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Introduced by M. of A. GLICK, BURDICK, ROSENTHAL, PAULIN, SHIMSKY, COLTON, REYES, R. CARROLL, RAJKUMAR, GONZALEZ-ROJAS, LUNSFORD, GALLAGHER, BURKE, STECK, KELLES, LEVENBERG, RAGA, SIMON, CUNNINGHAM, SIMONE, SHRESTHA, DE LOS SANTOS, TAPIA, EACHUS, SEAWRIGHT, DINOWITZ, HEVESI, ALVAREZ, FORREST, OTIS, GIBBS, STIRPE, RIVERA, CRUZ, ANDERSON, RAMOS, WEPRIN, ZINERMAN, MITAYNES, BICHOTTE HERMELYN, LEE, BARRETT, JACOBSON, STERN, McMAHON, KIM, TAYLOR, CLARK, SAYEGH, BENEDETTO, JACKSON, MEEKS, CONRAD, DAVILA, WILLIAMS, BORES, BRONSON, LUCAS, DILAN, LASHER, LAVINE, SCHIAVONI, TORRES, KAY, VALDEZ, ROMERO, KASSAY, P. CARROLL, FALL, WRIGHT, McDONALD, WALKER, BROOK-KRASNY, CHANDLER-WATERMAN, SOLAGES, MORENO -- read once and referred to the Committee on Environmental Conservation -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

5 TITLE 34

6 PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

7 Section 27-3401. Definitions.

8 27-3403. Selection of packaging reduction and recycling organ-
9 izations.

10 27-3405. Responsibilities of packaging reduction and recycling
11 organizations.

12 27-3407. Packaging reduction and recycling organization plan.

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

14 27-3411. Packaging reduction and recycling advisory council.

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

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- 1 27-3413. Funding mechanism.
2 27-3415. Collection and convenience.
3 27-3417. Producer responsibilities.
4 27-3419. Department responsibilities.
5 27-3421. Service provider responsibilities.
6 27-3423. Statewide packaging reduction, reuse, and recycling
7 needs assessment.
8 27-3425. Education and outreach program.
9 27-3427. Prohibition on certain toxic substances and materials.
10 27-3429. Non-reusable packaging reduction standards.
11 27-3431. Recycled content standards.
12 27-3433. Recyclability criteria, reusable or refillable packag-
13 ing requirements, and packaging recycling requirements
14 27-3435. Penalties and enforcement.
15 27-3437. Rules and regulations.
16 27-3439. State preemption.
17 27-3441. Other assistance programs.
18 27-3443. Antitrust protections.
19 27-3445. Severability.

20 § 27-3401. Definitions.

21 As used in this title:

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

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

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

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

34 5. "Contamination" means:

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

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

41 6. "Control", including the terms "controlling", "controlled by" and
42 "under common control with", means the possession, directly or indirect-
43 ly, of the power to direct or cause the direction of (a) the management
44 and policies of a person, (b) the operation of a person, or (c) substan-
45 tially all of the assets of a person, whether through the ownership of
46 voting securities, by contract, or otherwise.

47 7. "Covered services" means the collection, transfer, transportation,
48 sorting, processing, recovery, preparation, or management of packaging
49 materials by a service provider for purposes of packaging material
50 recovery, reuse, recycling, or disposal as required or permitted under
51 this title.

52 8. "De minimis producer" means a producer that in their most recent
53 fiscal year:

54 (a) introduced less than two tons of covered material into this state;

55 (b) earned global gross revenues of less than five million dollars; or

1 (c) is an agricultural cooperative with less than fifty employees
2 engaged in the production of dairy products.

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

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

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

24 12. "Disadvantaged community" shall have the same meaning as is set
25 forth in subdivision five of section 75-0101 of this chapter.

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

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

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

42 16. "Packaging material", "packaging", or "covered material" means
43 discrete material or a category of material, including residential and
44 commercial, regardless of recyclability, including but not limited to
45 such material types that are flexible, foam, or rigid material, includ-
46 ing paper, cardboard, plastic, glass, metal, or multi-material, that is
47 used for the containment, protection, handling, delivery, transport,
48 distribution, or presentation of another product that is sold, offered
49 for sale, imported, or distributed in the state, including through an
50 internet transaction, and single-use plastic products. The term "pack-
51 aging material", "packaging", or "covered material" does not include:

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

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

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

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

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

14 (f) Beverage containers subject to a returnable container deposit
15 under title ten of this article and all of their packaging;

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

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

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

22 17. "Packaging reduction and recycling organization" or "organization"
23 means a not-for-profit organization registered pursuant to 26 U.S.C.
24 501(c)(3) designated by the department for the initial organization, or
25 by a group of producers for subsequent organizations, to act as an agent
26 on behalf of each producer to develop and implement a packaging
27 reduction and recycling plan pursuant to section 27-3407 of this title
28 and comply with the organization's responsibilities under section
29 27-3405 of this title.

30 18. "Packaging reduction and recycling plan" or "plan" means a docu-
31 ment in which an organization describes the efforts it will undertake to
32 comply with the requirements of this title.

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

36 20. "Post-consumer recycled material" means new material produced
37 using material resulting from North American recycling.

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

40 22. (a) "Producer" means the following person responsible for compli-
41 ance with requirements under this title for a covered material intro-
42 duced:

43 (i) for items sold in or with packaging at a physical retail location
44 in this state:

45 (1) if the item is sold in or with packaging under the brand of the
46 item manufacturer or is sold in packaging that lacks identification of a
47 brand, the producer is the person that manufactures the item;

48 (2) if there is no person to which clause one of this subparagraph
49 applies, the producer is the person that is licensed to manufacture and
50 sell or offer for sale to consumers in this state an item with packaging
51 under the brand or trademark of another manufacturer or person;

52 (3) if there is no person to which clause one or two of this subpara-
53 graph applies, the producer is the brand owner of the item;

54 (4) if there is no person described in clause one, two, or three of
55 this subparagraph within the United States, the producer is the person
56 who is the importer of record for the item into the United States for

1 use in a commercial enterprise that sells, offers for sale, or distrib-
2 utes the item in this state; or

3 (5) if there is no person described in clause one, two, three, or four
4 of this subparagraph the producer is the person that first distributes
5 the item in or into this state;

6 (ii) for items sold or distributed in packaging in or into this state
7 via e-commerce, remote sale, or distribution;

8 (1) for packaging used to directly protect or contain the item, the
9 producer of the packaging is the same as the producer identified under
10 subparagraph (i) of this paragraph; and

11 (2) for packaging used to ship the item to a consumer, the producer of
12 the packaging is the person that packages the item to be shipped to the
13 consumer;

14 (iii) for packaging that is a covered material and is not included in
15 subparagraphs (i) or (ii) of this paragraph, the producer of the packag-
16 ing is the person that first distributes the item in or into this state;
17 and

18 (iv) a person is the producer of a covered material sold, offered for
19 sale, or distributed in or into this state, as defined in subparagraphs
20 (i), (ii), and (iii) of this paragraph, except:

21 (1) where another person has mutually signed an agreement with a
22 producer as defined in subparagraphs (i), (ii), and (iii) of this para-
23 graph that contractually assigns responsibility to the person as the
24 producer, and the person has joined a registered packaging reduction and
25 recycling organization as the responsible producer for that covered
26 material under this title. In the event that another person is assigned
27 responsibility as the producer under this subdivision, the producer
28 under subparagraphs (i), (ii), and (iii) of this paragraph shall provide
29 written certification of such contractual agreement to the producer
30 responsibility organization; and

31 (2) if the producer described in subparagraphs (i), (ii), and (iii) of
32 this paragraph is a business operated wholly or in part as a franchise,
33 the producer is the franchisor if that franchisor has franchisees that
34 have a commercial presence within the state.

35 (b) "Producer" shall not include:

36 (i) a state, a federal or state agency, a political subdivision, or
37 other governmental unit;

38 (ii) a registered 501(c)(3) charitable organization or 501(c)(4)
39 social welfare organization; or

40 (iii) a de minimis producer.

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

44 24. "Recyclable" means a packaging material that meets the criteria in
45 subdivision one of section 27-3433 of this title.

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

1 26. "Recycling rate" means the percentage of packaging material that
2 is delivered to responsible end markets for recycling. The recycling
3 rate for packaging material shall be calculated as the total weight of
4 packaging material that is delivered to responsible end markets for
5 recycling in a given year divided by the total weight of the packaging
6 material supplied or sold into the state in that year. The "recycling
7 rate" shall not include contaminants, residues, reusable or refillable
8 packaging or containers, or the use of materials as landfill cover.

9 27. "Responsible end market" means a materials market that:

10 (a) reuses, recycles, or otherwise recovers materials and disposes of
11 contaminants in a manner that protects the environment and minimizes
12 risks to public health and worker health and safety;

13 (b) complies with all applicable federal, state, and local statutes,
14 rules, ordinances, and other laws governing environmental, health, safe-
15 ty, and financial responsibility;

16 (c) possesses all requisite licenses and permits required by a federal
17 or state agency or political subdivision;

18 (d) if the market operates in the state, manages waste according to
19 all applicable state laws; and

20 (e) minimizes adverse impacts to disadvantaged communities, as defined
21 in this title.

22 28. "Reuse" means the return of packaging material back into the
23 economic stream for use in the same kind of application intended for the
24 original packaging, without effectuating a change in the original compo-
25 sition of the package, the identity of the product, or the components
26 thereof.

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

32 30. "Reusable or refillable packaging and containers" means packaging
33 material and containers that are specifically designed and manufactured
34 to maintain shape and structure, and be materially durable for repeated
35 sanitizing, washing, and reuse; provided, however, that such packaging
36 and containers must comply with the high reuse and refill rate as set
37 forth in the plan and approved by the department.

38 31. "Secondary packaging" means packaging intended to bundle, sell in
39 bulk, brand, or display a product.

40 32. "Service provider" means an entity that provides covered services
41 for covered materials. A municipality that provides or that contracts or
42 otherwise arranges with another party to provide covered services for
43 covered materials within its jurisdiction may be a service provider
44 regardless of whether it provided, contracted for, or otherwise arranged
45 for similar services before the approval of the applicable organization
46 plan.

47 33. "Single use plastic" means single use plastic products that
48 frequent the waste stream including, but not limited to, single use
49 plastic items such as straws, utensils, cups, plates, and plastic bags.

50 34. "Tertiary packaging" means packaging intended to protect the prod-
51 uct during transport.

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

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

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

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

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

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

16 (a) consistency and coordination between all organizations;

17 (b) responsibilities carried out are consistent and seamless;

18 (c) municipalities and service providers are reimbursed for recycling
19 services as required under this title; and

20 (d) that packaging material requirements are not reported as gener-
21 ated, supplied or managed by more than one organization.

22 § 27-3405. Responsibilities of packaging reduction and recycling organ-
23 izations.

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

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

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

35 (b) Collect and compile data from producers as required by section
36 27-3417 of this title;

37 (c) Calculate reimbursement rates through the objective formula
38 approved by the department as contemplated by paragraph (e) of subdivi-
39 sion four of section 27-3407 of this title for the costs associated
40 with this title and the collection, transportation, sorting, handling,
41 storage, and recycling, disposal, or other processing of packaging mate-
42 rials, including associated administrative costs;

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

45 (e) Reimburse the department and any other relevant state agencies for
46 the costs associated with conducting the statewide needs assessment
47 required by section 27-3423 of this title, the administration of the
48 program by the department, and the expenses of the advisory council;

49 (f) Distribute funds to reimburse municipalities for any associated
50 reasonable and necessary administrative costs and service providers for
51 the costs associated with this title, including the implementation of
52 reduction, refill, and reuse programs, and the collection, transporta-
53 tion and recycling, disposal or other processing of packaging materials;

54 (g) Undertake an effective statewide education and public outreach
55 program as required by section 27-3425 of this title;

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

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

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

12 (a) Contact information for the organization;

13 (b) A list of all (i) producers, (ii) brands, and (iii) products that
14 each producer sells, offers for sale, or distributes into the state that
15 are contained, protected, delivered, presented, or distributed in or
16 using packaging material;

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

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

27 (e) The total amount, by weight, of each material category delivered
28 to responsible end markets for recycling as a result of activities
29 undertaken by the organization, either directly or through reimburse-
30 ment or contractual arrangement;

31 (f) A calculation of the recycling rate of each material category;

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

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

36 (i) A list of producers reasonably believed to be out of compliance
37 with the requirements of this title, and the reason the organization
38 reasonably believes the producer to be out of compliance. Information
39 on non-compliant producers shall be provided to the commissioner and
40 attorney general's office in a timely fashion and for possible enforce-
41 ment action;

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

46 (k) An assessment of whether the fee structure adopted by the organ-
47 ization pursuant to section 27-3413 of this title has been effective in
48 incentivizing improvements to the design of packaging material, includ-
49 ing actual reduction of packaging material, increases in reusable and
50 refillable packaging material, recycling rates for packaging materials,
51 and decreases in the amount of packaging material;

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

55 (m) Independently audited financial statements; and

1 (n) Any additional information required by the department, including
2 Universal Product Codes (UPC) should they deem them necessary.

3 4. Each organization shall conduct public outreach and provide consum-
4 ers with educational and informational materials related to reducing the
5 amount of packaging discarded and disposed of in the state as outlined
6 in section 27-3425 of this title.

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

9 6. An organization shall not share, except with the department, the
10 advisory council, and the toxic packaging task force, or as required by
11 law, any proprietary information that is identified by a producer as
12 proprietary information without prior written consent.

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

14 1. Within thirty months of the effective date of this title, the
15 initial packaging reduction organization shall develop and submit a
16 packaging reduction and recycling plan for implementation of the rules
17 and regulations of this title, including ensuring timely disbursements
18 to municipalities and service providers, to the department for approval.
19 The plan shall be submitted to the advisory council for review pursuant
20 to section 27-3411 of this title prior to the department's approval.
21 Any subsequent or additional organization shall develop and submit a
22 packaging reduction and recycling plan and comply with all the require-
23 ments of this section, and have such plan approved pursuant to section
24 27-3409 of this title.

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

29 3. Each producer shall begin program implementation within one year
30 after the date the plan for the initial organization is approved and in
31 no event later than four years of the effective date of this title. If
32 no plan is approved by that timeframe, the department, in its
33 discretion, shall either approve a plan with conditions or specify
34 modifications that must be made within forty-five days to conform the
35 submitted plan to the requirements of this section. If a producer is
36 not making good faith efforts to comply with the requirements of this
37 title during such forty-five day period, the producer shall be subject
38 to penalties for noncompliance.

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

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

43 (b) the identity of the producer or producers participating in the
44 plan;

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

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

50 (e) in relation to funding the program:

51 (i) a proposed budget outlining the anticipated costs of operating the
52 program and a description of the method by which the organization
53 intends to determine and collect producer payments during the initial
54 startup period;

1 (ii) a description of the proposed funding mechanism, identified in
2 section 27-3413 of this title, that meets the requirements of this
3 title;

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

7 (iv) a description of how the organization intends to manage and
8 account for all program related funds which pass through the organiza-
9 tion, including how timely reimbursements to service providers will be
10 provided;

11 (f) an objective formula establishing a reimbursement rate, in consul-
12 tation with service providers which covers obligations identified in the
13 needs assessment and the minimum recyclables list reflects the reason-
14 able and necessary costs of providing covered services, and takes into
15 account variable regional costs along with responsible end markets for
16 participating service providers;

17 (g) a description of the process for participating service providers
18 to recoup reasonable costs as established by the objective formula, from
19 the organization, including, as applicable, any administrative, sorting,
20 collection, transportation, public education, or processing costs;

21 (h) a description of the process for participating municipalities to
22 recoup reasonable and necessary administrative costs of the program from
23 the organization, where such cost reimbursements may be in addition to
24 any service provider fees should the municipality also register as a
25 service provider;

26 (i) at a minimum, the following funding mechanism details shall be
27 provided in the plan:

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

33 (ii) proposed program fee adjustments to incorporate eco-modulation
34 factors;

35 (j) a description of the characteristics of each type of packaging
36 material that is relevant to the eco-modulating factors set forth pursu-
37 ant to section 27-3413 of this title;

38 (k) if the municipality does not elect to provide service, a
39 description of the process used for contracting with a service provider
40 to provide such services and the recoupment of reasonable costs, includ-
41 ing procedures to ensure that such service provider is not compensated
42 for such services by both the organization and the consumer for the same
43 service, provided, however, that the packaging recycling and reduction
44 organization and any such service provider has entered into a labor
45 peace agreement with a bona-fide labor organization that is actively
46 engaged in representing or attempting to represent its employees and its
47 contractors' employees;

48 (l) a description of how the organization will work with existing
49 waste haulers, material recovery facilities, recyclers, and service
50 providers to operate or expand current collection programs to address
51 material collection methods, improve efficiency and yield of processing
52 materials from separate collection streams, expand local material recov-
53 ery options, and increase packaging reduction and reuse;

54 (m) a description of how the organization will use open, competitive,
55 and fair procurement practices should they directly enter into contrac-
56 tual agreements with service providers;

1 (n) a description of how a municipality will participate, on a volun-
2 tary basis, with collection and how existing municipal recycling proc-
3 essing and collection infrastructure will be used;

4 (o) a description of how the organization plans to meet the conven-
5 ience requirements set forth in this title;

6 (p) a description of the process for end-of-life management, including
7 recycling and disposal of residuals collected for recycling, using envi-
8 ronmentally sound management practices and responsible end markets;

9 (q) a description of how the organization shall provide the option to
10 purchase recycled materials from processors;

11 (r) a description of how producers are complying with the waste
12 reduction, toxics, recycling and post-consumer content requirements of
13 this title, and the process for verifying compliance, including any
14 third party verification services;

15 (s) a description of how: (i) the organization will strategically
16 invest in existing and future reuse and recycling infrastructure and the
17 expansion or strengthening for and use of covered materials by responsi-
18 ble end markets in the state or region in consultation with the depart-
19 ment and in a manner not inconsistent with the needs assessment, includ-
20 ing, but not limited to, installing or upgrading equipment to improve
21 the sorting of covered materials or mitigating the impacts of materials
22 on other commodities at existing sorting and processing facilities, and
23 capital expenditures for new technology, equipment, and facilities; and
24 (ii) how the process to offer and select opportunities will be conducted
25 in an open, competitive, and fair manner;

26 (t) a description of how the organization's recycling infrastructure
27 and market development investments (i) were informed by the results of
28 the needs assessment, and (ii) will utilize the state's existing infras-
29 tructure;

30 (u) a process to address concerns and questions from customers and
31 residents;

32 (v) a description of the organization's public outreach education
33 program for consumers and other stakeholders;

34 (w) a description of how the comments of stakeholders were considered
35 and addressed in the development of the plan;

36 (x) a detailed description of how the organization consulted with the
37 advisory council, the public, and other stakeholders in the development
38 of the plan prior to its submission to the department, and to what
39 extent the organization specifically incorporated the advisory council's
40 input into the plan;

41 (y) a comprehensive contingency plan demonstrating how the activities
42 in the plan will continue to be carried out by some other entity, if
43 needed, such as an escrow company, until such time as a new plan is
44 submitted and approved by the department:

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

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

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

51 (iv) in any other event that the organization can no longer carry out
52 plan implementation;

53 (z) a description of how the program shall reimburse service provid-
54 ers, including but not limited to a description of how the program will
55 establish;

1 (i) a process for service providers to submit invoices and be fully
2 reimbursed for covered services provided;

3 (ii) clear and reasonable timelines for reimbursement; and

4 (iii) a process that utilizes a third-party mediator to resolve
5 disputes that arise between the organization and a service provider
6 regarding the determination of reimbursement rates and payment of
7 reimbursements;

8 (aa) performance standards for service providers as applicable to the
9 service provided, including but not limited to:

10 (i) requirements that service providers must accept all covered mate-
11 rials on the list established by the department; and

12 (ii) labor standards and safety practices, including but not limited
13 to safety programs, health benefits, and living wages;

14 (bb) a description of how the organization will treat and protect
15 nonpublic data submitted by service providers;

16 (cc) a description of how the organization will provide technical
17 assistance to service providers in order to assist them in delivering
18 covered materials to responsible end markets; and

19 (dd) any other additional information required by the department.

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

30 § 27-3409. Packaging reduction and recycling plan approval.

31 1. Before approval or denial of a packaging reduction and recycling
32 plan can be made in accordance with this title, the producer or organ-
33 ization shall submit the plan to the packaging reduction and recycling
34 advisory council. The advisory council shall then make a recommendation
35 regarding approval or disapproval of the plan in accordance with section
36 27-3411 of this title.

37 2. Within sixty days of the advisory council making a recommendation
38 to the department, the department shall make a determination to approve
39 the plan as submitted; approve the plan with conditions; or deny the
40 plan, with reasons for the denial.

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

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

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

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

55 § 27-3411. Packaging reduction and recycling advisory council.

1 1. There is hereby established within the department a packaging
2 reduction and recycling advisory council to receive and review the pack-
3 aging reduction and recycling plans required under section 27-3407 of
4 this title, to make recommendations to the department regarding approval
5 of the plans, to review the annual reports produced by organizations and
6 to make recommendations to the department and organizations as required
7 by this section.

8 2. The advisory council shall convene for the first time no later than
9 one year after the effective date of this title. The advisory council
10 shall be composed of nineteen members. Nine shall be appointed by the
11 commissioner, four shall be appointed by the speaker of the assembly,
12 one shall be appointed by the minority leader of the assembly, four
13 shall be appointed by the temporary president of the senate and one
14 shall be appointed by the minority leader of the senate. The advisory
15 council shall include at least one member from each of the following:

16 (a) a municipal association or municipal program, including an addi-
17 tional municipal representative from cities with a population of one
18 million or more residents;

19 (b) a statewide environmental organization;

20 (c) a representative of a disadvantaged community affected by solid
21 waste infrastructure;

22 (d) an environmental justice organization;

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

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

25 (g) a recycling collection provider;

26 (h) a manufacturer of packaging materials utilizing post-consumer
27 recycled content;

28 (i) a consumer advocate;

29 (j) a retailer;

30 (k) a public health specialist;

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

33 (m) a representative of a labor organization representing waste
34 collection employees;

35 (n) a representative of a labor organization representing municipal
36 solid waste and recycling processing employees; and

37 (o) a representative of a manufacturer of packaging materials or a
38 trade association representing such manufacturers or materials that
39 assists their customers with plan compliance.

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

44 4. Advisory council members shall serve without compensation, except
45 that a member of the committee who is a state officer or employee may
46 receive their regular compensation while engaging in the business of the
47 committee, but shall be entitled to receive reimbursement for any actu-
48 al, necessary expenses incurred in the course of performing business for
49 the committee.

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

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

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

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

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

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

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

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

25 (a) organizations for any changes in the administration of the
26 program, including feedback on the education and outreach program as
27 outlined in section 27-3425 of this title;

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

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

35 § 27-3413. Funding mechanism.

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

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

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

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

54 (i) Paper;

55 (ii) Cardboard;

56 (iii) Corrugated cardboard;

- 1 (iv) Wood;
2 (v) Glass;
3 (vi) Polyethylene terephthalate (PET);
4 (vii) High density polyethylene (HDPE);
5 (viii) Expanded polystyrene (EPS);
6 (ix) Polystyrene;
7 (x) Bio-plastics;
8 (xi) Generic plastics;
9 (xii) Plastic film;
10 (xiii) Other plastics;
11 (xiv) Ferrous metals;
12 (xv) Aluminum;
13 (xvi) Tinsplate;
14 (xvii) Generic metals; and
15 (xviii) Mixed materials including laminates and packaging containing
16 more than one of the above materials;
17 (b) The quantity of each packaging material type, by weight and unit
18 weight, that the producer sells, offers for sale, or distributes in the
19 state;
20 (c) Eco-modulation, including as described in subdivision two of this
21 section, beginning two years after producers pay their first fees.
22 4. Producer fees shall be designed to cover, at minimum, the total
23 costs associated with:
24 (a) Providing curbside collection or other form of collection service
25 that is, at minimum, as convenient as is detailed in section 27-3415 of
26 this title;
27 (b) The department's and other state agencies' administration and
28 enforcement of this title;
29 (c) Organizations' administration of this title;
30 (d) The cost associated with the development of the needs assessment,
31 as required in section 27-3423 of this title;
32 (e) The costs associated with the advisory council;
33 (f) The costs associated with establishing packaging reduction and
34 reuse infrastructure;
35 (g) The cost of reimbursement for, or providing, recycling and
36 disposal services, including the collection cost, processing cost for
37 each recyclable material, cost of handling, disposal, and transportation
38 of non-recyclable material types collected as part of collection, trans-
39 portation cost of recycling for each material type; and
40 (h) Any other factors determined by the department.
41 5. An organization may adjust producer fees based on factors that
42 affect system costs provided that the specific parameters of such
43 adjustments and fees are included in the plan approved by the depart-
44 ment. At a minimum, fees shall be variable based on:
45 (a) costs to provide curbside collection or another form of service
46 that is, at minimum, as convenient as curbside collection or as conven-
47 ient as the previous collection plan in the particular jurisdiction
48 should collection not be provided;
49 (b) costs to process packaging materials for acceptance by responsible
50 end markets;
51 (c) whether the packaging material would typically be readily-recycla-
52 ble; and
53 (d) the commodity value of a packaging material, as defined by
54 published indices, which shall include allowances for commodities that
55 have excessive residual contamination.

1 6. The eco-modulated fees shall be adjusted, or the producers may be
2 provided a credit, as detailed in the plan, based upon the percentage of
3 post-consumer recycled material content and such percentage of post-con-
4 sumer recycled content shall be verified by the organization or through
5 an independent third party approved to perform verification services to
6 ensure that such percentage exceeds the minimum requirements in the
7 packaging, as long as the recycled content does not disrupt the poten-
8 tial for future recycling.

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

15 8. The eco-modulated fees shall be structured to provide producers
16 with financial incentives to encourage:

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

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

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

26 (d) A reduction in toxic components in packaging materials;

27 (e) A reduction in landfilled or incinerated material; and

28 (f) Packaging that is not disruptive of recycling processes due to
29 labels, inks, and adhesives containing heavy metals or other toxic
30 substances that would result in contamination of the recycling process.

31 9. An organization shall be responsible for calculating and disbursing
32 funding at a reasonable rate developed through an objective formula
33 approved by the department, which includes the general quality of
34 covered materials collected by service providers, and such reasonable
35 rate may be varied based on population density rates for municipal
36 services utilized by an organization if the municipality elects to be
37 compensated by the organization for reimbursement for all costs eligible
38 under this title in the collection, recovery, recycling, and processing
39 of covered materials and products as or with a service provider.

40 10. If a municipality does not elect to provide service, the organiza-
41 tion shall be responsible for contracting with a service provider for
42 services and shall be responsible for calculating and disbursing funding
43 at a reasonable rate for reimbursement for all costs eligible under this
44 title for collection, recycling, recovery, processing, and disposal
45 services provided by the service provider. Any such contract shall be
46 subject to a labor peace agreement as contemplated by paragraph (k) of
47 subdivision four of section 27-3407 of this title.

48 11. To facilitate an organization's cost reimbursement determination,
49 participating service providers shall report data related to their costs
50 and the value of materials to the organization. Cost calculations shall
51 take into consideration the amount received from the sale of source-se-
52 parated materials.

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

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

1 14. Notwithstanding any deposits that are charged to the consumer for
2 reusable or refillable packaging, or containers contained within a reuse
3 or refill system, no retailer shall charge a point-of-sale or other fee
4 to consumers to facilitate a producer or organization to recoup the
5 costs associated with meeting the obligations under this title.

6 15. Nothing in this title shall require a municipality to participate
7 in the program, provided that a municipality must give at least six
8 months' notice of its intent to cease participation.

9 § 27-3415. Collection and convenience.

10 1. The program shall provide for widespread, convenient, and equitable
11 access to collection opportunities for packaging materials at no addi-
12 tional cost to service providers. Such opportunities, including curbside
13 collection, shall be provided to all residents of the state in a manner
14 that is as convenient as the collection of solid waste as provided to
15 the consumer in that geographic area as of the effective date of this
16 title. Organizations shall ensure services continue for existing
17 collection programs as of the effective date of this title, either
18 directly or through a contract to provide services, and that such
19 services are continued through such producer or organization's plan
20 pursuant to section 27-3405 of this title.

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

32 3. Organizations may rely on a range of means to collect various cate-
33 gories of covered materials so long as collection options include curb-
34 side collection services provided by municipal programs, municipal
35 contracted programs, solid waste collection companies, or other approved
36 entities as identified by the department if at a minimum:

37 (a) the category of packaging materials is on the minimum recyclables
38 list created by the department, is suitable for waste collection and can
39 be effectively sorted by the facilities receiving the curbside collected
40 material;

41 (b) the provider of the collection service agrees to the organiza-
42 tion's service provider costs arrangement; and

43 (c) any private contract for such services is subject to a labor peace
44 agreement as contemplated by paragraph (k) of subdivision four of
45 section 27-3407.

46 4. All service providers shall provide for the collection and recycl-
47 ing of all packaging materials contained on the minimum recyclables
48 lists in order to be eligible for reimbursement; provided, however,
49 nothing shall penalize a service provider for recovering and recycling
50 materials that are generated in the municipality that are not included
51 on the minimum recyclables lists as long as it can be demonstrated that
52 such materials have a responsible end market for purchase as determined
53 by the department in consultation with the producer or organization.

54 5. Reimbursement shall cover collection, processing, transportation,
55 and recycling and disposal of covered materials so long as the program
56 includes at least the minimum recyclables list. The department may grant

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

7 6. Program funds that are not reimbursements outlined in this title
8 shall be used for investment in collection systems for recycling or
9 reuse, transportation systems for recycling or reuse, reuse systems,
10 washing systems, redistribution systems, technology for tracking and
11 data collection, capital expenditures on new and emerging technology
12 that is focused on reusable and refillable packaging, as well as equip-
13 ment, and facilities, and other projects as contemplated by paragraph
14 (s) of subdivision four of section 27-3407 of this title.

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

18 § 27-3417. Producer responsibilities.

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

31 2. Each producer shall provide the organization with the following
32 information as part of registration:

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

36 (b) Any other information required by the department.

37 3. One year following producer registration with the organization,
38 producers shall be required to report:

39 (a) A comprehensive list of the categories and brands of packaging
40 materials for which the producer or producers are responsible; and

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

44 4. Producers are responsible for payment of fees, through an organiza-
45 tion, based on the quantity, category of packaging material used in the
46 state, and other factors. Producers shall make the first payment to an
47 organization within six months of approval of a plan, pursuant to
48 section 27-3409 of this title, and annually thereafter.

49 5. Producers are responsible for meeting the toxic substances, packag-
50 ing material reduction, post-consumer content, and recyclability stand-
51 ards under this title.

52 6. A producer shall electronically submit annually, to both the
53 department and an organization, a written declaration signed by an
54 authorized representative, verifying the producer's compliance with:

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

1 (b) The packaging material recycled content requirements of this
2 title;

3 (c) The packaging material recyclability requirements of this title;

4 (d) The toxic substance requirements of this title;

5 (e) Their obligations to pay fees to the organization pursuant to
6 section 27-3413 of this title and subdivision three of this section; and

7 (f) Any reimbursement obligations they have to the organization in
8 connection with this title.

9 7. Nothing in this title shall impair a producer's eligibility for tax
10 credits or other business incentives for which they would otherwise
11 qualify.

12 § 27-3419. Department responsibilities.

13 1. Within one year of the effective date of this title, the department
14 shall register service providers seeking reimbursement for covered
15 services provided within this title and publicly post the list of regis-
16 tered service providers.

17 2. Within eighteen months of the effective date of this title, the
18 department shall, in accordance with section 27-3435 of this title,
19 promulgate all rules and regulations necessary to implement, administer,
20 and enforce the provisions of this title, including setting standards
21 for consumer protection when the organization directly disburses funds
22 to third parties. Such rules and regulations shall include prohibiting
23 certain toxics in packaging pursuant to section 27-3427 of this title
24 as of the dates set forth therein.

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

34 4. The department shall establish and maintain the minimum recyclables
35 lists by regulation. The department may update such lists annually,
36 after the initial organization's plan is first approved, considering
37 recommendations from organizations and the advisory council. The minimum
38 recyclables lists shall meet the requirements of subdivision one of
39 section 27-3433 of this title.

40 5. In the event that the department determines that the organization
41 no longer meets the requirements of this title, or fails to implement
42 and administer the requirements of this title in a manner that effectu-
43 ates the purposes of this title, after reasonable opportunity to cure
44 such deficiencies, the department shall revoke its approval of such
45 organization and, subject to the contingency plan contemplated by para-
46 graph (x) of subdivision four of section 27-3407 of this title, shall
47 select a new organization pursuant to section 27-3403 of this title.

48 § 27-3421. Service provider responsibilities.

49 1. Within one year of the effective date of this title and annually
50 thereafter, service providers seeking reimbursement for covered services
51 provided shall register with the department with contact information for
52 a representative of the service provider, the address of the service
53 provider, and any other information determined by the department.

54 2. Service providers shall be responsible for the covered services for
55 the covered materials in this title.

1 3. Service providers shall submit invoices to the organization for
2 reimbursement of covered services rendered.

3 4. Service providers shall meet performance standards established in
4 this title.

5 5. Service providers shall ensure that covered materials are sent to
6 responsible end markets.

7 6. Service providers shall provide to an organization information on
8 amounts, covered material types, and volumes of covered materials by
9 covered service method.

10 7. Service providers that invoice customers shall display the service
11 provider's price, minus the reimbursement from the organization, when
12 invoicing customers. Such balance is what the service provider may
13 charge the customer.

14 § 27-3423. Statewide packaging reduction, reuse, and recycling needs
15 assessment.

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

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

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

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

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

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

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

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

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

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

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

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

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

51 (l) Landfill capacity.

52 3. In developing the needs assessment, the department shall consult
53 with the organization to ensure that the methodology used and data
54 collected by the department properly informs the organization's plan.

55 4. In developing the needs assessment, the department shall solicit
56 input from the public.

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

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

6 § 27-3425. Education and outreach program.

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

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

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

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

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

21 (e) How to prevent litter of packaging material in the process of
22 collection;

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

26 (g) The best practices and guidance relating to compliance with appli-
27 cable federal law or regulations established pursuant to paragraph (c)
28 of subdivision six of section 27-3429 of this title, paragraph (c) of
29 subdivision eleven of section 27-3433 of this title, and paragraph (c)
30 of subdivision twelve of section 27-3433 of this title; and

31 (h) Any other information required by the department.

32 2. The educational outreach program shall incorporate, at a minimum,
33 electronic, print, web-based and social media elements, including for
34 use by municipalities and service providers at their discretion, as well
35 as including a variety of outreach and education tools. Such educational
36 outreach programs shall ensure materials are widely accessible and
37 available in multiple languages.

38 3. The educational outreach program shall be coordinated with and
39 assist municipalities and service providers.

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

42 5. The educational outreach program shall include a plan to work with
43 producers to label or mark packaging material, in accordance with
44 reasonable labeling standards, with information to assist consumers in
45 responsibly managing and recycling covered materials.

46 6. The educational outreach program shall include a plan to work with
47 New York state agencies that require labeling, including the department
48 of agriculture and markets, to ensure producers can comply with this
49 title and any other relevant rules or regulations.

50 7. The organization shall consult with municipalities and service
51 providers on the development of educational materials and may coordinate
52 on outreach and communication.

53 8. The organization shall be authorized to provide producers and
54 retailers with educational materials related to the responsible
55 reduction, reuse, recycling, or disposal of discarded packaging materi-
56 al. The educational and informational materials provided to the retailer

1 under this subdivision may include, but need not be limited to, printed
2 materials, signage and templates of materials that can be reproduced by
3 retailers and provided thereby to consumers at the time of a product's
4 purchase, and advertising materials that promote and encourage consumers
5 to properly reuse, recycle, or dispose of packaging material.

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

8 10. The organization shall promote the opportunity for all service
9 providers to register with the department and to submit invoices for
10 reimbursement with the organization.

11 § 27-3427. Prohibition on certain toxic substances and materials.

12 1. Notwithstanding title two of article thirty-seven of this chapter
13 to the contrary, (a) Beginning four years after the promulgation of
14 rules and regulations pursuant to this title, no producer shall sell,
15 offer for sale, or distribute into the state any packaging containing
16 any of the following toxic substances or materials as an intentionally
17 added substance:

18 (i) Ortho-phthalates;

19 (ii) Bisphenols but excluding Tetramethyl bisphenol F (TMBPF);

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

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

24 (v) Benzophenone and its derivatives;

25 (vi) Formaldehyde;

26 (vii) Toluene;

27 (viii) Antimony and compounds;

28 (ix) Polyvinyl chloride, including polyvinylidene chloride; or

29 (x) Polystyrene but excluding EPS (expanded polystyrene).

30 (b) Beginning seven years after the promulgation of rules and regu-
31 lations pursuant to this title, no person or entity shall sell, offer
32 for sale, or distribute into the state any packaging containing any of
33 the toxic substances listed in paragraph (a) of this subdivision as
34 intentionally added substance or at or above a level established by the
35 department through regulation.

36 2. Any producer that violates this section, or any rules or regu-
37 lations promulgated pursuant to this section, shall be subject to a fine
38 for each violation not to exceed ten thousand dollars per violation. For
39 the purposes of this section, each product line that is sold, offered
40 for sale, or distributed to consumers, via retail commerce, in the
41 state, including through an internet transaction shall be considered a
42 separate violation.

43 § 27-3429. Non-reusable packaging reduction standards.

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

46 (a) Beginning three years after the program implementation date set
47 forth in subdivision three of section 27-3407 or January first of the
48 third year following the date on which a producer first registers with
49 an organization if a producer registers after the program implementation
50 date, such producer shall reduce the total amount of plastic packaging
51 material, including plastic primary packaging, and all other non-primary
52 packaging material, including secondary and tertiary packaging of all
53 materials by ten percent either on a company-wide basis or by unit
54 weight, for covered materials used to contain, protect, deliver, pres-
55 ent, or distribute the products they sell, offer for sale, or distribute
56 for sale in the state.

1 (b) Beginning five years after the program implementation date set
2 forth in subdivision three of section 27-3407 or January first of the
3 fifth year following the date on which a producer first registers with
4 an organization if a producer registers after the program implementation
5 date, such producer shall reduce the total amount of plastic packaging
6 material, including plastic primary packaging, and all other non-primary
7 packaging material, including secondary and tertiary packaging of all
8 materials by fifteen percent either on a company-wide basis or by unit
9 weight, for covered materials used to contain, protect, deliver, pres-
10 ent, or distribute the products they sell, offer for sale, or distribute
11 for sale in the state.

12 (c) Beginning eight years after the program implementation date set
13 forth in subdivision three of section 27-3407 or January first of the
14 eighth year following the date on which a producer first registers with
15 an organization if a producer registers after the program implementation
16 date, such producer shall reduce the total amount of plastic packaging
17 material, including plastic primary packaging, and all other non-primary
18 packaging material, including secondary and tertiary packaging of all
19 materials by twenty percent either on a company-wide basis or by unit
20 weight, for covered materials used to contain, protect, deliver, pres-
21 ent, or distribute the products they sell, offer for sale, or distribute
22 for sale in the state.

23 (d) Beginning ten years after the program implementation date set
24 forth in subdivision three of section 27-3407 or January first of the
25 tenth year following the date on which a producer first registers with
26 an organization if a producer registers after the program implementation
27 date, such producer shall reduce the total amount of plastic packaging
28 material, including plastic primary packaging, and all other non-primary
29 packaging material, including secondary and tertiary packaging of all
30 materials by twenty-five percent either on a company-wide basis or by
31 unit weight for covered packaging materials used to contain, protect,
32 deliver, present, or distribute the products they sell, offer for sale,
33 or distribute for sale in the state.

34 (e) Beginning twelve years after the program implementation date set
35 forth in subdivision three of section 27-3407 or January first of the
36 twelfth year following the date on which a producer first registers with
37 an organization if a producer registers after the program implementation
38 date, such producer shall reduce the total amount of plastic packaging
39 material, including plastic primary packaging, and all other non-primary
40 packaging material, including secondary and tertiary packaging of all
41 materials by thirty percent either on a company-wide basis or by unit
42 weight, for covered materials used to contain, protect, deliver, pres-
43 ent, or distribute the products they sell, offer for sale, or distribute
44 for sale in the state.

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

48 3. These reductions shall be achieved by eliminating single-use pack-
49 aging material, including secondary or tertiary packaging material,
50 elimination of packaging material components, reduction of packaging
51 material components, or by transitioning to reusable or refillable pack-
52 aging systems. Reductions may also be achieved by substituting plastic
53 packaging material with non-plastic packaging material. However, the
54 reductions required by this section shall not be achieved by substitut-
55 ing non-plastic materials with plastic materials or substituting recycl-
56 able materials with non-recyclable materials.

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

8 5. In the case of a producer that demonstrates in a manner satisfac-
9 tory to the department that, for the period beginning ten years prior to
10 the effective date of this title and ending on the date which is two
11 years after the effective date of this title, or in the case of a
12 producer registering with an organization two years after the effective
13 date of this title, for the period beginning ten years prior to the
14 producer registering with an organization, the producer reduced the
15 amount of packaging used to contain, protect, deliver, present, or
16 distribute the products the producer sells, offers for sale, or distrib-
17 utes for sale into the state, such producer may apply to the department
18 for a waiver from the packaging reduction requirements of this section
19 with respect to that percentage of its packaging, by unit weight, which
20 was reduced during such twelve-year period.

21 6. (a) A producer may apply to the department for a partial or
22 complete waiver from the reduction requirements of this section if bona
23 fide compliance is impossible due to federal law or substantially
24 impairs compliance with health, safety, or labeling requirements under
25 federal law, and any regulations promulgated thereunder, including, but
26 not limited to requirements relating to the contents of packaging mate-
27 rials that come into contact with food or drugs not otherwise exempted
28 under this title; standardized labeling of weight, quantity, ingredi-
29 ents, nutrition, material contents, product origin and manufacturer, or
30 health and safety warnings; or packaging design to prevent or limit
31 ingestion by minors.

32 (b) Such waiver shall be applied for at least every five years on a
33 form prescribed by the department. In such application the producer
34 shall provide sufficient information, as determined by the department in
35 consultation with the advisory council, to make a determination that
36 such waiver is necessary and proper and the extent to which such waiver
37 shall apply, including citation to the relevant federal law or regu-
38 lation, an explanation as to why compliance with this section is made
39 impossible or substantially impaired by federal law or regulations, and
40 evidence that the producer has otherwise taken all feasible actions to
41 achieve the reductions required by this section.

42 (c) The department, in consultation with the advisory council, organ-
43 izations, the department of health, and relevant federal health and
44 environmental subdivisions, shall, no later than two years after the
45 effective date of this section develop and maintain on its website,
46 incorporate into the education and outreach materials required pursuant
47 to section 27-3425 of this title, and update at least annually thereaft-
48 er, a list of best practices and guidance relating to the design or
49 manufacture of common packing materials subject to regulation under
50 federal law to (i) reduce, to the maximum extent practicable, the amount
51 of packaging material used; and (ii) maintain compliance with applicable
52 federal law or regulations.

53 7. Notwithstanding subdivision four of this section, the requirements
54 of this section shall not apply to reusable or refillable packaging or
55 containers contained within a reuse or refill system and their secondary
56 or tertiary packaging, however a producer switching to reusable or

1 refillable packaging or containers contained within a reuse or refill
2 system from other packaging shall qualify for the above standards.

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

5 § 27-3431. Recycled content standards.

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

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

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

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

18 3. Beginning five years after the promulgation of rules and regu-
19 lations pursuant to this title all plastic trash bags sold or offered
20 for sale in the state by a producer shall contain, on average, at least
21 twenty percent post-consumer recycled content.

22 4. The requirements of this section shall not apply to reusable or
23 refillable packaging or containers contained within a reuse or refill
24 system.

25 5. Beginning two years after plan implementation begins for the
26 initial organization, the department is authorized, in consultation with
27 the advisory council and the organization, to:

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

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

34 § 27-3433. Recyclability criteria, reusable or refillable packaging
35 requirements, and packaging recycling requirements.

36 1. Within eighteen months of the effective date of this title, the
37 department shall approve a list of packaging materials that are deter-
38 mined to be recyclable statewide through a system where materials that
39 are commingled into a recyclables stream. The department shall establish
40 standards for collection services sufficient to meet the needs of
41 consumers in an ongoing and convenient manner. The department may grant
42 a municipality or service provider an exception or waiver to the
43 requirements of this subdivision if they demonstrate to the reasonable
44 satisfaction of the department that it is not able to provide services
45 or provide the convenience standards for the materials on the list
46 developed by the department.

47 2. Within eighteen months of the effective date of this title, the
48 department shall approve a list of packaging materials determined to be
49 recyclable and collected statewide through systems other than the system
50 required for packaging materials on the list established by the depart-
51 ment according to subdivision one of this section.

52 3. The department shall consult with the advisory council, the organ-
53 ization, municipalities, service providers, and any other interested
54 parties determined by the department to develop or amend the minimum
55 recyclables list and shall review any requests by interested parties for

1 additional or removal of packaging materials from the minimum recycling
2 lists.

3 4. In developing the minimum recyclable lists, the department may
4 consider the following criteria:

5 (a) current availability of recycling collection services;

6 (b) recycling process and infrastructure;

7 (c) capacity and technology for sorting packaging materials;

8 (d) whether a packaging material is of a type and form that is regu-
9 larly sorted and aggregated into defined streams for recycling processes
10 or is included in a relevant national recycled material association;

11 (e) availability of responsible end markets for packaged materials;

12 (f) presence and amount of processing residuals, contamination, and
13 toxic substances;

14 (g) quantity of packaging materials estimated to be available and
15 recoverable;

16 (h) availability of domestic post-consumer recycled content;

17 (i) projected future conditions for the criteria above; and

18 (j) any other criteria or factors as determined by the department.

19 5. The department may amend a list completed under this section annu-
20 ally and shall provide amended lists to an organization within a reason-
21 able amount of time after adopting an amendment. The organization shall
22 provide amended lists to service providers and producers as soon as
23 possible after receiving the amendment and work to incorporate changes
24 in relevant reimbursement rates within a year.

25 6. The categories used by the organization for producer reporting and
26 fee payments shall align with the lists developed by the department.

27 7. Beginning January first, two thousand thirty-two, packaging materi-
28 als that are not reusable or refillable packaging or containers capable
29 of being managed through a reuse and refill system that meet the
30 requirements of this title used by a producer shall meet the following
31 recyclability criteria:

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

34 (b) have responsible end markets;

35 (c) not contain the following:

36 (i) opaque or pigmented polyethylene terephthalate;

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

38 (iii) polyethylene terephthalate glycol in rigid packaging;

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

42 (v) DoPS - polystyrene, excluding EPS (expanded polystyrene);

43 (d) meet the post-consumer content requirements of this title; and

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

45 8. Each individual producer shall be required to meet the following
46 reuse standards, producer packaging changes to achieve these standards
47 may also fulfill a producer's requirements under section 27-3429 of this
48 title:

49 (a) Beginning January first, two thousand thirty-two, a minimum of
50 five percent of packaging material shall be reuseable or refillable
51 packaging or containers;

52 (b) Beginning January first, two thousand forty, a minimum of ten
53 percent of packaging material shall be reusable or refillable packaging
54 or containers; and

1 (c) Beginning January first, two thousand fifty-five, a minimum of
2 twenty percent of packaging material shall be reusable or refillable
3 packaging or containers.

4 9. An organization shall be required to meet the following recycling
5 rate standards:

6 (a) With respect to covered materials that are non-plastic packaging:

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

10 (ii) Beginning January first, two thousand forty, a minimum of fifty
11 percent of packaging material reported by an organization as supplied
12 into the state shall be reused or recycled; and

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

16 (b) With respect to covered materials that are plastic packaging:

17 (i) Beginning January first, two thousand thirty-two, a minimum of
18 twenty-five percent of plastic packaging material reported by an organ-
19 ization as supplied into the state shall be reused or recycled;

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

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

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

33 11. (a) A producer may apply to the department for a partial or
34 complete waiver from the recyclability requirements of this section if
35 bona fide compliance is impossible due to federal law or substantially
36 impairs compliance with health, safety, or labeling requirements under
37 federal law, and any regulations promulgated thereunder, including, but
38 not limited to requirements relating to the contents of packaging mate-
39 rials that come into contact with food or drugs not otherwise exempted
40 under this title; standardized labeling of weight, quantity, ingredi-
41 ents, nutrition, material contents, product origin and manufacturer, or
42 health and safety warnings; or packaging design to prevent or limit
43 ingestion by minors.

44 (b) Such waiver shall be applied for at least every five years on a
45 form prescribed by the department. In such application the producer
46 shall provide sufficient information, as determined by the department in
47 consultation with the advisory council, to make a determination that
48 such waiver is necessary and proper and the extent to which such waiver
49 shall apply, including citation to the relevant federal law or regu-
50 lation, an explanation as to why compliance with this section is made
51 impossible or substantially impaired by federal law or regulations and
52 evidence that the producer has otherwise taken all feasible actions to
53 achieve the reductions required by this section.

54 (c) The department, in consultation with the advisory council, organ-
55 izations, the department of health, and relevant federal health and
56 environmental subdivisions, shall, no later than two years after the

1 effective date of this section develop and maintain on its website,
2 incorporate into the education and outreach materials required pursuant
3 to section 27-3425 of this title, and update at least annually thereaft-
4 er, a list of best practices and guidance relating to the design or
5 manufacture of common packing materials subject to regulation under
6 federal law to (i) expand the recyclability of packaging material used;
7 and (ii) maintain compliance with applicable federal law or regulations.

8 12. (a) A producer may apply to the department for a partial or
9 complete waiver from the reuse standards of this section if bona fide
10 compliance is impossible due to federal law or substantially impairs
11 compliance with health, safety, or labeling requirements under federal
12 law, and any regulations promulgated thereunder, including, but not
13 limited to requirements relating to the contents of packaging materials
14 that come into contact with food or drugs not otherwise exempted under
15 this title; standardized labeling of weight, quantity, ingredients,
16 nutrition, material contents, product origin and manufacturer, or health
17 and safety warnings; or packaging design to prevent or limit ingestion
18 by minors.

19 (b) Such waiver shall be applied for at least every five years on a
20 form prescribed by the department. In such application the producer
21 shall provide sufficient information, as determined by the department in
22 consultation with the advisory council, to make a determination that
23 such waiver is necessary and proper and the extent to which such waiver
24 shall apply, including citation to the relevant federal law or regu-
25 lation, an explanation as to why compliance with this section is made
26 impossible or substantially impaired by federal law or regulations and
27 evidence that the producer has otherwise taken all feasible actions to
28 achieve the reductions required by this section.

29 (c) The department, in consultation with the advisory council, organ-
30 izations, the department of health, and relevant federal health and
31 environmental subdivisions, shall, no later than two years after the
32 effective date of this section develop and maintain on its website,
33 incorporate into the education and outreach materials required pursuant
34 to section 27-3425 of this title, and update at least annually thereaft-
35 er, a list of best practices and guidance relating to the design or
36 manufacture of common packing materials subject to regulation under
37 federal law to (i) expand the reuse of packaging material used; and (ii)
38 maintain compliance with applicable federal law or regulations.

39 § 27-3435. Penalties and enforcement.

40 1. Failure to comply with the requirements of this title shall subject
41 the organization or an individual producer to penalties for violations.
42 The department or attorney general, may conduct investigations, includ-
43 ing inspecting operations, facilities, and records of producers and
44 organizations, and performing audits of producers and organizations, to
45 determine whether such producers and organizations are complying with
46 the requirements of this title.

47 2. The department or the attorney general, shall notify an organiza-
48 tion or producer of any conduct or practice that does not comply with
49 the requirements of this title and of any inconsistencies identified in
50 an audit.

51 3. The department and the attorney general, may issue a notice of
52 violation to, and impose an administrative civil penalty not to exceed
53 one thousand dollars per day per violation on any entity not in compli-
54 ance with this title or any of the regulations the department adopts to
55 implement this title. For the purposes of this section, each product
56 line that is sold, offered for sale, or distributed to consumers via

1 retail commerce in the state, including through an internet transaction,
2 shall be considered a separate violation.

3 4. Civil penalties under this section shall be assessed by the depart-
4 ment after an opportunity to be heard pursuant to the provisions of
5 section 71-1709 of this chapter, or by the court in any action or
6 proceeding pursuant to section 71-2727 of this chapter, and in addition
7 thereto, such person or entity may by similar process be enjoined from
8 continuing such violation and any permit, registration or other approval
9 issued by the department may be revoked or suspended or a pending
10 renewal denied.

11 § 27-3437. Rules and regulations.

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

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

19 § 27-3439. State preemption.

20 Jurisdiction in all matters pertaining to costs and funding mechanisms
21 of packaging reduction and recycling organizations relating to the
22 recovery of packaging materials shall, by this title, be vested exclu-
23 sively in the state; provided, however, that nothing in this title shall
24 preclude any person from coordinating, for recycling or reuse, the
25 collection of packaging materials and products.

26 § 27-3441. Other assistance programs.

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

30 § 27-3443. Antitrust protections.

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

38 § 27-3445. Severability.

39 The provisions of this title shall be severable and if any phrase,
40 clause, sentence or provision of this title or the applicability thereof
41 to any person or circumstance shall be held invalid, the remainder of
42 this title and the application thereof shall not be affected thereby.

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

45 § 37-0202. Applicability.

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

50 § 4. This act shall take effect immediately.