

At the Vanguard of a Transitioning Recycling Industry, New Jersey Establishes Postconsumer Recycled Content Requirements for In-State Plastic, Paper, and Glass Products

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On January 18, 2022, New Jersey Governor Phil Murphy **signed** into law a **bill** establishing postconsumer recycled content (PRC) requirements for rigid plastic containers, glass containers, paper and plastic carryout bags, and plastic trash bags (Recycled Content Law, or Law). The Law also prohibits the sale of polystyrene loose fill packaging, commonly referred to as “packaging peanuts.” It was inspired, in part, by China’s 2018 decision to stop accepting recycled material imports.¹ The Law’s sponsors, General Assembly Members Annette Quijana, D-Union, Mila M. Jasey, D-Essex, and John F. McKeon, D-Essex, explained that “[o]ver the past few years, other countries such as China have decided to no longer buy most plastic waste content. New Jersey has an opportunity to enhance our market for plastics, and this will allow us to be at the forefront of a transitioning recycling industry.”²

The Law establishes the following PRC requirements for certain items sold, offered for sale, or used in association with such sale or offer for sale in the state of New Jersey:

Plastic Packaging

- Rigid plastic containers: 10% PRC by 2024. Every three years thereafter, the percentage of PRC must increase by 10% until reaching 50% PRC.³
- Plastic beverage containers: 15% PRC by 2024.

Every three years thereafter, the percentage of PRC must increase by 5% until reaching 50% PRC.⁴

- Plastic carryout bags: 20% PRC by 2024. By 2027, 40% PRC.⁵
- Plastic trash bags: The PRC requirements vary by thickness of the bag:
 - Plastic trash bags greater than 0.70 millimeters (“mm”) thick, but less than 0.80 mm thick: 5% PRC by 2024, and 10% PRC by 2027
 - Plastic trash bags greater than 0.80 mm thick but less than 1.00 mm thick: 10% PRC by 2024, and 20% PRC by 2027
 - Plastic trash bags greater than 1.00 mm thick: 10% PRC by 2024, and 40% PRC by 2027⁶

Glass Containers and Paper Bags

- Glass containers: 35% PRC by 2024. This requirement is reduced to 25% PRC by 2024 for manufacturers that certify with the New Jersey Department of Environmental Protection (NJDEP) that their use of PRC is made up of at least 50% mixed-color cullet (broken or waste glass that is suitable for re-melting).^{7 8}
- Paper carryout bags: 40% PRC by 2024, except that paper carryout bags that hold eight pounds or less are only required to contain 20% PRC by 2024.⁹

¹ <https://www.wastedive.com/news/new-jersey-recycled-content-plastic-murphy/616975/>

² <https://www.nj.com/politics/2022/01/nj-will-ban-packing-peanuts-require-more-recycled-materials-under-new-law-murphy-just-signed.html>

³ See https://www.njleg.state.nj.us/Bills/2020/S3000/2515_R5.HTM, at Sec. 3(a)(1)-(2).

⁴ See *id.* at Sec. 4(a)(1)-(2).

⁵ See *id.* at Sec. 7(a)-(b).

⁶ See *id.* at Sec. 8(a)(1)-(2).

⁷ The Law defines “mixed-color cullet” as “cullet that does not meet the American Society for Testing and Materials (ASTM) standard specifications for the color mix of color-sorted, post-filled glass as a raw material for the manufacture of glass containers.”

⁸ See https://www.njleg.state.nj.us/Bills/2020/S3000/2515_R5.HTM, at Sec 5(a).

⁹ See *id.* at Sec 6.

The Law allows NJDEP to review and adjust any of these PRC requirements in consideration of market conditions, recycling rates, the availability of recycled material, the capacity of recycling or processing infrastructure, the progress made by manufacturers in meeting the PRC requirements, and any other relevant factors.¹⁰ It also authorizes NJDEP to assess civil penalties of up to \$50,000 for failure to comply with the PRC requirements, which penalties may be collected in a summary proceeding pursuant to the Penalty Enforcement Law of 1999.¹¹ Further, “any person who knowingly, purposely, or recklessly makes a false or misleading statement on any certification or registration submitted to the [NJDEP] pursuant to the [Recycled Content Law] must, upon conviction, be guilty of a crime of the third degree and . . . subject to a fine of not more than \$50,000 and restitution.”¹²

Notably, a number of products traditionally stored in plastic containers are exempt from the Recycled Content Law, including milk products, plant-based dairy substitute products, medical foods, food for special dietary use, and infant formula.¹³ More generally, with the exception of plastic or glass beverage containers, all food packages and containers will be exempt from the PRC requirements for five years.¹⁴

For manufacturers facing difficulty meeting the PRC requirements, the Law offers a waiver application process. The NJDEP may grant a waiver if it finds any of the following:

- The manufacturer cannot achieve the PRC requirements and stay in compliance with the requirements of the U.S. Food and Drug Administration, or any similar state or federal rule or regulation.
- It is not technically feasible for the manufacturer to achieve the PRC requirements.
- The manufacturer cannot comply with the PRC requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material.
- The manufacturer cannot comply for another reason that is deemed acceptable to the NJDEP.¹⁵

A waiver application must be supported by documentation from a federal or state agency or certified third-party expert showing that the manufacturer cannot comply. If a waiver is granted, however, the NJDEP can require the exempt

manufacturer to prepare and submit an alternative compliance plan showing that it is taking all reasonable steps to comply.¹⁶

The Law will also require all manufacturers to register with the NJDEP, pay a registration fee,¹⁷ and keep detailed records.¹⁸ Beginning three years and six months after the Law’s enactment, and annually thereafter, manufacturers must certify to the NJDEP that their plastic products either are or are not in compliance with the PRC requirements or are exempt.¹⁹

The Recycled Content Law is another in a line of recent statutes and regulations signaling a shift away from reliance on plastic products. For example, in November 2021, New Jersey enacted a law partially banning single-use plastic straws, unless customers specifically request them.²⁰ Regulated businesses can expect similar laws in the future. For now, manufacturers and users of plastic packaging and containers in New Jersey should carefully review the Recycled Content Law and ensure conformance with its requirements to the greatest extent possible or otherwise communicate to the NJDEP an inability to comply.

For any questions on the Recycled Content Law or New Jersey recycling issues, please contact the authors of this article.

¹⁰ See *id.* at Sec. 9.

¹¹ See *id.* at Sec. 16(e).

¹² See *id.*

¹³ See *id.* at Sec. 10(a).

¹⁴ See *id.* at Sec. 10(b)(1).

¹⁵ See *id.* at Sec. 11.

¹⁶ See *id.* at Sec. 12.

¹⁷ See *id.* at Sec. 13.

¹⁸ See *id.* at Sec. 14.

¹⁹ See *id.*

²⁰ <https://www.dailyprincetonian.com/article/2021/11/plastic-straws-ban-new-jersey>

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