

P.L. 2021, CHAPTER 391, *approved January 18, 2022*
Senate Committee Substitute (*Fifth Reprint*) for
Senate, No. 2515

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

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 sale in the State and that is packaged in a rigid plastic container, plastic
2 beverage container, or glass container ⁴, unless the brand owner
3 identifies a licensee who agrees to accept responsibility under this act
4 and the licensee informs the department in writing of the agreement; or
5 (3) in the absence of a person meeting the criteria in (1) or (2) of this
6 definition over whom the State may exercise jurisdiction, a person
7 who imports or distributes a product into or within the State that is
8 sold or offered for sale in the State and that is packaged in a rigid
9 plastic container, plastic beverage container, or glass container⁴ .

10 “Manufacturer” shall not include ⁴[(³: (1) a person who only licenses a
11 brand or trademark for a product and does not produce, package, or
12 sell the product in the State; and (2)³]⁴ a person who, at a single
13 physical location, produces, packages, and sells a product directly to a
14 consumer at retail, ¹[including, but not limited to,] which may
15 include¹ a grocery store, restaurant, bar, cafeteria, café, food truck,
16 food cart, or similar establishment.

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

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

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

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

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

40 “Plastic trash bag” means a bag that is made of plastic, is at least
41 0.70 mils thick, and is designed and manufactured for use as a
42 container to hold, store, or transport materials to be discarded,
43 composted, or recycled, and includes, but is not limited to, a garbage
44 bag, ¹[composting bag,]¹ lawn or leaf bag, can-liner bag, kitchen bag,
45 or compactor bag.

46 “Postconsumer recycled content” means a material or product that
47 has completed its intended end use and product life cycle, and which

1 has been separated from the solid waste stream for the purposes of
2 collection and recycling. “Postconsumer recycled content” shall not
3 include secondary waste material or materials and by-products
4 generated from, and commonly used within, an original manufacturing
5 and fabrication process.

6 “Rigid plastic container” means a container made of plastic that
7 has a relatively inflexible finite shape or form, has a minimum
8 capacity of eight fluid ounces or its equivalent volume and a maximum
9 capacity of five fluid gallons or its equivalent volume, and is capable
10 of maintaining its shape while empty or while holding other products.

11

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

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

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

39 (2) document the methodology used to prorate the national data in
40 the report required pursuant to paragraph (1) of subsection a. of section
41 14 of this act.

42 c. ¹For the purposes of this section, “product” means a rigid plastic
43 container, plastic beverage container, glass container, paper carryout
44 bag, plastic carryout bag, or plastic trash bag that is subject to the
45 postconsumer recycled content requirements of this act.

1 3. a. (1) Beginning two years after the effective date of this act,
2 all rigid plastic containers sold, offered for sale, or used in association
3 with the sale or offer for sale of a product in the State by a
4 manufacturer shall contain, on average, at least ⁵~~[25]~~ ¹⁰ percent
5 postconsumer recycled content.

6 (2) Beginning five years after the effective date of this act, and
7 every three years thereafter, the percentage of postconsumer recycled
8 content required for rigid plastic containers pursuant to this section
9 shall increase by ⁵~~[five]~~ ¹⁰ percent, until reaching 50 percent.

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

18 c. ²~~[A rigid plastic container shall be exempt from the~~
19 postconsumer recycled content requirements of subsection a. of this
20 section if it:

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

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

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

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

32 (5) is manufactured for use in the shipment of hazardous materials
33 and is: (a) prohibited from being manufactured with used material by
34 federal packaging material specifications set forth in 49 C.F.R.
35 s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing
36 standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R.
37 s.178.609, or (c) is subject to the recommendations of the United
38 Nations on the transport of dangerous goods; or

39 (6) is a refillable container or a reusable container. For the
40 purposes of this paragraph, "refillable container" means a rigid plastic
41 ¹~~[a]~~¹ container that is routinely returned to and refilled by the
42 manufacturer with the same product packaged by the container; and
43 "reusable container" means a rigid plastic container that is routinely
44 reused by consumers to store the original product packaged by the
45 container.

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

5 (2) Beginning five years after the effective date of this act, and
6 every three years thereafter, the amount of postconsumer recycled
7 content required for plastic beverage containers pursuant to this
8 section shall increase by five percent, until reaching 50 percent ⁵;
9 except that the postconsumer recycled content requirement for
10 manufacturers who utilize a hot fill process shall not exceed 30
11 percent⁵.

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

20 c. ²**]** The provisions of subsection a. of this section shall not apply
21 to a refillable beverage container. For the purposes of this subsection,
22 "refillable beverage container" means a beverage container that holds
23 150 fluid ounces or less of beverage, and which is routinely returned to
24 the manufacturer to be refilled and resold.
25

26 5. a. Beginning two years after the effective date of this act, all
27 glass containers sold or offered for sale in the State by a
28 manufacturer shall contain, on average, at least 35 percent
29 postconsumer recycled content; except that, if a manufacturer
30 certifies to the department that its use of postconsumer recycled
31 content is made up of at least 50 percent mixed-color cullet, then
32 the glass containers shall only be required to contain, on average, at
33 least 25 percent postconsumer recycled content.

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

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

1 6. Beginning two years after the effective date of this act ²]:
2 a. ² all paper carryout bags sold or offered for sale in the State
3 by a manufacturer shall contain, on average, at least 40 percent
4 postconsumer recycled content; except that a paper carryout bag
5 that holds eight pounds or less shall only be required to contain, on
6 average, at least 20 percent postconsumer recycled content ²]; and
7 b. a manufacturer shall label each paper carryout bag sold or
8 offered for sale in the State with ¹: (1)¹ the name of the
9 manufacturer and the city, state, and country where the
10 manufacturer is located ¹which may be designated as the location of
11 the manufacturer's corporate headquarters; or (2) a uniform
12 resource locator (URL) or quick response (QR) code to an Internet
13 website that contains the information required pursuant to
14 paragraph (1) of this subsection¹]² .

15
16 7. All plastic carryout bags sold or offered for sale in the State
17 by a manufacturer shall:

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

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

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

32
33 8. a. ¹ [Beginning two years after the effective date of this act,
34 all] All¹ plastic trash bags sold or offered for sale in the State by a
35 manufacturer shall ¹:

36 (1) beginning two years after the effective date of this act,¹ contain
37 ⁵], on average, at least 10 percent] the following proportion of⁵
38 postconsumer recycled content ⁵:

39 (a) for plastic trash bags greater than 0.70 mils thick but less than
40 0.80 mils thick, at least five percent;

41 (b) for plastic trash bags greater than 0.80 mils thick but less than
42 1.00 mils thick, at least 10 percent; and

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

1 (2) beginning five years after the effective date of this act, contain
2 ⁵[(, on average, at least 20 percent] the following proportion of⁵
3 postconsumer recycled content^{1 5}:

4 (a) for plastic trash bags greater than 0.70 mils thick but less than
5 0.80 mils thick, at least 10 percent;

6 (b) for plastic trash bags greater than 0.80 mils thick but less than
7 1.00 mils thick, at least 20 percent; and

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

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

18 c.]² The provisions of subsection a. of this section shall not apply
19 to a bag that is designed and manufactured to hold, store, or transport
20 hazardous waste or regulated medical waste. For the purposes of this
21 subsection, "hazardous waste" means any solid waste defined as
22 hazardous waste by the department pursuant to P.L.1970, c.39
23 (C.13:1E-1 et seq.); and "regulated medical waste" means the same as
24 that term is defined in section 3 of P.L.1989, c.34 (C.13:1E-48.3).
25

26 9. a. Notwithstanding the provisions of this act to the contrary,
27 the department may, pursuant to the "Administrative Procedure
28 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), review and adjust any
29 of the postconsumer recycled content requirements established in
30 sections 3 through 8 of this act. In making an adjustment pursuant
31 to this section, the department shall consider:

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

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

36 (3) the availability of recycled material suitable for
37 manufacturers to meet the postconsumer recycled content
38 requirements, including the availability of high-quality recycled
39 plastic or glass, and food-grade recycled plastic or glass;

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

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

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

45 b. Any adjustment to the postconsumer recycled content
46 requirements made pursuant to this section shall be only for a time-

1 period, and only under such conditions, as the department may by
2 rule or regulation establish.

3

4 10. a. A package ¹or container¹ that ¹~~contain~~ contains¹ milk
5 products, ²plant-based products with names that include the names of
6 dairy foods such as “milk,”² medical food, ⁵food for special dietary
7 use,⁵ or infant formula shall be exempt from the postconsumer
8 recycled content requirements of this act ¹~~for a period of five years~~
9 beginning on the effective date of this act¹ .

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

15 (2) The department may, in its discretion, extend the five-year
16 exemption provided in paragraph (1) of this subsection.¹ Upon
17 expiration of the ¹~~five-year~~¹ exemption ¹~~period~~¹, a manufacturer
18 ¹~~of milk products, medical food, or infant formula may apply to~~
19 shall be subject to the applicable postconsumer recycled content
20 requirements in effect at the time of the expiration, unless the
21 manufacturer applies to, and receives from,¹ the department ¹~~for~~¹ a
22 waiver pursuant to section 11 of this act.

23 ¹~~b.~~ ¹c. ¹ As used in this section:

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

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

29 “Milk product” means the same as that term is defined ²~~in the~~
30 Grade “A” Pasteurized Milk Ordinance promulgated² by the United
31 States Food and Drug Administration.

32

33 11. a. A manufacturer may apply to the department for a waiver
34 from the postconsumer recycled content requirements established
35 pursuant to this act. The department may grant a waiver pursuant to
36 this section if the manufacturer demonstrates, and the department
37 finds, in writing, that:

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

42 (2) it is not technologically feasible for the manufacturer to
43 achieve the postconsumer recycled content requirements; ¹~~or~~¹

44 (3) the manufacturer cannot comply with the postconsumer
45 recycled content requirements due to inadequate availability of

1 recycled material or a substantial disruption in the supply of recycled
2 material; or

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

5 b. In order to qualify for a waiver from the postconsumer recycled
6 content requirements of this act, a manufacturer shall submit to the
7 department documentation from a federal or State agency or certified
8 third-party expert, as appropriate, demonstrating that the manufacturer
9 cannot comply with the postconsumer recycled content requirements
10 for one of the reasons set forth in subsection a. of this section, and pay
11 a \$1,000 waiver fee. The department may modify the amount of the
12 waiver fee, pursuant to the “Administrative Procedure Act,” P.L.1968,
13 c.410 (C.52:14B-1 et seq.), as necessary to reflect the department’s
14 costs to administer, monitor, and enforce the provisions of this section.

15 ³Notwithstanding the provisions of this subsection to the contrary, a
16 manufacturer that demonstrates to the department that the
17 manufacturer’s gross revenue is below \$5,000,000 shall not be
18 required to pay the waiver fee established pursuant to this section.³

19 c. The department may grant a waiver from the postconsumer
20 recycled content requirements for ¹any period of time as the
21 department deems appropriate a period of not less than two years, as
22 determined by the department¹ . The department shall publish any
23 determination to grant a waiver from the postconsumer recycled
24 content requirements on its Internet website. The department shall
25 develop a standardized form and procedure for manufacturers to apply
26 for a waiver pursuant to this section.

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

40 b. The department shall adopt, pursuant to the “Administrative
41 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
42 regulations setting forth the substantive requirements for an
43 alternative compliance plan required pursuant to subsection a. of
44 this section ²], which may include, but need not be limited to, a
45 requirement that the manufacturer take alternative measures to
46 reduce its use of virgin plastics, glass, or paper, including
47 sustainable materials management protocols, light weighting,

1 lifecycle analyses, and such other measures as the department may,
2 by rule or regulation, require².

3 c. The department shall have the authority to approve or
4 disapprove an alternative compliance plan prepared and submitted
5 pursuant to this section, and to require a manufacturer to make any
6 revisions or modifications to its alternative compliance plan as the
7 department determines necessary, consistent with the provisions of
8 this act and the rules and regulations adopted by the department.

9 d. A manufacturer shall undertake all of the actions described
10 in the alternative compliance plan. Failure by a manufacturer to
11 comply with an approved alternative compliance plan shall
12 constitute a violation of this act.

13 e. The department may enter into a contract or other legally
14 binding agreement with one or more trade associations representing
15 manufacturers, which shall allow the trade association, in lieu of the
16 manufacturers, to prepare and submit an alternative compliance
17 plan pursuant to this section and to undertake the actions described
18 in the alternative compliance plan.

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

22
23 13. a. Beginning ¹[on the September 1 next following] six
24 months after¹ the effective date of this act, and ¹[each September 1]
25 annually¹ thereafter, each manufacturer shall register with the
26 department, in a form and manner as prescribed by the department,
27 and pay an annual registration fee of \$1,000. The department may
28 modify the amount of the registration fee, pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
30 as necessary to reflect the department's costs to implement,
31 administer, monitor, and enforce the provisions of this act. The
32 department shall establish an electronic registration process on its
33 Internet website; however, the lack of an electronic registration
34 process shall not negate the requirement for a manufacturer to register
35 pursuant to this subsection. ¹Notwithstanding the provisions of this
36 subsection to the contrary ³[.] : (1) a manufacturer that demonstrates
37 to the department that the manufacturer's gross revenue is below
38 \$5,000,000 shall not be required to pay the registration fee established
39 pursuant to this section; or (2)³ a manufacturer that produces or
40 generates only products that are exempt from the provisions of this act
41 shall be required to register with the department only once, and shall
42 be exempt from the registration fee.¹

43 b. Notwithstanding the provisions of section 16 of this act to the
44 contrary, a manufacturer that fails to register with the department
45 pursuant to subsection a. of this section shall first receive a written
46 warning. A manufacturer that receives a written warning shall register
47 with the department no later than 90 days after receipt of the warning.

1 A manufacturer that receives a written warning and that fails to
2 register with the department within 90 days of receipt of the warning
3 shall be subject to the penalties set forth in section 16 of this act.
4

5 14. a. ¹(1)¹ Beginning ¹【on the third September 1】 three years
6 and six months¹ after the effective date of this act, and ¹【on each
7 September 1】 annually¹ thereafter, each manufacturer shall certify,
8 in writing, to the department whether or not the rigid plastic
9 containers, plastic beverage containers, glass containers, paper
10 carryout bags, plastic carryout bags, or plastic trash bags, as
11 applicable, sold, offered for sale, or used in association with the
12 sale or offer for sale of a product in the State, are in compliance
13 with the postconsumer recycled content requirements of this act, or
14 are otherwise exempt or have been approved for a waiver from the
15 requirements. If the manufacturer claims an exemption from the
16 requirements of this act, the manufacturer shall set forth the specific
17 basis upon which the exemption is claimed, and submit such proof
18 as the department determines necessary. The certification shall be
19 signed by an authorized representative of the manufacturer. A
20 manufacturer shall submit the certification, in the form and manner
21 determined by the department, under penalty of perjury. The
22 certification shall include the amount, in pounds, of virgin plastic,
23 glass, or paper and ¹the amount, in pounds, of¹ postconsumer
24 recycled material used by the manufacturer for any products subject
25 to the requirements of this act, and any other information as the
26 department deems necessary. The department shall establish an
27 electronic certification process on its Internet website; however, the
28 lack of an electronic certification process shall not negate the
29 requirement for a manufacturer to certify its compliance pursuant to
30 this subsection.

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

43 b. Each manufacturer shall maintain records, in a form
44 prescribed by the department, that demonstrate, for all rigid plastic
45 containers, plastic beverage containers, glass containers, paper
46 carryout bags, plastic carryout bags, or plastic trash bags generated
47 or produced by the manufacturer, whether and how the

1 manufacturer has complied with the postconsumer recycled content
2 requirements, or whether the manufacturer qualifies for an
3 exemption or waiver from the postconsumer recycled content
4 requirements. The department may adopt specific requirements for
5 the records required to be maintained pursuant to this subsection
6 and may request the records from a manufacturer at any time. A
7 manufacturer shall submit records to the department no later than
8 30 days after receipt of a request, unless the department extends that
9 timeframe.

10 c. The department may audit or investigate a manufacturer, at
11 any time, to assess the manufacturer's compliance with the
12 requirements of this act. Each year, the department ¹~~shall~~ may¹
13 audit, or cause to be audited, a random sample of manufacturers in
14 order to determine compliance with this act. A manufacturer shall
15 cooperate fully with any audit or investigation conducted pursuant
16 to this section. The department may require a manufacturer to pay
17 the costs of an audit conducted pursuant to this subsection.

18 d. The department shall annually publish a list of registered
19 manufacturers, their compliance status, and other information the
20 department deems appropriate on the department's Internet website.

21

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

25 b. As used in this section:

26 "Polystyrene foam" means blown polystyrene and expanded and
27 extruded foams that are thermoplastic petrochemical materials
28 utilizing a styrene monomer and processed by a number of
29 techniques, including, but not limited to, fusion of polymer spheres
30 (expandable bead polystyrene), injection molding, foam molding,
31 and extrusion-blow molding (extruded foam polystyrene).

32 "Polystyrene loose fill packaging," commonly known as packing
33 peanuts, means a void-filling packaging product made of
34 polystyrene foam that is used as a packaging fill.

35

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

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

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

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

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

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

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

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

6 b. Whenever, on the basis of available information, the
7 commissioner finds that a person is in violation of this act, the
8 commissioner may issue an order: (1) specifying the provision or
9 provisions of this act, or the rule or regulation adopted pursuant
10 thereto, of which the person is in violation; (2) citing the action that
11 caused the violation; (3) requiring compliance with the provision of
12 this act or the rule or regulation adopted pursuant thereto of which the
13 person is in violation; and (4) giving notice to the person of his right to
14 a hearing on the matters contained in the order.

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

21 d. (1) The commissioner is authorized to impose a civil
22 administrative penalty of not less than \$1,000 and not more than
23 ¹~~[\$100,000]~~ \$25,000¹ for each violation of this act or any rule or
24 regulation adopted pursuant thereto, and each day of the violation shall
25 constitute an additional, separate, and distinct offense. Any amount
26 imposed under this subsection shall be assessed pursuant to rules and
27 regulations adopted by the commissioner for violations of similar type,
28 seriousness, and duration. The commissioner shall have the authority
29 to assess penalties prior to the establishment of rules and regulations
30 governing penalties to the extent that such penalties are reasonable and
31 based on other violations of a similar type, seriousness, and duration.
32 No civil administrative penalty shall be imposed until after the person
33 has been notified by certified mail or personal service. The notice
34 shall include: a reference to the section of the act, rule, regulation,
35 order, or permit violated; a concise statement of the facts alleged to
36 constitute a violation; a statement of the amount of the civil
37 administrative penalties to be imposed; and a statement of the person's
38 right to a hearing. The person shall have 20 days from receipt of the
39 notice within which to deliver to the commissioner a written request
40 for a hearing. Subsequent to the hearing and upon finding that a
41 violation has occurred, the commissioner may issue a final order or
42 civil administrative penalty after imposing the amount of the fine
43 specified in the notice. If no hearing is requested, the notice shall
44 become a final order or a final civil administrative penalty upon the
45 expiration of the 20-day period. Payment of the penalty is due when a
46 final order is issued or when the notice becomes a final order or a final
47 civil administrative penalty. The authority to levy a civil
48 administrative penalty is in addition to all other enforcement

1 provisions in this act, and the payment of a civil administrative penalty
2 shall not be deemed to affect the availability of any other enforcement
3 provision in connection with the violation for which the penalty is
4 levied. A civil administrative penalty imposed under this subsection
5 may be compromised by the commissioner upon the posting of a
6 performance bond by the violator, or upon terms and conditions the
7 commissioner may establish by rule or regulation.

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

16 (3)¹ In addition to the assessment of a civil administrative penalty,
17 the commissioner may, by administrative order and upon an
18 appropriate finding, assess a violator for the reasonable costs of any
19 investigation, inspection, or audit which led to the establishment of the
20 violation.

21 e. Any person who violates this act, an order issued pursuant to
22 subsection b. of this section, or a court order issued pursuant to
23 subsection c. of this section, or who fails to pay in full a civil
24 administrative penalty levied pursuant to subsection d. of this section,
25 shall be subject, upon order of a court, to a civil penalty not to exceed
26 ~~1~~[\$100,000] \$50,000, and each day of the violation shall constitute an
27 additional, separate, and distinct offense¹ . Any penalty imposed
28 pursuant to this subsection may be collected, and any costs incurred in
29 connection therewith may be recovered, in a summary proceeding
30 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
31 (C.2A:58-10 et seq.). The Superior Court and the municipal court
32 shall have jurisdiction to enforce the "Penalty Enforcement Law of
33 1999."

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

42 g. In addition to the penalties and remedies provided above, a
43 person who knowingly, purposely, or recklessly makes a false or
44 misleading statement on any certification or registration submitted to
45 the department pursuant to this act shall, upon conviction, be guilty of
46 a crime of the third degree and, notwithstanding the provisions of
47 N.J.S.2C:43-3, shall be subject to a fine of not more than \$50,000 and

1 restitution. The department shall refer the provider of any false or
2 misleading statement to the Attorney General for prosecution.

3

4 17. Any proprietary information or trade secrets included in any
5 registration, certification, alternative compliance plan, corrective
6 action plan, or any other record submitted to the department
7 pursuant to this act shall not be made available to the general public
8 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as
9 the open public records act.

10

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

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

33

34 19. A municipality or county shall not adopt any rule,
35 regulation, code, or ordinance regulating the postconsumer recycled
36 content of rigid plastic containers, plastic beverage containers, glass
37 containers, paper carryout bags, plastic carryout bags, or plastic
38 trash bags after the effective date of this act. The provisions of this
39 act shall supersede and preempt any municipal or county rule,
40 regulation, code, or ordinance regulating the recycled content of
41 rigid plastic containers, plastic beverage containers, glass
42 containers, paper carryout bags, plastic carryout bags, or plastic
43 trash bags that was enacted prior to the effective date of this act.

44

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

1 21. Nothing in this act shall be construed to alter, limit, or
2 otherwise affect any of the provisions of P.L.2020, c.117 (C.13:1E-
3 99.126 et al.).

4
5 22. a. ¹~~【The】~~ No later than two years after the effective date of
6 this act, the¹ department shall adopt, pursuant to the “Administrative
7 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
8 regulations necessary for the implementation of this act. ⁵The rules
9 and regulations shall also establish incentives, to the extent that funds
10 are appropriated therefor, for manufacturers, recyclers, and retailers to
11 collect and reuse polyethylene film.⁵

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

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

30
31 24. This act shall take effect immediately.

32

33

34

35

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