

[Fifth Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2515

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED DECEMBER 10, 2020

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Co-Sponsored by:

**Senator Gill, Assemblyman Calabrese and Assemblywoman Vainieri
Huttle**

SYNOPSIS

Establishes postconsumer recycled content requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags; prohibits sale of polystyrene loose fill packaging.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on January 6, 2022, with amendments.

(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning the use of postconsumer recycled content in
2 certain containers and packaging products and supplementing
3 Title 13 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 “Beverage” means any of the following products if those products
10 are in liquid, ready-to-drink form, and are intended for human
11 consumption: ²**[milk and milk products;]**² beer and other malt
12 beverages; wine and distilled spirit coolers; carbonated water,
13 including soda and carbonated mineral water; noncarbonated water,
14 including noncarbonated mineral water; carbonated soft drinks;
15 noncarbonated soft drinks and sport drinks; noncarbonated fruit drinks
16 that contain any percentage of fruit juice; coffee and tea drinks;
17 carbonated fruit drinks; and vegetable juice.

18 “Commissioner” means the Commissioner of Environmental
19 Protection.

20 “Department” means the Department of Environmental Protection.

21 “Food” means articles used for food or drink for consumption by
22 humans or other animals, and articles used for components of any such
23 article.

24 “Glass container” means a container made of glass that is filled
25 with a food or beverage.

26 ⁵“Hot fill process” means a process to sterilize both a food product
27 and its container during the food packaging process, in which the food
28 product is heated to a temperature between 194 and 203 degrees
29 Fahrenheit and then injected into the container.⁵

30 ⁴“Licensee” means a manufacturer or entity who licenses a brand
31 and manufactures a product under that brand.⁴

32 “Manufacturer” means ⁴**[a person that]**⁴ : (1) ⁴a person that⁴
33 produces or generates a rigid plastic container, ¹**[plastic beverage**
34 container, glass container,]¹ paper carryout bag, plastic carryout bag,
35 or plastic trash bag that ¹does not contain a product and that¹ is sold or
36 offered for sale in the State; ⁴**[or]**⁴ (2) ¹**[produces or generates]** ⁴a
37 person that⁴ is the brand owner of¹ a product that is sold or offered for
38 sale in the State and that is packaged in a rigid plastic container, plastic
39 beverage container, or glass container ⁴, unless the brand owner
40 identifies a licensee who agrees to accept responsibility under this act
41 and the licensee informs the department in writing of the agreement; or
42 (3) in the absence of a person meeting the criteria in (1) or (2) of this
43 definition over whom the State may exercise jurisdiction, a person
44 who imports or distributes a product into or within the State that is

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 17, 2021.

²Senate floor amendments adopted June 21, 2021.

³Assembly AEN committee amendments adopted November 15, 2021.

⁴Assembly AAP committee amendments adopted December 13, 2021.

⁵Assembly AAP committee amendments adopted January 6, 2022.

1 sold or offered for sale in the State and that is packaged in a rigid
2 plastic container, plastic beverage container, or glass container⁴ .
3 “Manufacturer” shall not include ⁴3: (1) a person who only licenses a
4 brand or trademark for a product and does not produce, package, or
5 sell the product in the State; and (2)³⁴ a person who, at a single
6 physical location, produces, packages, and sells a product directly to a
7 consumer at retail, ¹including, but not limited to, which may
8 include¹ a grocery store, restaurant, bar, cafeteria, café, food truck,
9 food cart, or similar establishment.

10 “Paper carryout bag” means a bag made of paper that is sold or
11 provided by a store to a customer for the purpose of containing,
12 carrying, and transporting food, beverages, or retail goods.

13 “Person” means an individual, corporation, company, association,
14 society, firm, partnership, or joint stock company.

15 “Plastic” means a synthetic material made from linking monomers
16 through a chemical reaction to create an organic polymer chain that
17 can be molded or extruded at high heat into various solid forms
18 retaining their defined shapes during the life cycle and after disposal.
19 “Plastic” shall not include material that is designed to be composted in
20 a municipal or industrial aerobic composting facility and that is
21 certified by a recognized third-party independent verification body as
22 meeting the standards therefor established by the American Society for
23 Testing and Materials in ASTM D6400 or ASTM D6868.

24 “Plastic beverage container” means an individual, separate bottle,
25 can, jar, carton, or other container made of plastic that is hermetically
26 sealed or made airtight with a metal or plastic cap, and that contains a
27 beverage. ²“Plastic beverage container” shall not include any label,
28 cap, closure, or other item affixed to the container.²

29 “Plastic carryout bag” means a bag made of plastic, of any
30 thickness, whether woven or nonwoven, that is sold or provided by a
31 store to a customer for the purpose of containing, carrying, and
32 transporting food, beverages, or retail goods.

33 “Plastic trash bag” means a bag that is made of plastic, is at least
34 0.70 mils thick, and is designed and manufactured for use as a
35 container to hold, store, or transport materials to be discarded,
36 composted, or recycled, and includes, but is not limited to, a garbage
37 bag, ¹composting bag,¹ lawn or leaf bag, can-liner bag, kitchen bag,
38 or compactor bag.

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

46 “Rigid plastic container” means a container made of plastic that
47 has a relatively inflexible finite shape or form, has a minimum

1 capacity of eight fluid ounces or its equivalent volume and a maximum
2 capacity of five fluid gallons or its equivalent volume, and is capable
3 of maintaining its shape while empty or while holding other products.
4

5 2. a. A manufacturer shall achieve compliance with the
6 postconsumer recycled content requirements of this act based on the
7 average amount of postconsumer recycled content, by weight ⁵or
8 another metric, as determined by the department⁵, contained in its
9 products. ¹~~For the first five years after the effective date of this act,~~
10 ~~a] A¹ manufacturer ¹[may] shall¹~~ calculate the average amount of
11 postconsumer recycled content contained in its products using data
12 specific to products sold or offered for sale in New Jersey ¹~~[or~~
13 ~~nationwide. Beginning five years after the effective date of this act, a~~
14 ~~manufacturer shall calculate the average amount of postconsumer~~
15 ~~recycled content in its products using data specific to products sold or~~
16 ~~offered for sale in New Jersey only.]~~, if such data are available. If a
17 manufacturer demonstrates to the department that State-specific data
18 are not available or feasible to generate, then the manufacturer may
19 utilize national data to calculate the average amount of postconsumer
20 recycled content contained in its products.¹ The calculation of
21 averages may be based on a manufacturer's entire product line or
22 separated into product sub-lines, provided that all of the
23 manufacturer's products are accounted for in the calculations.

24 b. ¹If a manufacturer relies on national data to calculate the
25 average amount of postconsumer recycled content contained in its
26 products, the manufacturer shall:

27 (1) prorate the national data based on market share ²[.] or²
28 population, ²[or another method as may be determined by the
29 department.]² to ensure that the percentage of postconsumer recycled
30 content calculated for products sold in New Jersey is the same
31 percentage as calculated for the nation; and

32 (2) document the methodology used to prorate the national data in
33 the report required pursuant to paragraph (1) of subsection a. of section
34 14 of this act.

35 c. ¹For the purposes of this section, "product" means a rigid plastic
36 container, plastic beverage container, glass container, paper carryout
37 bag, plastic carryout bag, or plastic trash bag that is subject to the
38 postconsumer recycled content requirements of this act.
39

40 3. a. (1) Beginning two years after the effective date of this act,
41 all rigid plastic containers sold, offered for sale, or used in association
42 with the sale or offer for sale of a product in the State by a
43 manufacturer shall contain, on average, at least ⁵[25] 10⁵ percent
44 postconsumer recycled content.

45 (2) Beginning five years after the effective date of this act, and
46 every three years thereafter, the percentage of postconsumer recycled

1 content required for rigid plastic containers pursuant to this section
2 shall increase by ⁵ ~~five~~ 10⁵ percent, until reaching 50 percent.

3 b. ² ~~Beginning~~ two years after the effective date of this act, a
4 manufacturer shall label each rigid plastic container with ¹: (1)¹ the
5 name of the manufacturer and the city, state, and country where the
6 manufacturer is located ¹ which may be designated as the location of
7 the manufacturer's corporate headquarters; or (2) a uniform resource
8 locator (URL) or quick response (QR) code to an Internet website that
9 contains the information required pursuant to paragraph (1) of this
10 subsection¹.

11 c. ² A rigid plastic container shall be exempt from the
12 postconsumer recycled content requirements of subsection a. of this
13 section if it:

14 (1) is a plastic beverage container, to which the requirements of
15 section 4 of this act shall apply;

16 (2) is associated with a product produced in or brought into the
17 State that is destined for shipment to a destination outside the State,
18 and that remains with the product upon shipment;

19 (3) contains drugs, dietary supplements, medical devices, or
20 cosmetics as those terms are defined in the Federal Food, Drug, and
21 Cosmetic Act, 21 U.S.C. s.301 et seq.;

22 (4) contains toxic or hazardous products regulated under the
23 "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. s.136
24 et seq.;

25 (5) is manufactured for use in the shipment of hazardous materials
26 and is: (a) prohibited from being manufactured with used material by
27 federal packaging material specifications set forth in 49 C.F.R.
28 s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing
29 standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.
30 s.178.609, or (c) is subject to the recommendations of the United
31 Nations on the transport of dangerous goods; or

32 (6) is a refillable container or a reusable container. For the
33 purposes of this paragraph, "refillable container" means a rigid plastic
34 ¹ ~~a~~ container that is routinely returned to and refilled by the
35 manufacturer with the same product packaged by the container; and
36 "reusable container" means a rigid plastic container that is routinely
37 reused by consumers to store the original product packaged by the
38 container.

39
40 4. a. (1) Beginning two years after the effective date of this act,
41 all plastic beverage containers sold or offered for sale in the State by a
42 manufacturer shall contain, on average, at least 15 percent
43 postconsumer recycled content.

44 (2) Beginning five years after the effective date of this act, and
45 every three years thereafter, the amount of postconsumer recycled
46 content required for plastic beverage containers pursuant to this
47 section shall increase by five percent, until reaching 50 percent ⁵;

1 except that the postconsumer recycled content requirement for
2 manufacturers who utilize a hot fill process shall not exceed 30
3 percent⁵.

4 b. ²**[**Beginning two years after the effective date of this act, a
5 manufacturer shall label each plastic beverage container sold or
6 offered for sale in the State with ¹: (1)¹ the name of the manufacturer
7 and the city, state, and country where the manufacturer is located
8 which may be designated as the location of the manufacturer's
9 corporate headquarters; or (2) a uniform resource locator (URL) or
10 quick response (QR) code to an Internet website that contains the
11 information required pursuant to paragraph (1) of this subsection¹.

12 c. ²**]** The provisions of subsection a. of this section shall not apply
13 to a refillable beverage container. For the purposes of this subsection,
14 "refillable beverage container" means a beverage container that holds
15 150 fluid ounces or less of beverage, and which is routinely returned to
16 the manufacturer to be refilled and resold.

17
18 5. a. Beginning two years after the effective date of this act, all
19 glass containers sold or offered for sale in the State by a
20 manufacturer shall contain, on average, at least 35 percent
21 postconsumer recycled content; except that, if a manufacturer
22 certifies to the department that its use of postconsumer recycled
23 content is made up of at least 50 percent mixed-color cullet, then
24 the glass containers shall only be required to contain, on average, at
25 least 25 percent postconsumer recycled content.

26 b. ²**[**Beginning two years after the effective date of this act, a
27 manufacturer shall label each glass container sold or offered for sale
28 in the State with ¹: (1)¹ the name of the manufacturer and the city,
29 state, and country where the manufacturer is located ¹which may be
30 designated as the location of the manufacturer's corporate
31 headquarters; or (2) a uniform resource locator (URL) or quick
32 response (QR) code to an Internet website that contains the
33 information required pursuant to paragraph (1) of this subsection¹.

34 c. ²**]** As used in this section, "mixed-color cullet" means cullet
35 that does not meet the American Society for Testing and Materials
36 (ASTM) standard specifications for the color mix of color-sorted,
37 post-filled glass as a raw material for the manufacture of glass
38 containers.

39
40 6. Beginning two years after the effective date of this act ²**[**:

41 a. ²**]**, ² all paper carryout bags sold or offered for sale in the State
42 by a manufacturer shall contain, on average, at least 40 percent
43 postconsumer recycled content; except that a paper carryout bag
44 that holds eight pounds or less shall only be required to contain, on
45 average, at least 20 percent postconsumer recycled content ²**[**; and

1 b. a manufacturer shall label each paper carryout bag sold or
2 offered for sale in the State with ¹: (1)¹ the name of the
3 manufacturer and the city, state, and country where the
4 manufacturer is located ¹which may be designated as the location of
5 the manufacturer's corporate headquarters; or (2) a uniform
6 resource locator (URL) or quick response (QR) code to an Internet
7 website that contains the information required pursuant to
8 paragraph (1) of this subsection¹]².
9

10 7. All plastic carryout bags sold or offered for sale in the State
11 by a manufacturer shall:

12 a. beginning two years after the effective date of this act,
13 contain, on average, at least 20 percent postconsumer recycled
14 content; ²and²

15 b. beginning five years after the effective date of this act,
16 contain, on average, at least 40 percent postconsumer recycled
17 content ²]; and

18 c. beginning two years after the effective date of this act, be
19 labeled with ¹: (1)¹ the name of the manufacturer and the city,
20 state, and country where the manufacturer is located ¹which may be
21 designated as the location of the manufacturer's corporate
22 headquarters; or (2) a uniform resource locator (URL) or quick
23 response (QR) code to an Internet website that contains the
24 information required pursuant to paragraph (1) of this
25 subsection¹]².
26

27 8. a. ¹【Beginning two years after the effective date of this act,
28 all】 All¹ plastic trash bags sold or offered for sale in the State by a
29 manufacturer shall ¹:

30 (1) beginning two years after the effective date of this act,¹ contain
31 ⁵【, on average, at least 10 percent】 the following proportion of⁵
32 postconsumer recycled content ⁵:

33 (a) for plastic trash bags greater than 0.70 mils thick but less than
34 0.80 mils thick, at least five percent;

35 (b) for plastic trash bags greater than 0.80 mils thick but less than
36 1.00 mils thick, at least 10 percent; and

37 (c) for plastic trash bags equal to or greater than 1.00 mils thick, at
38 least 20 percent⁵ ¹; and

39 (2) beginning five years after the effective date of this act, contain
40 ⁵【, on average, at least 20 percent】 the following proportion of⁵
41 postconsumer recycled content¹ ⁵:

42 (a) for plastic trash bags greater than 0.70 mils thick but less than
43 0.80 mils thick, at least 10 percent;

44 (b) for plastic trash bags greater than 0.80 mils thick but less than
45 1.00 mils thick, at least 20 percent; and

1 (c) for plastic trash bags equal to or greater than 1.00 mils thick, at
2 least 40 percent⁵ .

3 b. ²**[Beginning** two years after the effective date of this act, a
4 manufacturer shall label each container of plastic trash bags sold or
5 offered for sale in the State with ¹: (1)¹ the name of the manufacturer
6 and the city, state, and country where the manufacturer is located
7 which may be designated as the location of the manufacturer's
8 corporate headquarters; or (2) a uniform resource locator (URL) or
9 quick response (QR) code to an Internet website that contains the
10 information required pursuant to paragraph (1) of this subsection¹ .

11 c. ²**]** The provisions of subsection a. of this section shall not apply
12 to a bag that is designed and manufactured to hold, store, or transport
13 hazardous waste or regulated medical waste. For the purposes of this
14 subsection, “hazardous waste” means any solid waste defined as
15 hazardous waste by the department pursuant to P.L.1970, c.39
16 (C.13:1E-1 et seq.); and “regulated medical waste” means the same as
17 that term is defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3).

18
19 9. a. Notwithstanding the provisions of this act to the contrary,
20 the department may, pursuant to the “Administrative Procedure
21 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
22 of the postconsumer recycled content requirements established in
23 sections 3 through 8 of this act. In making an adjustment pursuant
24 to this section, the department shall consider:

25 (1) changes in market conditions, including supply and demand
26 for postconsumer recycled content, collection rates, and bale
27 availability both domestically and globally;

28 (2) recycling rates, as may be determined by the department;

29 (3) the availability of recycled material suitable for
30 manufacturers to meet the postconsumer recycled content
31 requirements, including the availability of high-quality recycled
32 plastic or glass, and food-grade recycled plastic or glass;

33 (4) the capacity of recycling or processing infrastructure;

34 (5) the progress made by manufacturers in meeting the
35 postconsumer recycled content requirements; and

36 (6) any other factors as determined by the department pursuant
37 to rule, regulation, or guidance.

38 b. Any adjustment to the postconsumer recycled content
39 requirements made pursuant to this section shall be only for a time-
40 period, and only under such conditions, as the department may by
41 rule or regulation establish.

42
43 10. a. A package ¹or container¹ that ¹**[contain]** contains¹ milk
44 products, ²plant-based products with names that include the names of
45 dairy foods such as “milk,”² medical food, ⁵food for special dietary
46 use,⁵ or infant formula shall be exempt from the postconsumer

1 recycled content requirements of this act ¹for a period of five years
2 beginning on the effective date of this act¹ .

3 ¹b. (1) A package or container that contains food shall be exempt
4 from the postconsumer recycled content requirements of this act for a
5 period of five years beginning on the effective date of this act, except
6 that the exemption provided in this paragraph shall not apply to a
7 plastic beverage container or a glass container filled with a beverage.

8 (2) The department may, in its discretion, extend the five-year
9 exemption provided in paragraph (1) of this subsection.¹ Upon
10 expiration of the ¹five-year¹ exemption ¹period¹, a manufacturer
11 ¹of milk products, medical food, or infant formula may apply to¹
12 shall be subject to the applicable postconsumer recycled content
13 requirements in effect at the time of the expiration, unless the
14 manufacturer applies to, and receives from,¹ the department ¹for¹ a
15 waiver pursuant to section 11 of this act.

16 ¹b. c.¹ As used in this section:

17 ⁵“Food for special dietary use” means the same as the term is
18 defined in 21 U.S.C. s.350.⁵

19 “Medical food” and “infant formula” mean the same as those terms
20 are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
21 s.301 et seq.

22 “Milk product” means the same as that term is defined ²in the
23 Grade “A” Pasteurized Milk Ordinance promulgated² by the United
24 States Food and Drug Administration.

25

26 11. a. A manufacturer may apply to the department for a waiver
27 from the postconsumer recycled content requirements established
28 pursuant to this act. The department may grant a waiver pursuant to
29 this section if the manufacturer demonstrates, and the department
30 finds, in writing, that:

31 (1) the manufacturer cannot achieve the postconsumer recycled
32 content requirements and remain in compliance with applicable rules
33 and regulations adopted by the United States Food and Drug
34 Administration, or any other State or federal law, rule, or regulation;

35 (2) it is not technologically feasible for the manufacturer to
36 achieve the postconsumer recycled content requirements; ¹or¹

37 (3) ¹the manufacturer cannot comply with the postconsumer
38 recycled content requirements due to inadequate availability of
39 recycled material or a substantial disruption in the supply of recycled
40 material; or

41 (4)¹ the manufacturer cannot comply for another reason as
42 determined by the department pursuant to rule, regulation, or guidance.

43 b. In order to qualify for a waiver from the postconsumer recycled
44 content requirements of this act, a manufacturer shall submit to the
45 department documentation from a federal or State agency or certified
46 third-party expert, as appropriate, demonstrating that the manufacturer

1 cannot comply with the postconsumer recycled content requirements
2 for one of the reasons set forth in subsection a. of this section, and pay
3 a \$1,000 waiver fee. The department may modify the amount of the
4 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
5 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
6 costs to administer, monitor, and enforce the provisions of this section.
7 ³Notwithstanding the provisions of this subsection to the contrary, a
8 manufacturer that demonstrates to the department that the
9 manufacturer’s gross revenue is below \$5,000,000 shall not be
10 required to pay the waiver fee established pursuant to this section.³

11 c. The department may grant a waiver from the postconsumer
12 recycled content requirements for ¹[any period of time as the
13 department deems appropriate] a period of not less than two years, as
14 determined by the department¹ . The department shall publish any
15 determination to grant a waiver from the postconsumer recycled
16 content requirements on its Internet website. The department shall
17 develop a standardized form and procedure for manufacturers to apply
18 for a waiver pursuant to this section.

19
20 12. a. The department may require a manufacturer that is
21 ¹temporarily¹ exempt from the postconsumer recycled content
22 requirements of this act ¹pursuant to subsection b. of section 10 of
23 this act¹ , or that has submitted a request for a waiver pursuant to
24 section 11 of this act, to prepare and submit to the department an
25 alternative compliance plan that demonstrates that the manufacturer
26 is taking, and will continue to take, all feasible actions to ensure the
27 reduction, ¹collection,¹ recycling, and reuse of rigid plastic
28 containers, plastic beverage containers, glass containers, paper
29 carryout bags, plastic carryout bags, or plastic trash bags made from
30 virgin plastic, glass, or paper, as applicable, and ¹to ensure¹ the use
31 of postconsumer recycled content.

32 b. The department shall adopt, pursuant to the “Administrative
33 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
34 regulations setting forth the substantive requirements for an
35 alternative compliance plan required pursuant to subsection a. of
36 this section ²[, which may include, but need not be limited to, a
37 requirement that the manufacturer take alternative measures to
38 reduce its use of virgin plastics, glass, or paper, including
39 sustainable materials management protocols, light weighting,
40 lifecycle analyses, and such other measures as the department may,
41 by rule or regulation, require]².

42 c. The department shall have the authority to approve or
43 disapprove an alternative compliance plan prepared and submitted
44 pursuant to this section, and to require a manufacturer to make any
45 revisions or modifications to its alternative compliance plan as the
46 department determines necessary, consistent with the provisions of
47 this act and the rules and regulations adopted by the department.

1 d. A manufacturer shall undertake all of the actions described
2 in the alternative compliance plan. Failure by a manufacturer to
3 comply with an approved alternative compliance plan shall
4 constitute a violation of this act.

5 e. The department may enter into a contract or other legally
6 binding agreement with one or more trade associations representing
7 manufacturers, which shall allow the trade association, in lieu of the
8 manufacturers, to prepare and submit an alternative compliance
9 plan pursuant to this section and to undertake the actions described
10 in the alternative compliance plan.

11 ²[¹f. The department shall publish a final alternative
12 compliance plan approved pursuant to this section on the
13 department's Internet website.]²
14

15 13. a. Beginning ¹[on the September 1 next following] six
16 months after¹ the effective date of this act, and ¹[each September 1]
17 annually¹ thereafter, each manufacturer shall register with the
18 department, in a form and manner as prescribed by the department,
19 and pay an annual registration fee of \$1,000. The department may
20 modify the amount of the registration fee, pursuant to the
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
22 as necessary to reflect the department's costs to implement,
23 administer, monitor, and enforce the provisions of this act. The
24 department shall establish an electronic registration process on its
25 Internet website; however, the lack of an electronic registration
26 process shall not negate the requirement for a manufacturer to register
27 pursuant to this subsection. ¹Notwithstanding the provisions of this
28 subsection to the contrary³[.]: (1) a manufacturer that demonstrates
29 to the department that the manufacturer's gross revenue is below
30 \$5,000,000 shall not be required to pay the registration fee established
31 pursuant to this section; or (2)³ a manufacturer that produces or
32 generates only products that are exempt from the provisions of this act
33 shall be required to register with the department only once, and shall
34 be exempt from the registration fee.¹

35 b. Notwithstanding the provisions of section 16 of this act to the
36 contrary, a manufacturer that fails to register with the department
37 pursuant to subsection a. of this section shall first receive a written
38 warning. A manufacturer that receives a written warning shall register
39 with the department no later than 90 days after receipt of the warning.
40 A manufacturer that receives a written warning and that fails to
41 register with the department within 90 days of receipt of the warning
42 shall be subject to the penalties set forth in section 16 of this act.

43
44 14. a. ¹(1)¹ Beginning ¹[on the third September 1] three years
45 and six months¹ after the effective date of this act, and ¹[on each
46 September 1] annually¹ thereafter, each manufacturer shall certify,
47 in writing, to the department whether or not the rigid plastic

1 containers, plastic beverage containers, glass containers, paper
2 carryout bags, plastic carryout bags, or plastic trash bags, as
3 applicable, sold, offered for sale, or used in association with the
4 sale or offer for sale of a product in the State, are in compliance
5 with the postconsumer recycled content requirements of this act, or
6 are otherwise exempt or have been approved for a waiver from the
7 requirements. If the manufacturer claims an exemption from the
8 requirements of this act, the manufacturer shall set forth the specific
9 basis upon which the exemption is claimed, and submit such proof
10 as the department determines necessary. The certification shall be
11 signed by an authorized representative of the manufacturer. A
12 manufacturer shall submit the certification, in the form and manner
13 determined by the department, under penalty of perjury. The
14 certification shall include the amount, in pounds, of virgin plastic,
15 glass, or paper and ¹the amount, in pounds, of¹ postconsumer
16 recycled material used by the manufacturer for any products subject
17 to the requirements of this act, and any other information as the
18 department deems necessary. The department shall establish an
19 electronic certification process on its Internet website; however, the
20 lack of an electronic certification process shall not negate the
21 requirement for a manufacturer to certify its compliance pursuant to
22 this subsection.

23 ¹(2) The department may ²[require that a manufacturer submit
24 an independent, third-party verification of a compliance
25 certification made pursuant to this subsection] , in consultation with
26 manufacturers, study: (a) whether there exist independent, third-
27 party verification organizations that can verify manufacturers'
28 compliance with the requirements of this act; and (b) appropriate
29 accreditation standards for such organizations. The department may
30 prepare and submit a report including its findings to the Governor,
31 to the Legislature pursuant to section 2 of P.L.1991, c.164
32 (C.52:14-19.1), and to the members of the Senate Environment and
33 Energy Committee and the Assembly Environment and Solid Waste
34 Committee, or their successors² ¹.

35 b. Each manufacturer shall maintain records, in a form
36 prescribed by the department, that demonstrate, for all rigid plastic
37 containers, plastic beverage containers, glass containers, paper
38 carryout bags, plastic carryout bags, or plastic trash bags generated
39 or produced by the manufacturer, whether and how the
40 manufacturer has complied with the postconsumer recycled content
41 requirements, or whether the manufacturer qualifies for an
42 exemption or waiver from the postconsumer recycled content
43 requirements. The department may adopt specific requirements for
44 the records required to be maintained pursuant to this subsection
45 and may request the records from a manufacturer at any time. A
46 manufacturer shall submit records to the department no later than
47 30 days after receipt of a request, unless the department extends that
48 timeframe.

1 c. The department may audit or investigate a manufacturer, at
2 any time, to assess the manufacturer's compliance with the
3 requirements of this act. Each year, the department ¹~~shall~~ may¹
4 audit, or cause to be audited, a random sample of manufacturers in
5 order to determine compliance with this act. A manufacturer shall
6 cooperate fully with any audit or investigation conducted pursuant
7 to this section. The department may require a manufacturer to pay
8 the costs of an audit conducted pursuant to this subsection.

9 d. The department shall annually publish a list of registered
10 manufacturers, their compliance status, and other information the
11 department deems appropriate on the department's Internet website.
12

13 15. a. Beginning two years after the effective date of this act, no
14 person shall sell or offer for sale in the State any polystyrene loose
15 fill packaging.

16 b. As used in this section:

17 "Polystyrene foam" means blown polystyrene and expanded and
18 extruded foams that are thermoplastic petrochemical materials
19 utilizing a styrene monomer and processed by a number of
20 techniques, including, but not limited to, fusion of polymer spheres
21 (expandable bead polystyrene), injection molding, foam molding,
22 and extrusion-blow molding (extruded foam polystyrene).

23 "Polystyrene loose fill packaging," commonly known as packing
24 peanuts, means a void-filling packaging product made of
25 polystyrene foam that is used as a packaging fill.
26

27 16. a. Whenever, on the basis of available information, the
28 commissioner finds that a person is in violation of this act, the
29 commissioner may ¹take one or more of the following actions¹ :

30 (1) issue an order in accordance with subsection b. of this section
31 requiring the person to comply;

32 (2) bring a civil action in accordance with subsection c. of this
33 section;

34 (3) levy a civil administrative penalty in accordance with
35 subsection d. of this section;

36 (4) bring an action for a civil penalty in accordance with
37 subsection e. of this section; ¹~~or~~¹

38 (5) require a manufacturer to submit a corrective action plan
39 pursuant to subsection f. of this section ¹; or

40 (6) notify the public of a manufacturer which, at any time during a
41 reporting period, was not in compliance with the requirements of this
42 act¹ .

43 The exercise of any of the remedies provided in this section shall
44 not preclude recourse to any other remedy so provided.

45 b. Whenever, on the basis of available information, the
46 commissioner finds that a person is in violation of this act, the
47 commissioner may issue an order: (1) specifying the provision or

1 provisions of this act, or the rule or regulation adopted pursuant
2 thereto, of which the person is in violation; (2) citing the action that
3 caused the violation; (3) requiring compliance with the provision of
4 this act or the rule or regulation adopted pursuant thereto of which the
5 person is in violation; and (4) giving notice to the person of his right to
6 a hearing on the matters contained in the order.

7 c. The commissioner is authorized to commence a civil action in
8 Superior Court for appropriate relief from a violation of this act. This
9 relief may include an assessment against the violator for the costs of
10 any investigation, inspection, or audit that led to the discovery and
11 establishment of the violation, and for the reasonable costs of
12 preparing and litigating the case under this subsection.

13 d. (1) The commissioner is authorized to impose a civil
14 administrative penalty of not less than \$1,000 and not more than
15 '~~[\$100,000]~~ \$25,000' for each violation of this act or any rule or
16 regulation adopted pursuant thereto, and each day of the violation shall
17 constitute an additional, separate, and distinct offense. Any amount
18 imposed under this subsection shall be assessed pursuant to rules and
19 regulations adopted by the commissioner for violations of similar type,
20 seriousness, and duration. The commissioner shall have the authority
21 to assess penalties prior to the establishment of rules and regulations
22 governing penalties to the extent that such penalties are reasonable and
23 based on other violations of a similar type, seriousness, and duration.
24 No civil administrative penalty shall be imposed until after the person
25 has been notified by certified mail or personal service. The notice
26 shall include: a reference to the section of the act, rule, regulation,
27 order, or permit violated; a concise statement of the facts alleged to
28 constitute a violation; a statement of the amount of the civil
29 administrative penalties to be imposed; and a statement of the person's
30 right to a hearing. The person shall have 20 days from receipt of the
31 notice within which to deliver to the commissioner a written request
32 for a hearing. Subsequent to the hearing and upon finding that a
33 violation has occurred, the commissioner may issue a final order or
34 civil administrative penalty after imposing the amount of the fine
35 specified in the notice. If no hearing is requested, the notice shall
36 become a final order or a final civil administrative penalty upon the
37 expiration of the 20-day period. Payment of the penalty is due when a
38 final order is issued or when the notice becomes a final order or a final
39 civil administrative penalty. The authority to levy a civil
40 administrative penalty is in addition to all other enforcement
41 provisions in this act, and the payment of a civil administrative penalty
42 shall not be deemed to affect the availability of any other enforcement
43 provision in connection with the violation for which the penalty is
44 levied. A civil administrative penalty imposed under this subsection
45 may be compromised by the commissioner upon the posting of a
46 performance bond by the violator, or upon terms and conditions the
47 commissioner may establish by rule or regulation.

1 (2) ¹With respect to violations related to the amount of recycled
2 content contained in a manufacturer's products, in lieu of the penalties
3 provided for in paragraph (1) of this subsection, the department shall
4 assess a civil administrative penalty on a per-pound basis for each
5 pound of virgin material that is used by a manufacturer in its products
6 where recycled material is required pursuant to this act. The
7 department shall establish the per-pound penalty in the rules and
8 regulations adopted to implement this act.

9 (3)¹ In addition to the assessment of a civil administrative penalty,
10 the commissioner may, by administrative order and upon an
11 appropriate finding, assess a violator for the reasonable costs of any
12 investigation, inspection, or audit which led to the establishment of the
13 violation.

14 e. Any person who violates this act, an order issued pursuant to
15 subsection b. of this section, or a court order issued pursuant to
16 subsection c. of this section, or who fails to pay in full a civil
17 administrative penalty levied pursuant to subsection d. of this section,
18 shall be subject, upon order of a court, to a civil penalty not to exceed
19 ¹[\$100,000] \$50,000, and each day of the violation shall constitute an
20 additional, separate, and distinct offense¹ . Any penalty imposed
21 pursuant to this subsection may be collected, and any costs incurred in
22 connection therewith may be recovered, in a summary proceeding
23 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
24 (C.2A:58-10 et seq.). The Superior Court and the municipal court
25 shall have jurisdiction to enforce the "Penalty Enforcement Law of
26 1999."

27 f. The department is authorized to require a manufacturer that
28 violates the provisions of this act, or any rule or regulation adopted
29 pursuant thereto, to submit a corrective action plan describing how the
30 manufacturer intends to come into compliance with the provisions of
31 this act. The department shall adopt, pursuant to the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
33 regulations setting forth the substantive requirements for corrective
34 action plans.

35 g. In addition to the penalties and remedies provided above, a
36 person who knowingly, purposely, or recklessly makes a false or
37 misleading statement on any certification or registration submitted to
38 the department pursuant to this act shall, upon conviction, be guilty of
39 a crime of the third degree and, notwithstanding the provisions of
40 N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000 and
41 restitution. The department shall refer the provider of any false or
42 misleading statement to the Attorney General for prosecution.

43
44 17. Any proprietary information or trade secrets included in any
45 registration, certification, alternative compliance plan, corrective
46 action plan, or any other record submitted to the department
47 pursuant to this act shall not be made available to the general public

1 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as
2 the open public records act.

3
4 18. a. There is established in the Department of the Treasury a
5 special, nonlapsing account to be known as the “Recycling
6 Enhancement Penalty Account.” The account shall be credited with
7 all penalties collected pursuant to section 16 of this act, and any
8 interest or investment income earned on monies in the account.
9 Moneys in the account may be utilized by the department for
10 administrative expenses incurred in connection with the
11 enforcement or implementation of this act, for the public education
12 program required pursuant to subsection b. of this section, and for
13 other efforts to support recycling markets in the State as the
14 department may determine.

15 b. The department, in consultation with the Association of New
16 Jersey Recyclers and the organization under contract with the
17 department to administer the Clean Communities Program pursuant
18 to section 6 of P.L.2002, c.128 (C.13:1E-218), shall develop and
19 implement a Statewide public information and education program to
20 encourage, support, and increase the recycling of rigid plastic
21 containers, plastic beverage containers, glass containers, paper
22 carryout bags, plastic carryout bags, and any other containers or
23 packaging products, which may include, but need not be limited to,
24 television, radio, and print advertisements, signage, or classroom
25 education.

26
27 19. A municipality or county shall not adopt any rule,
28 regulation, code, or ordinance regulating the postconsumer recycled
29 content of rigid plastic containers, plastic beverage containers, glass
30 containers, paper carryout bags, plastic carryout bags, or plastic
31 trash bags after the effective date of this act. The provisions of this
32 act shall supersede and preempt any municipal or county rule,
33 regulation, code, or ordinance regulating the recycled content of
34 rigid plastic containers, plastic beverage containers, glass
35 containers, paper carryout bags, plastic carryout bags, or plastic
36 trash bags that was enacted prior to the effective date of this act.

37
38 20. Nothing in this act shall be construed to impose liability on
39 any news media that accept or publish advertising for any product
40 that would otherwise be subject to the provisions of this act.

41
42 21. Nothing in this act shall be construed to alter, limit, or
43 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-
44 99.126 et al.).

45
46 22. a. ¹~~【The】~~ No later than two years after the effective date of
47 this act, the¹ department shall adopt, pursuant to the “Administrative
48 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and

1 regulations necessary for the implementation of this act. ⁵The rules
2 and regulations shall also establish incentives, to the extent that funds
3 are appropriated therefor, for manufacturers, recyclers, and retailers to
4 collect and reuse polyethylene film.⁵

5 b. Prior to the adoption of rules and regulations, and as necessary
6 thereafter, the department may develop guidance as necessary for the
7 implementation of this act. ¹The department shall publish any such
8 guidance on its Internet website.¹

9
10 23. No later than five years after the effective date of this act,
11 the ¹~~Advisory Council on Solid Waste Management, established~~
12 ~~pursuant to section 7 of P.L.1970, c.39 (C.13:1E-7),~~ department¹
13 shall prepare and submit a report to the Governor, to the Legislature
14 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the
15 members of the Senate Environment and Energy Committee and the
16 Assembly Environment and Solid Waste Committee, or their
17 successors, assessing the implementation of this act, evaluating the
18 act's effectiveness in stimulating the recycling markets in the State,
19 and making any recommendations for legislative or administrative
20 action necessary to further the purposes of this act, including
21 recommendations for whether and how the State should encourage,
22 require, or support other uses of recycled material.

23
24 24. This act shall take effect immediately.