

STATE OF NEW YORK

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2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sens. HARCKHAM, KAVANAGH, ADDABBO, BAILEY, BRESLIN, BRISPORT, BROUK, CHU, CLEARE, COMRIE, FERNANDEZ, GIANARIS, GONZALEZ, GOUNARDES, HINCHEY, HOYLMAN-SIGAL, JACKSON, KRUEGER, LIU, MAY, MAYER, MYRIE, PALUMBO, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SCARCELLA-SPANTON, SEPULVEDA, SERRANO, STAVISKY, THOMAS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

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

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.

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

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

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

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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 require-
ments.
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 depart-
ment; 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 indirect-
ly, 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-
tially all of the assets of a person, whether through the ownership of
voting securities, by contract, or otherwise.

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

8. "Disposal" means the landfilling or incineration of material or
products. "Disposal" shall also include energy recovery or energy

1 generation by any means, including, but not limited to, incineration,
2 combustion, pyrolysis, gasification, or solvolysis, waste-to-energy, or
3 waste-to-fuel, or any other chemical conversion process. "Disposal"
4 shall also include the use of materials as landfill cover.

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

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

16 11. "Intentionally added substance" means a substance or material that
17 serves an intended function or technical effect in the product or prod-
18 uct component, including as an intentional breakdown product of an
19 added chemical that also has a functional or technical effect in the
20 product or product component.

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

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

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

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

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

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

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

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

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

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

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

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

12 15. "Packaging reduction and recycling organization" or "organization"
13 means a not-for-profit organization registered pursuant to 26 U.S.C.
14 501(c)(3) designated by the department for the initial organization, or
15 by a group of producers for subsequent organizations, to act as an agent
16 on behalf of each producer to develop and implement a packaging
17 reduction and recycling plan pursuant to section 27-3407 of this title
18 and comply with the organization's responsibilities under section
19 27-3405 of this title.

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

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

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

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

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

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

36 (i) If the product is sold or served in or with packaging under the
37 product manufacturer's own brand or is sold or served in packaging mate-
38 rials that lack identification of a brand, the producer is the person
39 who manufactures the packaged product;

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

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

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

54 (v) If there is no person to which subparagraph (i), (ii), (iii) or
55 (iv) of this paragraph applies, the producer is the person who first
56 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 recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, or waste-to-fuel; (b) any chemical conversion process; or (c) landfill disposal.

25. "Recycling rate" means the percentage of any given material or category of material that is ultimately recycled. The recycling rate for any packaging material shall be calculated as the total weight of pack-

1 aging material that is recycled in a given year divided by the total
2 weight of packaging material generated in that year.

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

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

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

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

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

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

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

33 (b) A chemical or chemical class that is persistent or bioaccumula-
34 tive.

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

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

40 (e) A chemical or chemical class that may have adverse air quality
41 impacts, adverse ecological impacts, adverse soil quality impacts, or
42 adverse water quality impacts.

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

45 32. "Unit weight" means the weight of packaging material per unit of
46 product sold.

47 § 27-3403. Selection of packaging reduction and recycling organizations.

48 1. Until the date which is ten years after the effective date of this
49 title, there shall be only one packaging reduction organization and all
50 producers shall be required to register with such packaging reduction
51 organization.

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

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

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

- (a) consistency and coordination between all organizations;
- (b) responsibilities carried out are consistent and seamless;
- (c) local governments and service providers are reimbursed for recycling services as required under this chapter; and
- (d) that packaging material requirements are not reported as generated, supplied or managed by more than one organization.

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

1. Producers shall register with a packaging reduction organization to meet the responsibilities of the program pursuant to the provisions of this section, and each organization shall be responsible for implementation of the program on behalf of producers registered with such organization.

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

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

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

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

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

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

(f) Distribute funds to reimburse local governments and private companies for the costs associated with this title, including the implementation of reduction, refill, and reuse programs, and the collection, transportation and recycling, disposal or other processing of packaging materials;

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

(h) Offer technical support to producers, with an emphasis on support to small businesses, to assist them with compliance with the require-

ments of this title, including information about procuring affordable alternatives to non-compliant packaging material and reducing packaging material; and

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

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

(a) Contact information for the organization;

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

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

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

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

(f) A calculation of the recycling rate of each material category which is derived by dividing the amount of each material category recycled, as reported in paragraph (e) of this subdivision by the amount of each material category generated, as reported in paragraph (d) of this subdivision;

(g) A complete accounting of all payments made to and by the organization during the prior calendar year;

(h) An analysis of the average time it took to reimburse municipalities during the prior calendar year;

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

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

(k) An assessment of whether the fee structure adopted by the organization pursuant to section 27-3413 of this title has been effective in incentivizing improvements to the design of packaging material, including actual reduction of packaging material, increases in reusable and refillable packaging material, recycling rates for packaging materials, and decreases in the amount of packaging material;

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

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

7 (n) Audited financial statements;

8 (o) The results of the review conducted pursuant to subdivision five
9 of this section; and

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

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

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

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

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

31 § 27-3407. Packaging reduction and recycling organization plan.

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

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

46 3. Each producer shall begin program implementation within six months
47 after the date the plan for the initial organization is approved and in
48 no event later than three years of the effective date of this title. If
49 no plan is approved by that timeframe, the department, in its
50 discretion, shall either approve a plan with conditions or specify
51 modifications that must be made within forty-five days to conform the
52 submitted plan to the requirements of this section. If a producer is
53 not making good faith efforts to comply with the requirements of this
54 title during such forty-five day period, the producer shall be subject
55 to penalties for noncompliance.

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

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

4 (b) the identity of the producer or producers participating in the
5 plan;

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

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

11 (e) in relation to funding the program:

12 (i) a proposed budget outlining the anticipated costs of operating the
13 program and a description of the method by which the organization
14 intends to determine and collect producer payments during the initial
15 startup period;

16 (ii) a description of the proposed funding mechanism, identified in
17 section 27-3413 of this title, that meets the requirements of this
18 title;

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

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

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

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

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

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

44 (ii) proposed program fee adjustments to incorporate eco-modulation
45 factors;

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

49 (j) if the local government does not elect to provide service, a
50 description of the process used for contracting with a private sector
51 entity to provide such services and the recoupment of reasonable costs,
52 including procedures to ensure that such private sector entity is not
53 compensated for such services by both the organization and the consumer
54 for the same service, provided, however, that the packaging reduction
55 organization and any such private sector entity has entered into a labor
56 peace agreement with a bona-fide labor organization that is actively

1 engaged in representing or attempting to represent its employees and its
2 contractors' employees;

3 (k) a description of how the organization will work with existing
4 waste haulers, material recovery facilities, recyclers, and local
5 governments to operate or expand current collection programs to address
6 material collection methods, improve efficiency and yield of processing
7 materials from separate collection streams, and increase packaging
8 reduction and reuse;

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

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

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

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

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

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

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

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

41 (t) a process to address concerns and questions from customers and
42 residents;

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

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

47 (w) a detailed description of how the organization consulted with the
48 advisory council, the public, and other stakeholders in the development
49 of the plan prior to its submission to the department, and to what
50 extent the organization specifically incorporated the advisory council's
51 input into the plan;

52 (x) a comprehensive contingency plan demonstrating how the activities
53 in the plan will continue to be carried out by some other entity, if
54 needed, such as an escrow company, until such time as a new plan is
55 submitted and approved by the department;

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

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

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

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

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

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

19 § 27-3409. Packaging reduction and recycling plan approval.

20 1. Before approval or denial of a packaging reduction and recycling
21 plan can be made in accordance with this title, the producer or organ-
22 ization shall submit the plan to the packaging reduction and recycling
23 advisory council. The advisory council shall then make a recommendation
24 regarding approval or disapproval of the plan in accordance with section
25 27-3411 of this title.

26 2. Within sixty days of the advisory council making a recommendation
27 to the department, the department shall make a determination to approve
28 the plan as submitted; approve the plan with conditions; or deny the
29 plan, with reasons for the denial.

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

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

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

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

44 § 27-3411. Packaging reduction and recycling advisory council.

45 1. There is hereby established within the department a packaging
46 reduction and recycling advisory council to receive and review the pack-
47 aging reduction and recycling plans required under section 27-3407 of
48 this title, to make recommendations to the department regarding approval
49 of the plans, to review the annual reports produced by organizations and
50 to make recommendations to the department and organizations as required
51 by this section.

52 2. The advisory council shall convene for the first time no later than
53 one year after the effective date of this title. The advisory council
54 shall be composed of seventeen members. Nine shall be appointed by the
55 commissioner, three shall be appointed by the speaker of the assembly,
56 one shall be appointed by the minority leader of the assembly, three

1 shall be appointed by the temporary president of the senate and one
2 shall be appointed by the minority leader of the senate. The advisory
3 council shall include at least one member from each of the following:

4 (a) a local government association or local government program,
5 including an additional local government representative from cities with
6 a population of one million or more residents;

7 (b) a statewide environmental organization;

8 (c) a representative of a disadvantaged community affected by solid
9 waste infrastructure;

10 (d) an environmental justice organization;

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

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

13 (g) a recycling collection provider;

14 (h) a manufacturer of packaging materials utilizing post-consumer
15 recycled content;

16 (i) a consumer advocate;

17 (j) a retailer;

18 (k) a public health specialist;

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

21 (m) a representative of a labor organization representing waste
22 collection employees; and

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

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

29 4. Advisory council members shall serve without compensation, except
30 that a member of the committee who is a state officer or employee may
31 receive their regular compensation while engaging in the business of the
32 committee, but shall be entitled to receive reimbursement for any actu-
33 al, necessary expenses incurred in the course of performing business for
34 the committee.

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

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

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

46 (a) forward the plan to the commissioner with its recommendation for
47 approval; or

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

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

55 9. The advisory council shall review the submitted annual reports and
56 make such recommendations to the department and the organization for

1 improving future administration of the program and compliance with this
2 title.

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

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

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

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

19 § 27-3413. Funding mechanism.

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

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

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

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

38 (i) Paper;

39 (ii) Cardboard;

40 (iii) Corrugated cardboard;

41 (iv) Wood;

42 (v) Glass;

43 (vi) Polyethylene terephthalate (PET);

44 (vii) High density polyethylene (HDPE);

45 (viii) Expanded polystyrene (EPS);

46 (ix) Polystyrene;

47 (x) Bio-plastics;

48 (xi) Generic plastics;

49 (xii) Plastic film;

50 (xiii) Other plastics;

51 (xiv) Ferrous;

52 (xv) Aluminum;

53 (xvi) Tinplate;

54 (xvii) Generic metals; and

55 (xviii) Mixed materials including laminates and packaging containing
56 more than one of the above materials;

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

3 (c) Eco-modulation, including as described in subdivision eight of
4 this section.

5 4. Producer fees shall be designed to cover, at minimum, the total
6 costs associated with:

7 (a) Providing curbside collection or other form of residential service
8 that is, at minimum, as convenient as is detailed in section 27-3415 of
9 this title;

10 (b) The department's and other state agencies' administration and
11 enforcement of this title;

12 (c) Organizations' administration of this title;

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

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

17 (f) The costs associated with establishing packaging reduction and
18 reuse infrastructure;

19 (g) The cost of reimbursement for, or providing, recycling services,
20 including the collection cost, processing cost for each recyclable mate-
21 rial, cost of handling non-recyclable material types collected as part
22 of a recycling operation, transportation cost of recycling for each
23 material type; and

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

25 5. An organization may adjust producer fees based on factors that
26 affect system costs provided that the specific parameters of such
27 adjustments and fees are included in the plan approved by the depart-
28 ment. At a minimum, fees shall be variable based on:

29 (a) costs to provide curbside collection or another form of residen-
30 tial service that is, at minimum, as convenient as curbside collection
31 or as convenient as the previous recycling collection plan in the
32 particular jurisdiction should recycling collection not be provided;

33 (b) costs to process packaging materials for acceptance by secondary
34 material markets;

35 (c) whether the packaging material would typically be readily-recycla-
36 ble, except that as a consequence of the packaging design, the packaging
37 product has the effect of disrupting recycling processes or the product
38 includes labels, inks, and adhesives containing heavy metals or other
39 toxic substances that would result in contamination of the recycling
40 process;

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

43 (e) the commodity value of a packaging material, as defined by
44 published indices.

45 6. The fees shall be adjusted, or the producers may be provided a
46 credit, as detailed in the plan, based upon the percentage of post-con-
47 sumer recycled material content and such percentage of post-consumer
48 recycled content shall be verified by the organization or through an
49 independent third party approved to perform verification services to
50 ensure that such percentage exceeds the minimum requirements in the
51 packaging, as long as the recycled content does not disrupt the poten-
52 tial for future recycling.

53 7. In addition to the annual schedule of fees approved in the plan, an
54 organization fee schedule may include a special assessment on specific
55 categories of packaging materials, identified in the plan, if the nature
56 of the packaging material imposes unusual costs in collection or proc-

1 essing or requires special actions to address effective access to recy-
2 cling or successful processing in local government recycling facilities.

3 8. The fees shall be structured to provide producers with financial
4 incentives to encourage:

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

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

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

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

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

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

18 9. An organization shall be responsible for calculating and disbursing
19 funding at a reasonable rate developed through an objective formula
20 approved by the department, and such reasonable rate may be varied based
21 on population density rates, for municipal services utilized by an
22 organization if the municipality elects to be compensated by the organ-
23 ization in the collection, recovery, recycling, and processing of
24 covered materials and products, whether such services are provided
25 directly by the municipality or through a contracted service provider.

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

34 11. To facilitate an organization's cost reimbursement determination,
35 participating municipalities and private sector haulers contracting with
36 the organization shall report data related to their costs and the value
37 of materials to the organization. Cost calculations shall take into
38 consideration the amount received from the sale of source-separated
39 materials.

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

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

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

47 15. Nothing in this title shall require a local government to partic-
48 ipate in the program, provided that a local government must give at
49 least three months' notice of its intent to cease participation.

50 § 27-3415. Collection and convenience.

51 1. The program shall provide for widespread, convenient, and equitable
52 access to collection opportunities for recyclable packaging materials at
53 no additional cost. Such opportunities, including curbside recycling,
54 shall be provided to all residents of the state in a manner that is as
55 convenient as the collection of solid waste as provided to the consumer
56 as of the effective date of this title. Organizations shall ensure

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

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

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

21 (a) the category of packaging materials is on the minimum recyclables
22 list, is suitable for residential curbside recycling collection and can
23 be effectively sorted by the facilities receiving the curbside collected
24 material;

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

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

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

33 4. All local government or private recycling service providers shall
34 provide for the collection and recycling of all packaging materials
35 contained on the minimum recyclables lists, based on geographic regions,
36 in order to be eligible for reimbursement; provided, however, nothing
37 shall penalize a local government or private recycling service for
38 recovering and recycling materials that are generated in the local
39 government or geographic region that are not included on the minimum
40 recyclables lists as long as it can be demonstrated that such materials
41 have a consistent regional market for purchase as determined by the
42 department in consultation with the producer or organization.

43 5. Reimbursement shall cover collection, processing, transportation,
44 and recycling and disposal of all packaging materials so long as the
45 program includes at least the minimum recyclables list. The department
46 may grant an exception to the requirements in this subdivision upon a
47 written showing by the local government or private recycling service
48 that compliance with the requirements is not practicable for a specific
49 identified product or material and if the department finds it is in the
50 best interest of the intent of this title to grant an exception;
51 provided, however, that any such exception granted by the department
52 shall not exceed twelve months.

53 6. Program funds shall be used for investment in collection systems,
54 transportation systems, reuse systems, washing systems, redistribution
55 systems, technology for tracking and data collection, capital expendi-
56 tures on new and emerging technology that is focused on reusable and

1 refillable packaging, as well as equipment, and facilities, and other
2 projects determined by the department to facilitate the goals and
3 objectives of this title.

4 7. Nothing in this title shall be deemed to automatically void or
5 nullify any collection contracts in effect as of the effective date of
6 this title.

7 § 27-3417. Producer responsibilities.

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

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

24 (a) Contact information, including the name, e-mail address, physical
25 address, and telephone number of the authorized representative of the
26 producer;

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

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

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

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

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

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

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

44 (b) The packaging material recycled content requirements of this
45 title;

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

47 (d) The toxic substance reduction requirements of this title.

48 (e) Their obligations to pay fees to the organization pursuant to
49 section 27-3413 of this title and subdivision three of this section.

50 (f) Any reimbursement obligations they have to local governments or
51 third party service providers in connection with this title.

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

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

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

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

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

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

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

24 § 27-3419. Department responsibilities.

25 1. Within eighteen months of the effective date of this title, the
26 department shall, in accordance with section 27-3435 of this title,
27 promulgate all rules and regulations necessary to implement, administer,
28 and enforce the provisions of this title, including setting standards
29 for consumer protection when the organization directly disburses funds
30 to third parties. These rules and regulations shall include prohibiting
31 certain toxics in packaging pursuant to section 27-3425 of this title
32 as of the dates set forth therein.

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

42 3. The department shall establish and maintain the minimum recyclables
43 list by regulation. The department shall update this list annually,
44 after the initial organization's plan is first approved, considering
45 recommendations from organizations and the advisory council. The minimum
46 recyclables list may vary by geographic region depending on regional
47 markets and regional collection and processing infrastructure, but shall
48 in all cases meet the requirements of subdivision one of section 27-3431
49 of this title.

50 4. In the event that the department determines that the organization
51 no longer meets the requirements of this title, or fails to implement
52 and administer the requirements of this title in a manner that effectuates
53 the purposes of this title, after reasonable opportunity to cure
54 such deficiencies, the department shall revoke its approval of such
55 organization and, subject to the contingency plan contemplated by para-

graph (w) of subdivision four of section 27-3407 of this title, shall select a new organization pursuant to section 27-3403 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Landfill capacity.

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

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

§ 27-3423. Education and outreach program.

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

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

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

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

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

6 (e) How to prevent litter of packaging material in the process of
7 collection;

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

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

12 2. The educational outreach program shall incorporate, at a minimum,
13 electronic, print, web-based and social media elements, including for
14 use by local governments at their discretion, as well as including a
15 variety of outreach and education tools. Such educational outreach
16 programs shall ensure materials are widely accessible and available in
17 multiple languages.

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

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

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

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

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

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

41 § 27-3425. Prohibition on certain toxic substances and materials.

42 1. Notwithstanding title two of article thirty-seven of this chapter
43 to the contrary, (a) Beginning three years after the promulgation of
44 rules and regulations pursuant to this title, no person or entity shall
45 sell, offer for sale, or distribute into the state any packaging
46 containing any of the following toxic substances or materials as an
47 intentionally added substance:

48 (i) Ortho-phthalates;

49 (ii) Bisphenols;

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

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

54 (v) Benzophenone and its derivatives;

55 (vi) Halogenated flame retardants;

56 (vii) Perchlorate;

(viii) Formaldehyde;
(ix) Toluene;
(x) Antimony and compounds;
(xi) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol);
(xii) Polyvinyl chloride, including polyvinylidene chloride;
(xiii) Polystyrene but excluding EPS (expanded polystyrene); or
(xiv) Polycarbonate.

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

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

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

(c) The task force shall meet at least twice per year to review and recommend to the department whether (i) there are additional toxic substances or classes of toxic substances for use in packaging that should no longer be sold, offered for sale, distributed for sale, or distributed for such use in this state, and (ii) there should be substance or material-specific exceptions to the prohibitions provided for in subdivision one of this section, provided such recommendation may be made only upon a demonstration of substantial and convincing evidence that such substance or material does not meet the criteria for classification as a toxic substance or material.

3. (a) Within one hundred eighty days of the toxic packaging task force recommending the designation of an additional toxic substance, the department shall adopt rules and regulations to designate such substance as a toxic substance under this section and prohibit the use of such toxic substance in packaging in the same manner as those toxic substances listed in subdivision one of this section, with an effective date no later than two years after the date of such recommendation, unless the department determines that such two-year period would be unduly burdensome, in which case the department shall establish an

1 effective date for such prohibition no later than four years after the
2 date of such recommendation.

3 (b) The department may evaluate recommendations from the toxic packag-
4 ing task force for exceptions as provided in paragraph (c) of subdivi-
5 sion two of this section, and upon a demonstration of substantial and
6 convincing evidence that such substance or material does not meet the
7 criteria for classification as a toxic substance or material, may adopt
8 rules and regulations to except such substance as a toxic substance or
9 material.

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

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

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

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

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

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

52 (d) Beginning ten years after the program implementation date set
53 forth in subdivision three of section 27-3407 or January first of the
54 tenth year following the date on which a producer first registers with
55 an organization if a producer registers after the program implementation
56 date, such producer shall reduce the amount of primary plastic packaging

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

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

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

23 3. These reductions shall be achieved by eliminating single-use pack-
24 aging material, including secondary or tertiary packaging material,
25 elimination of packaging material components, reduction of packaging
26 material components, or by transitioning to reusable or refillable pack-
27 aging systems. Reductions may also be achieved by substituting plastic
28 packaging material with non-plastic packaging material. However, the
29 reductions required by this section shall not be achieved by substitut-
30 ing non-plastic materials with plastic materials or substituting recycl-
31 able materials with non-recyclable materials.

32 4. The department may adjust the reduction performance requirements in
33 subdivision one of this section by rulemaking based on information gath-
34 ered through the needs assessment or provided in producer plans and
35 reports, and/or based on consideration of environmental, technical and
36 economic conditions. An adjustment to the reduction performance targets
37 may not adjust the reduction requirement to less than ten percent or
38 more than thirty percent.

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

46 6. In the case of a producer that demonstrates in a manner satisfac-
47 tory to the department that, for the period beginning ten years prior to
48 the effective date of this title and ending on the date which is two
49 years after the effective date of this title, the producer reduced the
50 amount of packaging used to contain, protect, deliver, present, or
51 distribute the products the producer sells, offers for sale, or distrib-
52 utes for sale into the state, such producer may apply to the department
53 for a waiver from the packaging reduction requirements of this section
54 with respect to that percentage of its packaging, by unit weight, which
55 was reduced during such twelve-year period.

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

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

§ 27-3429. Recycled content standards.

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

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

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

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

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

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

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

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

(b) modify the post-consumer recycled content targets for the materials set forth in subdivision two of this section, provided that modifications do not result in a lesser percentage or an earlier year for the respective target.

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

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

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

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

(c) not contain the following:

(i) opaque or pigmented polyethylene terephthalate;

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

(iii) polyethylene terephthalate glycol in rigid packaging;

(iv) label constructions, including adhesives, inks, materials and formats, or features that render a package non-recyclable or disruptive 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.

2. The recycling inspector general shall have the authority to investigate the compliance of producers and the organization with all provisions of this title and to bring enforcement actions for violations

1 of this title pursuant to the provisions of section 27-3435 of this
2 title. A violation by the organization as the result of actions by one
3 or more producers shall be enforceable by the recycling inspector gener-
4 al as violations against such producers.

5 § 27-3435. Penalties and enforcement.

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

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

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

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

34 § 27-3437. Rules and regulations.

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

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

42 § 27-3439. State preemption.

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

52 § 27-3441. Other assistance programs.

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

56 § 27-3443. Antitrust protections.

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

8 § 27-3445. Severability.

9 The provisions of this title shall be severable and if any phrase,
10 clause, sentence or provision of this title or the applicability thereof
11 to any person or circumstance shall be held invalid, the remainder of
12 this title and the application thereof shall not be affected thereby.

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

15 § 37-0202. Applicability.

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

20 § 4. This act shall take effect immediately.