SYNOPSIS
Establishes recycled content requirements for plastic containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning the sale of certain containers and packaging products in the State and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in sections 1 through 14 of this act:
   “Beverage” means milk, alcoholic beverages, including beer or other malt beverages, liquor, wine, vermouth and sparkling wine, and nonalcoholic beverages, including fruit juice, mineral water and soda water and similar nonalcoholic carbonated and noncarbonated drinks intended for human consumption.
   “Department” means the Department of Environmental Protection.
   “Food” means articles used for food or drink for humans and articles used for components of any such article.
   “Manufacturer” means a person that: (1) produces or generates a rigid plastic container, plastic beverage container, glass container, paper carryout bag, reusable carryout bag made of plastic film, or plastic trash bag that is sold or offered for sale in the State; or (2) produces or generates a product that is sold or offered for sale in the State and packaged in a rigid plastic container, plastic beverage container, or glass container.
   “Package” means a container used to protect, store, contain, transport, display, or sell a product.
   “Paper carryout bag” means a bag made of paper that is sold or provided by a store or other retail establishment to a customer for the purpose of wrapping, containing, or carrying out food, beverages, or other retail goods.
   “Person” means an individual, corporation, company, association, society, firm, partnership, or joint stock company.
   “Plastic” means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms, which retain their defined shapes during their life cycle and after disposal.
   “Plastic beverage container” means an individual bottle or can composed primarily of plastic that is hermetically sealed or made airtight with a metal or plastic cap, and that contains a beverage.
   “Plastic film” means any thin, nonwoven, flexible plastic.
   “Plastic trash bag” means a bag that is made of plastic, is at least 0.70 mils thick, and is designed and manufactured for use as a container to hold, store, or transport materials to be discarded, composted, or recycled, and includes, but is not limited to, a

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
garbage bag, composting bag, lawn or leaf bag, can-liner bag, kitchen bag, compactor bag, or recycling bag.

“Recycled content” means the portion of a package’s total weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material in the package as a percentage of the total weight of the package.

“Recycled material” means a material or product that has completed its intended end use and product life cycle, and which has been separated from the solid waste stream for the purposes of collection and recycling; except that “recycled material” shall not include secondary waste material or materials and by-products generated from, and commonly used within, an original manufacturing and fabrication process.

“Reusable carryout bag” means a bag that is sold or provided by a store to a customer for the purpose of transporting groceries, prepared foods, or retail goods, and that is designed and manufactured for multiple reuse.

“Rigid plastic container” means a package composed primarily of plastic that has a relatively inflexible finite shape or form, has a capacity of between eight ounces and five gallons, and is capable of maintaining its shape while empty or while holding other products.

2. a. Except as provided in subsection c. of this section, beginning January 1, 2022, each rigid plastic container sold, offered for sale, or used in association with the sale or offer for sale of a product in the State by a manufacturer shall:
(1) contain at least 35 percent recycled content; or
(2) be made of a plastic that is being recycled in the State at a rate of 35 percent.

b. A rigid plastic container shall be deemed to meet the requirements of paragraph (2) of subsection a. of this section if:
(1) rigid plastic containers, in the aggregate, are being recycled in the State at a rate of 35 percent;
(2) the rigid plastic container is a specific resin type of rigid plastic container and that resin type of rigid plastic container is being recycled in the State at a rate of 35 percent; or
(3) the rigid plastic container is a particular product-associated package and that type of product-associated package is being recycled in the State at a rate of 35 percent.

c. A rigid plastic container shall be exempt from the requirements of subsection a. of this section if it:
(1) is a plastic beverage container, to which the requirements of section 3 of this act apply;
(2) contains drugs, medical devices, medical food, or infant formula as defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.;
(3) contains toxic or hazardous products regulated by the 
s.136 et seq.; 
(4) is associated with a product produced in or brought into the 
State that is destined for shipment to other destinations outside the 
State and that remains with the product upon shipment; 
(5) is necessary to provide tamper-resistant seals for public 
health purposes; 
(6) is a source reduced package. A rigid plastic container shall 
qualify as a source reduced package if the percentage of package 
weight per unit of product has been reduced by at least 10 percent 
when compared with the packaging used for the same product by 
the same manufacturer five years earlier. In no case may packaging 
reduction be achieved, for purposes of this paragraph, by 
substituting a different material category for a material that 
constituted a substantial part of the packaging in question, or by 
packaging changes that adversely impact either the potential for the 
package to be recycled or contain recycled material. Exemptions 
under this paragraph shall be limited to five years, shall not be 
renewable, and shall not be applicable to packages for which the 
percentage of package weight per unit of product increased after 
January 1, 2021; or 
(7) is a refillable container or a reusable container. A rigid 
plastic container shall qualify as a refillable container if the 
container is routinely returned to and refilled by the manufacturer at 
least five times with the same product packaged by the container. A 
rigid plastic container shall qualify as a reusable container if the 
container is routinely reused by consumers at least five times to 
store the same product packaged by the container. 
d. Each year, the department shall determine the recycling rate 
for rigid plastic containers in the aggregate. If, for any year, the 
department determines that the recycling rate for rigid plastic 
containers in the aggregate is less than 35 percent, the department 
shall also determine whether the recycling rate for rigid plastic 
containers made from each of the major resin types is 35 percent or 
more. The department shall determine the recycling rate for rigid 
plastic containers in the aggregate, specific resin types of rigid 
plastic containers, and product associated packages based on the 
percentage, as measured by weight, of such packages sold or 
offered for sale in the State that are recycled the preceding calendar 
year. The department shall publish the determinations made 
pursuant to this subsection on its Internet website. 
e. If, in any year, the department determines that the recycling 
rate for rigid plastic containers is less than 35 percent, the 
department shall prepare and submit a report to the Legislature 
pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the 
members of the Senate Environment and Energy Committee and the 
Assembly Environment and Solid Waste Committee, or their
successors, which assesses the reasons why the recycling rate is below 35 percent, and includes a review of the status of collection programs in the State and the capacity available in the State to process rigid plastic containers collected and reclaim the resin from the collected rigid plastic containers. The department may include in its report any recommendations for legislative or regulatory action necessary to improve the recycling rate for rigid plastic containers.

f. The department shall not enforce the provisions of this section during the first full calendar year after the department determines, for the first time, that the recycling rate for rigid plastic containers is less than 35 percent. For any period for which the department determines that the recycling rate for rigid plastic containers equals or exceeds 35 percent, a manufacturer shall not be required to keep records that demonstrate compliance as provided pursuant to subsection b. of section 10 of this act.

g. For the purposes of this section, “product-associated package” means a brand-specific rigid plastic container line, which may have one or more sizes, shapes, or designs and which is used in conjunction with a particular, generic product line.

3. a. Beginning January 1, 2022, through December 31, 2025, each plastic beverage container sold, offered for sale, or filled with a beverage sold or offered for sale in the State by a manufacturer shall contain at least 10 percent recycled content.

b. Beginning January 1, 2026, through December 31, 2030, each plastic beverage container sold, offered for sale, or filled with a beverage sold or offered for sale in the State by a manufacturer shall contain at least 25 percent recycled content.

c. On and after January 1, 2031, each plastic beverage container sold, offered for sale, or filled with a beverage sold or offered for sale in the State by a manufacturer shall contain at least 50 percent recycled content.

d. The provisions of this section shall not apply to a refillable plastic beverage container. For the purposes of this subsection, a “refillable plastic beverage container” means a plastic beverage container that has a capacity of 150 fluid ounces or less, holds 150 fluid ounces or less of beverage, and which ordinarily would be returned to the manufacturer to be refilled and resold.

4. a. Beginning January 1, 2022, each glass container sold, offered for sale, or filled with a food or beverage sold or offered for sale in the State by a manufacturer shall contain at least 35 percent recycled content; except that, if a manufacturer demonstrates to the satisfaction of the department that its use of recycled content is made up of at least 50 percent mixed-color cullet, then the manufacturer shall use at least 25 percent recycled content in the manufacturing of its glass containers.
b. As used in this section, “mixed-color cullet” means cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for color mix of color sorted post-filled glass as raw material for the manufacture of glass containers.

5. Beginning January 1, 2022, each paper carryout bag sold or offered for sale in the State by a manufacturer shall:
   a. contain at least 40 percent recycled content; except that a paper carryout bag that holds eight pounds or less shall contain at least 20 percent recycled content; and
   b. have printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the percentage of recycled content in the bag.

6. Each reusable carryout bag made of plastic film that is sold or offered for sale in the State shall meet the following requirements:
   a. Beginning January 1, 2022, the reusable carryout bag shall contain at least 20 percent recycled content; and
   b. Beginning January 1, 2025, the reusable carryout bag shall contain at least 40 percent recycled content.

7. a. Except as provided in subsection b. of this section, beginning January 1, 2022, each plastic trash bag sold or offered for sale in the State shall contain at least 10 percent recycled content.
   b. The provisions of subsection a. of this section shall not apply to a bag that is designed and manufactured to hold, store, or transport hazardous waste or medical waste.

8. A manufacturer may apply to the department for a waiver from, or reduction in, the recycled content requirements of sections 2 through 7 of this act. The department may approve, in writing, a waiver or other relief pursuant to this section if the manufacturer demonstrates, and the department finds, that it is not technologically feasible for the manufacturer to achieve the recycled content requirements, or the manufacturer cannot achieve the recycled content requirements due to a lack of available recycled material or other market conditions. The department shall develop a standardized form for manufacturers to apply for a waiver pursuant to this section.

9. a. Beginning January 1, 2022, no person shall sell or offer for sale in the State polystyrene loose fill packaging.
   b. Nothing in subsection a. of this section shall be construed to prohibit a person from using polystyrene loose fill packaging to package a product sold or offered for sale by the person after January 1, 2022, if the person purchased the polystyrene loose fill
packaging prior to January 1, 2022 and the person does not resell
the polystyrene loose fill packaging.

3. As used in this section:
4. “Expanded polystyrene” means blown polystyrene and expanded
and extruded foams that are thermoplastic petrochemical materials
utilizing a styrene monomer and processed by any number of
techniques including, but not limited to, fusion of polymer spheres
(expandable bead foam), injection molding, foam molding, and
extrusion-blown molding (extruded foam polystyrene). “Expanded
polystyrene” shall not include rigid polystyrene.

5. “Polystyrene loose fill packaging,” commonly known as packing
peanuts, means a void-filling packaging product made of expanded
polystyrene that is used as a packaging fill.

10. a. On or before January 1 of each year, each manufacturer
shall certify, in writing, to the department that the rigid plastic
containers, plastic beverage containers, glass containers, paper
carryout bags, reusable carryout bags made of plastic film, or
plastic trash bags, as applicable, sold, offered for sale, or used in
association with the sale or offer for sale of a product in the State,
are in compliance with the requirements of this act, or are otherwise
exempt or have been approved for a waiver or other relief under the
provisions of this act. A manufacturer shall submit the certification
in the form and manner determined by the department under penalty
of perjury. The certification shall include the amount in pounds of
virgin plastic, glass, or paper products and recycled content used by
the manufacturer for its rigid plastic containers, plastic beverage
containers, glass containers, paper carryout bags, reusable carryout
bags made of plastic film, or plastic trash bags, as applicable, and
any other information the department determines necessary in order
to determine compliance with this act.

b. Each manufacturer shall maintain records that demonstrate,
for all rigid plastic containers, plastic beverage containers, glass
containers, paper carryout bags, reusable carryout bags made of
plastic film, or plastic trash bags generated or produced by the
manufacturer, whether and how the manufacturer has complied with
the requirements of this act, or for what reason, if any, the
manufacturer is exempt or has been approved for a waiver or other
relief from the requirements of this act. The department may adopt
specific requirements for the records required to be maintained
pursuant to this subsection. A manufacturer shall submit its records
to the department upon request. Any proprietary information or
trade secrets included in the records submitted to the department
shall not be made available to the general public. The department
may audit or investigate any manufacturer to assess the
manufacturer’s compliance with the requirements of this act.
11. a. Any person who violates the provisions of this act, or any rule or regulation adopted pursuant thereto, shall be subject to a civil administrative penalty of not more than $10,000. If the violation is of a continuing nature, each day during which the violation continues shall constitute an additional, separate, and distinct offense. The department may adopt a schedule of penalties to be applied pursuant to this section. In determining the amount of any penalty to be imposed, the commissioner shall consider the nature, circumstances, extent, and severity of the violation. No civil administrative penalty shall be imposed until after the person has been notified by certified mail or personal service. The notice shall include: a reference to the provision of this section, or any rule or regulation adopted pursuant thereto, violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil administrative penalties to be imposed; and a statement of the person's right to a hearing. The person shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. Subsequent to the hearing and upon finding that a violation has occurred, the commissioner may issue a final order or civil administrative penalty after imposing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order or a final civil administrative penalty upon the expiration of the 20-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order or a final civil administrative penalty. The authority to levy a civil administrative penalty shall be in addition to all other enforcement provisions in this act, and the payment of a civil administrative penalty shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the penalty is levied. A civil administrative penalty imposed under this subsection may be compromised by the department upon the posting of a performance bond by the violator, or upon terms and conditions the department may establish by rule or regulation.

b. In addition to the assessment of a civil administrative penalty pursuant to subsection a. of this section, the department may, by administrative order, and upon an appropriate finding, assess a violator for the reasonable costs of any audit, investigation, or inspection which led to the establishment of the violation. The department may retain any amount it collects pursuant to this subsection.

c. In addition to, or in lieu of, assessing a civil administrative penalty pursuant to subsection a. of this section, the department may require a manufacturer to submit a corrective action plan to the department detailing how the manufacturer will come into compliance with the provisions of this act.
12. There is established in the Department of the Treasury a special, nonlapsing account to be known as the “Recycling Enhancement Penalty Account.” The account shall be credited with all penalties collected pursuant to subsection a. of section 11 of this act, and any interest or investment income earned on monies in the account. Moneys in the account shall be expended, upon appropriation by the Legislature, for the sole purpose of supporting recycling in the State. The department may offer recommendations each year to the Legislature on appropriate uses of the moneys in the account, and shall transmit such recommendations to the chairpersons of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee, or their successors, for their respective consideration.

13. A municipality or county shall not adopt any rule, regulation, code, or ordinance regulating the recycled content of rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, or plastic trash bags after the effective date of this act. The provisions of this act shall supersede and preempt any municipal or county rule, regulation, code, or ordinance regulating the recycled plastic content requirement for plastic beverage containers that was enacted prior to the effective date of this act.

14. No later than 18 months after the effective date of this act, the department shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this act.

15. This act shall take effect immediately.

STATEMENT

This bill would establish recycled content requirements for plastic containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, and plastic trash bags sold or offered for sale in the State, and prohibit the sale of polystyrene loose fill packaging.

Specifically, under the bill, beginning January 1, 2022, each rigid plastic container sold, offered for sale, or used in association with the sale or offer for sale of a product in the State would be required to: (1) contain at least 35 percent recycled content; or (2) be made of a plastic that is being recycled in the State at a rate of 35 percent. A rigid plastic container would be deemed to be made of a plastic that is being recycled in the State at a rate of 35 percent if: (1) rigid plastic containers, in the aggregate, are being recycled in the State at a rate of 35 percent; (2) the rigid plastic container is a
specific resin type of rigid plastic container and that type of
container is being recycled in the State at a rate of 35 percent; or (3)
the container is a particular product-associated package and that
type of product-associated package is being recycled in the State at
a rate of 35 percent. The bill exempts several types of rigid plastic
containers from the recycled content requirements.

Each year, the Department of Environmental Protection (DEP)
would determine the recycling rate for rigid plastic containers. If,
for any year, the DEP determines that the recycling rate for rigid
plastic containers is less than 35 percent, the DEP would also be
required to: (1) determine and publish on its Internet website
whether the recycling rate for rigid plastic containers made from
each of the seven major resin types is 35 percent or more; and (2)
prepare and submit a report to the Legislature assessing the reasons
why the recycling rate is below 35 percent, including a review of
the status of collection programs in the State and the State’s
recycling capacity for rigid plastic containers. The DEP would not
enforce the recycled content requirements for rigid plastic
containers in the first full calendar year after it determines, for the
first time, that the recycling rate for rigid plastic containers is less
than 35 percent.

Under the bill, different recycled content requirements would
apply to plastic beverage containers. Specifically, beginning
January 1, 2022 through December 31, 2025, each plastic beverage
container sold, offered for sale, or filled with a beverage sold or
offered for sale in the State would be required to contain at least 10
percent recycled content. Beginning January 1, 2026 through
December 31, 2030, each plastic beverage container would be
required to contain at least 25 percent recycled content. On and
after January 1, 2031, each plastic beverage container would be
required to contain at least 50 percent recycled content. However,
the recycled content requirements would not apply to refillable
plastic beverage containers.

Additionally, beginning January 1, 2022, each glass container
sold, offered for sale, or filled with a food or beverage sold or
offered for sale in the State would be required to contain at least 35
percent recycled content. However, if a manufacturer demonstrates
to the satisfaction of the DEP that its use of recycled content is
made up of at least 50 percent mixed-color cullet, then the
manufacturer would only be required to use at least 25 percent
recycled content in the manufacturing of its glass containers.

Beginning January 1, 2022, each paper carryout bag sold or
offered for sale in the State would be required to contain at least 40
percent recycled content. However, a paper carryout bag that holds
eight pounds or less would only be required to contain at least 20
percent recycled content. Under the bill, a paper carryout bag
would also be required to have printed on the bag the name of the
manufacturer, the country where the bag was manufactured, and the percentage of recycled content in the bag.

Under the bill, each reusable carryout bag made of plastic film that is sold or offered for sale in the State would be required to contain at least 20 percent recycled content beginning January 1, 2022, and 40 percent recycled content beginning January 1, 2025. Beginning January 1, 2022, each plastic trash bag sold or offered for sale in the State would be required to contain at least 10 percent recycled content, but this provision would not apply to bags designed and manufactured to hold, store, or transport hazardous waste or medical waste.

Under the bill, a manufacturer would be permitted to apply to the department for a waiver from, or reduction in, the recycled content requirements of the bill. The department would be authorized to grant a waiver or other relief if the manufacturer demonstrates, and the department finds, that it is not technologically feasible for the manufacturer to achieve the recycled content requirements, or the manufacturer cannot achieve the requirements due to a lack of available recycled material or other anomalous market conditions.

Under the bill, beginning January 1, 2022, a person would be prohibited from selling, or offering for sale in the State, polystyrene loose fill packaging, commonly known as “packing peanuts.”

Under the bill, each manufacturer would be required to certify, in writing, to the DEP each year that the rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, or plastic trash bags sold, offered for sale, or used in association with the sale or offer for sale of a product in the State are in compliance with the requirements of the bill, or are otherwise exempt or have been approved for a waiver or other relief. Each manufacturer would be required to maintain records that demonstrate, for all rigid plastic containers, plastic beverage containers, glass containers, paper carryout bags, reusable carryout bags made of plastic film, or plastic trash bags generated or produced by the manufacturer, whether and how the manufacturer has complied with the requirements of the bill, or for what reason, if any, the manufacturer is exempt or has been approved for a waiver or other relief. A manufacturer would be required to submit its records to the DEP upon request. The DEP would also be authorized to audit or investigate any manufacturer to assess its compliance with the requirements of the bill.

Any person who violates the provisions of the bill would be subject to a civil administrative penalty of not more than $10,000, and each day during which the violation continues would constitute an additional, separate, and distinct offense. The DEP would be authorized to adopt a schedule of penalties to be applied under the bill. In addition to the assessment of a civil administrative penalty, the DEP would be authorized to assess a violator for the reasonable
costs of any audit, investigation, or inspection which led to the
establishment of a violation. Also, the DEP would be authorized to
require a manufacturer to submit a corrective action plan detailing
how the manufacturer will come into compliance with the bill.

The bill would establish a special, nonlapsing account in the
Department of the Treasury to be known as the “Recycling
Enhancement Penalty Account.” The account would be credited
with all penalties collected under the bill, and any interest or
investment income earned from the account. Moneys in the account
would be used, upon appropriation by the Legislature, for the sole
purpose of supporting recycling in the State. The DEP would make
recommendations each year to the Legislature on appropriate uses
of moneys in the account and transmit those recommendations to
the appropriate legislative committees.

The bill would prohibit a municipality or county from adopting
any rule, regulation, code, or ordinance regulating the recycled
content of rigid plastic containers, plastic beverage containers, glass
containers, paper carryout bags, reusable carryout bags made of
plastic film, or plastic trash bags after the effective date of the bill.
The bill would also supersede and preempt any municipal or county
rule, regulation, code, or ordinance regulating the recycled content
of those items.