

STATE OF NEW YORK

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IN ASSEMBLY

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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, EPSTEIN, HEVESI, ALVAREZ, FORREST, OTIS, GIBBS, STIRPE, RIVERA, CRUZ, ANDERSON, RAMOS, WEPRIN, ZINERMAN, MAMDANI, MITAYNES, BICHOTTE HERMELYN, LEE, BARRETT, JACOBSON, STERN, McMAHON, KIM, TAYLOR, CLARK, SAYEGH, BENEDETTO, JACKSON, MEEKS, CONRAD, DAVILA, WILLIAMS, BORES, K. BROWN, BRONSON, LUCAS, DILAN, DeSTEFANO -- read once and referred to the Committee on Environmental Conservation

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

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

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

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

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.

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

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

27-3407. Packaging reduction and recycling organization plan.

27-3409. Packaging reduction and recycling plan approval.

27-3411. Packaging reduction and recycling advisory council.

27-3413. Funding mechanism.

27-3415. Collection and convenience.

27-3417. Producer responsibilities.

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

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27-3419. Department responsibilities.
27-3421. Statewide packaging reduction, reuse, and recycling needs assessment.
27-3423. Education and outreach program.
27-3425. Prohibition on certain toxic substances and materials.
27-3427. Non-reusable packaging reduction standards.
27-3429. Recycled content standards.
27-3431. Recyclability criteria and packaging recycling requirements.
27-3433. Establishment of the office of recycling inspector general.
27-3435. Penalties and enforcement.
27-3437. Rules and regulations.
27-3439. State preemption.
27-3441. Other assistance programs.
27-3443. Antitrust protections.
27-3445. Severability.

§ 27-3401. Definitions.

As used in this title:

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

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

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

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

5. "Contamination" means:

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

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

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

7. "Discarded", "discards", "generated" or "generation" means 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.

8. "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.

9. "Eco-modulation" means structuring program fees in a way to provide producers with financial incentives to reduce waste at the source,

1 increase recyclability of packaging materials, promote reusable packag-
2 ing products, including those that are contained within a reuse and
3 refill system, discourage and decrease contamination, disincentivize
4 designs or practices that increase the costs and adverse environmental
5 impacts of managing the packaging materials, and encourage designs and
6 processes that improve and facilitate development of infrastructure and
7 systems for source reduction, reuse, recycling, and composting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 15. "Packaging reduction and recycling organization" or "organization"
6 means a not-for-profit organization registered pursuant to 26 U.S.C.
7 501(c)(3) designated by the department for the initial organization, or
8 by a group of producers for subsequent organizations, to act as an agent
9 on behalf of each producer to develop and implement a packaging
10 reduction and recycling plan pursuant to section 27-3407 of this title
11 and comply with the organization's responsibilities under section
12 27-3405 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (c) For any single use plastic product:

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

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

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

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

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

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

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

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

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

39 24. "Recycling" means to separate, dismantle or process the materials,
40 components or commodities contained in discards for the purpose of
41 preparing the materials, components, or commodities for use or reuse in
42 new products or components. "Recycling" does not include: (a) energy
43 recovery or energy generation by any means, including but not limited
44 to, combustion, incineration, pyrolysis, gasification, solvolysis, or
45 waste-to-fuel; (b) any chemical conversion process; or (c) landfill
46 disposal.

47 25. "Recycling rate" means the percentage of any given material or
48 category of material that is ultimately recycled. The recycling rate for
49 any packaging material shall be calculated as the total weight of pack-
50 aging material that is recycled in a given year divided by the total
51 weight of packaging material generated in that year.

52 26. "Reuse" means the return of packaging material back into the
53 economic stream for use in the same kind of application intended for the
54 original packaging, without effectuating a change in the original compo-
55 sition of the package, the identity of the product, or the components
56 thereof.

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

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

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

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

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

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

26 (b) A chemical or chemical class that is persistent or bioaccumula-
27 tive.

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

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

33 (e) A chemical or chemical class that may have adverse air quality
34 impacts, adverse ecological impacts, adverse soil quality impacts, or
35 adverse water quality impacts.

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

38 32. "Unit weight" means the weight of packaging material per unit of
39 product sold.

40 § 27-3403. Selection of packaging reduction and recycling organizations.

41 1. Until the date which is ten years after the effective date of this
42 title, there shall be only one packaging reduction organization and all
43 producers shall be required to register with such packaging reduction
44 organization.

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

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

55 4. Regulations promulgated pursuant to this title may provide for
56 additional organizations beginning ten years after the effective date of

1 this title if, after ten years and the recommendation by the advisory
2 council pursuant to subdivision ten of section 27-3411 of this title,
3 the department determines that it would be beneficial for there to be
4 additional organizations implementing the program, such regulations
5 shall ensure:

6 (a) consistency and coordination between all organizations;
7 (b) responsibilities carried out are consistent and seamless;
8 (c) local governments and service providers are reimbursed for recycl-
9 ing services as required under this title; and

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

12 § 27-3405. Responsibilities of packaging reduction and recycling organ-
13 izations.

14 1. Producers shall register with a packaging reduction organization to
15 meet the responsibilities of the program pursuant to the provisions of
16 this section, and each organization shall be responsible for implementa-
17 tion of the program on behalf of producers registered with such organ-
18 ization.

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

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

25 (b) Collect and compile data from producers as required by section
26 27-3417 of this title;

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

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

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

40 (f) Distribute funds to reimburse local governments and private compa-
41 nies for the costs associated with this title, including the implementa-
42 tion of reduction, refill, and reuse programs, and the collection,
43 transportation and recycling, disposal or other processing of packaging
44 materials;

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

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

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

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

3 (a) Contact information for the organization;

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

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

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

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

22 (f) A calculation of the recycling rate of each material category
23 which is derived by dividing the amount of each material category recy-
24 cled, as reported in paragraph (e) of this subdivision by the amount of
25 each material category generated, as reported in paragraph (d) of this
26 subdivision;

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

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

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

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

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

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

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

56 (n) Audited financial statements;

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

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

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

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

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

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

24 § 27-3407. Packaging reduction and recycling organization plan.

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

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

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

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

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

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

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

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

4 (e) in relation to funding the program:

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

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

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

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

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

23 (g) a description of the process for participating local governments
24 or private sector service providers to recoup reasonable costs as estab-
25 lished by the objective formula, from the producer or organization,
26 including, as applicable, any administrative, sorting, collection,
27 transportation, public education, or processing costs, if the organiza-
28 tion uses existing services through a local government or obtains such
29 services from a private sector service provider;

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

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

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

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

42 (j) if the local government does not elect to provide service, a
43 description of the process used for contracting with a private sector
44 entity to provide such services and the recoupment of reasonable costs,
45 including procedures to ensure that such private sector entity is not
46 compensated for such services by both the organization and the consumer
47 for the same service, provided, however, that the packaging recycling
48 and reduction organization and any such private sector entity has
49 entered into a labor peace agreement with a bona-fide labor organization
50 that is actively engaged in representing or attempting to represent its
51 employees and its contractors' employees;

52 (k) a description of how the organization will work with existing
53 waste haulers, material recovery facilities, recyclers, and local
54 governments to operate or expand current collection programs to address
55 material collection methods, improve efficiency and yield of processing

1 materials from separate collection streams, and increase packaging
2 reduction and reuse;

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

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

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

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

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

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

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

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

35 (t) a process to address concerns and questions from customers and
36 residents;

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

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

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

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

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

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

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

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

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

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

14 § 27-3409. Packaging reduction and recycling plan approval.

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

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

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

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

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

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

39 § 27-3411. Packaging reduction and recycling advisory council.

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

47 2. The advisory council shall convene for the first time no later than
48 one year after the effective date of this title. The advisory council
49 shall be composed of seventeen members. Nine shall be appointed by the
50 commissioner, three shall be appointed by the speaker of the assembly,
51 one shall be appointed by the minority leader of the assembly, three
52 shall be appointed by the temporary president of the senate and one
53 shall be appointed by the minority leader of the senate. The advisory
54 council shall include at least one member from each of the following:

1 (a) a local government association or local government program,
2 including an additional local government representative from cities with
3 a population of one million or more residents;
4 (b) a statewide environmental organization;
5 (c) a representative of a disadvantaged community affected by solid
6 waste infrastructure;
7 (d) an environmental justice organization;
8 (e) a statewide waste disposal or recycling association;
9 (f) a materials recovery facility located within the state;
10 (g) a recycling collection provider;
11 (h) a manufacturer of packaging materials utilizing post-consumer
12 recycled content;
13 (i) a consumer advocate;
14 (j) a retailer;
15 (k) a public health specialist;
16 (l) a producer and an organization established under this title as
17 non-voting members;
18 (m) a representative of a labor organization representing waste
19 collection employees; and
20 (n) a representative of a labor organization representing municipal
21 solid waste and recycling processing employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 27-3413. Funding mechanism.

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

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

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

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

36 (i) Paper;

37 (ii) Cardboard;

38 (iii) Corrugated cardboard;

39 (iv) Wood;

40 (v) Glass;

41 (vi) Polyethylene terephthalate (PET);

42 (vii) High density polyethylene (HDPE);

43 (viii) Expanded polystyrene (EPS);

44 (ix) Polystyrene;

45 (x) Bio-plastics;

46 (xi) Generic plastics;

47 (xii) Plastic film;

48 (xiii) Other plastics;

49 (xiv) Ferrous metals;

50 (xv) Aluminum;

51 (xvi) Tinplate;

52 (xvii) Generic metals; and

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

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

1 (c) Eco-modulation, including as described in subdivision two of this
2 section.

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

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

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

10 (c) Organizations' administration of this title;

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

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

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

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

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

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

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

31 (b) costs to process packaging materials for acceptance by secondary
32 material markets;

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

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

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

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

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

1 8. The fees shall be structured to provide producers with financial
2 incentives to encourage:

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

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

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

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

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

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

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

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

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

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

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

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

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

48 § 27-3415. Collection and convenience.

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

1 services, and that such services are continued through such producer or
2 organization's plan pursuant to section 27-3405 of this title.

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

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

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

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

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

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

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

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

51 6. Program funds shall be used for investment in collection systems,
52 transportation systems, reuse systems, washing systems, redistribution
53 systems, technology for tracking and data collection, capital expendi-
54 tures on new and emerging technology that is focused on reusable and
55 refillable packaging, as well as equipment, and facilities, and other

1 projects determined by the department to facilitate the goals and
2 objectives of this title.

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

6 § 27-3417. Producer responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

46 (d) The toxic substance reduction requirements of this title;

47 (e) Their obligations to pay fees to the organization pursuant to
48 section 27-3413 of this title and subdivision three of this section; and
49 (f) Any reimbursement obligations they have to local governments or
50 third party service providers in connection with this title.

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

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

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

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

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

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

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

24 § 27-3419. Department responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Landfill capacity.

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

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

§ 27-3423. Education and outreach program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (i) Ortho-phthalates;

49 (ii) Bisphenols;

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

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

54 (v) Benzophenone and its derivatives;

55 (vi) Halogenated flame retardants;

56 (vii) Perchlorate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 6. A producer may apply to the department for a waiver from the
50 reduction requirements of this section if compliance is impossible due
51 to federal law or otherwise conflicts with federal law. Such waiver
52 must be applied for annually. In such application the producer shall
53 provide the department and the advisory council with sufficient informa-
54 tion, in the determination of the department in consultation with the
55 advisory council, to make a determination on such application, including

1 proof that the producer has taken all feasible actions to achieve the
2 reductions required by this section.

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

5 § 27-3429. Recycled content standards.

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

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

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

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

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

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

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

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

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

32 § 27-3431. Recyclability criteria and packaging recycling requirements.

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

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

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

40 (c) not contain the following:

41 (i) opaque or pigmented polyethylene terephthalate;

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

43 (iii) polyethylene terephthalate glycol in rigid packaging;

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

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

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

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

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

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

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

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

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

9 (b) With respect to plastic packaging:

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

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

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

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

29 4. A producer may apply to the department for a waiver from the recycling
30 rate requirements of this section if compliance is impossible due
31 to federal law or otherwise conflicts with federal law. Such waiver
32 shall be applied for annually. In such application the producer shall
33 provide the department and the advisory council with sufficient information,
34 in the determination of the department in consultation with the
35 advisory council, to make a determination on such application, including
36 proof that the producer has taken all feasible actions to achieve the
37 reductions required by this section.

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

40 § 27-3433. Establishment of the office of recycling inspector general.

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

47 2. The recycling inspector general shall have the authority to investigate
48 the compliance of producers and the organization with all
49 provisions of this title and to bring enforcement actions for violations
50 of this title pursuant to the provisions of section 27-3435 of this
51 title. A violation by the organization as the result of actions by one
52 or more producers shall be enforceable by the recycling inspector general
53 as violations against such producers.

54 § 27-3435. Penalties and enforcement.

55 1. Failure to comply with the requirements of this title shall subject
56 the organization or an individual producer to penalties for violations.

1 The department, recycling inspector general, or attorney general, may
2 conduct investigations, including inspecting operations, facilities, and
3 records of producers and organizations, and performing audits of produc-
4 ers and organizations, to determine whether such producers and organiza-
5 tions are complying with the requirements of this title.

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

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

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

27 § 27-3437. Rules and regulations.

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

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

35 § 27-3439. State preemption.

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

45 § 27-3441. Other assistance programs.

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

49 § 27-3443. Antitrust protections.

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

1 § 27-3445. Severability.

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

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

8 § 37-0202. Applicability.

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

13 § 4. This act shall take effect immediately.