducted in consultation with representatives of end markets, including
20 recycled commodities brokers and manufacturers who purchase post-consum-
21 er material for use in manufacturing new products, and in consultation
22 with local governments. For the purposes of calculating producer
23 payments and local government reimbursements in accordance with this
24 title, this annual process shall include a transitional period between
25 the date the determination is finalized and the date it goes into
26 effect.

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

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

33 7. An organization shall not share, except with the department, the
34 advisory council, and the toxic packaging task force, or as required by
35 law, any proprietary information that is identified by a producer as
36 proprietary information without prior written consent.

37 § 27-3407. Packaging reduction and recycling organization plan.

38 1. Within two years of the effective date of this title, the initial
39 packaging reduction organization shall develop and submit a packaging
40 reduction and recycling plan for implementation of the rules and regu-
41 lations of this title, including ensuring timely disbursements to local
42 governments, to the department for approval. The plan shall be submitted
43 to the advisory council for review pursuant to section 27-3411 of this
44 title prior to the department's approval. Any subsequent or additional
45 organization shall develop and submit a packaging reduction and recycl-
46 ing plan and comply with all the requirements of this section, and have
47 such plan approved pursuant to section 27-3409 of this title.

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

52 3. Each producer shall begin program implementation within six months
53 after the date the plan for the initial organization is approved and in
54 no event later than three years of the effective date of this title. If
55 no plan is approved by that timeframe, the department, in its
56 discretion, shall either approve a plan with conditions or specify

1 modifications that must be made within forty-five days to conform the
2 submitted plan to the requirements of this section. If a producer is
3 not making good faith efforts to comply with the requirements of this
4 title during such forty-five day period, the producer shall be subject
5 to penalties for noncompliance.

6 4. The submitted plan shall include, but not be limited to:

7 (a) contact information, including the name, e-mail address, physical
8 address, and telephone number of the authorized representative of the
9 producer or producers;

10 (b) the identity of the producer or producers participating in the
11 plan;

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

14 (d) a description of how the organization will implement the program,
15 including the mechanisms and processes for providing assistance to
16 producers to comply with the reporting requirements of this title;

17 (e) in relation to funding the program:

18 (i) a proposed budget outlining the anticipated costs of operating the
19 program and a description of the method by which the organization
20 intends to determine and collect producer payments during the initial
21 startup period;

22 (ii) a description of the proposed funding mechanism, identified in
23 section 27-3413 of this title, that meets the requirements of this
24 title;

25 (iii) a description of how the organization will maintain a financial
26 reserve sufficient to operate the program in a fiscally prudent and
27 responsible manner; and

28 (iv) a description of how the organization intends to manage and
29 account for all program related funds which pass through the organiza-
30 tion, including how timely reimbursements to local governments will be
31 provided;

32 (f) an objective formula establishing a reimbursement rate, which
33 covers obligations identified in the needs assessment and the minimum
34 recyclables list and takes into account variable regional costs, for
35 participating local governments or private sector service providers;

36 (g) a description of the process for participating local governments
37 or private sector service providers to recoup reasonable costs as estab-
38 lished by the objective formula, from the producer or organization,
39 including, as applicable, any administrative, sorting, collection,
40 transportation, public education, or processing costs, if the organiza-
41 tion uses existing services through a local government or obtains such
42 services from a private sector service provider;

43 (h) at a minimum, the following funding mechanism details shall be
44 provided in the plan:

45 (i) proposed program fees, provided as a table listing the rate paid
46 for each material category, including at a minimum those identified in
47 subdivision three of section 27-3413, which in sum, will generate suffi-
48 cient funding to cover obligations identified in the needs assessment
49 and the requirements of this title; and

50 (ii) proposed program fee adjustments to incorporate eco-modulation
51 factors;

52 (i) a description of the characteristics of each type of packaging
53 material that is relevant to the eco-modulating factors set forth pursu-
54 ant to section 27-3413 of this title;

55 (j) if the local government does not elect to provide service, a
56 description of the process used for contracting with a private sector

1 entity to provide such services and the recoupment of reasonable costs,
2 including procedures to ensure that such private sector entity is not
3 compensated for such services by both the organization and the consumer
4 for the same service, provided, however, that the packaging recycling
5 and reduction organization and any such private sector entity has
6 entered into a labor peace agreement with a bona-fide labor organization
7 that is actively engaged in representing or attempting to represent its
8 employees and its contractors' employees;

9 (k) a description of how the organization will work with existing
10 waste haulers, material recovery facilities, recyclers, and local
11 governments to operate or expand current collection programs to address
12 material collection methods, improve efficiency and yield of processing
13 materials from separate collection streams, and increase packaging
14 reduction and reuse;

15 (l) a description of how the organization will use open, competitive,
16 and fair procurement practices should they directly enter into contrac-
17 tual agreements with service providers, including municipalities and
18 private entities;

19 (m) a description of how a local government will participate, on a
20 voluntary basis, with collection and how existing local government recy-
21 cling processing and collection infrastructure will be used;

22 (n) a description of how the organization plans to meet the conven-
23 ience requirements set forth in this title;

24 (o) a description of the process for end-of-life management, including
25 recycling and disposal of residuals collected for recycling, using envi-
26 ronmentally sound management practices;

27 (p) a description of how the organization shall provide the option to
28 purchase recycled materials from processors;

29 (q) a description of how producers are complying with the waste
30 reduction, toxics, recycling and post-consumer content requirements of
31 this title, and the process for verifying compliance, including any
32 third party verification services;

33 (r) a description of how: (i) the organization will strategically
34 invest in existing and future reuse and recycling infrastructure and
35 market development in the state in consultation with the department and
36 in a manner not inconsistent with the needs assessment, including, but
37 not limited to, installing or upgrading equipment to improve the sorting
38 of covered materials or mitigating the impacts of materials on other
39 commodities at existing sorting and processing facilities, and capital
40 expenditures for new technology, equipment, and facilities; and (ii) how
41 the process to offer and select opportunities will be conducted in an
42 open, competitive, and fair manner;

43 (s) a description of how the organization's recycling infrastructure
44 and market development investments (i) were informed by the results of
45 the needs assessment, and (ii) will utilize the state's existing infras-
46 tructure;

47 (t) a process to address concerns and questions from customers and
48 residents;

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

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

53 (w) a detailed description of how the organization consulted with the
54 advisory council, the public, and other stakeholders in the development
55 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 (x) a comprehensive contingency plan demonstrating how the activities
4 in the plan will continue to be carried out by some other entity, if
5 needed, such as an escrow company, until such time as a new plan is
6 submitted and approved by the department;

7 (i) upon the expiration of an approved plan;

8 (ii) in the event that the organization has been notified by the
9 department that it must transfer implementation responsibility for the
10 plan to a different organization;

11 (iii) in the event that the organization notifies the department that
12 it will cease to implement an approved plan; or

13 (iv) in any other event that the organization can no longer carry out
14 plan implementation; and

15 (y) any other additional information required by the department.

16 5. The organization shall also provide the advisory council a reason-
17 able period of time to review and comment upon the draft plan prior to
18 its submission to the department in accordance with section 27-3409 of
19 this title which shall in no event be less than sixty days. The organ-
20 ization shall make an assessment of comments received and shall provide
21 a summary and an analysis of the issues raised by the advisory council
22 and significant changes suggested by any such comments, a statement of
23 the reasons why any significant changes were not incorporated into the
24 plan, and a description of any changes made to the plan as a result of
25 such comments.

26 § 27-3409. Packaging reduction and recycling plan approval.

27 1. Before approval or denial of a packaging reduction and recycling
28 plan can be made in accordance with this title, the producer or organ-
29 ization shall submit the plan to the packaging reduction and recycling
30 advisory council. The advisory council shall then make a recommendation
31 regarding approval or disapproval of the plan in accordance with section
32 27-3411 of this title.

33 2. Within sixty days of the advisory council making a recommendation
34 to the department, the department shall make a determination to approve
35 the plan as submitted; approve the plan with conditions; or deny the
36 plan, with reasons for the denial.

37 3. The department may establish additional plan requirements in addi-
38 tion to those identified herein to fulfill the intent of this title;
39 provided, however, that any additional requirements shall be established
40 one year prior to a required submission of a plan.

41 4. The department may rescind the approval of an approved plan at any
42 time for cause and with documented justification.

43 5. The maintenance of a labor peace agreement as contemplated by para-
44 graph (j) of subdivision four of section 27-3407 of this title shall be
45 an ongoing material condition of plan approval.

46 6. For the purposes of this title, "labor peace agreement" means an
47 agreement between an entity and labor organization that, at a minimum,
48 protects the state's proprietary interests by prohibiting labor organ-
49 izations and members from engaging in picketing, work stoppages,
50 boycotts, and any other economic interference.

51 § 27-3411. Packaging reduction and recycling advisory council.

52 1. There is hereby established within the department a packaging
53 reduction and recycling advisory council to receive and review the pack-
54 aging reduction and recycling plans required under section 27-3407 of
55 this title, to make recommendations to the department regarding approval
56 of the plans, to review the annual reports produced by organizations and

1 to make recommendations to the department and organizations as required
2 by this section.

3 2. The advisory council shall convene for the first time no later than
4 one year after the effective date of this title. The advisory council
5 shall be composed of seventeen members. Nine shall be appointed by the
6 commissioner, three shall be appointed by the speaker of the assembly,
7 one shall be appointed by the minority leader of the assembly, three
8 shall be appointed by the temporary president of the senate and one
9 shall be appointed by the minority leader of the senate. The advisory
10 council shall include at least one member from each of the following:

11 (a) a local government association or local government program,
12 including an additional local government representative from cities with
13 a population of one million or more residents;

14 (b) a statewide environmental organization;

15 (c) a representative of a disadvantaged community affected by solid
16 waste infrastructure;

17 (d) an environmental justice organization;

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

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

20 (g) a recycling collection provider;

21 (h) a manufacturer of packaging materials utilizing post-consumer
22 recycled content;

23 (i) a consumer advocate;

24 (j) a retailer;

25 (k) a public health specialist;

26 (l) a producer and an organization established under this title as
27 non-voting members;

28 (m) a representative of a labor organization representing waste
29 collection employees; and

30 (n) a representative of a labor organization representing municipal
31 solid waste and recycling processing employees.

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

36 4. Advisory council members shall serve without compensation, except
37 that a member of the committee who is a state officer or employee may
38 receive their regular compensation while engaging in the business of the
39 committee, but shall be entitled to receive reimbursement for any actu-
40 al, necessary expenses incurred in the course of performing business for
41 the committee.

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

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

51 7. The advisory council shall, within sixty days of the submission of
52 a packaging reduction and recycling plan, either:

53 (a) forward the plan to the commissioner with its recommendation for
54 approval; or

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

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

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

10. Thirty months from the date the department adopts rules and regulations pursuant to this title, and every three years thereafter, the advisory council shall conduct a review of all relevant data, including annual reports, the latest scientific data available, any pertinent statewide waste and reuse data, and any other information deemed important, to make recommendations to the following:

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

(b) the department for any necessary changes to regulations, the funding mechanism, reimbursement and expenditure policies, or whether it would be beneficial for there to be additional organizations implementing the program; and

(c) the legislature for recommended statutory changes. Such recommendations shall include a recommendation as to whether to modify the definition of recycling under this title.

§ 27-3413. Funding mechanism.

1. An organization shall establish such program participation fees for producers through the plan pursuant to section 27-3407 of this title, which shall be sufficient to cover all costs of the program, including administration, enforcement, the statewide needs assessment, and all other state costs of the program and organizations' costs of the program, including but not limited to those costs described in subdivision four of this section.

2. An organization shall structure program fees to provide producers with financial incentives through eco-modulation, to reward waste and source reduction and recycling compatibility innovations and practices, and to disincentivize designs or practices that increase costs of managing the products or materials that contain toxic substances.

3. An organization may adjust fees to be paid by participating producers based on factors that affect system costs. At a minimum, fees shall be variable based on:

(a) The category of packaging material, provided that the list of such packaging material categories for which there is a specific producer fee shall include, at a minimum, the following material types:

(i) Paper;

(ii) Cardboard;

(iii) Corrugated cardboard;

(iv) Wood;

(v) Glass;

(vi) Polyethylene terephthalate (PET);

(vii) High density polyethylene (HDPE);

(viii) Expanded polystyrene (EPS);

(ix) Polystyrene;

(x) Bio-plastics;

1 (xi) Generic plastics;
2 (xii) Plastic film;
3 (xiii) Other plastics;
4 (xiv) Ferrous metals;
5 (xv) Aluminum;
6 (xvi) Tinplate;
7 (xvii) Generic metals; and
8 (xviii) Mixed materials including laminates and packaging containing
9 more than one of the above materials;
10 (b) The quantity of each packaging material type, by weight, that the
11 producer sells, offers for sale, or distributes in the state;
12 (c) Eco-modulation, including as described in subdivision two of this
13 section.
14 4. Producer fees shall be designed to cover, at minimum, the total
15 costs associated with:
16 (a) Providing curbside collection or other form of residential service
17 that is, at minimum, as convenient as is detailed in section 27-3415 of
18 this title;
19 (b) The department's and other state agencies' administration and
20 enforcement of this title;
21 (c) Organizations' administration of this title;
22 (d) The cost associated with the development of the needs assessment,
23 as required in section 27-3421 of this title;
24 (e) The costs associated with the advisory council and the toxic pack-
25 aging task force;
26 (f) The costs associated with establishing packaging reduction and
27 reuse infrastructure;
28 (g) The cost of reimbursement for, or providing, recycling services,
29 including the collection cost, processing cost for each recyclable mate-
30 rial, cost of handling non-recyclable material types collected as part
31 of a recycling operation, transportation cost of recycling for each
32 material type; and
33 (h) Any other factors determined by the department.
34 5. An organization may adjust producer fees based on factors that
35 affect system costs provided that the specific parameters of such
36 adjustments and fees are included in the plan approved by the depart-
37 ment. At a minimum, fees shall be variable based on:
38 (a) costs to provide curbside collection or another form of residen-
39 tial service that is, at minimum, as convenient as curbside collection
40 or as convenient as the previous recycling collection plan in the
41 particular jurisdiction should recycling collection not be provided;
42 (b) costs to process packaging materials for acceptance by secondary
43 material markets;
44 (c) whether the packaging material would typically be readily-recycla-
45 ble, except that as a consequence of the packaging design, the packaging
46 product has the effect of disrupting recycling processes or the product
47 includes labels, inks, and adhesives containing heavy metals or other
48 toxic substances that would result in contamination of the recycling
49 process;
50 (d) whether the packaging material is specifically designed to be
51 reusable or refillable and has high reuse or refill rate; and
52 (e) the commodity value of a packaging material, as defined by
53 published indices.
54 6. The fees shall be adjusted, or the producers may be provided a
55 credit, as detailed in the plan, based upon the percentage of post-con-
56 sumer recycled material content and such percentage of post-consumer

1 recycled content shall be verified by the organization or through an
2 independent third party approved to perform verification services to
3 ensure that such percentage exceeds the minimum requirements in the
4 packaging, as long as the recycled content does not disrupt the poten-
5 tial for future recycling.

6 7. In addition to the annual schedule of fees approved in the plan, an
7 organization fee schedule may include a special assessment on specific
8 categories of packaging materials, identified in the plan, if the nature
9 of the packaging material imposes unusual costs in collection or proc-
10 essing or requires special actions to address effective access to recy-
11 cling or successful processing in local government recycling facilities.

12 8. The fees shall be structured to provide producers with financial
13 incentives to encourage:

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

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

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

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

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

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

27 9. An organization shall be responsible for calculating and disbursing
28 funding at a reasonable rate developed through an objective formula
29 approved by the department, and such reasonable rate may be varied based
30 on population density rates, for municipal services utilized by an
31 organization if the municipality elects to be compensated by the organ-
32 ization in the collection, recovery, recycling, and processing of
33 covered materials and products, whether such services are provided
34 directly by the municipality or through a contracted service provider.

35 10. If a municipality does not elect to provide service, the organiza-
36 tion shall be responsible for contracting with a private entity for
37 services and shall be responsible for calculating and disbursing funding
38 at a reasonable recycling program rate for collection, recycling, recov-
39 ery, and processing services provided by the private sector entity
40 contracted to provide such service. Any such contract shall be subject
41 to a labor peace agreement as contemplated by paragraph (j) of subdivi-
42 sion four of section 27-3407 of this title.

43 11. To facilitate an organization's cost reimbursement determination,
44 participating municipalities and private sector haulers contracting with
45 the organization shall report data related to their costs and the value
46 of materials to the organization. Cost calculations shall take into
47 consideration the amount received from the sale of source-separated
48 materials.

49 12. There shall be no fee assessed on reusable or refillable packaging
50 and containers contained within a reuse or refill system.

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

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

1 15. Nothing in this title shall require a local government to partic-
2 ipate in the program, provided that a local government must give at
3 least three months' notice of its intent to cease participation.
4 § 27-3415. Collection and convenience.

5 1. The program shall provide for widespread, convenient, and equitable
6 access to collection opportunities for recyclable packaging materials at
7 no additional cost. Such opportunities, including curbside recycling,
8 shall be provided to all residents of the state in a manner that is as
9 convenient as the collection of solid waste as provided to the consumer
10 as of the effective date of this title. Organizations shall ensure
11 services continue for curbside recycling programs as of the effective
12 date of this title, either directly or through a contract to provide
13 services, and that such services are continued through such producer or
14 organization's plan pursuant to section 27-3405 of this title.

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

26 3. Organizations may rely on a range of means to collect various cate-
27 gories of packaging materials so long as collection options include
28 curbside recycling collection services provided by municipal programs,
29 municipal contracted programs, solid waste collection companies, or
30 other approved entities as identified by the department if at a minimum:

31 (a) the category of packaging materials is on the minimum recyclables
32 list, is suitable for residential curbside recycling collection and can
33 be effectively sorted by the facilities receiving the curbside collected
34 material;

35 (b) the category of packaging materials is not handled through a
36 deposit and return scheme or buy back system that relies on a collection
37 system other than curbside or multi-family collection;

38 (c) the provider of the curbside recycling service agrees to the
39 organization's service provider costs arrangement; and

40 (d) any private contract for such services is subject to a labor peace
41 agreement as contemplated by paragraph (j) of subdivision four of
42 section 27-3407.

43 4. All local government or private recycling service providers shall
44 provide for the collection and recycling of all packaging materials
45 contained on the minimum recyclables lists, based on geographic regions,
46 in order to be eligible for reimbursement; provided, however, nothing
47 shall penalize a local government or private recycling service for
48 recovering and recycling materials that are generated in the local
49 government or geographic region that are not included on the minimum
50 recyclables lists as long as it can be demonstrated that such materials
51 have a consistent regional market for purchase as determined by the
52 department in consultation with the producer or organization.

53 5. Reimbursement shall cover collection, processing, transportation,
54 and recycling and disposal of all packaging materials so long as the
55 program includes at least the minimum recyclables list. The department
56 may grant an exception to the requirements in this subdivision upon a

1 written showing by the local government or private recycling service
2 that compliance with the requirements is not practicable for a specific
3 identified product or material and if the department finds it is in the
4 best interest of the intent of this title to grant an exception;
5 provided, however, that any such exception granted by the department
6 shall not exceed twelve months.

7 6. Program funds shall be used for investment in collection systems,
8 transportation systems, reuse systems, washing systems, redistribution
9 systems, technology for tracking and data collection, capital expendi-
10 tures on new and emerging technology that is focused on reusable and
11 refillable packaging, as well as equipment, and facilities, and other
12 projects determined by the department to facilitate the goals and
13 objectives of this title.

14 7. Nothing in this title shall be deemed to automatically void or
15 nullify any collection contracts in effect as of the effective date of
16 this title.

17 § 27-3417. Producer responsibilities.

18 1. Beginning with the required program implementation date as contem-
19 plated by subdivision three of section 27-3407 of this title and in no
20 event later than three years after the effective date of this title, a
21 producer shall not sell, offer for sale, or distribute into the state a
22 product contained, protected, delivered, presented, or distributed in
23 packaging unless the producer is registered with an organization and in
24 full compliance with all requirements of this title. Producers shall
25 register with the initial organization within eighteen months of the
26 effective date of this title; provided, however, that any person who
27 becomes a producer thereafter shall register with an organization and
28 begin program implementation within six months thereof or be subject to
29 penalties for noncompliance.

30 2. Either when the producer registers, or within eighteen months of
31 the effective date of this title, whichever is later and annually there-
32 after, each producer shall provide the organization with the following
33 information:

34 (a) Contact information, including the name, e-mail address, physical
35 address, and telephone number of the authorized representative of the
36 producer;

37 (b) A comprehensive list of the categories and brands of packaging
38 materials for which the producer or producers are responsible;

39 (c) The total amount, in units and weight, of each category of packag-
40 ing material sold, offered for sale, or distributed for sale into the
41 state by the producer in the prior calendar year; and

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

43 3. Producers are responsible for payment of fees, through an organiza-
44 tion, based on the quantity, category of packaging material used in the
45 state, and other factors.

46 4. Producers are responsible for meeting the toxic substances, packag-
47 ing material reduction, post-consumer content, and recycling standards
48 under this title.

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

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

54 (b) The packaging material recycled content requirements of this
55 title;

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

1 (d) The toxic substance reduction requirements of this title;
2 (e) Their obligations to pay fees to the organization pursuant to
3 section 27-3413 of this title and subdivision three of this section; and
4 (f) Any reimbursement obligations they have to local governments or
5 third party service providers in connection with this title.

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

8 (a) The producer and its affiliates collectively realized less than
9 five million dollars in total gross revenue during the prior calendar
10 year;

11 (b) The producer and its affiliates collectively sold, offered for
12 sale, or distributed for sale products contained, protected, delivered,
13 presented, or distributed in or using less than two tons of packaging
14 material in total during the prior calendar year;

15 (c) The producer is a not-for-profit corporation that is primarily
16 engaged in preparing and delivering medically tailored meals and
17 medical nutrition therapy. As used in this paragraph, "medically
18 tailored meals and medical nutrition therapy" means nutritional assess-
19 ment, nutritional therapy, and nutritional counseling provided by a
20 certified dietician or certified nutritionist, and the provision of any
21 food indicated by such assessment, therapy or counseling and ordered by
22 a health care professional acting within their lawful scope of practice
23 under title eight of the education law, for the purpose of treating one
24 or more chronic conditions for an individual who is limited in their
25 activities of daily living; or

26 (d) is an agricultural cooperative with less than fifty employees
27 engaged in the production of dairy products.

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

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

34 § 27-3419. Department responsibilities.

35 1. Within eighteen months of the effective date of this title, the
36 department shall, in accordance with section 27-3435 of this title,
37 promulgate all rules and regulations necessary to implement, administer,
38 and enforce the provisions of this title, including setting standards
39 for consumer protection when the organization directly disburses funds
40 to third parties. These rules and regulations shall include prohibiting
41 certain toxics in packaging pursuant to section 27-3425 of this title
42 as of the dates set forth therein.

43 2. Beginning two years after the required program implementation date
44 as contemplated by subdivision three of section 27-3407 of this title
45 and in no event later than three years after the effective date of this
46 title, and annually thereafter, the department shall utilize the infor-
47 mation obtained pursuant to paragraphs (b), (c), (d), (e), (f) and (g)
48 of subdivision three of section 27-3405 of this title, and any other
49 information available to the department, with input from the advisory
50 council, to produce an annual report to be shared with the legislature
51 and posted publicly on the department's website.

52 3. The department shall establish and maintain the minimum recyclables
53 list by regulation. The department shall update this list annually,
54 after the initial organization's plan is first approved, considering
55 recommendations from organizations and the advisory council. The minimum
56 recyclables list may vary by geographic region depending on regional

1 markets and regional collection and processing infrastructure, but shall
2 in all cases meet the requirements of subdivision one of section 27-3431
3 of this title.

4 4. In the event that the department determines that the organization
5 no longer meets the requirements of this title, or fails to implement
6 and administer the requirements of this title in a manner that effectuates
7 the purposes of this title, after reasonable opportunity to cure
8 such deficiencies, the department shall revoke its approval of such
9 organization and, subject to the contingency plan contemplated by paragraph
10 (w) of subdivision four of section 27-3407 of this title, shall
11 select a new organization pursuant to section 27-3403 of this title.

12 § 27-3421. Statewide packaging reduction, reuse, and recycling needs
13 assessment.

14 1. No later than one year after the effective date of this title and
15 every five years thereafter, the department shall complete or cause to
16 be completed a statewide packaging material reduction, reuse, and recycling
17 needs assessment to determine the current state of packaging material
18 reuse, recycling, and disposal, identify barriers and opportunities
19 to reduce the amount of packaging material discarded and disposed of,
20 and increase the reusability and recyclability of packaging material.

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

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

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

26 (c) The processing capacity, market conditions, and opportunities in
27 the state and regionally for recyclable materials generally, and packaging
28 material categories specifically;

29 (d) The net cost of end-of-life management of discarded packaging
30 material in the state, including the cost associated with the
31 collection, transportation, sortation, recycling, littering, landfilling,
32 or incineration of discarded packaging;

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

35 (f) Current barriers affecting recycling access and availability in
36 the state;

37 (g) Current barriers to the marketability of recyclable materials
38 generated in the state;

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

41 (i) Opportunities for the improvement of packaging material recycling
42 in the state, including the development of end markets for recycled
43 packaging materials;

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

46 (k) Consumer education needs in the state with respect to packaging
47 material waste reduction, recycling, and reducing contamination in recycling,
48 and reuse and refill systems for packaging material; and

49 (l) Landfill capacity.

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

52 4. The department shall report the results of the needs assessment to
53 the public, the state legislature, and the governor, and shall post the
54 results on its website.

55 § 27-3423. Education and outreach program.

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

5 (a) Educational and informational materials for consumers related to
6 reducing the amount of packaging discarded, recycled, and disposed of in
7 the state;

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

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

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

16 (e) How to prevent litter of packaging material in the process of
17 collection;

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

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

22 2. The educational outreach program shall incorporate, at a minimum,
23 electronic, print, web-based and social media elements, including for
24 use by local governments at their discretion, as well as including a
25 variety of outreach and education tools. Such educational outreach
26 programs shall ensure materials are widely accessible and available in
27 multiple languages.

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

31 4. The educational outreach program shall be developed to ensure
32 disadvantaged communities receive targeted outreach and support.

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

37 6. The organization shall consult with local governments on the devel-
38 opment of educational materials and may coordinate with local govern-
39 ments on outreach and communication.

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

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

51 § 27-3425. Prohibition on certain toxic substances and materials.

52 1. Notwithstanding title two of article thirty-seven of this chapter
53 to the contrary, (a) Beginning three years after the promulgation of
54 rules and regulations pursuant to this title, no person or entity shall
55 sell, offer for sale, or distribute into the state any packaging

1 containing any of the following toxic substances or materials as an
2 intentionally added substance:

3 (i) Ortho-phthalates;

4 (ii) Bisphenols;

5 (iii) Per- and polyfluoroalkyl substances (PFAS);

6 (iv) Heavy metals and compounds, including lead, hexavalent chromium,
7 cadmium, and mercury, but excluding copper phthalocyanine (chemical
8 abstracts service registry number 147-14-8);

9 (v) Benzophenone and its derivatives;

10 (vi) Halogenated flame retardants;

11 (vii) Perchlorate;

12 (viii) Formaldehyde;

13 (ix) Toluene;

14 (x) Antimony and compounds;

15 (xi) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol);

16 (xii) Polyvinyl chloride, including polyvinylidene chloride;

17 (xiii) Polystyrene but excluding EPS (expanded polystyrene); or

18 (xiv) Polycarbonate.

19 (b) Beginning five years after the promulgation of rules and regu-
20 lations pursuant to this title, no person or entity shall sell, offer
21 for sale, or distribute into the state any packaging containing any of
22 the toxic substances listed in paragraph (a) of this subdivision, even
23 if they are not an intentionally added substance, at or above a level
24 that the department shall establish by regulation that is the lowest
25 level that can feasibly be achieved; provided, however, that the depart-
26 ment shall review such level every five years to determine whether it
27 should be lowered.

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

33 (b) The toxic packaging task force shall have nine members, one of
34 whom shall be the commissioner or their designee who shall be chair, and
35 one of whom shall be the commissioner of health or their designee. The
36 other members shall include: (i) a representative of the packaging
37 industry; (ii) a representative of an environmental justice organiza-
38 tion; (iii) a representative from the chemical industry; (iv) a profes-
39 sional or academic expert in toxicology; and (v) a professional or
40 academic expert in public health risk assessment; all of whom shall be
41 appointed by the commissioner. The remaining members shall be persons
42 with significant professional or academic expertise in maternal or child
43 health, epidemiology, chemical safety or public health policy, one of
44 whom shall be appointed by the temporary president of the senate and one
45 of whom shall be appointed by the speaker of the assembly. Appointments
46 to the toxic packaging task force are term limited to five consecutive
47 years of service.

48 (c) The task force shall meet at least twice per year to review and
49 recommend to the department whether (i) there are additional toxic
50 substances or classes of toxic substances for use in packaging that
51 should no longer be sold, offered for sale, distributed for sale, or
52 distributed for such use in this state, and (ii) there should be
53 substance or material-specific exceptions to the prohibitions provided
54 for in subdivision one of this section, provided such recommendation may
55 be made only upon a demonstration of substantial and convincing evidence

1 that such substance or material does not meet the criteria for classi-
2 fication as a toxic substance or material.

3 3. (a) Within one hundred eighty days of the toxic packaging task
4 force 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 unless the department determines that such two-year period would be
11 unduly burdensome, in which case the department shall establish an
12 effective date for such prohibition no later than four years after the
13 date of such recommendation.

14 (b) The department may evaluate recommendations from the toxic packag-
15 ing task force for exceptions as provided in paragraph (c) of subdivi-
16 sion two of this section, and upon a demonstration of substantial and
17 convincing evidence that such substance or material does not meet the
18 criteria for classification as a toxic substance or material, may adopt
19 rules and regulations to except such substance as a toxic substance or
20 material.

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

28 § 27-3427. Non-reusable packaging reduction standards.

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

31 (a) Beginning three years after the program implementation date set
32 forth in subdivision three of section 27-3407 or January first of the
33 third year following the date on which a producer first registers with
34 an organization if a producer registers after the program implementation
35 date, such producer shall reduce the amount of primary plastic packaging
36 material, and the amount of all other packaging material, in each case,
37 by ten percent either on a company-wide basis or by unit weight, for all
38 packaging materials used to contain, protect, deliver, present, or
39 distribute the products they sell, offer for sale, or distribute for
40 sale in the state.

41 (b) Beginning five years after the program implementation date set
42 forth in subdivision three of section 27-3407 or January first of the
43 fifth year following the date on which a producer first registers with
44 an organization if a producer registers after the program implementation
45 date, such producer shall reduce the amount of primary plastic packaging
46 material, and the amount of all other packaging material, in each case,
47 by fifteen percent either on a company-wide basis or by unit weight, for
48 all packaging materials used to contain, protect, deliver, present, or
49 distribute the products they sell, offer for sale, or distribute for
50 sale in the state.

51 (c) Beginning eight years after the program implementation date set
52 forth in subdivision three of section 27-3407 or January first of the
53 eighth year following the date on which a producer first registers with
54 an organization if a producer registers after the program implementation
55 date, such producer shall reduce the amount of primary plastic packaging
56 material, and the amount of all other packaging material, for all mate-

1 rials used to contain, protect, deliver, present, or distribute the
2 products they sell, offer for sale, or distribute for sale into the
3 state, in each case, by twenty percent either on a company-wide basis or
4 by unit weight, for all packaging materials used to contain, protect,
5 deliver, present, or distribute the products they sell, offer for sale,
6 or distribute for sale in the state.

7 (d) Beginning ten years after the program implementation date set
8 forth in subdivision three of section 27-3407 or January first of the
9 tenth year following the date on which a producer first registers with
10 an organization if a producer registers after the program implementation
11 date, such producer shall reduce the amount of primary plastic packaging
12 material, and the amount of all other packaging material, for all mate-
13 rials used to contain, protect, deliver, present, or distribute the
14 products they sell, offer for sale, or distribute for sale into the
15 state, in each case, by twenty-five percent either on a company-wide
16 basis or by unit weight for all packaging materials used to contain,
17 protect, deliver, present, or distribute the products they sell, offer
18 for sale, or distribute for sale in the state.

19 (e) Beginning twelve years after the program implementation date set
20 forth in subdivision three of section 27-3407 or January first of the
21 twelfth year following the date on which a producer first registers with
22 an organization if a producer registers after the program implementation
23 date, such producer shall reduce the amount of primary plastic packaging
24 material, and the amount of all other packaging material, for all mate-
25 rials used to contain, protect, deliver, present, or distribute the
26 products they sell, offer for sale, or distribute for sale into the
27 state, in each case, by thirty percent either on a company-wide basis or
28 by unit weight, for all packaging materials used to contain, protect,
29 deliver, present, or distribute the products they sell, offer for sale,
30 or distribute for sale in the state.

31 2. The reductions required by this section shall be measured against
32 the packaging material the producer used during the first year such
33 producer registered with an organization.

34 3. These reductions shall be achieved by eliminating single-use pack-
35 aging material, including secondary or tertiary packaging material,
36 elimination of packaging material components, reduction of packaging
37 material components, or by transitioning to reusable or refillable pack-
38 aging systems. Reductions may also be achieved by substituting plastic
39 packaging material with non-plastic packaging material. However, the
40 reductions required by this section shall not be achieved by substitut-
41 ing non-plastic materials with plastic materials or substituting recycl-
42 able materials with non-recyclable materials.

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

50 5. In the case of a producer that demonstrates in a manner satisfac-
51 tory to the department that, for the period beginning ten years prior to
52 the effective date of this title and ending on the date which is two
53 years after the effective date of this title, the producer reduced the
54 amount of packaging used to contain, protect, deliver, present, or
55 distribute the products the producer sells, offers for sale, or distrib-
56 utes for sale into the state, such producer may apply to the department

1 for a waiver from the packaging reduction requirements of this section
2 with respect to that percentage of its packaging, by unit weight, which
3 was reduced during such twelve-year period.

4 6. A producer may apply to the department for a waiver from the
5 reduction requirements of this section if compliance is impossible due
6 to federal law or otherwise conflicts with federal law. Such waiver
7 must be applied for annually. In such application the producer shall
8 provide the department and the advisory council with sufficient informa-
9 tion, in the determination of the department in consultation with the
10 advisory council, to make a determination on such application, including
11 proof that the producer has taken all feasible actions to achieve the
12 reductions required by this section.

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

15 § 27-3429. Recycled content standards.

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

18 2. Beginning two years after promulgation of rules and regulations
19 pursuant to this title:

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

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

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

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

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

36 (a) establish content requirements for materials not listed in subdivi-
37 sion two of this section; and

38 (b) modify the post-consumer recycled content targets for the materi-
39 als set forth in subdivision two of this section, provided that modifi-
40 cations do not result in a lesser percentage or an earlier year for the
41 respective target.

42 § 27-3431. Recyclability criteria and packaging recycling requirements.

43 1. Beginning two years after the promulgation of rules and regulations
44 pursuant to this title, packaging materials used by a producer shall
45 meet the following recyclability criteria:

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

48 (b) have a consistent regional market for purchase, by end users in
49 the production of new products;

50 (c) not contain the following:

51 (i) opaque or pigmented polyethylene terephthalate;

52 (ii) oxo-degradable additives, including oxo-biodegradable additives;

53 (iii) polyethylene terephthalate glycol in rigid packaging;

54 (iv) label constructions, including adhesives, inks, materials and
55 formats, or features that render a package non-recyclable or disruptive
56 to the recycling process; and

(v) DoPS - polystyrene, excluding EPS (expanded polystyrene);
(d) meet the post-consumer content requirements of this title; and
(e) any other criteria determined by the department.

2. Each individual producer shall be required to meet the following recycling rate standards:

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

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

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

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

(b) With respect to plastic packaging:

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

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

(iii) Beginning January first, two thousand fifty-one, a minimum of seventy-five percent of plastic packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled.

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

4. A producer may apply to the department for a waiver from the recycling rate requirements of this section if compliance is impossible due to federal law or otherwise conflicts with federal law. Such waiver shall 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.

5. The requirements of subdivision two of this section shall not apply to reusable or refillable packaging or containers.

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

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

1 2. The recycling inspector general shall have the authority to inves-
2 tigate the compliance of producers and the organization with all
3 provisions of this title and to bring enforcement actions for violations
4 of this title pursuant to the provisions of section 27-3435 of this
5 title. A violation by the organization as the result of actions by one
6 or more producers shall be enforceable by the recycling inspector gener-
7 al as violations against such producers.

8 § 27-3435. Penalties and enforcement.

9 1. Failure to comply with the requirements of this title shall subject
10 the organization or an individual producer to penalties for violations.
11 The department, recycling inspector general, or attorney general, may
12 conduct investigations, including inspecting operations, facilities, and
13 records of producers and organizations, and performing audits of produc-
14 ers and organizations, to determine whether such producers and organiza-
15 tions are complying with the requirements of this title.

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

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

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

37 § 27-3437. Rules and regulations.

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

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

45 § 27-3439. State preemption.

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

55 § 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. Antitrust protections.

5 A producer shall not be liable for any claim of a violation of anti-
6 trust, restraint of trade, or unfair trade practice arising from conduct
7 undertaken in order to comply with this title; provided, however, this
8 section shall not apply to any agreement establishing or affecting the
9 price of packaging material, or the output or production of any agree-
10 ment restricting the geographic area or customers to which packaging
11 material will be sold.

12 § 27-3445. Severability.

13 The provisions of this title shall be severable and if any phrase,
14 clause, sentence or provision of this title or the applicability thereof
15 to any person or circumstance shall be held invalid, the remainder of
16 this title and the application thereof shall not be affected thereby.

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

19 § 37-0202. Applicability.

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

24 § 4. This act shall take effect immediately.