

LC002567

IN GENERAL ASSEMBLY

RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY
FOR PACKAGING AND PAPER ACT

Referred To: Senate Environment & Agriculture

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

23-19.19-1. Legislative intent.

(b) The legislature finds that valuable resources are wasted when products are disposed instead of recycled or reused and that state and local policy have created a municipal recycling system that lacks coordination, adequate funding, and accountability. Product producers have a responsibility to correct these shortcomings by funding municipal recycling programs; improving those programs; and coordinating their planning, performance, and effectiveness. Producer responsibility is in the public interest of the state and furthers environmental objectives, including the establishment of a circular economy, preserving resources, and reducing carbon and other emissions associated with primary production.

(1) "Advisory board" means the producer responsibility program for the statewide

1 recycling advisory board created in § 23-19.19-3.

2 (2) "Baseline assessment" means the assessment of the state's recycling baseline conducted
3 pursuant to § 23-19.19-5.

4 (3) "Collection" means the gathering and transportation of covered materials from covered
5 entities for the purpose of recycling.

6 (4) "Collection rate" means the weight of covered materials that are collected under the
7 program in a calendar year divided by the weight of covered materials used for products sold or
8 distributed by producers within or into the state in the same calendar year, expressed as a
9 percentage.

10 (5) "Compost" means the material or product that is developed under controlled conditions
11 and that results from biological degradation processes by which organic wastes decompose.

12 (6) "Compostable" means a covered material associated with organic waste streams that is
13 capable of undergoing aerobic biological decomposition in a controlled composting system as
14 demonstrated by meeting ASTM D6400 or ASTM D6868, or any successor standards.

15 (7) "Compost facility" means a site where compost is produced and includes only those
16 facilities that readily accept and process packaging collected from consumers.

17 (8) "Consumer" means any person who purchases or receives covered materials in the state
18 and is located at a covered entity.

19 (9) "Covered entity" means the following locations in the state from which covered
20 materials are collected:

21 (i) All single-family residences in the state; and
22 (ii) All multifamily residences in the state.

23 (10) "Covered materials" includes:
24 (i) Packaging as defined in this section; and
25 (ii) Paper products as defined in this section.

26 (11) "Covered services" means services provided for the recycling, composting, or reuse
27 of covered materials, including the collection from covered entities through various means,
28 including curbside and drop-off services; transportation of collected materials; sorting and
29 contamination removal; and processing of covered materials for end markets.

30 (12) "Covered services costs" means the reasonable net costs of recycling, composting, or
31 reuse programs to provide covered services, including applicable costs related to:

32 (i) The administration of the programs;
33 (ii) Capital investments in the programs;
34 (iii) The collection, transportation, sorting, and processing of covered materials net of the

1 commodity value earned from the sale of materials;

2 (iv) Public education about the programs; and

3 (v) Disposal of nonmarketable collected covered materials.

4 (13) "Department" means the department of environmental management.

5 (14) "Director" means the director of the department of environmental management.

6 (15) "Environmentally sound management practices" means policies that ensure

7 compliance with all applicable environmental laws, including laws addressing:

8 (i) Record keeping;

9 (ii) Tracking and documenting the disposition of covered materials collected from covered

10 entities; and

11 (iii) Environmental liability coverage for professional services and contractor operations.

12 (16) "Materials recovery facility" means a facility for processing covered materials that are

13 collected for recycling before they are conveyed to end-market businesses.

14 (17) "Minimum recyclable or compostable lists" means the lists of covered materials

15 eligible for collection and reimbursement, developed under § 23-19.19-9.

16 (18) "Nonprofit organization" means a tax-exempt charitable or social welfare organization

17 operating under 26 U.S.C. §§ 501 (c)(3) or (4) of the federal "Internal Revenue Code of 1986 as

18 amended".

19 (19) "Packaging" or "consumer packaging" means any material, regardless of recyclability,

20 which is intended for short-term use and is used for the containment, protection, handling, or

21 delivery of products to the consumer at the point of sale, including through an Internet transaction.

22 (i) Packaging includes products supplied to or purchased by consumers for the express

23 purpose of facilitating food or beverage consumption and that are:

24 (A) Ordinarily disposed of after short-term use; and

25 (B) Not designed for reuse or refill.

26 (ii) Packaging includes paper, plastic, glass, metal, cartons, flexibles, foams, rigid

27 packaging, or other materials or combinations of these materials.

28 (iii) Packaging does not include:

29 (A) Packaging that is not sold or distributed to covered entities;

30 (B) Packaging used solely in transportation or distribution to non-consumers;

31 (C) Packaging used exclusively in industrial or manufacturing processes;

32 (D) Packaging used for products sold or distributed outside the state;

33 (E) Packaging intended to be used for the long-term storage or protection of a durable

34 product and that is intended to transport, protect, or store the product for at least five (5) years;

1 (F) Beverage containers subject to a returnable container deposit, if applicable;

2 (G) Packaging used to contain a product that is regulated as a drug, medical device, or
3 dietary supplement by the federal food and drug administration under the "Federal Food, Drug, and
4 Cosmetic Act", 21 U.S.C. Ch. 9 § 301 et seq., as amended, or any related federal regulations
5 promulgated thereunder, or any equipment and materials used to manufacture such products;

6 (H) Packaging used to contain a product that is regulated as animal biologics, including
7 vaccines, bacterins, antisera, diagnostic kits, and other products of biological origin under the
8 federal "Virus-Serum-Toxin Act", 21 U.S.C. Ch. 5 § 151-159, as amended;

9 (I) Packaging used to contain a product that is regulated under the "Federal Insecticide,
10 Fungicide, and Rodenticide Act", 7 U.S.C. Ch. 6 § 136-136y, as amended; or

11 (J) Packaging used to contain a product that is required under state law to be sold in
12 packaging material that meets the standards set forth in the "Poison Prevention Packaging Act of
13 1970", 15 U.S.C. Ch. 39A § 1471 et seq., as amended.

14 (20) "Paper products" means paper and other cellulosic fibers, whether or not they are used
15 as a medium for text or images, including flyers, brochures, booklets, telephone and other
16 directories, newspapers, magazines and other periodicals, and paper used for writing or any other
17 purpose; provided, however, paper products do not include:

18 (i) Paper products that, through their use, could become unsafe or unsanitary to handle; or
19 (ii) Bound books.

20 (21) "Postconsumer recycled content rate" means the average amount of postconsumer
21 recycled material used by a producer in the production of covered materials in a calendar year
22 divided by the amount of that type of covered material sold or distributed by producers within or
23 into their United States market territory in the same calendar year, expressed as a percentage.

24 (22) "Postconsumer recycled material" means only those covered materials that have
25 served their intended end use as consumer items and that have been separated or diverted from the
26 waste stream for the purposes of collection and recycling as a secondary material feedstock.

27 (i) Postconsumer recycled material includes returns of material from the distribution chain.
28 (ii) Postconsumer recycled material does not include waste material generated during or
29 after the completion of a manufacturing process.

30 (23) "Processing" means preparing collected covered materials at a materials recovery
31 facility or similar establishment for sale or delivery to material reclaimers or end markets.

32 (24) "Producer" means the following person responsible for compliance with requirements
33 under this chapter for a covered material introduced:

34 (i) For items sold in or with packaging at a physical retail location in this state:

1 (A) If the item is sold in or with packaging under the brand of the item manufacturer or is
2 sold in packaging that lacks identification of a brand, the producer is the person that manufactures
3 the item;

4 (B) If there is no person to which subsection (24)(i)(A) of this section applies, the producer
5 is the person that is licensed to manufacture and sell or offer for sale to consumers in this state an
6 item with packaging under the brand or trademark of another manufacturer or person;

7 (C) If there is no person to which subsections (24)(i)(A) or (24)(i)(B) of this section apply,
8 the producer is the brand owner of the item;

9 (ii) If there is no person described in subsection (24)(i) of this section within the United
10 States, the producer is the person who is the importer of record for the item into the United States
11 for use in a commercial enterprise that sells, offers for sale, or distributes the item in this state; or

12 (iii) If there is no person described in subsections (24)(i) or (24)(ii) of this section, the
13 producer is the person that first distributes the item in or into this state;

14 (iv) For items sold or distributed in packaging in or into this state via e-commerce, remote
15 sale, or distribution;

16 (A) For packaging used to directly protect or contain the item, the producer of the
17 packaging is the same as the producer identified under subsection (24)(i) of this section; and

18 (B) For packaging used to ship the item to a consumer, the producer of the packaging is
19 the person that packages the item to be shipped to the consumer;

20 (v) For packaging that is a covered material and is not included in subsections (24)(i) or
21 (24)(ii) of this section, the producer of the packaging is the person that first distributes the item in
22 or into this state;

23 (vi) For paper products that are magazines, catalogs, telephone directories, or similar
24 publications, the producer is the publisher;

25 (vii) For paper products not described in subsections (24)(i) through (24)(vi) of this section:

26 (A) If the paper product is sold under the manufacturer's own brand, the producer is the
27 person that manufactures the paper product;

28 (B) If there is no person to which subsection (24)(vii)(A) of this section applies, the
29 producer is the person that is the owner or licensee of a brand or trademark under which the paper
30 product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state,
31 whether or not the trademark is registered in this state;

32 (C) If there is no person to which subsection (24)(vii)(A) or (24)(B) of this section applies,
33 the producer is the brand owner of the paper product;

34 (D) If there is no person described in subsections (24)(vii)(A) through (24)(C) of this

1 section within the United States, the producer is the person that imports the paper product into the
2 United States for use in a commercial enterprise that sells, offers for sale, or distributes the paper
3 product in this state; or

4 (E) If there is no person described in subsections (24)(vii)(A) through (24)(vii)(D) of this
5 section, the producer is the person that first distributes the paper product in or into this state.

6 (viii) A person is the producer of a covered material sold, offered for sale, or distributed in
7 or into this state, as defined in the prior subsections, except where another person has mutually
8 signed an agreement with a producer as defined herein that contractually assigns responsibility to
9 the person as the producer, and the person has joined a registered producer responsibility
10 organization as the responsible producer for that covered material under this chapter. In the event
11 that another person is assigned responsibility as the producer under subsections (24)(i) through
12 (24)(vii) of this section, the producer shall provide written certification of that contractual
13 agreement to the producer responsibility organization; and

14 (ix) If the producer described in subsections (24)(i) through (24)(viii) of this section is a
15 business operated, wholly or in part, as a franchise, the producer is the franchisor if that franchisor
16 has franchisees that have a commercial presence within the state.

17 (x) The following are excluded from the definition of producer under this chapter:

18 (A) A person with less than five million dollars (\$5,000,000) in realized gross total revenue
19 during the prior calendar year. The department shall adjust by rule this dollar limit on July 1 of
20 each year after enactment using the percentage change in an appropriate consumer price index for
21 the region;

22 (B) A person that has used less than one ton of covered materials for products sold or
23 distributed within or into the state during the prior calendar year;

24 (C) The state or a local government; and

25 (D) A nonprofit organization.

26 (25) "Producer responsibility organization" or "organization" means a nonprofit
27 organization established pursuant to § 23-19.19-4 to implement the program.

28 (26) "Producer responsibility program" or "program" means the producer responsibility
29 program for statewide recycling, composting, and reuse created in accordance with this chapter.

30 (27) "Proprietary information" means information that, if made public, would divulge
31 competitive business information or trade secrets of the entity that developed the information or
32 would reasonably hinder the entity's competitive advantage in the market.

33 (28) "Readily recyclable or compostable material" means a covered material included on
34 the minimum recyclable or compostable lists.

1 (29) "Recycling" means the reprocessing, by means of a manufacturing process, of a used
2 material into a product or a secondary raw material. Recycling does not include:

3 (i) Energy recovery or energy generation by means of combustion;

4 (ii) Use as a fuel; or

5 (iii) Use as alternative daily cover at a landfill.

6 (30) "Recycling rate" means the weight of covered materials that are recycled under the
7 program in a calendar year divided by the weight of covered materials used for products sold or
8 distributed by producers within or into the state in the same calendar year, expressed as a
9 percentage. The recycling rate is measured at the point where collected covered materials have been
10 prepared for sale or delivery to material reclaimers or end markets after processing at a materials
11 recovery facility or similar establishment that sells directly to reclaimers or end markets.

12 (31) "Responsible end market" means a materials market in which the recycling,
13 composting, or reuse of materials or the disposal of contaminants is conducted in a way that benefits
14 the environment and minimizes risks to public health and worker health and safety.

15 (32) "Retailer" means a person that sells products to consumers within or into the state,
16 including sales made through an Internet transaction, where those products are covered materials
17 or are packaged with covered materials.

18 (33) "Reuse" or "refill" means the return into the marketplace of a covered material that
19 has already been used in the same manner as originally intended without a change in the covered
20 material's purpose and was intended to be used for its original purpose at least five (5) times.

21 (34) "Service provider" means a public or private entity, other than the producer
22 responsibility organization, which provides recycling, composting, or reuse services to covered
23 entities in the state.

24 **23-19.19-3. Advisory board.**

25 (a)(1) The producer responsibility program for statewide recycling advisory board is
26 hereby created within the department. The department may select an impartial third-party facilitator
27 to convene and provide administrative support to the advisory board.

28 (2) The advisory board consists of the following thirteen (13) voting members and two (2)
29 nonvoting members appointed by the director:

30 (i) Three (3) voting members representing local governments in the state, including:

31 (A) One member representing a city with a population greater than one hundred fifty
32 thousand (150,000);

33 (B) One member representing a coastal city or town; and

34 (C) One member representing a non-coastal city or town;

1 (ii) One voting member representing a materials recovery facility in the state that processes
2 covered materials from covered entities;

3 (iii) One voting member representing a private sector collector of recyclable covered
4 materials from covered entities;

5 (iv) One voting member representing an environmental or community-based nonprofit
6 organization;

7 (v) One voting member representing a packaging material supplier that is not a producer,
8 with the member rotating to a supplier of a different type of packaging material after each new
9 term;

10 (vi) One voting member representing a manufacturer of recycled paper products that is not
11 a producer;

12 (vii) One voting member representing a trade association, chamber of commerce, or other
13 business advocacy organization representing businesses in the state;

14 (viii) One voting member representing a retailer's association or a retailer that is not a
15 producer;

16 (ix) One voting member representing a compost facility in the state that handles covered
17 materials;

18 (x) One voting member who has experience in environmental justice and represents
19 underserved communities in the state;

20 (xi) One voting member representing a solid waste landfill or transfer station operating an
21 on-site, public-facing recycling collection program;

22 (xii) One nonvoting member representing the department; and

23 (xiii) One nonvoting member representing the producer responsibility organization.

24 (b)(1) The members of the advisory board shall have relevant knowledge and expertise in
25 recycling programs or the impact of covered materials on the state and the environment. In
26 appointing members, the director shall ensure to the extent possible the geographic diversity of the
27 advisory board's membership.

28 (2) The director shall make all appointments to the advisory board no later than December
29 31, 2025. The appointments for initial terms to the advisory board shall be staggered in order that
30 some of the members serve initial two (2) year terms and other members serve initial three (3) year
31 terms; all subsequent appointments shall be for three (3) year terms. The director shall fill any
32 vacancy by appointment for the remainder of the unexpired term.

33 (3) The advisory board shall convene its first meeting no later than March 1, 2026. At the
34 first meeting, the voting members shall select a chair and vice-chair from among the voting

1 members for a term not to exceed two (2) years, as determined by the advisory board. The advisory
2 board shall conduct annual meetings and may conduct meetings more frequently upon the request
3 of the chair or of at least seven (7) of the voting members of the advisory board. The decisions of
4 the advisory board shall be made by a vote of the majority of its membership. The organization
5 may provide technical and staff assistance to the advisory board.

6 (4) The advisory board is subject to the open meetings provisions of chapter 46 of title 42
7 ("open meetings").

8 (5) Advisory board members shall be entitled to be reimbursed at a rate consistent with
9 other boards and commissions created within the department for necessary travel within the state
10 and other reasonable expenses incurred in the performance of their official duties.

11 (6) The advisory board shall:

12 (i) Advise the organization throughout the baseline assessment process in accordance with
13 the provisions of this chapter;

14 (ii) Review the baseline assessment reported to the advisory board pursuant to the
15 provisions of this chapter;

16 (iii) Review the plan proposal submitted pursuant to § 23-19.19-6;

17 (iv) Consult with the organization on amendments to the plan proposal and the amended
18 plan proposal;

19 (v) Recommend that the director approve or reject the plan proposal or amended plan
20 proposal;

21 (vi) Review the annual report submitted by the organization pursuant to § 23-19.19-12 and
22 may, in consultation with the organization, recommend to the director amendments to the final plan
23 as part of this review; and

24 (vii) Consult with the organization on the development and updating of the minimum
25 recyclable or compostable list.

26 **23-19.19-4. Producer responsibility organizations and service providers.**

27 (a) On or before March 31, 2026, the director shall approve a single producer responsibility
28 organization to represent the interests of producers under this chapter. Prospective organizations
29 shall apply by February 1, 2026, for recognition by submitting to the commissioner contact
30 information, proof of or application for nonprofit status, and the producers it represents.

31 (b) In the event that the director receives multiple applications, the approved organization
32 shall be the one best able to represent producers based on the market share of covered materials
33 represented by the organization and its experience as an organization in states or
34 countries/provinces with similar programs.

1 (c) The organization designated by the director pursuant to this section shall have a
2 governing board with voting members that represent a diverse range of producers by size and type
3 and represent producers of different types of covered materials. The members of the governing
4 board shall not have more than one member per corporate entity.

5 (d) The producer responsibility organization shall:

6 (1) Facilitate a baseline assessment in consultation with the advisory board;

7 (2) Consult with the advisory board in the development of the plan proposal prior to its
8 submission, including in the development of the cost formulas for reimbursements to service
9 providers pursuant to §§ 23-19.19-6, 23-19.19-7, and 23-19.19-8;

10 (3) Submit a plan proposal in accordance with §§ 23-19.19-6, 23-19.19-7, and 23-19.19-8
11 that covers a period of five (5) years; and

12 (4) Operate and administer the program in accordance with the final plan, the provisions
13 of this chapter, and the rules and regulations adopted by the department under this chapter.

14 (d)(1) Beginning January 1, 2033, and every January 1 thereafter, a nonprofit organization
15 may request that the director designate that organization as an additional producer responsibility
16 organization.

17 (2) The director may designate a nonprofit organization as an additional producer
18 responsibility organization if the director, in coordination with the advisory board, determines that
19 the designation of the additional producer responsibility organization is necessary to:

20 (i) Increase recycling rates for covered materials;

21 (ii) Expand covered services to covered entities that are not covered under the final plan;

22 (iii) Provide recycling services for a specific type of covered material; or

23 (iv) Lower costs.

24 (e) If the director designates an additional producer responsibility organization, the
25 additional organization shall submit to the director an additional plan consistent with §§ 23-19.19-
26 6, 23-19.19-7, and 23-19.19-8 requirements as appropriate as well as a coordination plan meeting
27 the requirements developed under this section. The additional plan shall be subject to the same
28 review and approval processes as the organization's plan as outlined in §§ 23-19.19-6, 23-19.19-7,
29 and 23-19.19-8.

30 (f) Within one hundred twenty (120) days after the designation of the first additional
31 producer responsibility organization, the director shall promulgate by rules and regulation
32 standards and requirements for a coordination plan and for coordination between the organization
33 and any additional producer responsibility organizations designated by the director. A coordination
34 plan shall also include a method for allocating administrative and enforcement reimbursements

1 under § 23-19.19-17 among organizations. A coordination plan approved or ordered by the director
2 shall be implemented by the organization and any additional producer responsibility organizations
3 designated by the director. If the coordination plan conflicts with the final plan or any other plan
4 approved by the director pursuant to this chapter, the provisions of the coordination plan prevail.
5 A coordination plan approved or ordered by the director is valid until revoked or until a new
6 coordination plan is approved or ordered by the director.

7 (g) Registration of service providers. By January 1, 2027, and annually thereafter, a service
8 provider seeking reimbursement for covered services provided under an approved program plan
9 shall register with the department by submitting the following information:

10 (1) The contact information for a person representing the service provider;

11 (2) The address of the service provider; and

12 (3) If applicable to services provided, a report of the total amount billed for collection for
13 covered entities, processing services, and transfer station operations provided during the preceding
14 calendar year and, when possible, values shall be separated for collection, transfer, and processing.

15 (h) The organization, any additional producer responsibility organization, and any person
16 administering a plan approved by the director pursuant to this chapter shall maintain all documents
17 and records necessary for the director to determine compliance with this chapter and submit any
18 such documents and records to the director upon a request by the director.

19 **23-19.19-5. Baseline assessment.**

20 (a) On or before August 1, 2026, the organization shall hire an independent third party
21 approved by the director to develop a baseline of the state's recycling system. The organization
22 shall develop a request for proposals for the baseline assessment and shall consult with the advisory
23 board on the scope of the assessment prior to finalizing the scope and putting the work out to bid.

24 (b) The baseline assessment is a compilation of information collected from service
25 providers in the state, both public and private, that currently provide recycling and/or composting
26 services for covered materials. As this information is critical to developing a plan, service providers
27 shall respond to data requests from the third-party organization contracted for this work or be
28 subject to enforcement action under § 23-19.19-13. The third party, organization, department, and
29 advisory board shall keep confidential any proprietary information from a service provider.

30 (c) Collection service. The scope of the baseline data collection shall include, but not be
31 limited to:

32 (1) Access to covered material recycling and composting service for residential customers
33 of the service providers, including households served, type of service provided (e.g., single-stream
34 curbside, drop-off), types of collection containers used, materials accepted, frequency of service

1 provided where relevant, and length of contracts;

2 (2) Weight of material collected per time period and the capacity of the current collection

3 method; and

4 (3) Total cost of service and households served or contracted rates for service (e.g., dollars

5 per household) and the services covered by the rates.

6 (d) Processing. The scope of the baseline data collection shall include, but not be limited

7 to:

8 (1) The material throughput at processing facilities providing recycling services to covered

9 entities and the facilities' capacity for processing material;

10 (2) The design and capabilities of the facility (e.g., single vs dual stream, use of optical

11 sorters);

12 (3) Composition of tons received and composition of tons processed and sold;

13 (4) Tip fees charged for processing; and

14 (5) Data on contamination.

15 (e) Additional data. The scope of the baseline assessment may include:

16 (1) The market conditions and opportunities for the use of recycled covered materials in

17 the state and region and issues with access to markets for recycled covered materials;

18 (2) Size and number of transfer stations and transfer locations for recyclable covered

19 materials;

20 (3) The availability and scope of any reuse or refill systems in the state affecting the use of

21 covered materials;

22 (4) Access to, capacity, technology used, and characteristics of compost facilities to process

23 and recover compostable covered materials; and

24 (5) Recommendations for covered materials that meet the criteria for inclusion on the

25 collection lists described in § 23-19.19-9, including materials that may be appropriate for inclusion

26 in an alternative collection program.

27 (f) On or before January 31, 2027, the organization shall deliver a draft of the needs

28 assessment to the advisory board and the department. The advisory board and the department shall

29 submit comments to the organization within thirty (30) days, and the organization shall finalize the

30 needs assessment by April 30, 2027, including a summary of any comments received and

31 significant changes made to the needs assessment based on those comments.

32 **23-19.19-6. Program plan.**

33 On or before December 31, 2027, the organization shall submit a proposed program plan

34 to the advisory board that addresses covered services for covered entities. The plan shall cover a

1 period of five (5) years, and an updated plan proposal shall be submitted to the advisory board one
2 year before the expiration of the current plan. In developing the plan proposal and any updated plan
3 proposals, the organization shall solicit and consider input from the advisory board and provide an
4 opportunity for additional stakeholder input.

5 **23-19.19-7. Approval of program plan.**

6 To be approved, a program plan proposal shall:

7 (1) Provide contact information for the organization and a representative of the
8 organization;

9 (2) Describe how the plan proposal will address and implement the findings of the baseline
10 assessment;

11 (3) Describe the manner in which the organization solicited and considered input from
12 stakeholders and the advisory board in developing the plan proposal. The organization shall provide
13 a summary of any comments about the plan proposal from the advisory board and additional
14 stakeholders and identify changes made to the plan proposal based on the comments;

15 (4) Describe how the organization will notify affected producers of their obligations under
16 this chapter, track compliance among producers, and collaborate with the director to bring
17 producers into compliance;

18 (5) Include a comprehensive list of the covered materials included in the program and the
19 mechanism for producers to report data on covered materials to the organization;

20 (6) Establish recycling practices that:

21 (i) Meet or exceed the convenience standards for covered materials on the proposed
22 collection lists, including any alternative collection programs as described in § 23-19.19-9;

23 (ii) Use open, competitive, and fair procurement practices when entering into contracts
24 with service providers;

25 (iii) Incorporate preferences for service providers with strong labor standards and worker
26 safety practices when entering into contracts with private service providers;

27 (iv) Ensure that any covered materials collected and processed for recycling or composting
28 will be transferred to a responsible end market; and

29 (v) Use environmentally sound management practices;

30 (7) Describe how the organization will work with newspaper publishers and magazine and
31 periodical publishers to accept print or online advertising in lieu of all or a portion of the producer
32 responsibility dues for newspapers, magazines, and periodicals circulated within the state;

33 (8) Establish a funding mechanism for the program that:

34 (i) Does not exceed the direct and indirect costs of implementing the program, including

1 the costs of:

2 (A) Providing covered services under the program through contracts with service providers

3 or reimbursement of reasonable covered services costs pursuant to this section:

4 (B) Meeting the reporting requirements set forth in § 23-19.19-12;

5 (C) Conducting the baseline assessment;

6 (D) Developing and updating the final plan;

7 (E) Implementing the education and outreach program set forth in § 23-19.19-10;

8 (F) Reimbursing the department pursuant to § 23-19.19-17 for its costs in administering

9 and implementing this chapter, including the costs of the advisory board; and

10 (G) Reimbursing the department pursuant to § 23-19.19-17 for the costs of enforcing this

11 chapter pursuant to § 23-19.19-13;

12 (ii) Is funded through producer responsibility dues. The producer responsibility dues shall

13 vary by the type of covered material, whether or not the material is readily recyclable, and be based

14 on the net covered services costs for each covered material in the state as well as allocated fixed

15 costs of the organization for administration, education and outreach, and other costs not linked to

16 material type.

17 (iii) Requires:

18 (A) Any surplus money generated by the program to be placed back into the program for

19 program improvements or a reduction in producer responsibility dues;

20 (B) The organization to maintain a financial reserve sufficient to operate the program in a

21 fiscally prudent and responsible manner; and

22 (C) Annual updates to the producer responsibility dues schedule to reflect changes in

23 program costs and relevant plan revisions and how the organization will inform and solicit input

24 from producers in setting and revising the annual producer responsibility dues schedule;

25 (iv) Includes eco-modulation factors that lower producer responsibility dues to incentivize:

26 (A) Reductions in the amount of packaging used for products, including through design

27 innovations and elimination of unnecessary or redundant packaging;

28 (B) Innovations and practices to enhance the recyclability, compostability, or commodity

29 value of covered materials;

30 (C) Postconsumer recycled material use;

31 (D) Packages designed for reuse and refill where supporting infrastructure exists in the

32 state; and

33 (E) High recycling, composting, and refill rates of covered materials

34 (v) Includes eco-modulation factors that increase producer responsibility dues to

1 discourage:

2 (A) Designs and materials that increase the costs of recycling, reusing, or composting

3 covered materials;

4 (B) Designs and materials that disrupt the recycling or composting of other materials; and

5 (C) Producers' use of covered materials that are not on the minimum recyclable or

6 compostable list; and

7 (vi) At the request of a producer or producers of a covered material, may include a special

8 assessment paid by the producers of that covered material to improve or establish a method for

9 collecting and recycling that covered material or to facilitate the addition of the covered material

10 to the list of readily recyclable materials;

11 (9) Include a proposed budget and a description of the processes used to determine

12 producer responsibility dues, levied on a material-specific basis. Describe any producer sales limits

13 where dues would be eliminated or based on a flat rate to minimize administrative and reporting

14 costs of the producers and the organization;

15 (10) Provide a methodology for reimbursement rates for covered services for covered

16 materials:

17 (i) The methodology for reimbursement rates shall consider estimated revenue received by

18 service providers from the sale of covered materials based upon relevant material indices and

19 incorporate relevant cost information identified by the needs assessment. Reimbursement rates

20 shall be annually updated and reflect the net costs for covered services for covered materials from

21 covered entities. Reimbursement rates shall be established equivalent to net costs as established by

22 a methodology in an approved plan as follows:

23 (A) No less than fifty percent (50%) of the net cost for the first year of initial plan operation;

24 (B) No less than seventy-five percent (75%) of the net cost for the second year of initial

25 plan operation; and

26 (C) No less than ninety percent (90%) of the net cost thereafter;

27 (11) Reimbursement rates shall be based on the following, as applicable based on the

28 service provided:

29 (i) The cost to collect covered material for recycling, a proportional share of composting,

30 or reuse adjusted to reflect conditions that affect those costs, varied by region or jurisdiction in

31 which the covered services are provided including, but not limited to:

32 (A) The number and type of covered entities;

33 (B) Population density;

34 (C) Collections methods employed;

1 (D) Distance traveled by collection vehicles to consolidation or transfer facilities; to reuse,
2 recycling, or composting facilities; and to responsible markets;

3 (E) Other factors that may contribute to regional or jurisdictional cost differences;

4 (F) The proportion of covered compostable materials within all source-separated
5 compostable materials collected or managed through composting; and

6 (G) The general quality of covered materials collected by service providers;

7 (ii) The cost to transfer collected covered materials from consolidation or transfer facilities
8 to reuse, processing, recycling, or composting facilities or to responsible markets;

9 (iii) The cost to:

10 (A) Sort and process covered materials for sale or use and remove contamination from
11 covered materials by a recycling or composting facility, less the average fair market value for that
12 covered material based on market indices for the region; and

13 (B) Manage contamination removed from collected covered material;

14 (iv) Administrative costs of service providers, including education, public awareness
15 campaigns, and outreach program costs as applicable; and

16 (v) The costs of covered services for a refill system or covered services provided for
17 reusable covered materials and management of contamination;

18 (12) A service provider retains all revenue from the sale of covered materials. Nothing in
19 this chapter shall restrict a service provider from charging a fee for covered services of covered
20 materials to the extent that reimbursement from a producer responsibility organization does not
21 cover all costs of services, including continued investment and innovation in operations, operating
22 profits, and returns on investments required by a service provider to maintain the services;

23 (13) Reimbursement rates may be calculated per ton, by household, or by another unit of
24 measurement under an approved program plan;

25 (14) Describe the process to develop and revise the reimbursement methodology as
26 necessary, including use of documented costs;

27 (15) Describe a plan that outlines, if the organization ceased to exist or ceased to administer
28 the program, how any producer responsibility dues that had not been used to implement the
29 program would be transferred to another organization designated by the director to administer the
30 program or would be transferred to the fund to be managed by the department until transferred to
31 another designated organization;

32 (16) Include the minimum recyclable or compostable lists established in accordance with
33 § 23-19.19-9;

34 (17) Set targets that the program will strive to meet by December 31, 2033, and December

1 31, 2038, for:

2 (i) Minimum collection and recycling rates for all covered materials and by type of covered

3 materials; and

4 (ii) Minimum postconsumer recycled content rates for covered materials, including paper

5 products, glass, metal, and plastic, but excluding covered materials that cannot include

6 postconsumer recycled content because of technical or market barriers, unique chemical or physical

7 properties, or health and safety requirements that prevent its use;

8 (18) Describe how postconsumer recycled content rates will be calculated using weight

9 and other metrics, how the organization will verify minimum postconsumer recycled content rates,

10 and describe a process to temporarily waive postconsumer recycled content rates for a type or

11 subcategory of covered materials and the criteria for evaluating such waivers, including food safety

12 requirements, technological feasibility, or inadequate or disrupted supply;

13 (19) Describe how the organization will provide producers with the opportunity to purchase

14 postconsumer recycled materials from processors at market prices if the producer is interested in

15 obtaining recycled feedstock to achieve minimum postconsumer recycled content rates;

16 (20) Describe how the organization will reduce or offset the producer responsibility dues

17 for any producer or group of producers that fund or operate a collection program that:

18 (i) Covers a specific type of covered material that is not processed by materials recovery

19 facilities; and

20 (ii) Has recycling rates that meet or exceed the minimum recycling rate target set forth in

21 the plan;

22 (21) Describe how the organization will work with service providers to:

23 (i) Utilize and expand on existing covered services and infrastructure and existing

24 education and outreach programs;

25 (ii) Reduce contamination of covered materials delivered to materials recovery facilities

26 and compost facilities by:

27 (A) Requiring each materials recovery facility and compost facility participating in the

28 program to report annually to the organization on in-bound contamination levels at each facility;

29 and

30 (B) Providing funding or other assistance to compost facilities to reduce the costs of

31 managing or increase the effectiveness of efforts to manage contamination and to process and

32 recover compostable packaging;

33 (iii) Invest in new or upgraded recycling infrastructure;

34 (iv) Mitigate the impacts of covered materials on other materials and equipment at sorting

1 and processing facilities;

2 (v) Invest in market development for covered materials in the state; and

3 (vi) Increase the recycling of collected covered materials;

4 (22) Describe how the organization will work with and incentivize producers to reduce

5 packaging through product design changes, the development or expansion of systems for reusable

6 packaging, and product innovation;

7 (23) Describe how the program will prioritize the use of end markets that return

8 postconsumer recycled materials to their original product type;

9 (24) Describe how the organization will evaluate and monitor the use of responsible end

10 markets through methods such as processor contracts or financial incentives;

11 (25) Describe how the organization will implement the education and outreach program

12 set forth in § 23-19.19-10; and

13 (26) Include any additional information required by the department.

14 **23-19.19-8. Review of advisory plan.**

15 (a) The advisory board shall review the plan proposal for compliance with this chapter. The

16 advisory board shall consult with the organization throughout its review of the plan proposal.

17 (1) Within ninety (90) days after the submission of the plan proposal to the advisory board,

18 the advisory board shall either provide any recommended amendments to the plan proposal to the

19 organization or, if the advisory board does not have any recommended amendments, forward the

20 plan proposal to the director;

21 (2) The organization shall provide responsive answers to the advisory board's

22 recommendations and submit an amended plan proposal to the advisory board within sixty (60)

23 days after its receipt of the recommended amendments;

24 (3) Within thirty (30) days after the submission of the amended plan proposal to the

25 advisory board, the advisory board shall forward the amended plan proposal to the director with its

26 recommendation for approval or rejection and, if applicable, a written explanation of the basis for

27 recommending rejection of the plan proposal;

28 (4) Within one week of receiving the plan proposal, the director shall post the plan proposal

29 on the department's website and provide public notice and an opportunity to comment on the plan

30 proposal.

31 (b)(1) Within sixty (60) days after receiving the plan proposal or amended plan proposal,

32 the director shall either approve or reject the plan proposal or amended plan proposal;

33 (2) If the director rejects the plan proposal or amended plan proposal, the director shall

34 notify the organization of the rejection and the reasons for the rejection, which reasons shall be

1 based on the failure of the plan proposal or amended plan proposal to comply with the requirements
2 specified in this section. The organization shall submit a revised plan proposal to the advisory board
3 within sixty (60) days after receiving the director's rejection. The revised plan proposal shall be
4 reviewed by the advisory board and the revised plan proposal or amended plan proposal shall be
5 expeditiously reviewed and approved or rejected by the director in thirty (30) days in accordance
6 with this section.

7 (c) If the director approves the plan proposal or amended plan proposal pursuant to this
8 section, the director shall designate the plan proposal or amended plan proposal as the final plan
9 and shall publish the final plan on the department's website.

10 (d) The organization shall begin implementing the final plan within six (6) months after it
11 is approved.

12 (e) As part of its annual report under § 23-19.19-12, the organization may submit proposed
13 amendments to a final plan. The organization shall submit these amendments to the advisory board
14 at least sixty (60) days prior to the deadline to submit the annual report:

15 (1) The department may request that the organization amend the plan in any year to address
16 a specific concern or aspect of the plan by submitting the request at least ninety (90) days prior to
17 the annual report deadline. The organization shall consult with the advisory board on these
18 proposed amendments.

19 (2) The advisory board shall submit any proposed amendments to the director concurrent
20 with the annual report for approval or rejection based on the plan proposal requirements specified
21 in this section.

22 (f) The organization shall continue to operate the program in accordance with the final plan
23 pending the approval or rejection of a proposed amendment by the director. The director's rejection
24 of a proposed amendment does not relieve the organization of its responsibility to continue to
25 operate the program in accordance with the final plan.

26 (g) The director shall enforce this chapter in accordance with § 23-19.19-13 and the
27 department shall promulgate rules as may be necessary for the administration and enforcement of
28 this chapter. Notwithstanding any law to the contrary, the organization shall not make any
29 determination as to a person's compliance with this chapter.

30 (h)(1) By December 31, 2027, and each December 31 thereafter, as an alternative to
31 participating in the program, a producer may submit to the advisory board an individual program
32 plan proposal. A producer shall notify the department of its intent to submit an individual program
33 plan as described in § 23-19.19-11.

34 (2) An individual program plan proposal shall:

- 1 (i) Comply with the requirements of subsection (h)(1) of this section, as applicable;
- 2 (ii) Describe how the producer participating in the individual program plan proposal will
- 3 contribute its share of department costs to oversee the program under § 23-19.19-17;
- 4 (iii) Describe how the producer will reimburse service providers that provide recycling
- 5 services for the covered materials covered by the individual program plan proposal; and
- 6 (iv) Describe any alternative collection programs run by the producer and their recycling
- 7 rates by material type.
- 8 (i) The advisory board shall review and make recommendations on, and the director shall
- 9 approve or reject, any individual program plan proposals in accordance with the criteria and
- 10 procedures set forth in this section. If the director approves an individual program plan proposal,
- 11 the director shall designate the individual program plan proposal as the plan that the producer is
- 12 authorized to implement and administer as an alternative to participating in the program.
- 13 (j) The producer implementing an individual program plan shall submit any amendments
- 14 to the plan to the advisory board in accordance with this section. The advisory board shall review
- 15 and make recommendations on and the director shall approve or reject any amendments to the plan
- 16 in accordance with this section.
- 17 **23-19.19-9. Minimum recyclable or compostable lists and convenience standards.**
- 18 (a) As part of the plan, the producer responsibility organization shall develop a list of
- 19 covered materials determined to be recyclable or compostable statewide through systems where
- 20 covered materials are commingled into a recyclables stream and a separate compostables stream.
- 21 These covered materials shall be collected at an optimal level and method of service and
- 22 convenience for covered entities, at a minimum, wherever collection services for mixed municipal
- 23 solid waste are available.
- 24 (b) The producer responsibility organization may propose a list of covered materials
- 25 determined to be recyclable or compostable and collected statewide through systems other than the
- 26 system required for covered materials on the list established in subsection (a) of this section.
- 27 (1) These alternative collection programs shall:
- 28 (i) Provide year-round, convenient, statewide collection opportunities, including at least
- 29 one drop-off collection site located in each county;
- 30 (ii) Provide tiers of service for collection, convenience, number of drop-off collection sites,
- 31 and additional collection systems based on county population size and county population density;
- 32 (iii) Ensure materials are sent to responsible markets;
- 33 (iv) Use education and outreach strategies that can be expected to significantly increase
- 34 consumer awareness of the program throughout the state; and

1 (v) Measure the amount of each covered material collected and the applicable performance
2 target and statewide requirement.

3 (2) A proposal for an alternative collection program shall include:

4 (i) The type, number, and location of each collection opportunity;

5 (ii) A description of how each of the program requirements established in this section will
6 be met;

7 (iii) Performance targets for each covered material, as applicable, to be managed through
8 an alternative collection program; and

9 (iv) How the alternative collection program will work in combination with the collection
10 systems described in this section to meet performance targets for any material type that is managed
11 through a combination of an alternative collection program and the commingled systems described
12 in this section.

13 (c) The producer responsibility organization shall draw on the findings of the baseline
14 assessment and consult with the advisory board, producers submitting individual program plans,
15 service providers, and other interested parties to develop or amend the recyclable or compostable
16 covered materials lists and shall review any requests by interested parties for addition or removal
17 of covered materials from the lists created under this section.

18 (d) In developing the lists under this section, the producer responsibility organization may
19 consider

20 (1) The availability of recycling and composting collection services;

21 (2) Recycling and composting processing infrastructure;

22 (3) Capacity and technology for sorting covered materials;

23 (4) Whether a covered material is of a type and form that is regularly sorted and aggregated
24 into defined streams for recycling processes or is included in a relevant Institute of Scrap Recycling
25 Industries specification or its successors;

26 (5) Availability of responsible markets;

27 (6) Presence and amount of processing residuals, contamination, and toxic substances;

28 (7) Quantity of covered material estimated to be available and recoverable; and

29 (8) Projected future conditions for the criteria in this section.

30 (e) The producer responsibility organization may propose amendments to these lists as part
31 of its annual report to the advisory board and department. Upon approval, the producer
32 responsibility organizations shall provide amended lists to service providers as soon as possible
33 after approval and incorporate changes in relevant service provider reimbursement rates within a
34 year.

1 (f)(1) To be eligible for reimbursement for covered services provided under the program,
2 service providers shall be registered with the department as required in § 23-19.19-4 and shall
3 provide covered services for all readily recyclable and compostable covered materials in a manner
4 that facilitates attaining the rate targets established in the final plan and in compliance with
5 requirements in this section.

6 (2) The director may grant a service provider an exception to the requirements of subsection
7 (a) of this section if the service provider demonstrates to the reasonable satisfaction of the director
8 that it is not able to provide covered services or meet the convenience standards for a readily
9 recyclable or compostable material.

10 (3) Notwithstanding any law to the contrary, nothing in this chapter restricts a service
11 provider from collecting or processing covered materials that are not included in the minimum
12 recyclable or compostable lists.

13 (g)(1) The organization shall contract with service providers to provide covered entities
14 with convenient and equitable access to covered services for all readily recyclable and compostable
15 covered materials, at no charge to the covered entity, with the goal of achieving the recycling rate,
16 collection rate, and postconsumer recycled content rate targets established in the final plan under
17 §§ 23-19.19-6, 23-19.19-7, and 23-19.19-8.

18 (2) The collection of readily recyclable and compostable covered materials shall be
19 provided in a manner that is as convenient as the collection of solid waste in the geographic area in
20 which the covered entity is located.

21 (3) Any covered entities in the state that are receiving covered services on December 31,
22 2027 shall continue to receive equivalent covered services through the program or a service
23 provider once the final plan is implemented.

24 (4) The organization shall not restrict a person's ability to contract directly with service
25 providers to obtain covered services for covered materials.

26 (5) Notwithstanding any law to the contrary, nothing in this chapter voids or cancels any
27 contract between a resident and a service provider for the provision of recycling or composting
28 services that is executed prior to December 31, 2027.

29 **23-19.19-10. Education and outreach program.**

30 (a) The organization shall develop and implement a statewide education and outreach
31 program that is designed to increase the recycling, composting, and reuse of covered materials and
32 includes education and outreach on proper end-of-life management of covered materials, the
33 location and availability of covered services under the program, and how to prevent littering in the
34 process of providing covered services.

1 **(b) The education and outreach program shall, at a minimum:**

2 **(1) Provide clear and concise recycling, composting, and reuse instructions that are**
3 **consistent statewide and accessible for all demographic groups;**

4 **(2) Coordinate and align existing recycling education materials and services provided**
5 **throughout the state; and**

6 **(3) Be designed to help the state achieve the minimum collection rate and minimum**
7 **recycling rate targets established in the final plan and reduce levels and impacts of inbound**
8 **contamination from covered materials at materials recovery facilities and compost facilities.**

9 **(c) The organization shall consult with the advisory board and other entities providing**
10 **recycling education in the state on the development and distribution of education outreach services**
11 **and materials. The organization may contract with service providers, local governments, and**
12 **nonprofit organizations to conduct recycling education and outreach services under the program**
13 **developed under this section.**

14 **(d) The organization shall develop a proposed methodology for evaluating and reporting**
15 **on the effectiveness of the education and outreach program.**

16 **23-19.19-11. Producer requirements, records, and data.**

17 **(a) Producers shall join the approved producer responsibility organization by July 1, 2026.**
18 **As an alternative to participating in the program, a producer shall notify the department and the**
19 **approved producer responsibility organization of its intent to submit an individual program plan**
20 **proposal. A producer shall notify the department of its initial intent to submit an individual program**
21 **plan proposal by July 1, 2026.**

22 **(b) Effective July 1, 2027, a producer shall not sell or distribute any products that use**
23 **covered materials in the state unless the producer is participating in the program as a member of**
24 **the organization or having notified the department of its intent to submit an individual program**
25 **plan proposal. Participation includes providing data necessary to meet its plan obligations as**
26 **determined by the organization and may use prorated national or regional data if state-specific data**
27 **is not available or feasible to generate. Participation also includes payment of dues according to the**
28 **schedule developed by the organization on the terms and conditions established by the organization.**

29 **(c) A producer shall make all documents and records related to the calculation and payment**
30 **of producer responsibility dues, recycling rates, collection rates, postconsumer recycled content**
31 **rates, and any other materials necessary for the director to determine compliance with this chapter**
32 **available for inspection by the director. In connection with enforcing a violation by a producer**
33 **pursuant to § 23-19.19-13, the director may request in writing that the producer provide any such**
34 **documents or records to the director.**

1 (d) The director, the advisory board, the organization, an additional producer responsibility
2 organization, and any other person administering a plan approved by the director pursuant to this
3 chapter shall keep confidential any proprietary information provided by a producer and shall not
4 include any proprietary information provided by a producer in the plan proposal, the amended plan
5 proposal, the final plan, any other plan approved by the director pursuant to this chapter, or any
6 amendment to the final plan or other plan approved by the director pursuant to this chapter.

7 **23-19.19-12. Annual reporting.**

8 (a) The organization, any additional producer responsibility organization, and any person
9 administering a plan approved by the director pursuant to this chapter shall cause to be conducted
10 an annual financial audit of the program or any other plan approved by the director pursuant to this
11 chapter by an independent third-party auditor.

12 (b)(1) Before March 31 of the second year of the program's implementation, and by March
13 31 each year thereafter, the organization shall submit a report to the advisory board describing the
14 progress of the program. The advisory board shall review the report and forward the report to the
15 director. The advisory board shall also review any proposed amendments to the final plan and any
16 updates to the minimum recyclable or compostable lists and forward the amendments and updates
17 to the director with its recommendation for approval or rejection. The director shall post the report
18 on the department's website. The program report shall include the following information from the
19 preceding calendar year:

20 (i) A detailed description of the progress toward each element of the final plan as described
21 in §§ 23-19.19-6, 23-19.19-7, and 23-19.19-8;

22 (ii) A list of all the producers, brands, and covered materials covered by the final plan;

23 (iii) A list of known producers that are not participating in the program and any known
24 producers that may be out of compliance with one or more obligations imposed by this chapter;

25 (iv) The total amount of producer responsibility dues collected under the program,
26 including an annual schedule of producer responsibility dues assessed by weight for each type of
27 covered material and any annual increases or decreases in the dues schedule and the reasons for
28 these adjustments;

29 (v) The total weight of each type of covered materials that producers used for products that
30 were sold or distributed in the state;

31 (vi) The total weight of each type of covered material that was collected and recycled under
32 the program, with the data broken down by the means of collection, including by curbside service,
33 drop-off center, or other means;

34 (vii) The number of covered entities, by type, such as single-family residential and multi-

1 family residential, and the means of collection, including curbside service, drop-off, or other means;
2 (viii) A list of the names, locations, and scope of services for curbside, drop-off, and other
3 operations accepting or collecting covered materials under the program;
4 (ix) The collection and recycling rates for all covered materials and by type of covered
5 materials and the postconsumer recycled content rate as applicable for each type of covered
6 material; a description of the organization's process in achieving the minimum rate targets set forth
7 in the final plan; and in the event that the program is not on target to meet the rates, actions the
8 organization plans to undertake to meet the rates;
9 (x) The rate methodology and/or schedules for reimbursement to service providers, any
10 proposed adjustments to the methodology, and a summary of any disputes arising between the
11 organization and service providers concerning rates and how the disputes were addressed;
12 (xi) A summary of the education and outreach efforts implemented, including samples of
13 materials distributed and the methodology and results of the evaluation of education program
14 effectiveness;
15 (xii) A description of the organization's efforts to ensure that covered materials have been
16 responsibly managed and delivered to responsible end markets under the program, including a list
17 of the recycling end markets for each type of covered materials processed;
18 (xiii) A financial statement of income and expenses supported by a copy of the independent
19 third party's report auditing the program pursuant to subsection (a) of this section;
20 (xiv) A description of the status of reserve funds, an assessment of the adequacy of those
21 funds to cover program costs, and a description of how any program funding shortfalls will be
22 addressed; and
23 (xv) Any amendments to the final plan, including any updates to the minimum recyclable
24 or compostable lists.
25 (c) The responsible organization or person administering any additional plan approved by
26 the commissioner shall also submit a report to the advisory board by March 31 of the second year
27 of any such plan and every March 31 thereafter describing the progress of the plan. The report shall
28 include the information described in subsection (b)(1) of this section, as applicable, from the
29 preceding calendar year. The advisory board shall review the report and forward the report to the
30 director. The advisory board shall also review any proposed amendments to the plan and forward
31 the amendments to the director with its recommendation for approval or rejection. The director
32 shall post the report on the department's website.
33 (d) If, based on the annual reports submitted under this section, the program or any other
34 plan approved by the director pursuant to this chapter is not on track to meet the minimum

1 collection rates, minimum recycling rates, or minimum postconsumer recycled content rates set
2 forth in the program or plans, the director may require the organization, additional producer
3 responsibility organization, or other person responsible for administering a plan approved by the
4 director under this chapter to amend its respective plan as described in § 23-19.19-8.

5 (e) Department report. The director shall annually compile the results of the reports
6 received pursuant to this section into a general report describing the progress of the program and
7 any other plans approved by the director pursuant to this chapter. The department report shall
8 include a review of the department's activities and expenses that were reimbursed pursuant to § 23-
9 19.19-17. The director shall post the report on the department's website and submit the report to the
10 governor, to the senate committee on environment and agriculture, and to the house committee on
11 environment and natural resources.

12 **23-19.19-13. Enforcement and penalties.**

13 (a) If the organization, an additional producer responsibility organization, a person
14 administering a plan approved by the director pursuant to this chapter, a producer, or a service
15 provider (referred to in this section as a "regulated entity") violates any portion of this chapter, the
16 regulated entity is liable for an administrative penalty not to exceed:

17 (1) For a first violation, an initial penalty of two thousand dollars (\$2,000) for the first day
18 of each violation and one thousand dollars (\$1,000) per day for each day the violation continues;

19 (2) For a second violation committed within twelve (12) months after a prior violation, an
20 initial penalty of five thousand dollars (\$5,000) for the first day of each violation and two thousand
21 five hundred dollars (\$2,500) per day for each day the violation continues; and

22 (3) For a third or subsequent violation committed within twelve (12) months after two (2)
23 or more prior violations, an initial penalty of ten thousand dollars (\$10,000) for the first day of each
24 violation and five thousand dollars (\$5,000) per day for each day the violation continues.

25 (b)(1) If the regulated entity violates any portion of this chapter, the director shall serve by
26 personal service or by certified mail an order that imposes an administrative penalty.

27 (2) The regulated entity may submit a written request for a hearing to the director by
28 personal service or by certified mail within thirty (30) calendar days after the date of the order
29 imposing an administrative penalty. The department's office of administrative adjudication shall
30 conduct the hearing.

31 (3) If a request for a hearing is filed, the requirement to pay a penalty is stayed pending a
32 final decision by the office of administrative adjudication after a hearing on the merits. The director
33 is not precluded from imposing an administrative penalty against the regulated entity for subsequent
34 violations of this chapter committed during the pendency of the stay.

1 (4) The director bears the burden of proof by a preponderance of the evidence in a hearing
2 held pursuant to this section.

3 (c) The director may enter into a settlement agreement with a regulated entity assessed an
4 administrative penalty under this section.

5 (d) The director shall transfer any money collected under this section to the office of the
6 general treasurer, which shall credit the money to the ocean state climate adaptation and resilience
7 fund established in the § 46-23.3-4.

8 (e) Notwithstanding any law to the contrary, nothing in this chapter:

9 (1) Creates a private right of action; or

10 (2) Authorizes enforcement of this chapter against anyone other than a regulated entity.

11 **23-19.19-14. Limited exemption from antitrust and unfair trade practices.**

12 If the program or any other plan approved by the director pursuant to this chapter engages
13 in an activity performed solely in furtherance of implementing the program or plan and in
14 compliance with this chapter, the activity is not a violation of the antitrust provisions of the Rhode
15 Island antitrust act in chapter 36 of title 6 or of the unfair methods of competition and unfair or
16 deceptive acts or practices described in the deceptive trade practices provisions of chapter 13.1 of
17 title 6.

18 **23-19.19-15. Local government eligibility and obligations.**

19 (a) Nothing in this chapter affects a person's eligibility for any state or local incentive
20 programs for which the person is otherwise eligible.

21 (b) Notwithstanding any law to the contrary, a local government is not required to provide
22 covered services under the program or any other plan approved by the director pursuant to this
23 chapter. To the extent that a local government elects to provide covered services under the program
24 or any other plan approved by the director pursuant to this chapter, the organization, additional
25 producer responsibility organization, or other person responsible for administering a plan approved
26 by the director under this chapter shall reimburse the local government for those covered services
27 in accordance with § 23-19.19-9 and the final plan or any other plan approved by the director
28 pursuant to this chapter.

29 (c) A local government that receives reimbursement funds from the organization or in
30 accordance with any other plan approved by the director shall use such funds for the local
31 government's recycling program and shall not charge residents for costs reimbursed through the
32 program.

33 **23-19.19-16. Restriction on consumer fees.**

34 A person shall not charge any kind of point-of-sale or point-of-collection fee to consumers

1 to recoup its costs in meeting the obligations of or complying with this chapter. Nor shall a service
2 provider charge a fee for costs for which the service provider is reimbursed under this chapter.

3 **23-19.19-17. Administrative fund.**

4 (a) There is hereby created in the office of the general treasurer the extended producer
5 responsibility for packaging and paper administrative fund, referred to in this section as the "fund."
6 The fund consists of any producer funds designated for administrative costs pursuant to this section,
7 including a portion of dues transferred to the fund by the organization and administrative funds
8 transferred from an additional producer responsibility organization or a person administering a plan
9 approved by the director pursuant to this chapter. The fund also includes money that the general
10 assembly transfers to the fund for use by the department. Payments for administrative costs made
11 in accordance with approved plans are limited to reimbursing:

12 (1) The department, including the advisory board, for the reasonable costs incurred in
13 administering and implementing any portion of this chapter; and

14 (2) The department for the reasonable costs incurred in enforcing this chapter.

15 (b)(1) By August 1, 2026, the department shall notify the organization of the costs in
16 administering, implementing, and enforcing this chapter from the effective date of this chapter
17 through June 30, 2026.

18 (2) By August 1 of each subsequent year, the department shall notify the organization of
19 the costs of administering, implementing, and enforcing this chapter during the immediately
20 preceding state fiscal year.

21 (c) Upon receipt of the department's cost accounting, the organization, an additional
22 producer responsibility organization, or a person administering a plan approved by the director
23 pursuant to this chapter shall transmit to the general treasurer, for deposit in the fund, their allocated
24 share of the funds necessary to reimburse the department for its costs.

25 (d) The general assembly shall annually appropriate money from the fund to the department
26 for the purposes set forth in this section.

27 (e) All unexpended and unencumbered money in the fund at the end of any state fiscal year
28 remains in the fund and shall not be credited or transferred to the general fund or any other fund;
29 this money shall be used to reduce the reimbursement obligations under subsection (b) of this
30 section. All interest derived from the deposit and investment of money in the fund remains in the
31 fund and does not revert to the general fund.

32 **23-19.19-18. No obligation to provide covered services.**

33 Notwithstanding any law to the contrary, a private service provider is not required to
34 provide covered services under the program or any other plan approved by the director pursuant to

[this chapter.](#)

23-19.19-19. Regional coordination and harmonization encouraged.

[The department and any approved organizations shall seek opportunities for coordination and harmonization with similar programs in the region including, but not limited to, conduct of the baseline assessment, management of organizations, development of the minimum recyclable or compostable lists, and composition and representation of the advisory committee. Further, the organizations and service providers shall seek to optimize scale through regional recycling services and infrastructure wherever practical.](#)

23-19.19-20. Severability.

[If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.](#)

SECTION 2. The title of Chapter 44-44 of the General Laws entitled "Taxation of Beverage Containers and Hard-To-Dispose Material" is hereby amended to read as follows:

~~CHAPTER 44-44~~

~~Taxation of Beverage Containers and Hard-To-Dispose Material~~

[CHAPTER 44-44](#)

[TAXATION OF HARD-TO-DISPOSE MATERIAL](#)

SECTION 3. Sections 44-44-3, 44-44-8 and 44-44-13 of the General Laws in Chapter 44-44 entitled "Taxation of Beverage Containers and Hard-To-Dispose Material" are hereby repealed.

~~**44-44-3. Imposition of tax on beverage containers.**~~

~~There shall be levied and imposed a tax of eight cents (\$0.08) on each case of beverage containers sold by a beverage wholesaler to a beverage retailer or consumer within this state. The tax shall be collected by the beverage wholesaler. The tax provided for in this section shall not be levied, imposed, or collected on reusable and refillable beverage containers.~~

~~**44-44-8. Records required — Inspection of records.**~~

~~Every beverage wholesaler shall keep books, including records, receipts, and other pertinent papers, in a form the tax administrator may require. The records shall be open at all times to the inspection of the tax administrator and his or her agents and, upon summons issued by the tax administrator, shall be produced at the time and place that he or she may designate for inspection by the tax administrator or his or her agents.~~

~~**44-44-13. Contingency provision.**~~

~~The provisions of this chapter shall become null and void, and the tax imposed under this~~

~~chapter shall terminate, if federal or state legislation is enacted which requires a deposit on beverage containers.~~

SECTION 4. Sections 44-44-1, 44-44-2, 44-44-4, 44-44-17, 44-44-18 and 44-44-19 of the General Laws in Chapter 44-44 entitled "Taxation of Beverage Containers and Hard-To-Dispose Material" are hereby amended to read as follows:

44-44-1. Purpose.

This chapter is enacted to provide funding for the ~~litter reduction and recycling program, created pursuant to chapter 15.1 of title 37, and the~~ hard-to-dispose material — control and recycling program, created pursuant to chapter 15.1 of title 37.

44-44-2. Definitions.

As used in this chapter:

(1) ~~"Beverage" means all non-alcoholic drinks for human consumption, except milk but including beer and other malt beverages.~~

(2) ~~"Beverage container" means any sealable bottle, can, jar, or carton which contains a beverage.~~

(3) ~~"Beverage retailer" means any person who engages in the sale of a beverage container to a consumer within the state of Rhode Island, including any operator of a vending machine.~~

(4) ~~"Beverage wholesaler" means any person who engages in the sale of beverage containers to beverage retailers in this state, including any brewer, manufacturer, or bottler who engages in those sales.~~

(5) ~~"Case" means:~~

~~(i) Forty-eight (48) beverage containers sold or offered for sale within this state when each beverage container has a liquid capacity of seven (7) fluid ounces or less;~~

~~(ii) Twenty-four (24) beverage containers sold or offered for sale within this state when each beverage container has a liquid capacity in excess of seven (7) fluid ounces but less than or equal to sixteen and nine tenths (16.9) fluid ounces;~~

~~(iii) Twelve (12) beverage containers sold or offered for sale within this state when each beverage container has a liquid capacity in excess of sixteen and nine tenths (16.9) fluid ounces but less than thirty-three and nine tenths (33.9) fluid ounces; and~~

~~(iv) Six (6) beverage containers sold or offered for sale within this state when each beverage container has a liquid capacity of thirty-three and nine tenths (33.9) fluid ounces or more.~~

(6) ~~"Consumer" means any person who purchases a beverage in a beverage container for use or consumption with no intent to resell that filled beverage container.~~

(7) "Hard-to-dispose material" is as defined in § 37-15.1-3.

(8) "Hard-to-dispose material retailer" means any person who engages in the retail sale of hard-to-dispose material (as defined in § 37-15.1-3) in this state.

(9) "Hard-to-dispose material wholesaler" means any person, wherever located, who engages in the sale of hard-to-dispose material (as defined in § 37-15.1-3) to customers for sale in this state (including manufacturers, refiners, and distributors and retailers), and to other persons as defined above.

(10) "New vehicle" means any mode of transportation for which a certificate of title is required pursuant to title 31 and for which a certificate of title has not been previously issued in this state or any other state or country.

(11) "Organic solvent" is as defined in § 37-15.1-3.

(12) "Person" means any natural person, corporation, partnership, joint venture, association, proprietorship, firm, or other business entity.

~~(13) "Vending machine" means a self-contained automatic device that dispenses for sale foods, beverages, or confection products.~~

44-44-4. Filing of returns and extensions of time for filing returns.

On or before the twenty-fifth day of the month next succeeding the month in which any taxes imposed by this chapter are collected, the ~~beverage wholesaler and/or~~ hard-to-dispose material wholesaler or hard-to-dispose material retailers or person liable for tax pursuant to § 44-44-3.7, shall pay the taxes to the tax administrator and at the same time shall file a return in a form that the tax administrator may by regulation prescribe. The tax administrator may grant reasonable extensions of time for filing returns under rules and regulations that he or she prescribes. If any taxes are not paid to the tax administrator when due, or if any return is not filed when due, there shall be added to the taxes and made a part of the taxes interest at the rate set forth in § 44-1-7 from the date when the taxes became due until the date of payment.

44-44-17. Deficiency determination — Determination without return.

If any hard-to-dispose material wholesaler or hard-to-dispose material retailer or person ~~or beverage wholesaler~~ fails to file a return or application or to keep records described in § 44-44-8, or if the tax administrator is not satisfied with the amount of taxes or fees paid to the tax administrator, the tax administrator may compute and determine the amount required by this chapter to be paid to the tax administrator upon the basis of the facts contained in the returns or applications that have been filed or upon the basis of any information in the tax administrator's possession or that may come into the tax administrator's possession.

44-44-18. Notice of determination.

The tax administrator shall give written notice of the tax administrator's determination to

1 the ~~beverage-wholesaler or~~ hard-to-dispose material wholesaler or hard-to-dispose material retailer
2 or person. Except in the case of fraud or failure to make a return, or noncompliance with § 44-44-
3 8, every notice of determination shall be mailed within three (3) years of the date the taxes first
4 became due. The amount of this determination shall bear interest at the rate prescribed in § 44-1-7
5 from the date when taxes should have been paid until the date of payment.

6 **44-44-19. Payment of refunds.**

7 Whenever the tax administrator shall determine that any ~~beverage-wholesaler or~~ hard-to-
8 dispose material wholesaler or hard-to-dispose material retailer or person is entitled to a refund of
9 any moneys paid under the provisions of this chapter, or whenever a court of competent jurisdiction
10 orders a refund of any moneys paid, the general treasurer shall, upon certification by the tax
11 administrator, pay the refund from any moneys in the litter control account or hard-to-dispose
12 material account other than those moneys already appropriated for the administration of the taxes
13 and programs entitled by this chapter and § 37-15-13; provided, that no refund shall be allowed
14 unless a claim for a refund is filed with the tax administrator within three (3) years from the date
15 the overpayment was made. Every claim for a refund shall be made in writing, shall be in a form,
16 and shall present only information that the tax administrator may, by regulation, require. Within
17 thirty (30) days after disallowing any claim in whole or in part the tax administrator shall give
18 written notice of the tax administrator's decision to the ~~beverage-wholesaler or~~ hard-to-dispose
19 material wholesaler or hard-to-dispose material retailer or person. A refund of less than ten dollars
20 (\$10.00) will not be processed, but may be credited to the following month's return without interest.

21 SECTION 5. Sections 2, 3 and 4 of this act shall take effect upon the director of the
22 department of environmental management approving the final plan set forth in Section 1 of this act.
23 The remaining sections of this act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- EXTENDED PRODUCER RESPONSIBILITY
FOR PACKAGING AND PAPER ACT

- 1 This act would create the extended producer responsibility for packaging and paper
2 program for the recycling of packaging and paper products.
- 3 Sections 2, 3, and 4 of this act would take effect upon the director of the department of
4 environmental management approving the final plan set forth in Section 1 of this act. The remaining
5 sections of this act would take effect upon passage.

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