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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:

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

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

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.
27-3403. Selection of packaging reduction and recycling organizations.
27-3405. Responsibilities of packaging reduction and recycling organizations.
27-3407. Packaging reduction and recycling organization plan.
27-3409. Packaging reduction and recycling plan approval.
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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27-3413. Funding mechanism.
27-3415. Collection and convenience.
27-3417. Producer responsibilities.
27-3419. Department responsibilities.
27-3421. Service provider responsibilities.
27-3423. Statewide packaging reduction, reuse, and recycling needs assessment.
27-3425. Education and outreach program.
27-3427. Prohibition on certain toxic substances and materials.
27-3429. Non-reusable packaging reduction standards.
27-3431. Recycled content standards.
27-3433. Recyclability criteria, reusable or refillable packaging requirements, and packaging recycling requirements
27-3435. Penalties and enforcement.
27-3437. Rules and regulations.
27-3439. State preemption.
27-3441. Other assistance programs.
27-3443. Antitrust protections.
27-3445. Severability.

§ 27-3401. Definitions.

As used in this title:

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

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

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

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

5. "Contamination" means:

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

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

6. "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession, directly or indirectly, of the power to direct or cause the direction of (a) the management and policies of a person, (b) the operation of a person, or (c) substantially all of the assets of a person, whether through the ownership of voting securities, by contract, or otherwise.

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

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

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

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

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

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

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

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

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

13. "Intentionally added substance" means a substance or material that serves an intended function or technical effect in the product or product component, including as an intentional breakdown product of an added chemical that also has a functional or technical effect in the product or product component.

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

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

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

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

(b) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act, 21 U.S.C. 151-159;

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

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

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

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

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

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

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

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

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

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

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

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

22. (a) "Producer" means the following person responsible for compliance with requirements under this title for a covered material introduced:

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

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

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

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

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

use in a commercial enterprise that sells, offers for sale, or distributes the item in this state; or

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

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

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

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

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

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

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

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

(b) "Producer" shall not include:

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

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

(iii) a de minimis producer.

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

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

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

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

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

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

(b) complies with all applicable federal, state, and local statutes, rules, ordinances, and other laws governing environmental, health, safety, and financial responsibility;

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

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

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

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

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

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

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

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

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

34. "Tertiary packaging" means packaging intended to protect the product during transport.

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

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

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

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

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

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

(a) consistency and coordination between all organizations;

(b) responsibilities carried out are consistent and seamless;

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

(d) that packaging material requirements are not reported as generated, supplied or managed by more than one organization.

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

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

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

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

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

(c) Calculate reimbursement rates through the objective formula approved by the department as contemplated by paragraph (e) of subdivision four of section 27-3407 of this title for the costs associated with this title and the collection, transportation, sorting, handling, storage, and recycling, disposal, or other processing of packaging materials, including associated administrative costs;

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

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

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

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

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

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

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

(a) Contact information for the organization;

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

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

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

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

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

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

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

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

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

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

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

(m) Independently audited financial statements; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) in relation to funding the program:

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

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

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

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

(f) an objective formula establishing a reimbursement rate, in consultation with service providers which covers obligations identified in the needs assessment and the minimum recyclables list reflects the reasonable and necessary costs of providing covered services, and takes into account variable regional costs along with responsible end markets for participating service providers;

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

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

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

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

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

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

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

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

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

(n) a description of how a municipality will participate, on a voluntary basis, with collection and how existing municipal recycling processing and collection infrastructure will be used;

(o) a description of how the organization plans to meet the convenience requirements set forth in this title;

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

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

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

(s) a description of how: (i) the organization will strategically invest in existing and future reuse and recycling infrastructure and the expansion or strengthening for and use of covered materials by responsible end markets in the state or region in consultation with the department and in a manner not inconsistent with the needs assessment, including, but not limited to, installing or upgrading equipment to improve the sorting of covered materials or mitigating the impacts of materials on other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities; and (ii) how the process to offer and select opportunities will be conducted in an open, competitive, and fair manner;

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

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

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

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

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

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

(i) upon the expiration of an approved plan;

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

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

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

(z) a description of how the program shall reimburse service providers, including but not limited to a description of how the program will establish:

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

(ii) clear and reasonable timelines for reimbursement; and

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

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

(i) requirements that service providers must accept all covered materials on the list established by the department; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a municipal association or municipal program, including an additional municipal representative from cities with a population of one million or more residents;

(b) a statewide environmental organization;

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

(d) an environmental justice organization;

(e) a statewide waste disposal or recycling association;

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

(g) a recycling collection provider;

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

(i) a consumer advocate;

(j) a retailer;

(k) a public health specialist;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 27-3413. Funding mechanism.

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

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

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

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

(i) Paper;

(ii) Cardboard;

(iii) Corrugated cardboard;

(iv) Wood;
(v) Glass;
(vi) Polyethylene terephthalate (PET);
(vii) High density polyethylene (HDPE);
(viii) Expanded polystyrene (EPS);
(ix) Polystyrene;
(x) Bio-plastics;
(xi) Generic plastics;
(xii) Plastic film;
(xiii) Other plastics;
(xiv) Ferrous metals;
(xv) Aluminum;
(xvi) Tinplate;
(xvii) Generic metals; and
(xviii) Mixed materials including laminates and packaging containing more than one of the above materials;

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

(c) Eco-modulation, including as described in subdivision two of this section, beginning two years after producers pay their first fees.

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

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

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

(c) Organizations' administration of this title;

(d) The cost associated with the development of the needs assessment, as required in section 27-3423 of this title;

(e) The costs associated with the advisory council;

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

(g) The cost of reimbursement for, or providing, recycling and disposal services, including the collection cost, processing cost for each recyclable material, cost of handling, disposal, and transportation of non-recyclable material types collected as part of collection, transportation cost of recycling for each material type; and

(h) Any other factors determined by the department.

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

(a) costs to provide curbside collection or another form of service that is, at minimum, as convenient as curbside collection or as convenient as the previous collection plan in the particular jurisdiction should collection not be provided;

(b) costs to process packaging materials for acceptance by responsible end markets;

(c) whether the packaging material would typically be readily-recyclable; and

(d) the commodity value of a packaging material, as defined by published indices, which shall include allowances for commodities that have excessive residual contamination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 27-3415. Collection and convenience.

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

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

3. Organizations may rely on a range of means to collect various categories of covered materials so long as collection options include curbside collection services provided by municipal programs, municipal contracted programs, solid waste collection companies, or other approved entities as identified by the department if at a minimum:

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

(b) the provider of the collection service agrees to the organization's service provider costs arrangement; and

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

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

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

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

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

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

§ 27-3417. Producer responsibilities.

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

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

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

(b) Any other information required by the department.

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

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

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

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

5. Producers are responsible for meeting the toxic substances, packaging material reduction, post-consumer content, and recyclability standards under this title.

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

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

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

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

(d) The toxic substance requirements of this title;

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

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

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

§ 27-3419. Department responsibilities.

1. Within one year of the effective date of this title, the department shall register service providers seeking reimbursement for covered services provided within this title and publicly post the list of registered service providers.

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

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

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

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

§ 27-3421. Service provider responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Landfill capacity.

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

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

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

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

§ 27-3425. Education and outreach program.

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

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

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

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

(d) The location and availability of curbside collection and additional drop-off collection opportunities for packaging material, including deposit and take-back programs;

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

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

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

(h) Any other information required by the department.

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

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

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

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

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

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

8. The organization shall be authorized to provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging material. The educational and informational materials provided to the retailer

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

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

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

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

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

(i) Ortho-phthalates;

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

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

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

(v) Benzophenone and its derivatives;

(vi) Formaldehyde;

(vii) Toluene;

(viii) Antimony and compounds;

(ix) Polyvinyl chloride, including polyvinylidene chloride; or

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

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

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

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

1. Each individual producer is required to meet the following packaging reduction requirements:

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

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

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

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

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

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

3. These reductions shall be achieved by eliminating single-use packaging material, including secondary or tertiary packaging material, elimination of packaging material components, reduction of packaging material components, or by transitioning to reusable or refillable packaging systems. Reductions may also be achieved by substituting plastic packaging material with non-plastic packaging material. However, the reductions required by this section shall not be achieved by substituting non-plastic materials with plastic materials or substituting recyclable materials with non-recyclable materials.

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

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

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

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

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

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

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

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

§ 27-3431. Recycled content standards.

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

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

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

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

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

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

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

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

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

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

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

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

3. The department shall consult with the advisory council, the organization, municipalities, service providers, and any other interested parties determined by the department to develop or amend the minimum recyclables list and shall review any requests by interested parties for

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

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

(a) current availability of recycling collection services;

(b) recycling process and infrastructure;

(c) capacity and technology for sorting packaging materials;

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

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

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

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

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

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

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

5. The department may amend a list completed under this section annually and shall provide amended lists to an organization within a reasonable amount of time after adopting an amendment. The organization shall provide amended lists to service providers and producers as soon as possible after receiving the amendment and work to incorporate changes in relevant reimbursement rates within a year.

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

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

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

(b) have responsible end markets;

(c) not contain the following:

(i) opaque or pigmented polyethylene terephthalate;

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

(iii) polyethylene terephthalate glycol in rigid packaging;

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

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

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

(e) any other criteria determined by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The department, in consultation with the advisory council, organizations, the department of health, and relevant federal health and environmental subdivisions, shall, no later than two years after the

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

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

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

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

§ 27-3435. Penalties and enforcement.

1. Failure to comply with the requirements of this title shall subject the organization or an individual producer to penalties for violations. The department or attorney general, may conduct investigations, including inspecting operations, facilities, and records of producers and organizations, and performing audits of producers and organizations, to determine whether such producers and organizations are complying with the requirements of this title.

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

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

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

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

§ 27-3437. Rules and regulations.

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

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

§ 27-3439. State preemption.

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

§ 27-3441. Other assistance programs.

Nothing in this title shall impact any producer eligibility for any state or local incentive or assistance program to which they are otherwise eligible.

§ 27-3443. Antitrust protections.

A producer shall not be liable for any claim of a violation of antitrust, restraint of trade, or unfair trade practice arising from conduct undertaken in order to comply with this title; provided, however, this section shall not apply to any agreement establishing or affecting the price of packaging material, or the output or production of any agreement restricting the geographic area or customers to which packaging material will be sold.

§ 27-3445. Severability.

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

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

§ 37-0202. Applicability.

This article shall only have effect to the extent that the prohibitions in this title are not otherwise substantially given effect or in conflict with the provisions of title thirty-four of article twenty-seven of this chapter.

§ 4. This act shall take effect immediately.