

LE: Please remove double underlining before returning to drafter.

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

DRAFT

**UNEDITED
UNREVISED
REDRAFT
3.28.22**
Double underlining
denotes changes from
prior draft

LLS NO. 22-0075.02 Sarah Lozano x3858

HOUSE BILL

HOUSE SPONSORSHIP

Cutter,

SENATE SPONSORSHIP

Priola and Gonzales,

BILL TOPIC: "Producer Responsibility Program For Recycling"

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF THE PRODUCER RESPONSIBILITY PROGRAM**
102 **FOR STATEWIDE RECYCLING.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

On or before June 1, 2023, the executive director (executive director) of the Colorado department of public health and environment (department) must designate a nonprofit organization (organization) to implement and manage a statewide program (program) that provides recycling services to covered entities in the state, which are defined as residences, businesses, schools, government buildings, and public places. The program is funded by annual dues (producer

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

responsibility dues) paid by producers of products that use covered materials (producers). Covered materials are defined as packaging materials and paper products _____ that are sold, offered for sale, or distributed in the state.

The bill creates the producer responsibility program for statewide recycling advisory board (advisory board) that consists of members who have expertise in recycling programs and are knowledgeable about recycling services in the different geographic regions of the state.

Prior to the implementation of the program, the organization must:

- On or before September 1, 2023, hire an independent third party to conduct an assessment of the recycling services currently provided in the state and the recycling needs in the state that are not being met (needs assessment);
- On or before April 1, 2024, report the results of the needs assessment to the advisory board and the executive director; and
- On or before February 1, 2025, after soliciting input from the advisory board and other key stakeholders, submit a plan proposal for the program (plan proposal) to the advisory board and executive director.

The plan proposal will initially cover recycling services only for residential covered entities. The plan proposal must:

- Describe how the organization will meet certain convenience standards and statewide recycling, collection, and postconsumer-recycled-content rates (rates);
- Establish a funding mechanism through the collection of producer responsibility dues that covers the organization's costs in implementing the program and the costs of the department in overseeing the program;
- Establish an objective formula to reimburse 100% of the net recycling services costs of public and private recycling service providers (providers) performing services under the program;
- Provide a list of covered materials (minimum recyclable list) that providers performing services under the program must collect to be eligible for reimbursement under the program;
- Set minimum rates that the state will meet by January 1, 2030, and January 1, 2035, and describe how the state can meet increased rates after 2035; and
- Describe a process and timeline, beginning no later than 2028, to expand recycling services to applicable nonresidential covered entities.

As part of the program, the organization must:

- Utilize and expand on existing recycling services provided by providers to provide statewide recycling services at no charge to covered entities for all covered materials on the minimum recyclable list;

1 (a) RECYCLING HAS A POSITIVE IMPACT ON THE ENVIRONMENT AND
2 PUBLIC HEALTH BY SAVING ENERGY, CONSERVING NATURAL RESOURCES, AND
3 REDUCING GREENHOUSE GAS EMISSIONS;

4 (b) RECYCLING HAS A POSITIVE BENEFIT ON COLORADO'S ECONOMY,
5 WITH THE RECYCLING, REMANUFACTURING, AND REUSE INDUSTRIES
6 AFFECTING EIGHTY-SIX THOUSAND JOBS IN COLORADO AND CONTRIBUTING
7 OVER EIGHT BILLION DOLLARS IN ECONOMIC BENEFITS ANNUALLY;

8 (c) IN 2020, COLORADO ONLY RECYCLED FIFTEEN PERCENT OF ITS
9 WASTE, WHICH IS LESS THAN HALF OF THE NATIONAL AVERAGE;

10 (d) COLORADO IS NOT ON TRACK TO MEET THE STATEWIDE
11 RECYCLING AND WASTE DIVERSION GOALS THAT THE POLLUTION PREVENTION
12 ADVISORY BOARD ASSISTANCE COMMITTEE, CREATED IN SECTION
13 25-16.5-105.5 (2), ADOPTED IN 2016 AND SET FORTH IN AN INTEGRATED
14 SOLID WASTE AND MATERIALS MANAGEMENT PLAN;

15 (e) THERE CAN BE NEGATIVE ENVIRONMENTAL, SOCIAL, ECONOMIC,
16 AND HEALTH IMPACTS IN THE PRODUCTION, CONSUMPTION, AND END-OF-USE
17 MANAGEMENT OF CONSUMER PRODUCTS AND PACKAGING ACROSS THEIR LIFE
18 CYCLES;

19 (f) ALL PARTIES HAVE THE OBLIGATION TO SHARE IN THE
20 RESPONSIBILITY TO REDUCE NEGATIVE IMPACTS OF END-OF-USE
21 MANAGEMENT FOR COVERED MATERIALS BY BUILDING A SYSTEM DESIGNED
22 TO MINIMIZE WASTE AND TO INCREASE REUSE AND RECYCLING OF PRODUCTS
23 AND PACKAGING; AND

24 (g) A PRODUCER RESPONSIBILITY PROGRAM IN COLORADO WOULD:

25 (I) ESTABLISH A CENTRALIZED SYSTEM FOR MANAGING RECYCLING IN
26 THE STATE THAT IS FUNDED THROUGH ANNUAL PRODUCER RESPONSIBILITY
27 DUES PAID BY THE PRODUCERS OF COVERED MATERIALS;

1 (II) ESTABLISH A CLEAR AND UNIFORM STATEWIDE LIST OF READILY
2 RECYCLABLE MATERIALS;

3 (III) PROVIDE A SUSTAINABLE FUNDING MECHANISM FOR RECYCLING
4 SERVICES AND RECYCLING INFRASTRUCTURE ACROSS ALL AREAS OF
5 COLORADO;

6 (IV) PROMOTE THE INCREASED USE OF READILY RECYCLABLE
7 MATERIALS IN NEW PRODUCTS AND PACKAGING;

8 (V) ENCOURAGE PRODUCERS TO DESIGN AND MANAGE COVERED
9 MATERIALS TO PREVENT OR MINIMIZE THEIR NEGATIVE ENVIRONMENTAL,
10 SOCIAL, ECONOMIC, AND HEALTH IMPACTS;

11 (VI) BE MANAGED BY AN INDEPENDENT NONPROFIT ORGANIZATION
12 THAT CONSULTS WITH AN ADVISORY BOARD OF RECYCLING EXPERTS AND
13 WOULD BE OVERSEEN BY THE DEPARTMENT;

14 (VII) INVEST IN RECYCLING END-MARKET DEVELOPMENT AND
15 INNOVATIONS THAT COULD ATTRACT NEW BUSINESSES TO COLORADO AND
16 CREATE A MORE RESILIENT DOMESTIC SUPPLY CHAIN; AND

17 (VIII) LEVERAGE EXISTING RECYCLING SYSTEMS AND
18 INFRASTRUCTURE BY WORKING WITH BOTH PUBLIC AND PRIVATE SERVICE
19 PROVIDERS.

20 (2) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT IT IS IN THE
21 PUBLIC INTEREST OF COLORADO TO REQUIRE PRODUCERS TO FINANCE A
22 PRODUCER RESPONSIBILITY PROGRAM THAT PROVIDES STATEWIDE RECYCLING
23 SERVICES FOR COVERED MATERIALS.

24 **25-17-603. Definitions.** AS USED IN THIS PART 6, UNLESS THE
25 CONTEXT OTHERWISE REQUIRES:

26 (1) "ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION" MEANS
27 A NONPROFIT ORGANIZATION DESIGNATED BY THE DEPARTMENT AS AN

1 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION PURSUANT TO
2 SECTION 25-17-608 (2)(b).

3 (2) "ADDITIONAL PRODUCER RESPONSIBILITY PROGRAM" MEANS A
4 PROGRAM IMPLEMENTED IN ACCORDANCE WITH AN ADDITIONAL PROGRAM
5 PLAN.

6 (3) "ADDITIONAL PROGRAM PLAN" MEANS THE ADDITIONAL
7 PROGRAM PLAN PROPOSAL THAT HAS BEEN DESIGNATED AS THE ADDITIONAL
8 PROGRAM PLAN BY THE EXECUTIVE DIRECTOR PURSUANT TO SECTION
9 25-17-608 (2)(d).

10 (4) "ADDITIONAL PROGRAM PLAN PROPOSAL" MEANS THE
11 ADDITIONAL PROGRAM PLAN PROPOSAL THAT IS SUBMITTED BY THE
12 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION TO THE ADVISORY
13 BOARD IN ACCORDANCE WITH SECTION 25-17-608 (2)(c).

14 (5) "ADVISORY BOARD" MEANS THE PRODUCER RESPONSIBILITY
15 PROGRAM FOR STATEWIDE RECYCLING ADVISORY BOARD CREATED IN SECTION
16 25-17-604 (1).

17 (6) "AMENDED PLAN PROPOSAL" MEANS AN AMENDED PLAN
18 PROPOSAL FOR THE IMPLEMENTATION OF THE PROGRAM SUBMITTED TO THE
19 ADVISORY BOARD AFTER THE ADVISORY BOARD'S INITIAL REVIEW OF THE
20 PLAN PROPOSAL IN ACCORDANCE WITH SECTION 25-17-605 (5).

21 (7) "COLLECTION" MEANS THE GATHERING AND TRANSPORTATION OF
22 COVERED MATERIALS FROM COVERED ENTITIES FOR THE PURPOSE OF
23 RECYCLING.

24 (8) "COLLECTION RATE" MEANS THE WEIGHT OF COVERED MATERIALS
25 THAT ARE COLLECTED UNDER THE PROGRAM IN A CALENDAR YEAR DIVIDED
26 BY THE WEIGHT OF COVERED MATERIALS USED FOR PRODUCTS SOLD, OFFERED
27 FOR SALE, OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THE STATE IN THE

1 SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

2 (9) "COMMISSION" MEANS THE SOLID AND HAZARDOUS WASTE
3 COMMISSION CREATED UNDER SECTION 25-15-302 (1)(a).

4 (10) "COMPOST" MEANS THE MATERIAL OR PRODUCT THAT IS
5 DEVELOPED UNDER CONTROLLED CONDITIONS AND THAT RESULTS FROM
6 BIOLOGICAL DEGRADATION PROCESSES BY WHICH ORGANIC WASTES
7 DECOMPOSE.

8 (11) (a) "COMPOST FACILITY" MEANS A SITE WHERE COMPOST IS
9 PRODUCED.

10 (b) "COMPOST FACILITY" INCLUDES ONLY COMPOST FACILITIES THAT
11 READILY ACCEPT AND PROCESS PACKAGING MATERIAL COLLECTED FROM
12 CONSUMERS.

13 (12) "CONSUMER" MEANS ANY PERSON WHO PURCHASES OR RECEIVES
14 COVERED MATERIALS IN THE STATE AND IS LOCATED AT A COVERED ENTITY.

15 (13) "CONVENIENCE STANDARDS" MEANS THE STANDARDS FOR THE
16 PROGRAM AS DESCRIBED IN SECTION 25-17-606 (3).

17 (14) "COVERED ENTITY" MEANS THE FOLLOWING LOCATIONS IN THE
18 STATE FROM WHICH COVERED MATERIALS THAT ARE PROCESSED BY A
19 MATERIALS RECOVERY FACILITY OR SIMILAR FACILITY ARE COLLECTED:

20 (a) ALL SINGLE-FAMILY OR MULTIFAMILY RESIDENCES IN THE STATE;
21 AND

22 (b) NONRESIDENTIAL LOCATIONS IDENTIFIED IN THE FINAL PLAN,
23 INCLUDING PUBLIC PLACES; SMALL BUSINESSES; SCHOOLS, AS DEFINED IN
24 SECTION 22-1-132 (2)(c); AND STATE AND LOCAL GOVERNMENT BUILDINGS.

25 (15) (a) "COVERED MATERIALS" INCLUDES:

26 (I) PACKAGING MATERIAL, EXCEPT AS SPECIFIED IN SUBSECTION
27 (15)(b) OF THIS SECTION;

1 (II) PAPER PRODUCTS, EXCEPT AS SPECIFIED IN SUBSECTION (15)(b)
2 OF THIS SECTION;

3 _____

4 (b) "COVERED MATERIALS" DOES NOT INCLUDE:

5 (I) PACKAGING MATERIALS INTENDED TO BE USED FOR THE
6 LONG-TERM STORAGE OR PROTECTION OF A DURABLE PRODUCT AND THAT
7 ARE INTENDED TO TRANSPORT, PROTECT, OR STORE THE PRODUCT FOR AT
8 LEAST FIVE YEARS;

9 (II) PAPER PRODUCTS THAT, THROUGH THEIR USE, COULD BECOME
10 UNSAFE OR UNSANITARY TO HANDLE;

11 (III) BOUND BOOKS;

12 (IV) BEVERAGE CONTAINERS SUBJECT TO A RETURNABLE CONTAINER
13 DEPOSIT, IF APPLICABLE;

14 (V) PACKAGING MATERIAL USED EXCLUSIVELY IN INDUSTRIAL OR
15 MANUFACTURING PROCESSES;

16 (VI) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS
17 REGULATED AS A DRUG, MEDICAL DEVICE, OR DIETARY SUPPLEMENT BY THE
18 FEDERAL FOOD AND DRUG ADMINISTRATION UNDER THE "FEDERAL FOOD,
19 DRUG, AND COSMETIC ACT", 21 U.S.C. SEC. 301 ET SEQ., AS AMENDED, OR
20 ANY FEDERAL REGULATION PROMULGATED UNDER THE ACT, OR ANY
21 EQUIPMENT AND MATERIALS USED TO MANUFACTURE SUCH PRODUCTS;

22 (VII) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS
23 REGULATED AS ANIMAL BIOLOGICS, INCLUDING VACCINES, BACTERINS,
24 ANTISERA, DIAGNOSTIC KITS, AND OTHER PRODUCTS OF BIOLOGICAL ORIGIN
25 UNDER THE FEDERAL "VIRUS-SERUM-TOXIN ACT", 21 U.S.C. SEC. 151 ET
26 SEQ., AS AMENDED;

27 (VIII) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS

1 REGULATED AS A TOXIC OR HAZARDOUS MATERIAL UNDER THE "FEDERAL
2 INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT", 7 U.S.C. SEC. 136 ET SEQ.,
3 AS AMENDED;

4 (IX) PACKAGING MATERIAL USED TO CONTAIN ARCHITECTURAL
5 PAINT COVERED UNDER A PAINT STEWARDSHIP PROGRAM IN ACCORDANCE
6 WITH PART 4 OF THIS ARTICLE 17; AND

7 (X) PACKAGING MATERIAL USED TO CONTAIN A PRODUCT THAT IS
8 REQUIRED UNDER STATE LAW TO BE SOLD IN PACKAGING MATERIAL THAT
9 MEETS THE STANDARDS SET FORTH IN THE "POISON PREVENTION PACKAGING
10 ACT OF 1970", 15 U.S.C. SEC. 1471 ET SEQ., AS AMENDED.

11 (16) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
12 AND ENVIRONMENT CREATED IN SECTION 24-1-119.

13 (17) "ENVIRONMENTALLY SOUND MANAGEMENT PRACTICES" MEANS
14 POLICIES THAT ENSURE COMPLIANCE WITH ALL APPLICABLE ENVIRONMENTAL
15 LAWS, INCLUDING LAWS ADDRESSING:

16 (a) RECORD KEEPING;

17 (b) TRACKING AND DOCUMENTING THE DISPOSITION OF COVERED
18 MATERIALS COLLECTED FROM COVERED ENTITIES; AND

19 (c) ENVIRONMENTAL LIABILITY COVERAGE FOR PROFESSIONAL
20 SERVICES AND CONTRACTOR OPERATIONS.

21 (18) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
22 DEPARTMENT OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

23 (19) "FINAL PLAN" MEANS THE PLAN PROPOSAL OR AMENDED PLAN
24 PROPOSAL THAT HAS BEEN DESIGNATED AS THE FINAL PLAN BY THE
25 EXECUTIVE DIRECTOR PURSUANT TO SECTION 25-17-605 (5)(c)(I).

26 (20) "FRONT RANGE" MEANS THE COUNTIES OF ADAMS, ARAPAHOE,
27 BOULDER, DOUGLAS, ELBERT, EL PASO, JEFFERSON, LARIMER, PUEBLO,

1 TELLER, AND WELD AND THE CITIES AND COUNTIES OF BROOMFIELD AND
2 DENVER.

3 (21) "INDUSTRIAL RECYCLING" MEANS THE PROCESSES OF COLLECTING,
4 AGGREGATING, AND SIZE-REDUCING AND OTHER OPERATIONS THAT TURN
5 PRECONSUMER MATERIALS, INCLUDING PRODUCTS THAT DO NOT MEET
6 QUALITY SPECIFICATIONS, DAMAGED PRODUCTS, AND ITEMS OR
7 BY-PRODUCTS GENERATED BY THE MANUFACTURE OF A PRODUCT BEFORE THE
8 PRODUCT REACHES AN END USER, INTO FEEDSTOCK FOR USE IN THE
9 MANUFACTURE OF NEW PRODUCTS.

10 (22) "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY
11 COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

12 (23) "MATERIALS RECOVERY FACILITY" MEANS A FACILITY FOR
13 PROCESSING COVERED MATERIALS COLLECTED FOR RECYCLING BEFORE
14 THEY ARE CONVEYED TO END-MARKET BUSINESSES, AS DEFINED IN SECTION
15 25-16.5-112 (4)(a).

16 (24) "MECHANICAL RECYCLING" MEANS A FORM OF RECYCLING THAT
17 DOES NOT CHANGE THE BASIC MOLECULAR STRUCTURE OF THE MATERIAL
18 BEING RECYCLED.

19 (25) "MINIMUM RECYCLABLE LIST" MEANS THE LIST OF COVERED
20 MATERIALS DEVELOPED UNDER SECTION 25-17-606 (1)(a).

21 (26) "NEEDS ASSESSMENT" MEANS THE ASSESSMENT OF THE STATE'S
22 RECYCLING NEEDS CONDUCTED PURSUANT TO SECTION 25-17-605 (3).

23 (27) "NONPROFIT ORGANIZATION" MEANS A TAX-EXEMPT
24 CHARITABLE OR SOCIAL WELFARE ORGANIZATION OPERATING UNDER 26
25 U.S.C. 501 (c)(3) OR 501 (c)(4) OF THE FEDERAL "INTERNAL REVENUE CODE
26 OF 1986", AS AMENDED.

27 (28) (a) (I) "PACKAGING MATERIAL" MEANS ANY MATERIAL,

1 REGARDLESS OF RECYCLABILITY, THAT IS INTENDED FOR SINGLE OR
2 SHORT-TERM USE AND IS USED FOR THE CONTAINMENT, PROTECTION,
3 HANDLING, DELIVERY, OR PRESENTATION OF PRODUCTS TO THE CONSUMER AT
4 THE POINT OF SALE, INCLUDING THROUGH AN INTERNET TRANSACTION.

5 (II) "PACKAGING MATERIAL" INCLUDES PRODUCTS SUPPLIED TO OR
6 PURCHASED BY CONSUMERS FOR THE EXPRESS PURPOSE OF FACILITATING
7 FOOD OR BEVERAGE CONSUMPTION AND THAT ARE:

8 (A) ORDINARILY DISPOSED OF AFTER A SINGLE OR SHORT-TERM USE;
9 AND

10 (B) NOT DESIGNED FOR REUSE OR REFILL.

11 (III) "PACKAGING MATERIAL" INCLUDES PAPER, PLASTIC, GLASS,
12 METAL, CARTONS, FLEXIBLE FOAM, RIGID PACKAGING, OR OTHER MATERIALS
13 OR COMBINATION OF THESE MATERIALS.

14 (b) "PACKAGING MATERIAL" DOES NOT INCLUDE:

15 (I) PACKAGING MATERIALS USED SOLELY IN TRANSPORTATION OR
16 DISTRIBUTION TO NONCONSUMERS;

17 (II) PACKAGING MATERIALS USED SOLELY IN BUSINESS-TO-BUSINESS
18 TRANSACTIONS WHERE A COVERED MATERIAL IS NOT INTENDED TO BE
19 DISTRIBUTED TO THE END CONSUMER;

20 (III) PACKAGING MATERIALS THAT ARE NOT SOLD OR DISTRIBUTED
21 TO COVERED ENTITIES; OR

22 (IV) PACKAGING MATERIALS THAT ARE USED FOR PRODUCTS SOLD,
23 OFFERED FOR SALE, OR DISTRIBUTED OUTSIDE THE STATE.

24 (29) "PAPER PRODUCTS" MEANS PAPER AND OTHER CELLULOSIC
25 FIBERS, WHETHER OR NOT THEY ARE USED AS A MEDIUM FOR TEXT OR
26 IMAGES, INCLUDING:

27 (a) FLYERS;

- 1 (b) BROCHURES;
- 2 (c) BOOKLETS;
- 3 (d) CATALOGS;
- 4 (e) TELEPHONE DIRECTORIES;
- 5 (f) NEWSPAPERS;
- 6 (g) MAGAZINES; AND
- 7 (h) PAPER USED FOR WRITING OR ANY OTHER PURPOSE.
- 8 (30) "PLAN PROPOSAL" MEANS THE PLAN PROPOSAL FOR THE
- 9 IMPLEMENTATION OF THE PROGRAM SUBMITTED TO THE ADVISORY BOARD IN
- 10 ACCORDANCE WITH SECTION 25-17-605 (4).
- 11 (31) "POSTCONSUMER-RECYCLED-CONTENT RATE" MEANS THE
- 12 AMOUNT OF POSTCONSUMER RECYCLED MATERIALS USED IN THE PRODUCTION
- 13 OF COVERED MATERIALS IN A CALENDAR YEAR DIVIDED BY THE AMOUNT OF
- 14 COVERED MATERIALS USED FOR PRODUCTS SOLD, OFFERED FOR SALE, OR
- 15 DISTRIBUTED BY PRODUCERS WITHIN OR INTO THEIR UNITED STATES MARKET
- 16 TERRITORY IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.
- 17 (32) (a) "POSTCONSUMER RECYCLED MATERIAL" MEANS ONLY THOSE
- 18 COVERED MATERIALS THAT HAVE SERVED THEIR INTENDED END USE AS
- 19 CONSUMER ITEMS AND THAT HAVE BEEN SEPARATED OR DIVERTED FROM THE
- 20 WASTE STREAM FOR THE PURPOSES OF COLLECTION AND RECYCLING AS A
- 21 SECONDARY MATERIAL FEEDSTOCK.
- 22 (b) "POSTCONSUMER RECYCLED MATERIAL" DOES NOT INCLUDE
- 23 WASTE MATERIAL GENERATED DURING OR AFTER THE COMPLETION OF A
- 24 MANUFACTURING PROCESS.
- 25 (33) "PRODUCER" MEANS:
- 26 (a) (I) IF THE PRODUCT IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED
- 27 IN THE STATE USING PACKAGING MATERIALS UNDER THE MANUFACTURER'S

1 OWN BRAND OR IS SOLD, OFFERED FOR SALE, OR DISTRIBUTED IN THE STATE
2 USING PACKAGING MATERIALS THAT LACK IDENTIFICATION OF A BRAND, THE
3 PERSON THAT MANUFACTURES THE PRODUCT; OR

4 (II) IF THE PRODUCT IS MANUFACTURED BY A PERSON OTHER THAN
5 THE BRAND OWNER, THE PERSON THAT IS THE LICENSEE OF A BRAND OR
6 TRADEMARK UNDER WHICH A PACKAGED ITEM IS SOLD, OFFERED FOR SALE,
7 OR DISTRIBUTED IN THE STATE, WHETHER OR NOT THE TRADEMARK IS
8 REGISTERED IN THE STATE;

9

10 (b) FOR THE PURPOSES OF PRODUCTS THAT ARE SOLD, OFFERED FOR
11 SALE, OR DISTRIBUTED IN THE STATE THROUGH AN INTERNET TRANSACTION:

12 (I) THE PRODUCER OF THE PACKAGING MATERIAL USED TO DIRECTLY
13 PROTECT OR CONTAIN THE PRODUCT; AND

14 (II) FOR THE PURPOSES OF PACKAGING MATERIAL USED TO SHIP A
15 PRODUCT TO A CONSUMER, THE PERSON THAT PACKAGES OR SHIPS THE
16 PRODUCT TO THE CONSUMER;

17 (c) FOR THE PURPOSES OF A PAPER PRODUCT THAT IS A MAGAZINE,
18 NEWSPAPER, CATALOG, TELEPHONE DIRECTORY, OR SIMILAR PUBLICATION,
19 THE PUBLISHER OF THE PAPER PRODUCT; OR

20 (d) FOR ANY OTHER COVERED MATERIAL, THE PERSON THAT FIRST
21 DISTRIBUTES THE COVERED MATERIAL IN OR INTO THE STATE.

22 (34) "PRODUCER RESPONSIBILITY DUES" MEANS THE AMOUNTS
23 ESTABLISHED IN SECTION 25-17-605 (4)(h)(II) THAT A PRODUCER
24 PARTICIPATING IN THE PROGRAM PAYS ANNUALLY INTO THE PROGRAM
25 PURSUANT TO SECTION 25-17-609 (1).

26 (35) "PRODUCER RESPONSIBILITY ORGANIZATION" OR
27 "ORGANIZATION" MEANS THE NONPROFIT ORGANIZATION DESIGNATED TO

1 IMPLEMENT THE PROGRAM PURSUANT TO SECTION 25-17-605 (1)(b)(II).
2 (36) "PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE
3 RECYCLING" OR "PROGRAM" MEANS THE PRODUCER RESPONSIBILITY PROGRAM
4 FOR STATEWIDE RECYCLING CREATED IN ACCORDANCE WITH SECTION
5 25-17-605.

6 (37) "PROPRIETARY INFORMATION" MEANS INFORMATION THAT, IF
7 MADE PUBLIC:

8 (a) WOULD DIVULGE COMPETITIVE BUSINESS INFORMATION OR TRADE
9 SECRETS OF THE ENTITY THAT DEVELOPED THE INFORMATION; OR

10 (b) WOULD REASONABLY HINDER THE ENTITY'S COMPETITIVE
11 ADVANTAGE IN THE MARKET.

12 (38) (a) "PUBLIC PLACE" MEANS AN INDOOR OR OUTDOOR LOCATION
13 IN THE STATE THAT IS OPEN TO AND GENERALLY USED BY THE PUBLIC.

14 (b) "PUBLIC PLACE" INCLUDES STREETS; SIDEWALKS; PLAZAS; TOWN
15 SQUARES; STATE-OWNED OR LOCAL-GOVERNMENT-OWNED PARKS, BEACHES,
16 AND FORESTS; OTHER STATE-OWNED OR LOCAL-GOVERNMENT-OWNED LAND
17 OPEN FOR RECREATION OR OTHER PUBLIC USES; AND TRANSPORTATION
18 FACILITIES, INCLUDING BUS AND TRAIN STATIONS AND AIRPORTS.

19 (c) "PUBLIC PLACE" DOES NOT INCLUDE INDUSTRIAL, COMMERCIAL,
20 OR PRIVATELY OWNED PROPERTY.

21 (39) "READILY RECYCLABLE MATERIAL" MEANS A COVERED
22 MATERIAL THAT IS INCLUDED ON THE MINIMUM RECYCLABLE LIST.

23 (40) (a) "RECYCLING" MEANS THE REPROCESSING, BY MEANS OF A
24 MANUFACTURING PROCESS, OF A USED MATERIAL INTO A PRODUCT OR A
25 SECONDARY RAW MATERIAL.

26 (b) "RECYCLING" DOES NOT INCLUDE:

27 (I) ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF

1 COMBUSTION;

2 (II) USE AS A FUEL;

3 (III) USE AS ALTERNATIVE DAILY COVER AS DEFINED IN SECTION

4 30-20-1402 (1); OR

5 (IV) LANDFILL DISPOSAL OF DISCARDED COVERED MATERIALS.

6 (41) (a) "RECYCLING RATE" MEANS THE WEIGHT OF COVERED

7 MATERIALS THAT ARE RECYCLED UNDER THE PROGRAM IN A CALENDAR YEAR

8 DIVIDED BY THE WEIGHT OF COVERED MATERIALS USED FOR PRODUCTS SOLD,

9 OFFERED FOR SALE, OR DISTRIBUTED BY PRODUCERS WITHIN OR INTO THE

10 STATE IN THE SAME CALENDAR YEAR, EXPRESSED AS A PERCENTAGE.

11 (b) THE RECYCLING RATE IS MEASURED AT THE POINT WHERE

12 COLLECTED COVERED MATERIALS HAVE BEEN PROCESSED AND ARE READY FOR

13 SALE OR DELIVERY TO MATERIAL RECLAIMERS OR END MARKETS AFTER

14 PROCESSING AT A MATERIALS RECOVERY FACILITY OR SIMILAR

15 ESTABLISHMENT.

16 (42) (a) (I) "RECYCLING SERVICES" MEANS SERVICES PROVIDED FOR

17 THE RECYCLING OF COVERED MATERIALS, INCLUDING THE COLLECTION,

18 TRANSPORTATION, AND PROCESSING OF COVERED MATERIALS FROM THE

19 CONSUMER TO THE END MARKET.

20 (II) "RECYCLING SERVICES" INCLUDES CURBSIDE SERVICES AND

21 DROP-OFF CENTERS.

22 (b) "RECYCLING SERVICES" DOES NOT INCLUDE INDUSTRIAL RECYCLING

23 SERVICES.

24 (43) "RECYCLING SERVICES COSTS" MEANS THE COSTS OF RECYCLING

25 PROGRAMS TO PROVIDE RECYCLING SERVICES, INCLUDING COSTS RELATED TO:

26 (a) THE ADMINISTRATION OF RECYCLING PROGRAMS;

27 (b) CAPITAL IMPROVEMENTS TO RECYCLING PROGRAMS;

1 (c) THE COLLECTION, TRANSPORTATION, SORTING, AND PROCESSING
2 OF COVERED MATERIALS;

3 (d) PUBLIC EDUCATION ABOUT RECYCLING PROGRAMS; AND

4 (e) DISPOSAL OF NONRECYCLABLE COLLECTED COVERED MATERIALS.

5 (44) "RESPONSIBLE END MARKET" MEANS A MATERIALS MARKET IN
6 WHICH THE RECYCLING OF MATERIALS OR THE DISPOSAL OF CONTAMINANTS
7 IS CONDUCTED IN A WAY THAT:

8 (a) BENEFITS THE ENVIRONMENT; AND

9 (b) MINIMIZES RISKS TO PUBLIC HEALTH AND WORKER HEALTH AND
10 SAFETY.

11 (45) "RETAILER" MEANS A PERSON THAT SELLS OR OFFERS FOR SALE
12 TO CONSUMERS WITHIN OR INTO THE STATE, INCLUDING SALES MADE
13 THROUGH AN INTERNET TRANSACTION, PRODUCTS FOR WHICH COVERED
14 MATERIALS ARE USED.

15 (46) "REUSE" OR "REFILL" MEANS THE RETURN INTO THE
16 MARKETPLACE OF A COVERED MATERIAL THAT:

17 (a) HAS ALREADY BEEN USED IN THE SAME MANNER AS ORIGINALLY
18 INTENDED WITHOUT A CHANGE IN THE COVERED MATERIAL'S PURPOSE; AND

19 (b) WAS INTENDED TO BE USED FOR ITS ORIGINAL PURPOSE AT LEAST
20 FIVE TIMES.

21 (47) "SERVICE PROVIDER" MEANS A PUBLIC OR PRIVATE ENTITY, OTHER
22 THAN THE PRODUCER RESPONSIBILITY ORGANIZATION, THAT PROVIDES
23 RECYCLING SERVICES IN THE STATE.

24 **25-17-604. Producer responsibility program for statewide**
25 **recycling advisory board - creation - membership.** (1) THE PRODUCER
26 RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING ADVISORY BOARD IS
27 HEREBY CREATED IN THE DEPARTMENT. THE DEPARTMENT MAY SELECT AN

1 IMPARTIAL, THIRD-PARTY FACILITATOR TO CONVENE AND PROVIDE
2 ADMINISTRATIVE SUPPORT TO THE ADVISORY BOARD.

3 (2) (a) THE ADVISORY BOARD CONSISTS OF THE FOLLOWING THIRTEEN
4 VOTING MEMBERS AND TWO NONVOTING MEMBERS APPOINTED BY THE
5 EXECUTIVE DIRECTOR:

6 (I) THREE VOTING MEMBERS REPRESENTING LOCAL GOVERNMENTS IN
7 THE STATE, INCLUDING:

8 (A) ONE MEMBER REPRESENTING A MUNICIPALITY OR CITY AND
9 COUNTY;

10 (B) ONE MEMBER REPRESENTING A COUNTY; AND

11 (C) ONE MEMBER REPRESENTING A LOCAL GOVERNMENT NOT
12 LOCATED IN THE FRONT RANGE;

13 (II) ONE VOTING MEMBER REPRESENTING A MATERIALS RECOVERY
14 FACILITY;

15 (III) ONE VOTING MEMBER REPRESENTING A HAULER OF RECYCLABLE
16 MATERIALS, WHETHER REPRESENTING THE PUBLIC OR PRIVATE SECTOR;

17 (IV) ONE VOTING MEMBER REPRESENTING AN ENVIRONMENTAL OR
18 COMMUNITY-BASED NONPROFIT ORGANIZATION;

19 (V) ONE VOTING MEMBER REPRESENTING A PACKAGING MATERIAL
20 SUPPLIER THAT IS NOT A PRODUCER;

21 (VI) ONE VOTING MEMBER REPRESENTING A MANUFACTURER OF
22 RECYCLED PAPER PRODUCTS THAT IS NOT A PRODUCER;

23 (VII) ONE VOTING MEMBER REPRESENTING A TRADE ASSOCIATION,
24 CHAMBER OF COMMERCE, OR OTHER BUSINESS ADVOCACY ORGANIZATION
25 REPRESENTING BUSINESSES THAT ARE HEADQUARTERED IN THE STATE;

26 (VIII) ONE VOTING MEMBER REPRESENTING A RETAILER'S
27 ASSOCIATION OR A RETAILER THAT IS NOT A PRODUCER;

1 (IX) ONE VOTING MEMBER REPRESENTING A COMPOST FACILITY;
2 (X) ONE VOTING MEMBER WHO HAS EXPERIENCE IN ENVIRONMENTAL
3 JUSTICE AND REPRESENTING UNDERSERVED COMMUNITIES;

4 (XI) ONE VOTING MEMBER REPRESENTING A SOLID WASTE LANDFILL
5 OR TRANSFER STATION OPERATING AN ON-SITE, PUBLIC-FACING RECYCLING
6 COLLECTION PROGRAM;

7 (XII) ONE NONVOTING MEMBER REPRESENTING THE DEPARTMENT;
8 AND

9 (XIII) ONE NONVOTING MEMBER REPRESENTING THE PRODUCER
10 RESPONSIBILITY ORGANIZATION.

11 (b) (I) THE MEMBERS OF THE ADVISORY BOARD MUST HAVE RELEVANT
12 KNOWLEDGE AND EXPERTISE IN RECYCLING PROGRAMS OR THE IMPACTS OF
13 COVERED MATERIALS ON THE STATE AND THE ENVIRONMENT.

14 (II) IN APPOINTING MEMBERS, THE EXECUTIVE DIRECTOR SHALL
15 ENSURE TO THE EXTENT POSSIBLE THE GEOGRAPHIC DIVERSITY OF THE
16 ADVISORY BOARD'S MEMBERSHIP.

17 (3) THE EXECUTIVE DIRECTOR SHALL MAKE ALL APPOINTMENTS TO
18 THE ADVISORY BOARD NO LATER THAN DECEMBER 31, 2022. THE
19 APPOINTMENTS FOR INITIAL TERMS TO THE ADVISORY BOARD SHALL BE
20 STAGGERED SO THAT SOME OF THE MEMBERS SERVE INITIAL TWO-YEAR
21 TERMS AND OTHER MEMBERS SERVE INITIAL THREE-YEAR TERMS, AND ALL
22 MEMBERS SERVE SUBSEQUENT TERMS OF THREE YEARS. THE EXECUTIVE
23 DIRECTOR SHALL FILL ANY VACANCY BY APPOINTMENT FOR THE REMAINDER
24 OF THE UNEXPIRED TERM.

25 (4) THE ADVISORY BOARD SHALL CONVENE ITS FIRST MEETING NO
26 LATER THAN MARCH 1, 2023. AT THE FIRST MEETING, THE VOTING MEMBERS
27 SHALL SELECT A CHAIR AND VICE-CHAIR FROM AMONG THE VOTING MEMBERS

1 FOR A TERM NOT TO EXCEED TWO YEARS, AS DETERMINED BY THE ADVISORY
2 BOARD. THE ADVISORY BOARD SHALL CONDUCT ANNUAL MEETINGS AND MAY
3 CONDUCT MEETINGS MORE FREQUENTLY UPON THE REQUEST OF THE CHAIR OR
4 OF AT LEAST SEVEN OF THE VOTING MEMBERS OF THE ADVISORY BOARD. THE
5 ORGANIZATION MAY PROVIDE TECHNICAL AND STAFF ASSISTANCE TO THE
6 ADVISORY BOARD.

7 (5) THE ADVISORY BOARD IS SUBJECT TO THE OPEN MEETINGS
8 PROVISIONS OF THE "COLORADO SUNSHINE ACT OF 1972", CONTAINED IN
9 PART 4 OF ARTICLE 6 OF TITLE 24, AND THE "COLORADO OPEN RECORDS
10 ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

11 (6) ADVISORY BOARD MEMBERS ARE ENTITLED TO BE REIMBURSED AT
12 A RATE CONSISTENT WITH OTHER BOARDS AND COMMISSIONS CREATED
13 WITHIN THE DEPARTMENT FOR NECESSARY TRAVEL AND OTHER REASONABLE
14 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES.

15 (7) THE ADVISORY BOARD SHALL:

16 (a) ADVISE THE ORGANIZATION THROUGHOUT THE NEEDS
17 ASSESSMENT PROCESS IN ACCORDANCE WITH SECTION 25-17-605 (3)(b);

18 (b) REVIEW THE NEEDS ASSESSMENT REPORTED TO THE ADVISORY
19 BOARD PURSUANT TO SECTION 25-17-605 (3)(c);

20 (c) REVIEW THE PLAN PROPOSAL SUBMITTED UNDER SECTION
21 25-17-605 (4);

22 (d) RECOMMEND AMENDMENTS TO THE PLAN PROPOSAL AND THE
23 AMENDED PLAN PROPOSAL TO THE ORGANIZATION;

24 (e) RECOMMEND THAT THE EXECUTIVE DIRECTOR APPROVE OR REJECT
25 THE PLAN PROPOSAL OR AMENDED PLAN PROPOSAL;

26 (f) REVIEW THE ANNUAL REPORT SUBMITTED BY THE ORGANIZATION
27 UNDER SECTION 25-17-609 (2)(a); AND

1 (g) CONSULT WITH THE ORGANIZATION ON THE DEVELOPMENT AND
2 UPDATING OF THE MINIMUM RECYCLABLE LIST.

3 (8) IN CONSULTATION WITH THE ORGANIZATION, THE ADVISORY
4 BOARD MAY RECOMMEND AMENDMENTS TO THE FINAL PLAN TO THE
5 EXECUTIVE DIRECTOR FOR INCLUSION IN THE ANNUAL REPORT UNDER SECTION
6 25-17-609 (2)(c).

7 **25-17-605. Producer responsibility program for statewide**
8 **recycling - needs assessment - plan proposal - rules.** (1) (a) ON OR
9 BEFORE JUNE 1, 2023, PRODUCERS OR THEIR DESIGNATED AGENTS SHALL
10 ESTABLISH A NONPROFIT ORGANIZATION TO FULFILL THE REQUIREMENTS OF
11 THIS PART 6 AND SHALL PROVIDE NOTIFICATION TO THE DEPARTMENT THAT
12 INCLUDES:

13 (I) THE NAME, ADDRESS, AND CONTACT INFORMATION OF A PERSON
14 RESPONSIBLE FOR ENSURING THE COMPLIANCE OF THE NONPROFIT
15 ORGANIZATION AND PARTICIPATING PRODUCERS WITH THIS PART 6;

16 (II) A LIST OF PARTICIPATING PRODUCERS; AND

17 (III) A DESCRIPTION OF THE FUNDING MECHANISM THAT THE
18 NONPROFIT ORGANIZATION WILL USE TO CONDUCT THE NEEDS ASSESSMENT.

19 (b) UPON RECEIPT OF THE NOTIFICATION GIVEN PURSUANT TO
20 SUBSECTION (1)(a) OF THIS SECTION, THE EXECUTIVE DIRECTOR SHALL:

21 (I) ACKNOWLEDGE RECEIPT OF THE NOTIFICATION; AND

22 (II) DESIGNATE THE NONPROFIT ORGANIZATION AS THE PRODUCER
23 RESPONSIBILITY ORGANIZATION TO IMPLEMENT AND ADMINISTER THE
24 PRODUCER RESPONSIBILITY PROGRAM FOR STATEWIDE RECYCLING.

25 (c) THE ORGANIZATION DESIGNATED BY THE EXECUTIVE DIRECTOR
26 PURSUANT TO SUBSECTION (1)(b)(II) OF THIS SECTION MUST HAVE A
27 GOVERNING BOARD WITH VOTING MEMBERS THAT REPRESENT A DIVERSE

1 RANGE OF PRODUCERS AND REPRESENT PRODUCERS OF DIFFERENT TYPES OF
2 COVERED MATERIALS. THE GOVERNING BOARD OF THE ORGANIZATION MAY
3 INCLUDE NONVOTING MEMBERS THAT REPRESENT A DIVERSITY OF MATERIAL
4 TRADE ASSOCIATIONS.

5 (2) THE PRODUCER RESPONSIBILITY ORGANIZATION SHALL:

6 (a) FACILITATE A NEEDS ASSESSMENT IN CONSULTATION WITH THE
7 ADVISORY BOARD;

8 (b) CONSULT WITH THE ADVISORY BOARD IN THE DEVELOPMENT OF
9 THE PLAN PROPOSAL PRIOR TO ITS SUBMISSION, INCLUDING IN THE
10 DEVELOPMENT OF THE COST FORMULAS FOR REIMBURSEMENTS TO SERVICE
11 PROVIDERS PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION;

12 (c) SUBMIT A PLAN PROPOSAL IN ACCORDANCE WITH SUBSECTION (4)
13 OF THIS SECTION THAT COVERS A PERIOD OF FIVE YEARS; AND

14 (d) OPERATE AND ADMINISTER THE PROGRAM IN ACCORDANCE WITH
15 THE FINAL PLAN, THE PROVISIONS OF THIS PART 6, AND THE RULES ADOPTED
16 BY THE COMMISSION UNDER THIS PART 6.

17 (3) (a) ON OR BEFORE SEPTEMBER 1, 2023, THE ORGANIZATION SHALL
18 HIRE AN INDEPENDENT THIRD PARTY APPROVED BY THE EXECUTIVE DIRECTOR
19 TO CONDUCT AN ASSESSMENT OF THE STATE'S RECYCLING NEEDS. PRIOR TO
20 THE COMMENCEMENT OF THE NEEDS ASSESSMENT, THE ORGANIZATION SHALL
21 CONSULT WITH THE ADVISORY BOARD ON THE SCOPE OF THE NEEDS
22 ASSESSMENT AND PROVIDE ANY NECESSARY RECOMMENDATIONS TO THE
23 THIRD-PARTY CONSULTANT CONDUCTING THE NEEDS ASSESSMENT. THE
24 NEEDS ASSESSMENT SHALL BE INCLUSIVE OF AND ADDRESS THE NEEDS OF ALL
25 GEOGRAPHIC AREAS OF THE STATE. AT A MINIMUM, THE NEEDS ASSESSMENT
26 MUST IDENTIFY:

27 (I) THE SERVICE AVAILABILITY AND GAPS IN RECYCLING SERVICES TO

1 RESIDENTIAL COVERED ENTITIES THROUGHOUT THE STATE AND THE PRICES
2 PAID FOR RECYCLING SERVICES;

3 (II) THE ACTUAL RECYCLING SERVICES COSTS INCURRED BY PUBLIC
4 AND PRIVATE SERVICE PROVIDERS TO PROVIDE RECYCLING SERVICES FOR
5 RESIDENTIAL COVERED ENTITIES_____;

6 (III) DEMOGRAPHIC FACTORS AND OTHER VARIABLES TO BE
7 CONSIDERED IN THE DEVELOPMENT OF REIMBURSEMENT RATES FOR SERVICE
8 PROVIDERS IN ACCORDANCE WITH SUBSECTION (4)(i) OF THIS SECTION;

9 (IV) THE LEVELS OF CONTAMINATION AT MATERIALS RECOVERY
10 FACILITIES AND COMPOST FACILITIES THROUGHOUT THE STATE AND THE
11 IMPACTS OF CONTAMINATION ON THOSE FACILITIES;

12 (V) THE SERVICE AVAILABILITY, GAPS, AND RECYCLING SERVICES
13 COSTS ASSOCIATED WITH PROVIDING RECYCLING SERVICES TO
14 NONRESIDENTIAL COVERED ENTITIES, WITH PARTICULAR ATTENTION TO
15 SMALL BUSINESSES, AND WHICH TYPES AND LOCATIONS OF NONRESIDENTIAL
16 COVERED ENTITIES COULD BE PROVIDED WITH RECYCLING SERVICES THAT
17 WOULD INCREASE STATEWIDE COLLECTION AND RECYCLING RATES IN A
18 COST-EFFECTIVE MANNER;

19 (VI) THE PROCESSING CAPACITY AND INFRASTRUCTURE NEEDED FOR
20 THE PROGRAM TO MEET OR EXCEED THE CONVENIENCE STANDARDS AND THE
21 PROJECTED SCENARIOS FOR INCREASING THE RECYCLING RATE AND
22 COLLECTION RATE OF COVERED MATERIALS, AS IDENTIFIED PURSUANT TO
23 SUBSECTION (3)(a)(XII) OF THIS SECTION;

24 (VII) A PROPOSED LIST OF COVERED MATERIALS FOR INCLUSION IN
25 THE MINIMUM RECYCLABLE LIST AND ADDITIONAL MATERIALS THAT MAY BE
26 COLLECTED IN DIFFERENT GEOGRAPHIC AREAS THROUGH CURBSIDE SERVICES
27 OR DROP-OFF CENTERS;

1 (VIII) THE MARKET CONDITIONS AND OPPORTUNITIES FOR THE USE OF
2 RECYCLED COVERED MATERIALS IN THE STATE AND IN DIFFERENT GEOGRAPHIC
3 AREAS OF THE STATE;

4 (IX) OPPORTUNITIES FOR THE USE OF INNOVATIVE NEW
5 TECHNOLOGIES FOR THE RECYCLING AND REUSE OF COVERED MATERIALS;

6 (X) THE AVAILABILITY AND SCOPE OF ANY REUSE OR REFILL SYSTEMS
7 IN THE STATE AFFECTING THE USE OF COVERED MATERIALS;

8 (XI) EDUCATION NEEDS IN THE STATE WITH RESPECT TO THE
9 EDUCATION NEEDS DESCRIBED IN SECTION 25-17-607; AND

10 (XII) AT LEAST THREE PROJECTED SCENARIOS FOR INCREASING THE
11 RECYCLING RATE AND COLLECTION RATE OF COVERED MATERIALS IN THE
12 STATE, INCLUDING RECYCLING RATES AND COLLECTION RATES THAT THE
13 STATE COULD MEET BY JANUARY 1, 2030, AND JANUARY 1, 2035, AND THE
14 OPERATING AND CAPITAL COSTS NEEDED TO REACH EACH PROJECTED
15 SCENARIO.

16 (b) THE ORGANIZATION SHALL CONSULT WITH THE ADVISORY BOARD
17 THROUGHOUT THE NEEDS ASSESSMENT PROCESS AND IN DETERMINING WHICH
18 PROJECTED SCENARIO IDENTIFIED PURSUANT TO SUBSECTION (3)(a)(XII) OF
19 THIS SECTION TO IMPLEMENT IN ITS PLAN PROPOSAL.

20 (c) ON OR BEFORE APRIL 1, 2024, THE ORGANIZATION SHALL REPORT
21 THE RESULTS OF THE NEEDS ASSESSMENT TO THE ADVISORY BOARD AND THE
22 EXECUTIVE DIRECTOR. THE EXECUTIVE DIRECTOR SHALL POST THE RESULTS OF
23 THE NEEDS ASSESSMENT ON THE DEPARTMENT'S WEBSITE AND PROVIDE
24 PUBLIC NOTICE AND AN OPPORTUNITY TO COMMENT ON THE RESULTS OF THE
25 NEEDS ASSESSMENT.

26 (d) WITHIN SIXTY DAYS AFTER REPORTING THE RESULTS OF THE NEEDS
27 ASSESSMENT PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION, THE

1 ADVISORY BOARD MAY PROVIDE THE ORGANIZATION WITH A
2 RECOMMENDATION OF WHICH PROJECTED SCENARIO IDENTIFIED PURSUANT
3 TO SUBSECTION (3)(a)(XII) OF THIS SECTION TO IMPLEMENT IN ITS PLAN
4 PROPOSAL.

5 (e) ON OR BEFORE MAY 1, 2029, AND ON OR BEFORE MAY 1 EVERY
6 FIVE YEARS THEREAFTER, THE ORGANIZATION SHALL HIRE AN INDEPENDENT
7 THIRD PARTY APPROVED BY THE EXECUTIVE DIRECTOR TO CONDUCT AN
8 UPDATED ASSESSMENT OF THE STATE'S RECYCLING NEEDS TO REEVALUATE
9 THE PROGRAM AND IDENTIFY ANY RECYCLING SERVICE NEEDS IN THE STATE
10 THAT ARE NOT BEING MET BY THE PROGRAM. IN CONSULTATION WITH THE
11 ADVISORY BOARD, THE ORGANIZATION MAY MODIFY THE SCOPE OF AN
12 UPDATED NEEDS ASSESSMENT BY APRIL 15, 2029, AND ON OR BEFORE EVERY
13 APRIL 15 EVERY FIVE YEARS THEREAFTER. THE ORGANIZATION SHALL REPORT
14 THE RESULTS OF THE UPDATED NEEDS ASSESSMENT TO THE EXECUTIVE
15 DIRECTOR IN ACCORDANCE WITH THE REPORTING REQUIREMENTS SET FORTH
16 IN SUBSECTION (3)(c) OF THIS SECTION. THE ORGANIZATION SHALL USE THE
17 FINDINGS OF THE UPDATED NEEDS ASSESSMENT TO CREATE AN UPDATED PLAN
18 PROPOSAL AND SUBMIT THE UPDATED PLAN PROPOSAL TO THE ADVISORY
19 BOARD IN ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION. IN
20 CONSULTATION WITH THE ADVISORY BOARD AND THE ORGANIZATION, THE
21 EXECUTIVE DIRECTOR MAY WAIVE THE REQUIREMENT TO CONDUCT AN
22 UPDATED NEEDS ASSESSMENT UNDER THIS SUBSECTION (3)(e).

23 (4) ON OR BEFORE FEBRUARY 1, 2025, THE ORGANIZATION SHALL
24 SUBMIT A PLAN PROPOSAL FOR THE PROGRAM TO THE ADVISORY BOARD,
25 THAT, EXCEPT AS SET FORTH IN SUBSECTION (4)(y) OF THIS SECTION, ONLY
26 ADDRESSES RECYCLING SERVICES FOR RESIDENTIAL COVERED ENTITIES. THE
27 PLAN PROPOSAL MUST COVER A PERIOD OF FIVE YEARS, AND AN UPDATED

1 PLAN PROPOSAL MUST BE SUBMITTED TO THE ADVISORY BOARD ON OR
2 BEFORE FEBRUARY 1 EVERY FIVE YEARS THEREAFTER. ANY UPDATED PLAN
3 PROPOSAL MUST ADDRESS RECYCLING SERVICES FOR BOTH RESIDENTIAL AND
4 ANY APPLICABLE NONRESIDENTIAL COVERED ENTITIES, AS IDENTIFIED IN THE
5 NEEDS ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(V) OF THIS SECTION.
6 IN DEVELOPING THE PLAN PROPOSAL AND ANY UPDATED PLAN PROPOSALS,
7 THE ORGANIZATION SHALL SOLICIT AND CONSIDER INPUT FROM THE
8 ADVISORY BOARD AND PROVIDE OPPORTUNITY FOR ADDITIONAL
9 STAKEHOLDER INPUT. TO BE APPROVED, A PLAN PROPOSAL MUST:

10 (a) PROVIDE CONTACT INFORMATION FOR THE ORGANIZATION AND
11 A REPRESENTATIVE OF THE ORGANIZATION;

12 (b) DESCRIBE HOW THE PLAN PROPOSAL WILL ADDRESS AND
13 IMPLEMENT THE FINDINGS OF THE NEEDS ASSESSMENT;

14 (c) DESCRIBE THE MANNER IN WHICH THE ORGANIZATION SOLICITED
15 AND CONSIDERED INPUT FROM STAKEHOLDERS AND THE ADVISORY BOARD IN
16 DEVELOPING THE PLAN PROPOSAL. THE ORGANIZATION MUST PROVIDE A
17 SUMMARY OF ANY COMMENTS ABOUT THE PLAN PROPOSAL FROM THE
18 ADVISORY BOARD AND ADDITIONAL STAKEHOLDERS AND IDENTIFY CHANGES
19 MADE TO THE PLAN PROPOSAL BASED ON THE COMMENTS.

20 (d) DESCRIBE HOW THE ORGANIZATION WILL TRACK COMPLIANCE
21 AMONG PRODUCERS AND WILL COLLABORATE WITH THE EXECUTIVE DIRECTOR
22 TO BRING PRODUCERS INTO COMPLIANCE;

23 (e) INCLUDE A COMPREHENSIVE LIST OF THE COVERED MATERIALS
24 INCLUDED IN THE PROGRAM IN ACCORDANCE WITH THIS PART 6;

25 (f) ESTABLISH RECYCLING PRACTICES THAT:

26 (I) MEET OR EXCEED THE CONVENIENCE STANDARDS;

27 (II) USE OPEN, COMPETITIVE, AND FAIR PROCUREMENT PRACTICES

1 WHEN ENTERING INTO CONTRACTS WITH SERVICE PROVIDERS, AND, WHEN
2 ENTERING INTO CONTRACTS WITH PRIVATE SERVICE PROVIDERS, ADOPT A
3 PREFERENCE FOR SERVICE PROVIDERS WITH STRONG LABOR STANDARDS AND
4 WORKER SAFETY PRACTICES;

5 (III) ENSURE THAT ANY COVERED MATERIALS COLLECTED FOR
6 RECYCLING WILL BE TRANSFERRED TO A RESPONSIBLE END MARKET; AND

7 (IV) USE ENVIRONMENTALLY SOUND MANAGEMENT PRACTICES
8 ;

9 (g) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH NEWSPAPER
10 PUBLISHERS TO ACCEPT PRINT OR ONLINE ADVERTISING IN LIEU OF ALL OR A
11 PORTION OF THE PRODUCER RESPONSIBILITY DUES FOR NEWSPAPERS
12 CIRCULATED WITHIN THE STATE;

13 (h) ESTABLISH A FUNDING MECHANISM THAT:

14 (I) DOES NOT EXCEED THE DIRECT AND INDIRECT COSTS OF
15 IMPLEMENTING THE PROGRAM, INCLUDING THE COSTS OF:

16 (A) PROVIDING RECYCLING SERVICES UNDER THE PROGRAM THROUGH
17 CONTRACTS WITH SERVICE PROVIDERS OR REIMBURSEMENT OF RECYCLING
18 SERVICES COSTS UNDER THE REIMBURSEMENT RATES PROPOSED PURSUANT TO
19 SUBSECTION (4)(i) OF THIS SECTION;

20 (B) MEETING THE REPORTING REQUIREMENTS SET FORTH IN SECTION
21 25-17-609 (2);

22 (C) CONDUCTING THE NEEDS ASSESSMENT;

23 (D) DEVELOPING AND UPDATING THE FINAL PLAN; AND

24 (E) IMPLEMENTING THE EDUCATION AND OUTREACH PROGRAM SET
25 FORTH IN SECTION 25-17-607;

26 (II) IS FUNDED THROUGH PRODUCER RESPONSIBILITY DUES. THE
27 PRODUCER RESPONSIBILITY DUES PAID BY A PRODUCER MUST BE BASED ON

1 THE WEIGHT OF THE COVERED MATERIALS THAT ARE USED FOR PRODUCTS
2 SOLD, OFFERED FOR SALE, OR DISTRIBUTED BY THE PRODUCER IN THE STATE.

3 THE PRODUCER RESPONSIBILITY DUES FOR EACH COVERED MATERIAL TYPE
4 DEFINED BY THE ORGANIZATION MUST VARY BASED ON THE MARKET VALUE
5 OF EACH TYPE OF COVERED MATERIAL USED AND THE COST TO COLLECT,
6 TRANSPORT, PROCESS, AND MARKET THAT TYPE OF COVERED MATERIAL.

7 (III) REQUIRES:

8 (A) ANY SURPLUS MONEY GENERATED BY THE PROGRAM TO BE
9 PLACED BACK INTO THE PROGRAM FOR PROGRAM IMPROVEMENTS OR A
10 REDUCTION IN PRODUCER RESPONSIBILITY DUES; AND

11 (B) THE ORGANIZATION TO MAINTAIN A FINANCIAL RESERVE
12 SUFFICIENT TO OPERATE THE PROGRAM IN A FISCALLY PRUDENT AND
13 RESPONSIBLE MANNER;

14 (IV) INCENTIVIZES:

15 (A) REDUCTIONS IN THE AMOUNT OF PACKAGING MATERIALS USED
16 FOR PRODUCTS;

17 (B) INNOVATIONS AND PRACTICES TO ENHANCE THE RECYCLABILITY
18 OR COMMODITY VALUE OF COVERED MATERIALS;

19 (C) HIGH LEVELS OF POSTCONSUMER RECYCLED MATERIAL USE IN A
20 MANNER THAT DOES NOT DISRUPT THE RECYCLING OF OTHER MATERIALS;

21 (D) DESIGNS FOR THE REUSE AND REFILL OF COVERED MATERIALS;

22 AND

23 (E) HIGH RECYCLING AND REFILL RATES OF COVERED MATERIALS;

24 (V) DISINCENTIVIZES:

25 (A) DESIGNS AND PRACTICES THAT INCREASE THE COSTS OF
26 RECYCLING, REUSING, OR COMPOSTING COVERED MATERIALS;

27 (B) DESIGNS AND PRACTICES THAT DISRUPT THE RECYCLING OF OTHER

1 MATERIALS; AND

2 (C) PRODUCERS FROM USING COVERED MATERIALS THAT ARE NOT ON

3 THE MINIMUM RECYCLABLE LIST; AND

4 (VI) AT THE REQUEST OF A PRODUCER OR PRODUCERS OF A COVERED

5 MATERIAL, MAY INCLUDE A SPECIAL ASSESSMENT PAID BY THE PRODUCERS

6 OF THAT COVERED MATERIAL TO COVER SYSTEM IMPROVEMENTS THAT

7 IMPROVE THE COLLECTION AND RECYCLING OF THAT COVERED MATERIAL OR

8 FACILITATE THE ADDITION OF THE COVERED MATERIAL TO THE LIST OF

9 READILY RECYCLABLE MATERIALS;

10 (i) INCLUDE REIMBURSEMENT RATES FOR ONE HUNDRED PERCENT OF

11 THE NET RECYCLING SERVICES COSTS OF THE RECYCLING SERVICES PROVIDED

12 BY SERVICE PROVIDERS UNDER THE PROGRAM CONSISTENT WITH THE

13 REQUIREMENTS OF SECTION 25-17-606. THE REIMBURSEMENT RATES MUST:

14 (I) BE CALCULATED USING AN OBJECTIVE COST FORMULA OR

15 FORMULAS;

16 (II) INCORPORATE THE RELEVANT COST INFORMATION IDENTIFIED BY

17 THE NEEDS ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(III) OF THIS

18 SECTION;

19 (III) BE CALCULATED ON A PER UNIT BASIS SUCH AS PER TON, PER

20 HOUSEHOLD, OR OTHER UNIT OF MEASUREMENT; AND

21 (IV) TAKE INTO ACCOUNT _____:

22 (A) REGIONAL RECYCLING SERVICES COSTS;

23 (B) POPULATION DENSITY;

24 (C) NUMBER AND TYPES OF HOUSEHOLDS SERVED;

25 (D) COLLECTION METHOD USED;

26 (E) REVENUE GENERATED FROM COVERED MATERIALS; AND

27 (F) OTHER DEMOGRAPHIC FACTORS IDENTIFIED IN THE NEEDS

1 ASSESSMENT PURSUANT TO SUBSECTION (3)(a)(III) OF THIS SECTION.

2 (j) DESCRIBE THE _____ PROCESS TO EVALUATE AND REVISE THE
3 OBJECTIVE COST FORMULA AS NECESSARY. IF THE PLAN PROPOSAL INCLUDES
4 MORE THAN ONE OBJECTIVE COST FORMULA FOR RECYCLING SERVICES, THE
5 PLAN PROPOSAL MUST DESCRIBE THE CONDITIONS UNDER WHICH EACH
6 FORMULA WILL BE APPLIED.

7 (k) INCLUDE A SCHEDULE OF REIMBURSEMENT RATES FOR SERVICE
8 PROVIDERS THAT ELECT TO PARTICIPATE IN THE PROGRAM AND BE
9 REIMBURSED BY THE ORGANIZATION FOR PROVIDING RECYCLING SERVICES FOR
10 THE PROGRAM AND DESCRIBE A PROCESS FOR UPDATING THE SCHEDULE
11 PERIODICALLY AND AS NECESSARY;

12 (l) INCLUDE A PROPOSED BUDGET AND A DESCRIPTION OF THE PROCESS
13 USED TO DETERMINE PRODUCER RESPONSIBILITY DUES;

14 (m) DESCRIBE A PLAN THAT OUTLINES, IF THE ORGANIZATION CEASES
15 TO EXIST OR CEASES TO ADMINISTER THE PROGRAM, HOW ANY PRODUCER
16 RESPONSIBILITY DUES THAT HAVE NOT BEEN USED TO IMPLEMENT THE
17 PROGRAM WILL BE TRANSFERRED TO ANOTHER ORGANIZATION DESIGNATED
18 BY THE EXECUTIVE DIRECTOR UNDER SUBSECTION (1)(b)(II) OF THIS SECTION
19 TO ADMINISTER THE PROGRAM;

20 (n) INCLUDE THE MINIMUM RECYCLABLE LIST ESTABLISHED IN
21 ACCORDANCE WITH SECTION 25-17-606 (1)(a);

22 (o) SET TARGETS FOR THE MINIMUM COLLECTION RATES, MINIMUM
23 RECYCLING RATES, AND MINIMUM POSTCONSUMER-RECYCLED-CONTENT
24 RATES FOR CERTAIN TYPES OF COVERED MATERIALS, INCLUDING PAPER
25 PRODUCTS, GLASS, METAL, AND PLASTIC, THAT THE STATE WILL MEET BY
26 JANUARY 1, 2030, AND JANUARY 1, 2035;

27 (p) DESCRIBE HOW THE ORGANIZATION PLANS TO CONTINUE TO

1 INCREASE THE STATE'S MINIMUM COLLECTION RATES, MINIMUM RECYCLING
2 RATES, AND MINIMUM POSTCONSUMER-RECYCLED-CONTENT RATES AFTER
3 JANUARY 1, 2030, AND JANUARY 1, 2035;

4 (q) DESCRIBE HOW THE ORGANIZATION WILL VERIFY MINIMUM
5 POSTCONSUMER-RECYCLED-CONTENT RATES AND HOW
6 POSTCONSUMER-RECYCLED-CONTENT RATES WILL BE CALCULATED USING
7 WEIGHT AND OTHER METRICS;

8 (r) DESCRIBE HOW THE ORGANIZATION WILL PROVIDE PRODUCERS
9 WITH THE OPPORTUNITY TO PURCHASE POSTCONSUMER-RECYCLED
10 MATERIALS FROM PROCESSORS AT MARKET PRICES IF THE PRODUCER IS
11 INTERESTED IN OBTAINING RECYCLED FEEDSTOCK TO ACHIEVE MINIMUM
12 POSTCONSUMER-RECYCLED-CONTENT RATES;

13 (s) DESCRIBE HOW THE ORGANIZATION WILL REDUCE OR OFFSET THE
14 PRODUCER RESPONSIBILITY DUES FOR ANY PRODUCER OR GROUP OF
15 PRODUCERS THAT FUND OR OPERATE A COLLECTION PROGRAM THAT:

16 (I) COVERS A SPECIFIC TYPE OF COVERED MATERIAL THAT IS NOT
17 PROCESSED BY MATERIALS RECOVERY FACILITIES; AND

18 (II) HAS RECYCLING RATES THAT MEET OR EXCEED THE MINIMUM
19 RECYCLING RATE TARGET SET FORTH IN THE PLAN PROPOSAL PURSUANT TO
20 SUBSECTION (4)(o) OF THIS SECTION;

21 (t) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH SERVICE
22 PROVIDERS TO:

23 (I) UTILIZE AND EXPAND ON EXISTING RECYCLING SERVICES AND
24 INFRASTRUCTURE AND EXISTING EDUCATION AND OUTREACH PROGRAMS;

25 (II) REDUCE CONTAMINATION OF COVERED MATERIALS DELIVERED TO
26 MATERIALS RECOVERY FACILITIES AND COMPOST FACILITIES BY:

27 (A) REQUIRING EACH MATERIALS RECOVERY FACILITY AND COMPOST

1 FACILITY PARTICIPATING IN THE PROGRAM TO REPORT ANNUALLY TO THE
2 ORGANIZATION ON CONTAMINATION LEVELS AT EACH FACILITY; AND

3 (B) PROVIDING FUNDING OR OTHER ASSISTANCE TO COMPOST
4 FACILITIES TO REDUCE THE COSTS OF MANAGING OR INCREASE THE
5 EFFECTIVENESS OF EFFORTS TO MANAGE CONTAMINATION;

6 (III) INVEST IN NEW OR UPGRADED RECYCLING INFRASTRUCTURE;

7 (IV) PROPOSE AN APPROACH TO MEASURE AND REPORT ON THE USE
8 OF REUSABLE AND REFILLABLE COVERED MATERIALS AND ESTABLISH GOALS
9 AND STRATEGIES FOR INCREASING THE USE OF REUSABLE AND REFILLABLE
10 COVERED MATERIALS;

11 (V) MITIGATE THE IMPACTS OF COVERED MATERIALS ON OTHER
12 MATERIALS AND EQUIPMENT AT SORTING AND PROCESSING FACILITIES; AND

13 (VI) INVEST IN MARKET DEVELOPMENT FOR COVERED MATERIALS;

14 (u) DESCRIBE HOW THE ORGANIZATION WILL WORK WITH AND
15 INCENTIVIZE PRODUCERS TO REDUCE THE PACKAGING OF PRODUCTS USING
16 COVERED MATERIALS THROUGH PRODUCT DESIGN CHANGES, THE
17 DEVELOPMENT OR EXPANSION OF SYSTEMS FOR REUSABLE PACKAGING, AND
18 PRODUCT INNOVATION;

19 (v) DESCRIBE HOW THE PROGRAM WILL PRIORITIZE THE USE OF END
20 MARKETS THAT RETURN POST-CONSUMER RECYCLED MATERIALS TO THEIR
21 ORIGINAL PRODUCT TYPE;

22 (w) DESCRIBE HOW THE ORGANIZATION WILL EVALUATE AND
23 MONITOR THE USE OF RESPONSIBLE END MARKETS THROUGH METHODS SUCH
24 AS PROCESSOR CONTRACTS OR FINANCIAL INCENTIVES;

25 (x) DESCRIBE HOW THE ORGANIZATION WILL IMPLEMENT THE
26 EDUCATION AND OUTREACH PROGRAM SET FORTH IN SECTION 25-17-607;

27 (y) DESCRIBE A PROCESS AND TIMELINE, BEGINNING NO LATER THAN

1 2028, TO EXPAND RECYCLING SERVICES TO APPLICABLE NONRESIDENTIAL
2 COVERED ENTITIES, AS IDENTIFIED IN THE NEEDS ASSESSMENT PURSUANT TO
3 SUBSECTION (3)(a)(V) OF THIS SECTION; AND

4 (z) INCLUDE ANY ADDITIONAL INFORMATION REQUIRED BY THE
5 DEPARTMENT.

6 (5) (a) THE ADVISORY BOARD SHALL REVIEW THE PLAN PROPOSAL FOR
7 COMPLIANCE WITH THIS PART 6. THE ADVISORY BOARD SHALL CONSULT WITH
8 THE ORGANIZATION THROUGHOUT ITS REVIEW OF THE PLAN PROPOSAL.
9 WITHIN SIXTY DAYS AFTER THE SUBMISSION OF THE PLAN PROPOSAL TO THE
10 ADVISORY BOARD, THE ADVISORY BOARD SHALL EITHER PROVIDE ANY
11 RECOMMENDED AMENDMENTS TO THE PLAN PROPOSAL TO THE
12 ORGANIZATION OR, IF THE ADVISORY BOARD DOES NOT HAVE ANY
13 RECOMMENDED AMENDMENTS, FORWARD THE PLAN PROPOSAL TO THE
14 EXECUTIVE DIRECTOR. THE ORGANIZATION SHALL PROVIDE RESPONSIVE
15 ANSWERS TO THE ADVISORY BOARD'S RECOMMENDATIONS AND SUBMIT THE
16 AMENDED PLAN PROPOSAL TO THE ADVISORY BOARD WITHIN SIXTY DAYS
17 AFTER ITS RECEIPT OF THE RECOMMENDED AMENDMENTS. WITHIN THIRTY
18 DAYS AFTER THE SUBMISSION OF THE AMENDED PLAN PROPOSAL TO THE
19 ADVISORY BOARD, THE ADVISORY BOARD SHALL FORWARD THE AMENDED
20 PLAN PROPOSAL TO THE EXECUTIVE DIRECTOR WITH ITS RECOMMENDATION
21 FOR APPROVAL OR REJECTION AND, IF APPLICABLE, A WRITTEN EXPLANATION
22 OF THE BASIS FOR RECOMMENDING REJECTION OF THE PLAN PROPOSAL.

23 (b) (I) WITHIN SIXTY DAYS AFTER RECEIVING THE PLAN PROPOSAL OR
24 AMENDED PLAN PROPOSAL, THE EXECUTIVE DIRECTOR SHALL:

25 (A) APPROVE THE PLAN PROPOSAL OR AMENDED PLAN PROPOSAL; OR

26 (B) REJECT THE PLAN PROPOSAL OR AMENDED PLAN PROPOSAL.

27 (II) IF THE EXECUTIVE DIRECTOR REJECTS THE PLAN PROPOSAL OR

1 AMENDED PLAN PROPOSAL, THE EXECUTIVE DIRECTOR SHALL NOTIFY THE
2 ORGANIZATION OF THE REJECTION AND THE REASONS FOR THE REJECTION,
3 WHICH REASONS MUST BE BASED ON THE FAILURE OF THE PLAN PROPOSAL OR
4 AMENDED PLAN PROPOSAL TO COMPLY WITH THE REQUIREMENTS SPECIFIED
5 IN SUBSECTION (4) OF THIS SECTION. THE ORGANIZATION MUST SUBMIT A
6 NEW PLAN PROPOSAL TO THE ADVISORY BOARD WITHIN SIXTY DAYS AFTER
7 RECEIVING THE EXECUTIVE DIRECTOR'S REJECTION. THE NEW PLAN PROPOSAL
8 MUST BE REVIEWED BY THE ADVISORY BOARD AND THE NEW PLAN PROPOSAL
9 OR NEW AMENDED PLAN PROPOSAL MUST BE REVIEWED AND APPROVED OR
10 REJECTED BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH SUBSECTION
11 (5)(a) OF THIS SECTION AND THIS SUBSECTION (5)(b).

12 (c) (I) IF THE EXECUTIVE DIRECTOR APPROVES THE PLAN PROPOSAL OR
13 AMENDED PLAN PROPOSAL PURSUANT TO SUBSECTION (5)(b)(I) OF THIS
14 SECTION, THE EXECUTIVE DIRECTOR SHALL DESIGNATE THE PLAN PROPOSAL
15 OR AMENDED PLAN PROPOSAL AS THE FINAL PLAN AND SHALL PUBLISH THE
16 FINAL PLAN ON THE DEPARTMENT'S WEBSITE.

17 (II) THE ORGANIZATION SHALL BEGIN IMPLEMENTING THE FINAL PLAN
18 WITHIN SIX MONTHS AFTER IT IS APPROVED.

19 (6) (a) THE ORGANIZATION MAY SUBMIT PROPOSED AMENDMENTS TO
20 THE FINAL PLAN ANNUALLY TO THE ADVISORY BOARD FOR INCLUSION IN THE
21 ANNUAL REPORT UNDER SECTION 25-17-609 (2)(c). THE ADVISORY BOARD
22 SHALL REVIEW THE PROPOSED AMENDMENTS AND MAY RECOMMEND THOSE
23 PROPOSED AMENDMENTS TO THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH
24 THE PROCEDURES SET FORTH IN SUBSECTION (5)(a) OF THIS SECTION. THE
25 EXECUTIVE DIRECTOR SHALL APPROVE OR REJECT THE PROPOSED
26 AMENDMENTS BASED ON THE PLAN PROPOSAL REQUIREMENTS SPECIFIED IN
27 SUBSECTION (4) OF THIS SECTION.

1 (b) THE ORGANIZATION SHALL CONTINUE TO OPERATE THE PROGRAM
2 IN ACCORDANCE WITH THE FINAL PLAN PENDING THE APPROVAL OR
3 REJECTION OF A PROPOSED AMENDMENT BY THE EXECUTIVE DIRECTOR. THE
4 EXECUTIVE DIRECTOR'S REJECTION OF A PROPOSED AMENDMENT PURSUANT
5 TO THIS SUBSECTION (6) DOES NOT RELIEVE THE ORGANIZATION OF ITS
6 RESPONSIBILITY TO CONTINUE TO OPERATE THE PROGRAM IN ACCORDANCE
7 WITH THE FINAL PLAN.

8 (7) THE EXECUTIVE DIRECTOR SHALL ENFORCE THIS PART 6 IN
9 ACCORDANCE WITH SECTION 25-17-610 AND THE COMMISSION SHALL
10 PROMULGATE RULES IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24 AS MAY
11 BE NECESSARY FOR THE ADMINISTRATION OF THIS PART 6 AND THE
12 ENFORCEMENT OF THIS PART 6 PURSUANT TO SECTION 25-17-610.

13 **25-17-606. Minimum recyclable list - convenience standards.**

14 (1) (a) THE ORGANIZATION SHALL DEVELOP A MINIMUM RECYCLABLE LIST
15 BASED ON THE AVAILABILITY OF RECYCLING SERVICES, RECYCLING COLLECTION
16 AND PROCESSING INFRASTRUCTURE, AND RECYCLING END MARKETS FOR
17 COVERED MATERIALS, AS DETERMINED BY THE NEEDS ASSESSMENT.

18 (b) THE ORGANIZATION SHALL UPDATE THE MINIMUM RECYCLABLE
19 LIST, AND SUBMIT ANY UPDATES FOR INCLUSION IN THE ANNUAL REPORT
20 PURSUANT TO SECTION 25-17-609 (2)(a), IN RESPONSE TO RECYCLING
21 COLLECTION AND PROCESSING IMPROVEMENTS AND CHANGES IN RECYCLING
22 END MARKETS. THE ADVISORY BOARD SHALL CONSULT WITH THE
23 ORGANIZATION ON ANY UPDATES TO THE MINIMUM RECYCLABLE LIST IN
24 ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION 25-17-605 (6).

25 (2) (a) TO BE ELIGIBLE FOR REIMBURSEMENT FOR RECYCLING SERVICES
26 PROVIDED UNDER THE PROGRAM, SERVICE PROVIDERS MUST PROVIDE
27 RECYCLING SERVICES FOR ALL READILY RECYCLABLE MATERIALS.

1 (b) THE EXECUTIVE DIRECTOR MAY GRANT A SERVICE PROVIDER AN
2 EXCEPTION TO THE REQUIREMENTS OF SUBSECTION (2)(a) OF THIS SECTION IF
3 THE SERVICE PROVIDER DEMONSTRATES TO THE REASONABLE SATISFACTION
4 OF THE EXECUTIVE DIRECTOR THAT IT IS NOT ABLE TO PROVIDE RECYCLING
5 SERVICES FOR A READILY RECYCLABLE MATERIAL.

6 (c) SERVICE PROVIDERS ARE ELIGIBLE FOR REIMBURSEMENT FROM THE
7 ORGANIZATION FOR THE COLLECTION OF COVERED MATERIALS THAT ARE NOT
8 INCLUDED IN THE MINIMUM RECYCLABLE LIST FOR THE REGION IF THE SERVICE
9 PROVIDER DEMONSTRATES TO THE ORGANIZATION THAT THE COVERED
10 MATERIALS CAN BE COLLECTED AT A REASONABLE COST AND HAVE A
11 RESPONSIBLE END MARKET.

12 (d) THE ORGANIZATION SHALL REIMBURSE SERVICE PROVIDERS FOR
13 THE RECYCLING SERVICES COSTS TO PROVIDE RECYCLING SERVICES FOR ALL
14 READILY RECYCLABLE MATERIALS AND COVERED MATERIALS THAT THE
15 ORGANIZATION APPROVES PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION.

16 (e) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN
17 THIS PART 6 RESTRICTS A SERVICE PROVIDER FROM COLLECTING OR
18 PROCESSING COVERED MATERIALS THAT ARE NOT INCLUDED IN THE MINIMUM
19 RECYCLABLE LIST.

20 (3) (a) THE ORGANIZATION SHALL CONTRACT WITH SERVICE
21 PROVIDERS TO PROVIDE COVERED ENTITIES WITH CONVENIENT AND EQUITABLE
22 ACCESS TO RECYCLING SERVICES FOR ALL READILY RECYCLABLE MATERIALS,
23 AT NO CHARGE TO THE COVERED ENTITY, WITH THE GOAL OF ACHIEVING THE
24 RECYCLING RATE, COLLECTION RATE, AND
25 POST CONSUMER-RECYCLED-CONTENT RATE TARGETS ESTABLISHED IN THE
26 FINAL PLAN UNDER SECTION 25-17-605 (4)(o).

27 (b) TO THE EXTENT REASONABLE, THE COLLECTION OF READILY

1 RECYCLABLE MATERIALS MUST BE PROVIDED IN A MANNER THAT IS AS
2 CONVENIENT AS THE COLLECTION OF SOLID WASTE IN THE GEOGRAPHIC AREA
3 IN WHICH THE COVERED ENTITY IS LOCATED.

4 (c) TO THE EXTENT REASONABLE, ANY COVERED ENTITIES IN THE
5 STATE THAT ARE RECEIVING RECYCLING SERVICES ON DECEMBER 31, 2022,
6 MUST CONTINUE TO RECEIVE EQUIVALENT RECYCLING SERVICES THROUGH THE
7 PROGRAM OR A SERVICE PROVIDER ON AND AFTER DECEMBER 31, 2022.

8 (d) THE ORGANIZATION SHALL NOT RESTRICT A PERSON'S ABILITY TO
9 CONTRACT DIRECTLY WITH SERVICE PROVIDERS TO OBTAIN RECYCLING
10 SERVICES FOR COVERED MATERIALS.

11 (e) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN
12 THIS PART 6 VOIDS OR CANCELS ANY CONTRACT BETWEEN A RESIDENT AND
13 A SERVICE PROVIDER FOR THE PROVISION OF RECYCLING SERVICES THAT IS
14 EXECUTED PRIOR TO DECEMBER 31, 2022.

15 **25-17-607. Education and outreach program.** (1) THE
16 ORGANIZATION SHALL DEVELOP AND IMPLEMENT A STATEWIDE EDUCATION
17 AND OUTREACH PROGRAM THAT IS DESIGNED TO INCREASE THE RECYCLING
18 AND REUSE OF COVERED MATERIALS AND INCLUDES EDUCATION AND
19 OUTREACH ON:

- 20 (a) PROPER END-OF-LIFE MANAGEMENT OF COVERED MATERIALS;
21 (b) THE LOCATION AND AVAILABILITY OF RECYCLING SERVICES UNDER
22 THE PROGRAM; AND
23 (c) HOW TO PREVENT LITTERING IN THE PROCESS OF PROVIDING
24 RECYCLING SERVICES FOR COVERED MATERIALS.

25 (2) THE EDUCATION AND OUTREACH PROGRAM MUST, AT A
26 MINIMUM:

- 27 (a) PROVIDE CLEAR AND CONCISE RECYCLING INSTRUCTIONS THAT

1 ARE CONSISTENT STATEWIDE AND ACCESSIBLE FOR ALL DEMOGRAPHIC
2 GROUPS;

3 (b) COORDINATE WITH EXISTING RECYCLING EDUCATION MATERIALS
4 AND SERVICES PROVIDED THROUGHOUT THE STATE; AND

5 (c) BE DESIGNED TO HELP THE STATE ACHIEVE THE MINIMUM
6 COLLECTION RATE AND MINIMUM RECYCLING RATE TARGETS ESTABLISHED IN
7 THE FINAL PLAN UNDER SECTION 25-17-605 (4)(o) AND REDUCE LEVELS AND
8 IMPACTS OF CONTAMINATION FROM COVERED MATERIALS AT MATERIALS
9 RECOVERY FACILITIES AND COMPOST FACILITIES.

10 (3) THE ORGANIZATION SHALL CONSULT WITH THE ADVISORY BOARD
11 AND OTHER ENTITIES PROVIDING RECYCLING EDUCATION IN THE STATE ON THE
12 DEVELOPMENT AND DISTRIBUTION OF EDUCATION OUTREACH SERVICES AND
13 MATERIALS. THE ORGANIZATION MAY CONTRACT WITH SERVICE PROVIDERS,
14 LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS TO CONDUCT
15 RECYCLING EDUCATION AND OUTREACH SERVICES UNDER THE EDUCATION
16 AND OUTREACH PROGRAM DEVELOPED UNDER SUBSECTION (1) OF THIS
17 SECTION.

18 (4) THE ORGANIZATION SHALL DEVELOP A PROPOSED METHODOLOGY
19 FOR EVALUATING AND REPORTING ON THE EFFECTIVENESS OF THE EDUCATION
20 AND OUTREACH PROGRAM.

21 **25-17-608. Producer requirements - additional program plan -**
22 **confidentiality - compliance with local government codes - audit.**

23 (1) EFFECTIVE JULY 1, 2025, A PRODUCER SHALL NOT SELL, OFFER FOR SALE,
24 OR DISTRIBUTE ANY PRODUCTS THAT USE COVERED MATERIALS IN THE STATE
25 UNLESS THE PRODUCER IS PARTICIPATING IN THE PROGRAM OR, ON OR AFTER
26 JANUARY 1, 2029, EXCEPT AS SET FORTH IN AN ADDITIONAL PROGRAM PLAN.

27 (2) (a) ON JANUARY 1, 2029, AND EVERY JANUARY 1 THEREAFTER,

1 A NONPROFIT ORGANIZATION MAY REQUEST THAT THE EXECUTIVE DIRECTOR
2 DESIGNATE THE NONPROFIT ORGANIZATION AS AN ADDITIONAL PRODUCER
3 RESPONSIBILITY ORGANIZATION.

4 (b) THE EXECUTIVE DIRECTOR MAY DESIGNATE A NONPROFIT
5 ORGANIZATION AS AN ADDITIONAL PRODUCER RESPONSIBILITY
6 ORGANIZATION IF THE EXECUTIVE DIRECTOR, IN COORDINATION WITH THE
7 ADVISORY BOARD, DETERMINES THAT THE DESIGNATION OF THE ADDITIONAL
8 PRODUCER RESPONSIBILITY ORGANIZATION IS NECESSARY TO:

- 9 (I) INCREASE RECYCLING RATES;
- 10 (II) EXPAND RECYCLING SERVICES TO COVERED ENTITIES THAT ARE
11 NOT COVERED UNDER THE FINAL PLAN; OR
- 12 (III) PROVIDE RECYCLING SERVICES FOR A SPECIFIC TYPE OF COVERED
13 MATERIAL.

14 (c) IF THE EXECUTIVE DIRECTOR DESIGNATES AN ADDITIONAL
15 PRODUCER RESPONSIBILITY ORGANIZATION, THE ADDITIONAL PRODUCER
16 RESPONSIBILITY ORGANIZATION SHALL SUBMIT AN ADDITIONAL PROGRAM
17 PLAN PROPOSAL TO THE ADVISORY BOARD THAT COMPLIES WITH THE
18 REQUIREMENTS OF SECTION 25-17-605 (4), AS APPLICABLE. THE ADVISORY
19 BOARD SHALL REVIEW AND MAKE RECOMMENDATIONS ON, AND THE
20 EXECUTIVE DIRECTOR SHALL APPROVE OR REJECT, ANY ADDITIONAL PROGRAM
21 PLAN PROPOSAL OR AMENDMENTS TO THE ADDITIONAL PROGRAM PLAN
22 PROPOSAL IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN SECTION
23 25-17-605 (5) AND (6).

24 (d) IF THE EXECUTIVE DIRECTOR APPROVES THE ADDITIONAL
25 PROGRAM PLAN PROPOSAL PURSUANT TO SUBSECTION (2)(c) OF THIS
26 SECTION, THE EXECUTIVE DIRECTOR SHALL DESIGNATE THE ADDITIONAL
27 PROGRAM PLAN PROPOSAL AS THE ADDITIONAL PROGRAM PLAN AND SHALL

1 PUBLISH THE ADDITIONAL PROGRAM PLAN ON THE DEPARTMENT'S WEBSITE.

2 (3) THE EXECUTIVE DIRECTOR, ADVISORY BOARD, ORGANIZATION,
3 AND AN ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION:

4 (a) MUST KEEP CONFIDENTIAL ANY PROPRIETARY INFORMATION
5 PROVIDED BY A PRODUCER; AND

6 (b) SHALL NOT INCLUDE ANY PROPRIETARY INFORMATION PROVIDED
7 BY A PRODUCER IN THE PLAN PROPOSAL, THE AMENDED PLAN PROPOSAL, AN
8 ADDITIONAL PROGRAM PLAN PROPOSAL, THE FINAL PLAN, AN ADDITIONAL
9 PROGRAM PLAN, OR ANY AMENDMENT TO THE FINAL PLAN OR AN
10 ADDITIONAL PROGRAM PLAN.

11 (4) (a) THE PROGRAM AND AN ADDITIONAL PRODUCER
12 RESPONSIBILITY PROGRAM MUST COMPLY WITH ANY FIRE, SOLID WASTE, OR
13 OTHER RELEVANT ORDINANCES OR RESOLUTIONS ADOPTED BY A LOCAL
14 GOVERNMENT AND WITH APPLICABLE STATE AND FEDERAL LAWS, INCLUDING
15 THE EXEMPTIONS SET FORTH IN SECTION 30-20-102 (5).

16 (b) NOTWITHSTANDING ANY LAW TO THE CONTRARY, A LOCAL
17 GOVERNMENT IS NOT REQUIRED TO PROVIDE RECYCLING SERVICES UNDER THE
18 PROGRAM OR AN ADDITIONAL PRODUCER RESPONSIBILITY PROGRAM. TO THE
19 EXTENT THAT A LOCAL GOVERNMENT ELECTS TO PROVIDE RECYCLING
20 SERVICES UNDER THE PROGRAM OR AN ADDITIONAL PRODUCER
21 RESPONSIBILITY PROGRAM, THE ORGANIZATION OR ADDITIONAL PRODUCER
22 RESPONSIBILITY ORGANIZATION SHALL REIMBURSE THE LOCAL GOVERNMENT
23 FOR THOSE RECYCLING SERVICES IN ACCORDANCE WITH SECTION 25-17-606
24 (2) AND THE FINAL PLAN OR ADDITIONAL PROGRAM PLAN.

25 (5) THE ORGANIZATION AND ANY ADDITIONAL PRODUCER
26 RESPONSIBILITY ORGANIZATION SHALL CAUSE TO BE CONDUCTED AN ANNUAL
27 FINANCIAL AUDIT OF THE PROGRAM OR ADDITIONAL PRODUCER

1 RESPONSIBILITY PROGRAM BY AN INDEPENDENT THIRD-PARTY AUDITOR. THE
2 AUDIT MUST INCLUDE A DETAILED LIST OF THE PROGRAM'S OR ADDITIONAL
3 PRODUCER RESPONSIBILITY PROGRAM'S COSTS AND REVENUES FROM THE
4 PRODUCER RESPONSIBILITY DUES.

5 **25-17-609. Producer responsibility dues - inspection of records**
6 **- annual reporting.** (1) (a) EXCEPT AS SET FORTH IN AN ADDITIONAL
7 PROGRAM PLAN APPROVED BY THE EXECUTIVE DIRECTOR ON OR AFTER
8 JANUARY 1, 2029, BY A DATE DETERMINED BY THE ORGANIZATION THAT IS
9 NO LATER THAN JANUARY 1, 2025, AND ANNUALLY THEREAFTER BY A DATE
10 DETERMINED BY THE ORGANIZATION, A PRODUCER SHALL PAY PRODUCER
11 RESPONSIBILITY DUES TO THE ORGANIZATION BASED ON THE FUNDING
12 MECHANISM DESCRIBED IN THE PLAN PROPOSAL PURSUANT TO SECTION
13 25-17-605 (4)(h).

14 (b) A PRODUCER SHALL MAKE ALL DOCUMENTS AND RECORDS
15 RELATED TO THE CALCULATION AND PAYMENT OF PRODUCER RESPONSIBILITY
16 DUES AVAILABLE FOR INSPECTION BY THE EXECUTIVE DIRECTOR. IN
17 CONNECTION WITH ENFORCING A VIOLATION BY A PRODUCER PURSUANT TO
18 SECTION 25-17-610, THE EXECUTIVE DIRECTOR MAY REQUEST IN WRITING
19 THAT THE PRODUCER PROVIDE ANY SUCH DOCUMENTS OR RECORDS TO THE
20 EXECUTIVE DIRECTOR.

21 (2) (a) BEFORE MARCH 31 OF THE SECOND YEAR OF THE PROGRAM'S
22 IMPLEMENTATION, AND ANNUALLY ON MARCH 31 THEREAFTER, THE
23 ORGANIZATION SHALL SUBMIT A REPORT TO THE ADVISORY BOARD
24 DESCRIBING THE PROGRESS OF THE PROGRAM. THE ADVISORY BOARD SHALL
25 REVIEW THE REPORT AND FORWARD THE REPORT TO THE EXECUTIVE
26 DIRECTOR. THE ADVISORY BOARD SHALL ALSO REVIEW ANY PROPOSED
27 AMENDMENTS TO THE FINAL PLAN AND ANY UPDATES TO THE MINIMUM

1 RECYCLABLE LIST AND FORWARD THE AMENDMENTS AND UPDATES TO THE
2 EXECUTIVE DIRECTOR WITH ITS RECOMMENDATION FOR APPROVAL OR
3 REJECTION. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE
4 DEPARTMENT'S WEBSITE. THE PROGRAM REPORT MUST INCLUDE THE
5 FOLLOWING INFORMATION FROM THE PRECEDING CALENDAR YEAR:

6 (I) A DETAILED DESCRIPTION OF THE PROGRESS TOWARD EACH
7 ELEMENT OF THE FINAL PLAN AS DESCRIBED IN SECTION 25-17-605 (4);

8 (II) A LIST OF ALL THE PRODUCERS, BRANDS, AND COVERED
9 MATERIALS COVERED BY THE FINAL PLAN;

10 (III) A LIST OF PRODUCERS THAT ARE NOT PARTICIPATING IN THE
11 PROGRAM AND THAT ARE KNOWN BY THE ORGANIZATION TO BE OUT OF
12 COMPLIANCE WITH THIS PART 6;

13 (IV) THE TOTAL WEIGHT OF THE COVERED MATERIALS THAT
14 PRODUCERS USED FOR PRODUCTS THAT ARE SOLD, OFFERED FOR SALE, OR
15 DISTRIBUTED IN THE STATE;

16 (V) THE TOTAL AMOUNT OF PRODUCER RESPONSIBILITY DUES
17 COLLECTED UNDER THE PROGRAM, INCLUDING AN ANNUAL SCHEDULE OF
18 PRODUCER RESPONSIBILITY DUES ASSESSED BY WEIGHT FOR EACH TYPE OF
19 COVERED MATERIAL;

20 (VI) THE TOTAL WEIGHT OF EACH TYPE OF COVERED MATERIAL THAT
21 IS COLLECTED AND RECYCLED UNDER THE PROGRAM, WITH THE DATA BROKEN
22 DOWN BY:

23 (A) MEANS OF COLLECTION, INCLUDING BY CURBSIDE SERVICE OR
24 DROP-OFF CENTER OR OTHER MEANS;

25 (B) THE NUMBER OF COVERED ENTITIES, BY TYPE AND BY COUNTY,
26 SERVICED THROUGH CURBSIDE COLLECTION;

27 (C) THE METHOD USED TO HANDLE THE COLLECTED COVERED

1 (A) A DESCRIPTION OF HOW THE METHOD WILL AFFECT THE ABILITY
2 TO RECYCLE THE COVERED MATERIAL INTO FEEDSTOCK FOR THE
3 MANUFACTURE OF NEW PRODUCTS;

4 (B) A DESCRIPTION OF HOW THE METHOD WILL INCREASE THE TYPES
5 AND AMOUNTS OF RECYCLED PLASTIC FOR FOOD AND
6 PHARMACEUTICAL-GRADE PACKAGING AND APPLICATIONS;

7 (C) A DESCRIPTION OF ANY APPLICABLE STATE AND FEDERAL AIR,
8 WATER, AND WASTE PERMITTING COMPLIANCE REQUIREMENTS FOR THE
9 METHOD; AND

10 (D) AN ANALYSIS OF THE ENVIRONMENTAL IMPACTS OF THE METHOD
11 COMPARED TO THE ENVIRONMENTAL IMPACTS OF INCINERATION OF SOLID
12 WASTE IN LANDFILLS;

13 (XIII) A COPY OF AN INDEPENDENT THIRD PARTY'S REPORT AUDITING
14 THE PROGRAM PURSUANT TO SECTION 25-17-608 (5);

15 (XIV) A DESCRIPTION OF THE STATUS OF RESERVE FUNDS, AN
16 ASSESSMENT OF THE ADEQUACY OF THOSE FUNDS TO COVER PROGRAM COSTS,
17 AND A DESCRIPTION OF HOW ANY PROGRAM SHORTFALLS WILL BE
18 ADDRESSED;

19 (XV) ANY AMENDMENTS TO THE FINAL PLAN IN ACCORDANCE WITH
20 SECTION 25-17-605 (6); AND

21 (XVI) ANY UPDATES TO THE MINIMUM RECYCLABLE LIST IN
22 ACCORDANCE WITH SECTION 25-17-606 (1)(b).

23 (b) BEFORE MARCH 31 OF THE SECOND YEAR OF ANY ADDITIONAL
24 PROGRAM PLAN, AND ANNUALLY ON MARCH 31 THEREAFTER, AN
25 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION SHALL SUBMIT A
26 REPORT TO THE ADVISORY BOARD DESCRIBING THE PROGRESS OF THE
27 ADDITIONAL PROGRAM PLAN. THE REPORT MUST INCLUDE THE INFORMATION

1 DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION, AS APPLICABLE, FROM THE
2 PRECEDING CALENDAR YEAR. THE ADVISORY BOARD SHALL REVIEW THE
3 REPORT AND FORWARD THE REPORT TO THE EXECUTIVE DIRECTOR. THE
4 ADVISORY BOARD SHALL ALSO REVIEW ANY PROPOSED AMENDMENTS TO THE
5 ADDITIONAL PRODUCER RESPONSIBILITY PROGRAM AND FORWARD THE
6 AMENDMENTS TO THE EXECUTIVE DIRECTOR WITH ITS RECOMMENDATION FOR
7 APPROVAL OR REJECTION. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT
8 ON THE DEPARTMENT'S WEBSITE.

9 (c) THE EXECUTIVE DIRECTOR SHALL ANNUALLY COMPILE THE
10 RESULTS OF THE REPORTS RECEIVED PURSUANT TO SUBSECTIONS (2)(a) AND
11 (2)(b) OF THIS SECTION INTO A GENERAL REPORT DESCRIBING THE PROGRESS
12 OF THE PROGRAM AND ANY ADDITIONAL PRODUCER RESPONSIBILITY
13 PROGRAMS. THE EXECUTIVE DIRECTOR SHALL POST THE REPORT ON THE
14 DEPARTMENT'S WEBSITE AND SHALL ANNUALLY PRESENT THE GENERAL
15 REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE
16 AND THE ENERGY AND ENVIRONMENT COMMITTEE OF THE HOUSE OF
17 REPRESENTATIVES, OR THEIR SUCCESSOR COMMITTEES, AND THE GOVERNOR.
18 NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I), THE REPORTING
19 REQUIREMENT SPECIFIED IN THIS SUBSECTION (2)(c) CONTINUES INDEFINITELY.

20 (3) IF, BASED ON THE ANNUAL REPORT SUBMITTED UNDER
21 SUBSECTION (2) OF THIS SECTION, THE PROGRAM OR ANY ADDITIONAL
22 PRODUCER RESPONSIBILITY PROGRAM IS NOT ON TRACK TO MEET THE
23 MINIMUM COLLECTION RATES, MINIMUM RECYCLING RATES, OR MINIMUM
24 POST CONSUMER-RECYCLED-CONTENT RATES SET FORTH IN THE FINAL PLAN
25 OR ANY ADDITIONAL PROGRAM PLAN, THE EXECUTIVE DIRECTOR MAY
26 REQUIRE THE ORGANIZATION, WITH RESPECT TO THE PROGRAM, OR THE
27 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, WITH RESPECT TO

1 AN ADDITIONAL PRODUCER RESPONSIBILITY PROGRAM, TO AMEND ITS
2 RESPECTIVE PLAN UNDER SECTION 25-17-605 (6).

3 **25-17-610. Violations - enforcement - administrative penalty -**

4 **injunction.** (1) IF THE ORGANIZATION, AN ADDITIONAL PRODUCER
5 RESPONSIBILITY ORGANIZATION, OR A PRODUCER VIOLATES ANY PORTION OF
6 THIS PART 6, THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY
7 ORGANIZATION, OR PRODUCER IS LIABLE FOR AN ADMINISTRATIVE PENALTY
8 NOT TO EXCEED:

9 (a) FOR A FIRST VIOLATION, AN INITIAL PENALTY OF FIVE THOUSAND
10 DOLLARS FOR THE FIRST DAY OF EACH VIOLATION AND ONE THOUSAND FIVE
11 HUNDRED DOLLARS PER DAY FOR EACH DAY THE VIOLATION CONTINUES;

12 (b) FOR A SECOND VIOLATION COMMITTED WITHIN TWELVE MONTHS
13 AFTER A PRIOR VIOLATION, AN INITIAL PENALTY OF TEN THOUSAND DOLLARS
14 FOR THE FIRST DAY OF EACH VIOLATION AND THREE THOUSAND DOLLARS PER
15 DAY FOR EACH DAY THE VIOLATION CONTINUES; AND

16 (c) FOR A THIRD OR SUBSEQUENT VIOLATION COMMITTED WITHIN
17 TWELVE MONTHS AFTER TWO OR MORE PRIOR VIOLATIONS, AN INITIAL
18 PENALTY OF TWENTY THOUSAND DOLLARS FOR THE FIRST DAY OF EACH
19 VIOLATION AND SIX THOUSAND DOLLARS PER DAY FOR EACH DAY THE
20 VIOLATION CONTINUES.

21 (2) (a) IF THE ORGANIZATION, AN ADDITIONAL PRODUCER
22 RESPONSIBILITY ORGANIZATION, OR A PRODUCER VIOLATES ANY PORTION OF
23 THIS PART 6, THE EXECUTIVE DIRECTOR SHALL SERVE BY PERSONAL SERVICE
24 OR BY CERTIFIED MAIL AN ORDER THAT IMPOSES AN ADMINISTRATIVE
25 PENALTY ON THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY
26 ORGANIZATION, OR PRODUCER.

27 (b) THE ORGANIZATION, ADDITIONAL PRODUCER RESPONSIBILITY

1 ORGANIZATION, OR PRODUCER MAY SUBMIT A WRITTEN REQUEST FOR A
2 HEARING TO THE EXECUTIVE DIRECTOR BY PERSONAL SERVICE OR BY CERTIFIED
3 MAIL WITHIN THIRTY-FIVE CALENDAR DAYS AFTER THE DATE OF THE ORDER
4 IMPOSING AN ADMINISTRATIVE PENALTY. THE COMMISSION SHALL CONDUCT
5 THE HEARING IN ACCORDANCE WITH SECTION 24-4-105.

6 (c) IF A REQUEST FOR A HEARING IS FILED, THE REQUIREMENT TO PAY
7 A PENALTY IS STAYED PENDING A FINAL DECISION BY THE COMMISSION AFTER
8 A HEARING ON THE MERITS. THE EXECUTIVE DIRECTOR IS NOT PRECLUDED
9 FROM IMPOSING AN ADMINISTRATIVE PENALTY AGAINST THE ORGANIZATION,
10 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION, OR PRODUCER FOR
11 SUBSEQUENT VIOLATIONS OF THIS PART 6 COMMITTED DURING THE PENDENCY
12 OF THE STAY.

13 (d) THE EXECUTIVE DIRECTOR BEARS THE BURDEN OF PROOF BY A
14 PREPONDERANCE OF THE EVIDENCE IN A HEARING HELD PURSUANT TO THIS
15 SECTION.

16 (3) THE EXECUTIVE DIRECTOR MAY ENTER INTO A SETTLEMENT
17 AGREEMENT WITH THE ORGANIZATION, ADDITIONAL PRODUCER
18 RESPONSIBILITY ORGANIZATION, OR PRODUCER ASSESSED AN
19 ADMINISTRATIVE PENALTY UNDER THIS SECTION.

20 (4) THE EXECUTIVE DIRECTOR SHALL TRANSFER ANY MONEY
21 COLLECTED UNDER THIS SECTION TO THE STATE TREASURER, WHO SHALL
22 CREDIT THE MONEY TO THE RECYCLING RESOURCES ECONOMIC OPPORTUNITY
23 FUND CREATED IN SECTION 25-16.5-106.5 (1).

24 (5) NOTWITHSTANDING ANY LAW TO THE CONTRARY, NOTHING IN
25 THIS PART 6:

26 (a) CREATES A PRIVATE RIGHT OF ACTION; OR

27 (b) AUTHORIZES ENFORCEMENT OF THIS PART 6 AGAINST ANYONE

1 OTHER THAN THE ORGANIZATION, AN ADDITIONAL PRODUCER
2 RESPONSIBILITY ORGANIZATION, OR A PRODUCER.

3 **25-17-611. Limited exemption from antitrust, restraint of trade,**
4 **and unfair trade practices provisions.** IF THE PROGRAM OR AN ADDITIONAL
5 PRODUCER RESPONSIBILITY PROGRAM ENGAGES IN AN ACTIVITY PERFORMED
6 SOLELY IN FURTHERANCE OF IMPLEMENTING THE PROGRAM OR ADDITIONAL
7 PRODUCER RESPONSIBILITY PROGRAM AND IN COMPLIANCE WITH THIS PART
8 6, THE ACTIVITY IS NOT A VIOLATION OF THE ANTITRUST, RESTRAINT OF
9 TRADE, AND UNFAIR TRADE PRACTICES PROVISIONS OF THE "UNFAIR
10 PRACTICES ACT", ARTICLE 2 OF TITLE 6, OR THE "COLORADO ANTITRUST ACT
11 OF 1992", ARTICLE 4 OF TITLE 6.

12 **25-17-612. Eligibility for state or local incentive programs.**
13 NOTHING IN THIS PART 6 AFFECTS A PERSON'S ELIGIBILITY FOR ANY STATE OR
14 LOCAL INCENTIVE PROGRAMS FOR WHICH THE PERSON IS OTHERWISE ELIGIBLE.

15 **25-17-613. Producer exemptions - rules.** (1) A PRODUCER IS
16 EXEMPT FROM THE REQUIREMENTS OF THIS PART 6 IF THE PRODUCER IS:

17 (a) A PERSON WITH LESS THAN FIVE MILLION DOLLARS IN REALIZED
18 GROSS TOTAL REVENUE DURING THE PRIOR CALENDAR YEAR;

19 (b) A PERSON THAT HAS USED LESS THAN ONE TON OF COVERED
20 MATERIALS FOR PRODUCTS SOLD, OFFERED FOR SALE, OR DISTRIBUTED
21 WITHIN OR INTO THE STATE DURING THE PRIOR CALENDAR YEAR;

22 (c) THE STATE OR A LOCAL GOVERNMENT;

23 (d) A NONPROFIT ORGANIZATION;

24 (e) A RETAIL FOOD ESTABLISHMENT THAT PAYS:

25 (I) AN ANNUAL LICENSE FEE PURSUANT TO SECTION 25-4-1607 (1)(a);

26 OR

27 (II) FEES REQUIRED FOR RETAIL FOOD ESTABLISHMENTS PURSUANT

1 TO SECTION 32-106.5 (1) THROUGH SECTION 32-106.5 (5) OF THE DENVER
2 CODE OF ORDINANCES; AND

3 (f) A BUILDER, A CONSTRUCTION COMPANY, OR CONSTRUCTION
4 CONTRACTORS.

5 (2) THE COMMISSION SHALL ADJUST BY RULE THE DOLLAR
6 LIMITATION SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION ON JULY 1,
7 2023, AND ON JULY 1 OF EACH YEAR THEREAFTER, BASED ON THE
8 PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF LABOR'S
9 BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR
10 DENVER-AURORA-LAKEWOOD FOR ALL ITEMS AND ALL URBAN CONSUMERS,
11 OR ITS SUCCESSOR INDEX.

12 **25-17-614. Restriction on fees.** A PERSON SHALL NOT CHARGE ANY
13 KIND OF POINT-OF-SALE OR POINT-OF-COLLECTION FEE TO CONSUMERS TO
14 RECOUP ITS COSTS IN MEETING THE OBLIGATIONS OF OR COMPLYING WITH THIS
15 PART 6.

16 **25-17-615. Restrict use of producer responsibility dues.** THE
17 ORGANIZATION OR AN ADDITIONAL PRODUCER RESPONSIBILITY
18 ORGANIZATION SHALL NOT USE THE PRODUCER RESPONSIBILITY DUES
19 COLLECTED BY THE ORGANIZATION OR ANY DUES COLLECTED BY THE
20 ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION PURSUANT TO THIS
21 PART 6 TO CARRY OUT LOBBYING ACTIVITIES, TO BRING OR DEFEND A
22 LAWSUIT AGAINST THE STATE, TO DEFEND LITIGATION INVOLVING CLAIMS OF
23 THE ORGANIZATION'S OR ADDITIONAL PRODUCER RESPONSIBILITY
24 ORGANIZATION'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS
25 PART 6, OR FOR PAYMENT OF ADMINISTRATIVE PENALTIES AGAINST THE
26 ORGANIZATION OR ADDITIONAL PRODUCER RESPONSIBILITY ORGANIZATION
27 ASSESSED BY THE EXECUTIVE DIRECTOR UNDER SECTION 25-17-610.

1 **SECTION 2.** In Colorado Revised Statutes, 25-16.5-106.5, add
2 (1)(a)(I.5) as follows:

3 **25-16.5-106.5. Recycling resources economic opportunity fund**
4 **- creation - repeal.** (1) (a) The recycling resources economic opportunity
5 fund, referred to in this section as the "fund", is hereby created in the state
6 treasury. The fund consists of:

7 (I.5) MONEY CREDITED TO THE FUND PURSUANT TO SECTION
8 25-17-610 (4);

9 **SECTION 3. Act subject to petition - effective date.** This act takes
10 effect at 12:01 a.m. on the day following the expiration of the ninety-day period
11 after final adjournment of the general assembly; except that, if a referendum
12 petition is filed pursuant to section 1 (3) of article V of the state constitution
13 against this act or an item, section, or part of this act within such period, then the
14 act, item, section, or part will not take effect unless approved by the people at
15 the general election to be held in November 2022 and, in such case, will take
16 effect on the date of the official declaration of the vote thereon by the governor.