

## NJDEP Recycled Content Law FAQ (N.J.S.A. 13:1E-99.135-157)

June 6, 2024

### Modifications to FAQ #11

#### Introduction:

This FAQ is intended to assist the regulated community with complying with [New Jersey's Recycled Content Law](#).

*Disclaimer: The below FAQs will be updated frequently and are subject to change at the discretion of the Department of Environmental Protection (NJDEP). FAQs are intended to provide guidance to the public and should not be misconstrued as regulation or official position of the NJDEP. NJDEP reserves the right to modify responses as implementation of the law progresses and the NJDEP's understanding of certain issues evolves.*

*Please note that new questions and any existing questions with modified responses have been highlighted in yellow.*

#### 1. What is the Recycled Content Law?

On January 18, 2022, Governor Phil Murphy signed P.L. 2021, c. 391 (N.J.S.A. 13:1E-99.135-157), requiring manufacturers to meet minimum recycled content requirements for regulated containers and packaging products sold or offered for sale in New Jersey beginning on January 18, 2024. Regulated containers and packaging products include rigid plastic containers, plastic beverage containers, glass containers, paper and plastic carryout bags, and plastic trash bags. The law also prohibits the sale of polystyrene loose fill packaging (commonly known as packing peanuts) beginning on January 18, 2024.

#### 2. Who is subject to the law?

Generally, the law sets specific standards for inclusion of postconsumer recycled content for manufacturers of certain containers and packaging products, such as rigid plastic containers, paper and plastic carryout bags, plastic trash bags, plastic beverage containers, and glass containers, that are sold or offered for sale in New Jersey.

More specifically, a manufacturer is defined in the law as:

- “(1) a person that produces or generates a rigid plastic container, paper carryout bag, plastic carryout bag, or plastic trash bag that does not contain a product and that is sold or offered for sale in the State;
- (2) a person that is the brand owner of a product that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container, unless the brand owner identifies a licensee who agrees to accept responsibility under this act and the licensee informs the Department in writing of the agreement; or
- (3) in the absence of a person meeting the criteria in (1) or (2) of this definition over whom the State may exercise jurisdiction, a person who imports or distributes a product into or within the

State that is sold or offered for sale in the State and that is packaged in a rigid plastic container, plastic beverage container, or glass container.”

The term “manufacturer” does not include a person who, at a single physical location, produces, packages, and sells a product directly to a consumer at retail, which may include a grocery store, restaurant, bar, cafeteria, café, food truck, food cart, or similar establishment.

### **3. Who is required to register as a manufacturer?**

The brand owner of a regulated container or packaging product is required to register as the manufacturer unless a licensee is involved who agrees to accept responsibility for compliance under the law.

1. The brand owner is the entity that markets, sells, or offers for sale a regulated container or packaging product in New Jersey under a specific name brand.
2. In cases where a name brand cannot be identified, the manufacturer is the entity that designs or fabricates the regulated container or packaging product.
3. In cases where a brand owner or the entity responsible for product design or fabrication cannot be identified, the manufacturer is the entity that distributes the regulated container or packaging product to stores where it is then offered for sale to consumers in its final form.

The aforementioned applies to regulated containers and packaging products whether or not they contain a product.

The NJDEP will assume the brand owner is the manufacturer unless the brand owner provides the NJDEP with evidence to the contrary.

In cases where a parent company owns several subsidiaries that sell or offer for sale any regulated container or packaging product, the parent company may register on behalf of its subsidiaries as long as all regulated containers and packaging products are identified and accounted for in registration and compliance certification reports.

The NJDEP considers a parent company to be a company or corporation that owns, or holds control over, one or more separate businesses that operate under the direction of the parent regardless of managerial control given to its subsidiaries.

The NJDEP considers a subsidiary to be a company or business that is either fully or partially owned or controlled by a parent company.

### **4. What are some examples of a manufacturer when multiple parties are involved?**

The following are potential scenarios for assigning responsibility for compliance:

1. Company A owns a brand that sells beverages packaged in a plastic beverage container. Company A purchases empty plastic PET bottles from Company B (an unrelated company) to fill at a production facility. The finished product is then distributed by Company A to stores in New Jersey

and sold to Company C (a company related to Company A) for distribution to stores in New Jersey. Which of these companies must register as a recycled content manufacturer?

- Company A would be the company required to register under the law. It is the responsibility of Company A (being the brand owner of the regulated container or packaging product) to ensure it is sourcing compliant materials from Company B or using a different company that could meet the standards. Lastly, Company A is distributing its products to Company C, making Company A the brand owner and distributor of the regulated container or packaging product, which fulfills criteria #2 and #3 in the definition of manufacturer in the law. Additionally, Company A is manufacturing a beverage product (assumably packaged in a plastic beverage container); therefore, criteria #1 in the definition of manufacturer does not apply.
2. Company A operates a beverage production facility. Company A purchases preforms from Company B (an unrelated company), which Company A uses to blow molds into a fully formed plastic PET bottle at its production facility. Company A then fills the plastic PET bottles and sells the finished product to Company C (a company related to Company A) for distribution to stores in New Jersey. Which of these companies must register as a recycled content manufacturer?
- Company A would be required to register as the manufacturer under the law. Company A operates the beverage production facility; therefore, it is the responsibility of Company A to source compliant materials as the brand owner. Company B is not required to register but would be indirectly impacted by the law in order to meet the needs of its customers. Company C is the retailer and is not required to register as it simply sells the product to consumers. In this scenario, Company A is the brand owner and distributor fulfilling criteria #2 and #3 in the definition of manufacturer.
3. Company A is a beverage brand owner that licenses to Company B (a company related to Company A) the right to produce the brand beverage. The finished product is produced in plastic PET bottles that were blow molded at Company B's production facility in New York. The finished product is sold in New Jersey by Company C (a company related to Company A and Company B). Which of these companies must register as a recycled content manufacturer?
- In this scenario, Company A and Company B would need to come to an agreement to identify the company that would accept responsibility as the manufacturer under the law. Criteria # 2 in the definition of "manufacturer" states, "the brand owner identifies a licensee who agrees to accept responsibility under this act and the licensee informs the department in writing of the agreement," meaning the brand owner (Company A in this case) and the licensee (Company B in this case) are required to agree upon who will be accepting responsibility for compliance and notifying the NJDEP of such agreement. The brand owner and licensee can identify the responsible party that makes the most sense for their situation as long as the regulated container or packaging product is identified, and clear assignment of responsibility is provided to the NJDEP. Failure to submit this information in writing to the NJDEP will result in Company A being considered the default responsible party since it is the brand owner identified on the product's packaging. The NJDEP will use the name on the product's packaging to identify the manufacturer unless documentation in writing is provided that states otherwise.

## **5. What is considered postconsumer recycled content?**

Postconsumer recycled content is defined as a material or product that has completed its intended use and is at the end of its lifecycle, and which has been separated from the solid waste stream for the purposes of collection and recycling.

Common examples include plastic water or soda bottles, paper, and cardboard that are sent to recycling facilities as opposed to landfills. Once recycled, these products are converted into materials that are used to manufacture new bottles, paper, cardboard, or other products. Using recycled content to manufacture new products reduces reliance on virgin plastics and other materials that increase our carbon footprint, contributing to climate change. Furthermore, utilizing recycled materials is less energy intensive when compared to virgin materials.

## **6. Q: Are products/outputs from “advanced recycling” considered “postconsumer recycled content” to meet the recycled content mandates in the Law?**

Common forms of “advanced recycling” include processes such as pyrolysis and gasification. Pursuant to New Jersey’s solid waste regulations, facilities that use pyrolysis or gasification processes to break down plastics are considered “thermal destruction facilities” which are regulated as solid waste and not recycling facilities. [N.J.A.C. 7:26-1.1] As such, NJDEP does not consider the outputs from pyrolysis and gasification processes to be “postconsumer recycled content.” Therefore, plastic beverage containers and rigid plastic containers that are sold or offered for sale in the state cannot include feedstock from pyrolysis or gasification processes towards the recycled content mandates as of January 18, 2024.

Feedstock generated from other forms of “advanced recycling” such as solvolysis and dissolution are also not considered “postconsumer recycled content” at this time. However, any such technologies that convert plastics to plastics (excluding plastics-to-fuel which is not considered “recycling”) may be documented and provided to the NJDEP for review and consideration.

## **7. When do the requirements of the Recycled Content Law take effect?**

The requirements for regulated containers or packaging products, as well as the ban on polystyrene loose fill packaging, went into effect on January 18, 2024.

## **8. What is a regulated container or packaging product and what are the requirements for achieving compliance?**

A regulated container or packaging product is any of the following:

- Rigid plastic container
- Plastic beverage container
- Glass container
- Paper carryout bag

- Plastic carryout bag
- Plastic trash bag

The percentage of postconsumer recycled content required by year are as follows:

For rigid plastic containers:

- |                      |                      |
|----------------------|----------------------|
| a) <b>2024</b> = 10% | b) <b>2027</b> = 20% |
| c) <b>2030</b> = 30% | d) <b>2033</b> = 40% |
| e) <b>2036</b> = 50% |                      |

For plastic beverage containers:

- |                      |  |
|----------------------|--|
| a) <b>2024</b> = 15% | b) <b>2027</b> = 20%                                     |
| c) <b>2030</b> = 25% | d) <b>2033</b> = 30% (hot fill containers capped at 30%) |
| e) <b>2036</b> = 35% | f) <b>2039</b> = 40%                                     |
| g) <b>2041</b> = 45% | h) <b>2044</b> = 50%                                     |

For glass containers:

**2024** = 35%, except if 50% mixed-color cullet then 25%

For paper carryout bags:

**2024** = 40%, except for bags manufactured to hold 8lb or less require 20% recycled content

For plastic carryout bags:

- |                      |                      |
|----------------------|----------------------|
| a) <b>2024</b> = 20% | b) <b>2027</b> = 40% |
|----------------------|----------------------|

For plastic trash bags:

These requirements are tiered based on the thickness of the bag; as the bag thickness increases, so does the recycled content requirement.

**2024 -**

0.7 mils, less than 0.8 mils	0.8 mils, less than 1.0 mils	Greater than or equal to 1.0 mils
5%	10%	20%

**2027 -**

0.7 mils, less than 0.8 mils	0.8 mils, less than 1.0 mils	Greater than or equal to 1.0 mils
10%	20%	40%

## 9. What is considered a 'rigid plastic container'?

A rigid plastic container is a container made of plastic that has a relatively inflexible finite shape or form, has a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, and is capable of maintaining its shape while empty or while holding other products.

A rigid plastic container must be made of plastic except for minor incidentals including, but not limited to, caps, labels, or lids. However, a product does not need to include a lid, cap, or closure to be considered a rigid plastic container. Packaging that contains two or more material types (e.g. plastic and paper) is not considered a rigid plastic container when the plastic component comprises only a small proportion of the overall packaging product and is used solely to protect, display, and/or hold the product inside the package. In other words, when the package is disassembled into its component materials, if the plastic portion is unable to hold or contain a product on its own, it is not a rigid plastic container. However, if the plastic component will be able to contain, hold, or fully enclose a product at some point in the package's lifecycle, the package is considered a rigid plastic container.

A rigid plastic container may be sold or used as packaging to contain a separate product or be sold or used as the product itself. Regardless of the intended use, if the container is made of plastic, it is considered a rigid plastic container regulated by the law unless otherwise exempt.

#### **10. Is wine considered a beverage under the Recycled Content Law?**

A: The law defines a "beverage" as any of the following products if those products are in liquid, ready-to-drink form and are intended for human consumption:

- Beer and other malt beverages
- Wine and distilled spirit coolers
- Carbonated water, including soda and carbonated mineral water
- Noncarbonated water, including noncarbonated mineral water
- Carbonated soft drinks
- Noncarbonated soft drinks and sport drinks
- Noncarbonated fruit drinks that contain any percentage of fruit juice
- Coffee and tea drinks
- Carbonated fruit drinks
- Vegetable juice

The NJDEP interprets "wine and distilled spirit coolers" as referring to wine coolers and distilled spirit coolers, not to standard bottles of still, sparkling, or fortified wine or liquors. "Wine and distilled spirit coolers" are defined as a beverage containing wine or distilled spirits to which is added concentrated or unconcentrated juice or flavoring material and containing not more than 7 percent alcohol by volume (ABV).

Therefore, while wine and distilled spirit coolers are considered a beverage and are subject to the law, bottles of still, sparkling, or fortified wine or liquors are not considered beverages under the Recycled Content Law, and are therefore not subject to the recycled content mandates of the Law.

#### **11. Which products are exempt from the law? *Updated FAQ***

The following are exempt from the postconsumer recycled content requirements of the law:

1. A rigid plastic container is exempt from the postconsumer recycled content requirements if it:

- “1. is associated with a product produced in or brought into the State that is destined for shipment to a destination outside the State, and that remains with the product upon shipment;
  2. contains drugs, dietary supplements, medical devices, or cosmetics as those terms are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.;
  3. contains toxic or hazardous products regulated under the “Federal Insecticide, Fungicide, and Rodenticide Act,” 7 U.S.C. s.136 et seq.;
  4. is manufactured for use in the shipment of hazardous materials and is: (a) prohibited from being manufactured with used material by federal packaging material specifications set forth in 49 C.F.R. s.178.509 and 49 C.F.R. s.178.522, (b) is subject to the testing standards set forth in 49 C.F.R. s.178.600 through 49 C.F.R. s.178.609, or (c) is subject to the recommendations of the United Nations on the transport of dangerous goods; or
  5. is a refillable container or a reusable container. For the purposes of this paragraph, “refillable container” means a rigid plastic container that is routinely returned to and refilled by the manufacturer with the same product packaged by the container; and “reusable container” means a rigid plastic container that is routinely reused by consumers to store the original product packaged by the container.”
2. A trash bag is exempt from the postconsumer recycled content requirements if it is designed and manufactured to hold, store, or transport hazardous waste or regulated medical waste.
    - “Hazardous waste” means any solid waste defined as hazardous waste by the NJDEP pursuant to N.J.S.A. 13:1E-1 et seq., and “regulated medical waste” is defined at N.J.S.A. 13:1E-48.3.
  3. Any regulated container or packaging product is permanently exempt if it contains:
    - Milk products
      - Defined by the United States Food and Drug Administration in the 2019 Revision of the Grade “A” Pasteurized Milk Ordinance found at <https://www.fda.gov/food/milk-guidance-documents-regulatory-information/national-conference-interstate-milk-shipments-ncims-model-documents#PMO>
    - Plant-based products with names that include the names of dairy foods, such as “milk”
    - Medical food
      - Defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.
    - Food for special dietary use
      - Defined in 21 U.S.C. s.350 – Vitamins and Minerals
    - Infant formula
      - Defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. s.301 et seq.
  4. A package or container that contains food shall be temporarily exempt from the postconsumer recycled content requirements for a period of five years beginning on the effective date of the law, except that the exemption shall not apply to a plastic beverage container or a glass container filled with a beverage.

*Containers that are sold empty but are intended solely for the purpose of containing food, and are marketed as such, are eligible for this 5-year exemption. However, the food exemption does not apply to containers that are sold empty and may be used to contain food or other items.*

**12. What constitutes a toxic or hazardous product regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. s.136 et seq.?**

Pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) must be registered with the U.S. Environmental Protection Agency (USEPA) pursuant to 7 U.S.C. §136a. Any rigid plastic container containing a substance that is registered with the USEPA under FIFRA is exempt from the requirements of the Recycled Content Law. However, pesticides that have been deemed minimum risk pursuant to 40 CFR 152.25(f) are exempt from the registration requirements under FIFRA. Any rigid plastic container containing a toxic or hazardous product that is not required to be registered under FIFRA does not qualify for exemption under the Recycled Content Law and is subject to the postconsumer recycled content standards at N.J.S.A. 13:1E-99.137.

**13. How can a manufacturer claim an exemption under N.J.S.A. 13:1E-99.135-157?**

Manufacturers must claim exemptions for brands or products on the *Regulated Containers and Packaging Products Spreadsheet* that is required as part of their registration. The spreadsheet allows manufacturers to list their brands and products that are regulated by the law and assign exemptions to their exempt brands and products. The NJDEP reserves the right to request additional documentation or information from the manufacturer to support an exemption claim, but it is the manufacturer's responsibility to understand which of their products are exempt and to subsequently claim those exemptions for their regulated containers and packaging products through the registration process.

**14. When are manufacturers required to register?**

The law requires all manufacturers to register with the NJDEP beginning July 18, 2022 and annually thereafter. Registration for 2024 will open in the late spring/early summer and will remain open for manufacturers to register through the end of the year. A registration is valid for one year, after which, the manufacturer will be required to submit an annual renewal within three months after the expiration of their previous registration.

**15. Are manufacturers who produce only regulated containers and packaging products that are exempt under the temporary food exemption required to register prior to the expiration of the five-year exemption?**

Yes, manufacturers that generate only regulated containers and packaging products that are temporarily exempt through the five-year food exemption are required to submit an initial registration to the NJDEP through the online registration service. However, following the submission of the initial registration, annual registrations are not required until the temporary exemption expires, at which point manufacturers must begin to register annually. Should a manufacturer produce only exempt products, they are exempt from the registration fee, as stated within the statute.

**16. Will manufacturers be required to pay registration fees?**

Yes, manufacturers are required to pay an annual registration fee unless:



1. They demonstrate to the NJDEP that their gross revenue is below \$5,000,000.
2. They produce or generate only exempt products.

Please note:

- A manufacturer's gross revenue does not pertain only to revenue generated within New Jersey. The \$5,000,000 gross revenue exemption applies to a company's global gross revenue.
- Manufacturers whose gross revenue is less than \$5,000,000 are exempt from paying the \$1,000 registration fee and the \$1,000 waiver fee, if applicable. However, manufacturers whose gross revenue is less \$5,000,000 will not be exempt from complying with the postconsumer recycled content standards in the law, unless all of the manufacturer's regulated containers and packaging products meet the law's exemption criteria.

#### **17. Will a list of registered manufacturers be made available?**

The NJDEP will publish on its website a list of registered manufacturers and their compliance status on an annual basis. If a manufacturer is not on the list, it is not registered with the state and would not be considered in compliance with the law. To report a non-registered manufacturer, please contact [recycledcontent@dep.nj.gov](mailto:recycledcontent@dep.nj.gov).

#### **18. When are manufacturers required to submit compliance reports?**

The law requires manufacturers to submit annual compliance certification reports beginning July 18, 2025.

Compliance reports must provide the total quantity of post-consumer resin (PCR) utilized in the manufacturing process for all regulated containers and packaging products and the total quantity of overall material used by a manufacturer in all regulated containers and packaging products.

An example of quantifying the percentage of recycled content in a regulated container or packaging product is as follows:

$$\begin{aligned} & \text{Percent recycled content} \\ &= \text{sum recycled materials (in pounds)} / \text{total quantity of materials used (in pounds)} \end{aligned}$$

#### **19. How can manufacturers calculate postconsumer recycled content for purposes of certifying compliance?**

The statute states, "A manufacturer shall achieve compliance with the postconsumer recycled content requirements of this act based on the average amount of postconsumer recycled content, by weight or another metric, as determined by the Department, contained in its products. A manufacturer shall calculate the average amount of postconsumer recycled content contained in its products using data specific to products sold or offered for sale in New Jersey, if such data are available. If a manufacturer demonstrates to the Department that State-specific data are not available or feasible to generate, then

the manufacturer may utilize national data to calculate the average amount of postconsumer recycled content contained in its products. The calculation of averages may be based on a manufacturer's entire product line or separated into product sub-lines, provided that all of the manufacturer's products are accounted for in the calculations.

If a manufacturer relies on national data to calculate the average amount of postconsumer recycled content contained in its products, the manufacturer shall:

- (1) prorate the national data based on market share or population, to ensure that the percentage of postconsumer recycled content calculated for products sold in New Jersey is the same percentage as calculated for the nation; and
- (2) document the methodology used to prorate the national data in the report required"

In order to demonstrate that state-specific data is not available, the compliance report will need to include a justification.

The NJDEP considers a manufacturer's product line to mean their products that are produced, generated, sold, or offered for sale in a single category of regulated container or packaging product (e.g., a rigid plastic container, plastic beverage container, glass container, paper carryout bag, plastic carryout bag, or plastic trash bag). For example, a beverage company may sell iced tea, peach tea, and raspberry tea in liquid form but also offer for sale powdered iced tea and lemonade that are sold under the same brand as the liquid beverages. The container for the liquid beverages meets the definition of a plastic beverage container while the container for the powdered beverages meets the definition of a rigid plastic container. The liquid beverages and the powdered beverages would be considered two separate product lines because they are not offered for sale in the same category of regulated container or packaging product.

Manufacturers may aggregate their postconsumer recycled content utilization for multiple brands within a single regulated container or packaging product category but are not permitted to combine product lines into one postconsumer recycled content calculation when the product lines fall within two or more regulated container or packaging product categories. Manufacturers that produce, generate, sell, or offer sale product lines that fall within multiple regulated container or packaging product categories must submit separate calculations for each category. In the example of the beverage company above, the manufacturer would need to provide a recycled content calculation for the iced tea product line contained in a plastic beverage container and a separate calculation for the powdered iced tea and lemonade product line contained in a rigid plastic container.

The NJDEP considers a sub-product line as a group of connected products within a product line that are nearly identical but may differ slightly (e.g., a 32-ounce soda bottle and a 16-ounce soda bottle).

## **20. Are waivers available for manufacturers that are unable to achieve compliance with applicable requirements?**

Yes, the Recycled Content Law provides that a manufacturer may apply to the NJDEP for a waiver from the postconsumer recycled content requirements of the law if the manufacturer demonstrates to the NJDEP in writing, at a minimum, that:

- “(1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other State or federal law, rule, or regulation;
- (2) it is not technologically feasible for the manufacturer to achieve the postconsumer recycled content requirements;
- (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or
- (4) the manufacturer cannot comply for another reason as determined by the Department pursuant to rule, regulation, or guidance.”

Before waiver applications may be submitted for reasons other than those listed at 1-3 above, the NJDEP must publish rules, regulations, or guidance that establish additional reasons for which manufacturers may not be able to comply with the postconsumer recycled content standards. Regarding #4 above, at this time, the NJDEP has not published any such rules, regulations, or guidance. Therefore, the NJDEP will not grant individual waiver requests under criteria #4 at this time. As such, to qualify for a waiver, the manufacturer must meet one of the first three criteria for a waiver as provided in the law.

## **21. What is the difference between an exemption and a waiver in the Recycled Content Law?**

Exemptions and waivers both waive the requirement for a regulated container or packaging product to comply with the postconsumer recycled content requirements of the Recycled Content Law, but they differ in applicability and duration as well as in the process necessary to obtain them.

Exemptions are established within the statute, and they apply to specific types of regulated containers and packaging products, such as containers of infant formula or milk products. Some of the exemptions listed in the law apply to all categories of regulated containers and packaging products (e.g., rigid plastic containers, plastic beverage containers, etc.) while others are container specific, applying to only one category of regulated container or packaging product. For more detail about the exemptions provided in the law, please see the response to question #11 of this FAQ.

With the exception of the temporary food exemption, all exemptions are permanent unless the New Jersey Legislature amends the law. The NJDEP does not have the authority to create, revoke, or alter exemptions, except for the temporary food exemption, which the law allows the NJDEP to extend at its discretion.

If a regulated container or packaging product qualifies for an exemption, the manufacturer does not need to apply for the exemption. However, a one-time registration is still required. The item must be disclosed during the initial registration process with the appropriate exemption selected for the brand name or product in question on the form prescribed by the NJDEP. Please note that the NJDEP has the authority to determine if a regulated container or packaging product qualifies for an exemption and to audit registrations to verify product exemption eligibility.

Exempt containers and packaging products are not subject to registration fees, so a manufacturer that generates only exempt products will not be required to pay the fee. However, a manufacturer will be required to pay the registration fee if their registration also includes non-exempt products, unless the manufacturer's gross revenue is less than \$5,000,000.

Waivers are not necessary for exempt products as the exemption already waives the requirement to comply with the postconsumer recycled content standards. Waivers pertain only to regulated containers and packaging products that do not meet any of the exemptions listed within the law.

The law grants NJDEP the authority to grant a waiver for non-exempt regulated containers or packaging products that are unable to meet the postconsumer recycled content requirements. However, the law establishes specific criteria that must be met in order to qualify for a waiver. Please see the response to question #20 in this FAQ for more information about those criteria.

A manufacturer must apply for a waiver by completing this form [[link to waiver request form](#)] and submitting the supplemental documentation required on the form. For more information about the supplemental documentation that is required, please see the response to question #22 of this FAQ. A manufacturer must be registered with NJDEP in order to apply for a waiver. Since waivers apply only to non-exempt products, the registration fee is required unless the manufacturer's gross revenue is less than \$5,000,000.

A waiver application must also include a \$1,000 waiver application fee, which is in addition to the registration fee. Only manufacturers with a gross revenue of less than \$5,000,000 are exempt from the waiver application fee. After the waiver application is received, the NJDEP will send the manufacturer a bill for the waiver application fee.

NJDEP is granted the authority to determine if a regulated container or packaging product meets the criteria for a waiver established in the law and may deny a waiver application if those criteria are not met.

Unlike exemptions, waivers are not permanent. As required by the law, the NJDEP will issue a waiver for a minimum of two years. If issued, NJDEP will include an expiration date in the waiver provided. If the manufacturer wishes to extend the waiver beyond that expiration date, they will need to reapply for a new waiver and provide new documentation as to why each product should continue to be waived.

Products that are not regulated by the Recycled Content Law, such as wine and liquor, do not require registration, an exemption, or a waiver.

## **22. What supplemental documentation is necessary when applying for a waiver application?**

The specific documentation necessary to support a waiver application must be determined on a case-by-case basis. However, documentation must thoroughly demonstrate at least one of the following:

- The manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other state or federal law, rule, or regulation.

- It is not technologically feasible for the manufacturer to achieve the postconsumer recycled content requirements.
- The manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material.

Documentation must be specific to the manufacturer applying for the waiver. Please note that the NJDEP may deny a waiver request if any documentation is not specific to the applicant.

Acceptable documentation may include, but is not limited to:

- Citations of state or federal law,
- Certification from a third-party expert that a product is not capable of achieving compliance, or
- Documentation from suppliers that they are unable to source compliant materials.

Certified third-party experts may consist of labs that are unaffiliated with the manufacturer, certification entities, universities, suppliers, or equivalent accredited organizations. Use of internal experts, such as labs owned, operated, or affiliated with the manufacturer, will not be accepted. Other interested parties, such as trade associations, are also not considered third party experts.

Please note the NJDEP may deny a waiver request if any documentation based on market conditions is deemed to be insufficient or inaccurate upon review.

**23. After January 18, 2024, will a manufacturer that has submitted a waiver application have to comply with the postconsumer recycled content requirements while the NJDEP is reviewing the application?**

A manufacturer that has submitted an application for a waiver does not need to comply with the recycled content requirements while the waiver review is pending, provided that the manufacturer has received notification from the NJDEP that their waiver application is complete. However, a manufacturer that is awaiting a decision on a complete waiver application should take all feasible actions to ensure the use of postconsumer recycled content as mandated in the law.

**24. How can I contact NJDEP with questions or concerns or to confirm the compliance status of a manufacturer?**

Please contact [recycledcontent@dep.nj.gov](mailto:recycledcontent@dep.nj.gov) with any questions or inquiries or to request to be added to the NJDEP's recycled content distribution list.

**25. What are the next steps for the NJDEP in implementing the law?**

The NJDEP initiated the rulemaking process in June 2022. Stakeholder meetings were conducted on November 17, 2022 and January 16, 2023. A recording of the November 17 meeting can be found [here](#),

and a recording of the January 16 meeting can be found [here](#). The NJDEP expects proposed rules to be published for public comment in 2024 or early 2025. Please note that timelines are subject to change.