

STATE OF NEW YORK

5027

2021-2022 Regular Sessions

IN SENATE

February 22, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law and the state finance law, in relation to establishing a carpet stewardship program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Declaration of legislative findings and intent. The legis-
2 lature finds and declares that it is the policy of the state of New York
3 to promote the recyclability of products and materials and to promote
4 policies that encourage the optimal goal of closed-loop recycling and a
5 circular economy. The legislature finds and declares that the solid
6 waste management plan adopted by the department of environmental conser-
7 vation on December 27, 2010 entitled "Beyond Waste, A Sustainable Mate-
8 rials Management Strategy for New York State" promotes and supports a
9 system of sustainable solid waste management and favors waste
10 prevention, reuse, and recycling over the disposal of materials. The
11 legislature finds and declares that in the solid waste management plan
12 product stewardship was identified as a centerpiece of the new solid
13 waste management plan for the state, and carpet was one of the products
14 identified as most suited to a stewardship approach based on research
15 and feedback from stakeholders. According to the report, carpet
16 accounted for 1.4 percent of total solid waste generation in New York
17 state, or roughly 512 million pounds. Carpet waste is heavy and bulky
18 and imposes significant solid waste management cost on municipalities
19 because it is expensive to dispose of. The legislature finds and
20 declares that perfluoroalkyl and polyfluoroalkyl substances, or PFAS
21 chemicals, which are harmful to humans are increasingly being found in
22 household products, including carpets produced by major United States
23 carpet producers. The legislature further finds and declares that reduc-
24 ing the toxic components in carpet will not only reduce exposure to
25 toxic chemicals in our homes and workplaces, but also improve market

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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opportunities for carpet to be recycled back into carpet materials. The legislature finds and declares that enactment of this act will reduce carpet waste, encourage closed-loop carpet recycling, and provide a mechanism for carpet producer stewardship of its product through its life cycle.

§ 2. Article 27 of the environmental conservation law is amended by adding a new title 32 to read as follows:

TITLE 32

CARPET STEWARDSHIP

Section 27-3201. Short title and definitions.

27-3203. Labeling, warranty, and design requirements.

27-3205. Post-consumer content and adhesive requirements.

27-3207. Carpet stewardship advisory board.

27-3209. Stewardship organization responsibilities.

27-3211. Stewardship plan.

27-3213. Submission to the commissioner and approval timing.

27-3215. Collection convenience standard requirements.

27-3217. Stewardship assessment.

27-3219. Administrative fee.

27-3221. Producer responsibilities.

27-3223. Retailer and distributor responsibilities.

27-3225. Requirements for program collectors.

27-3227. Requirement for recycling.

27-3229. Department responsibilities.

27-3231. Rules and regulations.

27-3233. Annual audit and report.

27-3235. Enforcement and penalties.

27-3237. State preemption.

27-3239. Procurement.

27-3241. Anti-competitive conduct.

27-3243. Severability.

§ 27-3201. Short title and definitions.

1. This title may be known as and may be cited as the "New York state carpet stewardship law".

2. The definitions in this section apply throughout the title unless the context clearly requires otherwise:

(a) "Brand" means a name, symbol, word, or mark that attributes the product to the owner or licensee of the brand as the producer.

(b) "Carpet" means a manufactured article that is (i) used in commercial buildings or single or multifamily residential buildings, (ii) affixed or placed on the floor or building walking surface as a decorative or functional building interior or exterior feature, and (iii) primarily constructed of a top surface of synthetic or natural face fibers or yarns or tufts attached to a backing system made of synthetic or natural materials. "Carpet" includes, but is not limited to, a commercial or residential broadloom carpet, modular carpet tiles, and artificial turf, pad or underlayment used in conjunction with a carpet. "Carpet" does not include handmade rugs, area rugs, or mats.

(c) "Carpet stewardship advisory board" means the board created under section 27-3207 of this title.

(d) "Closed-loop recycling" means a process where discarded carpet is collected, recycled, and then used again to make carpet.

(e) "Collection rate" means the amount of carpet collected and is determined by dividing the amount of discarded carpet collected for recycling or reuse by the total amount of carpet discarded in a program year.

1 (f) "Collection site" means a permanent location in the state at which
2 discarded carpet may be returned for recycling by a consumer.

3 (g) "Collector" means a person who collects discarded carpet for the
4 purpose of supplying the recyclers.

5 (h) "Commissioner" means the commissioner of environmental conserva-
6 tion.

7 (i) "Consumer" means a person located in the state who purchases,
8 owns, leases, or uses carpet, including but not limited to an individ-
9 ual, a business, corporation, limited partnership, not-for-profit corpo-
10 ration, the state, a public corporation, public school, school district,
11 private or parochial school, or board of cooperative educational
12 services or governmental entity.

13 (j) "Department" means the department of environmental conservation.

14 (k) "Discarded carpet" means carpet that a consumer has used and
15 disposed of in the state.

16 (l) "Distributor" or "wholesaler" means a person who buys or otherwise
17 acquires carpet and sells or offers to sell carpet to retailers in this
18 state.

19 (m) "Energy recovery" means the process by which all or a portion of
20 solid waste materials are processed or combusted in order to utilize the
21 heat content or other forms of energy derived from such solid waste
22 materials.

23 (n) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS chemi-
24 cals" means a class of fluorinated organic chemicals containing at least
25 one fully fluorinated carbon atom.

26 (o) "Producer" means any person who manufactures or renovates carpet
27 that is sold, offered for sale, or distributed in the state. "Producer"
28 includes:

29 (i) the owner of a trademark or brand under which carpet is sold,
30 offered for sale, or distributed in this state, whether or not such
31 trademark or brand is registered in the state; and

32 (ii) any person who imports carpet into the United States that is sold
33 or offered for sale in the state and that is manufactured by a person
34 who does not have a presence in the United States.

35 (p) "Proprietary information" means information that is a trade secret
36 or is production, commercial, or financial information, that if
37 disclosed would impair the competitive position of the submitter and
38 would make available information not otherwise publicly available.

39 (q) "Recycling" means the process by which discarded carpet is proc-
40 essed and returned to the economic mainstream for the purpose of prepar-
41 ing the materials, components, or commodities for use or reuse in new
42 products or components. "Recycling" does not include energy recovery or
43 energy generation by means of combustion or landfill disposal of
44 discarded carpet.

45 (r) "Recycling rate" means the percentage of discarded carpet products
46 that is managed through recycling or reuse, as defined by this title,
47 and is computed by dividing the amount of discarded carpet collected and
48 recycled or reused by the total amount of discarded carpet collected
49 over a program year.

50 (s) "Recycler" means a person that engages in recycling.

51 (t) "Retailer" means any person who sells or offers for sale carpet to
52 a consumer in the state.

53 (u) "Reuse" means donating or selling a discarded carpet product back
54 into the market for its original intended use, when the discarded carpet
55 product retains its original performance characteristics and can be used
56 for its original purpose.

(v) "Sale" or "sell" means a transfer of title of carpet for consideration, including a remote sale conducted through a sales outlet, catalog, website, telephone, or through similar electronic means. "Sale" or "sell" includes a lease through which carpet is provided to a consumer in the state by a producer, distributor, or retailer.

(w) "Stewardship organization" means a nonprofit entity representing producers and other designated representatives who are cooperating with one another to collectively establish and operate a stewardship program for the purpose of complying with this title.

(x) "Stewardship program" means a program financed and implemented by producers through a stewardship organization that provides for, but is not limited to, the collection, transportation, reuse, recycling, or proper management through disposal, or an appropriate combination thereof, of discarded carpet.

§ 27-3203. Labeling, warranty, and design requirements.

1. On and after the effective date of this title, carpet sold or offered for sale in the state shall be accompanied by the following identifying information:

(a) Name of the producer and contact information;

(b) Carpet material, composition, and type of construction.

2. On and after the effective date of this title, all carpet shall be accompanied by an all-inclusive warranty for a period of seven years, with exceptions for inappropriate use and damage.

3. On and after a date that is two years after the effective date of this title, no carpet sold or offered for sale in the state shall contain or be treated with PFAS chemicals to provide a specific characteristic, appearance or quality, to perform a specific function, or for any other purpose.

§ 27-3205. Post-consumer content and adhesive requirements.

1. On and after a date that is two years after the effective date of this title, all carpet sold in the state shall be manufactured with a minimum of ten percent from post-consumer sources; and four years thereafter, a minimum of twenty percent from post-consumer sources; and five years thereafter, a minimum of thirty percent from such sources.

2. On and after a date which is two years after the effective date of this title, no permanent adhesives may be used in the installation of carpet. All carpet shall be designed and installed so as to allow removal without significant damage to the carpet.

§ 27-3207. Carpet stewardship advisory board.

1. There is hereby established within the department the carpet stewardship advisory board to receive and review stewardship plans required by this title and make recommendations to the commissioner regarding their approval.

2. The board shall be composed of eleven voting members to be appointed by the commissioner. Such members shall include:

(a) one representative of carpet producers;

(b) one representative of carpet retailers;

(c) one representative of carpet recyclers;

(d) one representative of carpet collectors;

(e) two representatives of companies that utilize discarded carpet to manufacture a new product;

(f) one representative of a carpet installer association;

(g) one representative from a statewide environmental organization;

(h) one representative from a statewide waste disposal association;

(i) one representative from the New York product stewardship council;

and

1 (j) one at-large member.

2 3. Such appointments shall be made no later than the first day of
3 January following the date on which this title takes effect.

4 4. The members shall designate a chair from among the members by
5 majority vote. Board members shall receive no compensation but shall be
6 entitled to their necessary and actual expenses incurred in the perform-
7 ance of their board duties.

8 5. The board shall meet at least quarterly by call of the chair.

9 6. Each carpet stewardship plan prepared by a stewardship organization
10 pursuant to this title shall be submitted to the advisory board, which
11 shall consider whether the plan meets the criteria and objectives of
12 this title.

13 7. The board shall, within ninety days of such submission, either:

14 (a) forward the plan to the commissioner with its recommendation for
15 approval; or

16 (b) return the plan with its disapproval and stated reasons therefor,
17 including any recommended changes to the plan necessary for approval.

18 8. A stewardship organization may resubmit a plan for approval at any
19 time. Upon such resubmission, the board shall within ninety days forward
20 the plan to the commissioner with its recommendation for approval or
21 disapproval.

22 9. The board shall review the submitted annual reports and make such
23 recommendations to the department and stewardship organization with an
24 approved plan for improving the plan. 10. The decision of the board
25 shall be by vote of the majority of its membership.

26 § 27-3209. Stewardship organization responsibilities.

27 1. A stewardship organization shall be created and financed collec-
28 tively by carpet producers.

29 2. The stewardship organization shall demonstrate to the department
30 the management capability and financial capacity to operate a statewide
31 program.

32 3. The stewardship organization shall not control, be controlled by,
33 nor be under common control of any single manufacturer, third-party
34 organization, vendor, collector, or industry-wide trade association.

35 4. The stewardship organization shall have a board of directors
36 composed of the following:

37 (a) two representatives of carpet producers;

38 (b) two representatives of carpet recyclers;

39 (c) two representatives of manufacturers who utilize recycled carpet
40 materials but are not carpet producers;

41 (d) one representative of retailers;

42 (e) one representative of a New York-based environmental advocacy
43 organization; and

44 (f) one representative of an organization that represents local
45 government.

46 5. On or before the first of July following the formation of the
47 carpet stewardship advisory board, a stewardship organization shall
48 submit a stewardship plan to the carpet stewardship advisory board.

49 6. A stewardship organization operating a stewardship program shall
50 update the stewardship plan every three years, at a minimum, and submit
51 the updated plan to the department for review and approval.

52 7. The stewardship organization shall notify the department within
53 thirty days of any significant changes or modifications to the plan or
54 its implementation. Within thirty days of the notification, a written
55 plan amendment shall be submitted to the department for review and
56 approval.

1 8. The stewardship organization shall meet with the carpet stewardship
2 advisory board at least twice per year.

3 9. The stewardship organization shall be responsible for producers'
4 compliance with the requirements of this title, including: the prepara-
5 tion and implementation of a stewardship plan, the preparation and
6 submission of annual audits, and reports to the commissioner as provided
7 in section 27-3233 of this title.

8 § 27-3211. Stewardship plan.

9 1. The stewardship plan shall include, at a minimum:

10 (a) Certification that the stewardship program will accept for
11 collection all discarded carpet;

12 (b) Contact information for each individual representing the steward-
13 ship organization, including the address of the stewardship organization
14 where the department will send any notifications and for service of
15 process, designation of a program manager responsible for administering
16 the program, a list of all producers participating in the stewardship
17 program, and contact information for each producer, including the
18 address for service of process, and the brands covered by the product
19 stewardship program;

20 (c) A description of the methods by which discarded carpet will be
21 collected;

22 (d) An explanation of how the stewardship program will achieve, at a
23 minimum, a convenience standard under section 27-3215 of this title;

24 (e) A description of how the effectiveness of the stewardship program
25 will be monitored, evaluated, and maintained;

26 (f) The names and locations of collection sites, transporters, and
27 recyclers who will manage discarded carpet;

28 (g) A description of how the discarded carpet will be safely and
29 securely transported, tracked, and handled from collection through final
30 recycling and processing;

31 (h) A description of the methods to be used to reuse or recycle
32 discarded carpet to ensure that the components, to the extent feasible,
33 are transformed or remanufactured into finished products for use;

34 (i) A description of the methods to be used to manage or dispose of
35 discarded carpet that cannot be recycled or reused;

36 (j) Establish goals for each year of the plan that increase the annual
37 percent of discarded carpet that is collected (collection rate) and the
38 annual percent that is recycled (recycling rate) and the percent of
39 which, pending available markets, should be closed-loop recycled. This
40 calculation is to be based on the previous three-year average amount of
41 carpet sold in the state so that the following goals are met:

42 (i) Five years after the effective date of this title, twenty-five
43 percent recycled, of which ten percent should be closed-loop recycling;

44 (ii) Ten years after the effective date of this title, fifty percent
45 recycled, of which twenty percent should be closed-loop recycling; and

46 (iii) Fifteen years after the effective date of this title, seventy-
47 five percent recycled, of which forty percent should be closed-loop
48 recycling.

49 (k) A description of the outreach and educational materials that must
50 be provided to consumers, retailers, collection sites, and transporters
51 of discarded carpet, and how such outreach will be evaluated for effec-
52 tiveness. These materials shall include:

53 (i) information about collection opportunities for post-consumer
54 carpet; efforts to promote the source reduction, reuse, and recycling of
55 carpet; and

1 (ii) a program that shall be implemented to train carpet installers on
2 how to properly manage discarded carpet.

3 (l) An up-to-date stewardship organization website and toll-free tele-
4 phone number through which a consumer can easily learn how and where to
5 return their discarded carpet for recycling;

6 (m) An evaluation of the status of end markets for discarded carpet
7 and what, if any, additional end markets are needed to improve the func-
8 tioning of the programs;

9 (n) A funding mechanism that demonstrates sufficient funding to carry
10 out the plan, including the administrative, operational, and capital
11 costs of the plan;

12 (o) A description of a process by which an independent auditor will be
13 selected for the purposes of section 27-3233 of this title. The plan
14 shall identify the criteria used by the stewardship organization in
15 selecting an independent auditor, including:

16 (i) identify, in detail, the operational plans for interacting with
17 retailers on the proper handling and management of post-consumer carpet;

18 (ii) define the methodology for calculating the fees necessary to
19 achieve the annual collection and recycling rates;

20 (iii) ensure that fees collected are sufficient for implementation of
21 this title.

22 (p) Any other information required by regulations promulgated by the
23 department.

24 2. By the first of July after the effective date of this title, and by
25 July first of each year thereafter, the stewardship organization shall
26 submit a report to the department that includes, for the previous
27 program year, a description of the stewardship program, including, but
28 not limited to, the following:

29 (a) a description of the methods used to collect, transport, and proc-
30 ess discarded covered products in regions of the state;

31 (b) identification of all collection sites in the state;

32 (c) the weight of all discarded covered products collected and reused
33 or recycled in all regions of the state;

34 (d) an evaluation of whether the performance goals and recycling rates
35 established in the stewardship plan have been achieved; and

36 (e) an estimated weight of discarded covered products and any compo-
37 nent materials that were collected pursuant to the stewardship plan, but
38 not recycled.

39 § 27-3213. Submission to the commissioner and approval timing.

40 1. Before rejection or approval of a stewardship plan can be made in
41 accordance with this title, the stewardship organization shall submit
42 the plan to the carpet stewardship advisory board.

43 2. Within sixty days of submission of the stewardship plan to the
44 commissioner upon the recommendation of the advisory board, the commis-
45 sioner shall either approve the plan, or return it to the stewardship
46 organization and provide the reasons for disapproval.

47 3. The stewardship organization shall provide a revised plan to the
48 commissioner within sixty days, and the commissioner shall approve or
49 reject such revised plan within thirty days.

50 4. The stewardship organization shall implement the stewardship plan
51 on the first of January in the year following approval of the plan under
52 this section.

53 § 27-3215. Collection convenience standard requirements.

54 1. Program collection sites shall be made available within a fifteen
55 mile radius for at least seventy percent of the population of the
56 state's residents, and within a fifteen mile radius for at least eighty

1 percent of the population of the state's residents within three years
2 after the start of the program.

3 2. Convenience standards shall be evaluated by the department period-
4 ically and the department may require additional collection locations to
5 ensure adequate consumer convenience.

6 3. In those areas that are not included within the collection conven-
7 ience standard in subdivision one of this section, the stewardship
8 organization shall provide collection events at least once per year.

9 4. With respect to a city having a population of one million or more,
10 after consultation with the appropriate local or regional entity respon-
11 sible for the collection of solid and hazardous waste, the stewardship
12 plan shall establish an alternative convenience standard that is
13 approved by the department.

14 § 27-3217. Stewardship assessment.

15 1. One month after the approval of the stewardship plan, each producer
16 shall include in the price of any carpet sold to retailers and distribu-
17 tors in the state an amount determined under the approved stewardship
18 plan. A retailer or distributor shall not deduct this amount from the
19 purchase price.

20 2. Each producer shall remit the quarterly assessment amount to the
21 stewardship organization each quarter.

22 3. Such an assessment shall be in an amount sufficient to cover the
23 costs of collection, recycling, and other activities specified in the
24 stewardship plan as required by this title.

25 4. The stewardship assessment amount shall take into account the
26 financial burden that a particular carpet material has on the steward-
27 ship program, and the amount of post-consumer recycled content contained
28 in a particular carpet, and be differentiated to incentivize the use of
29 post-consumer content in carpet and discourage the use of carpet materi-
30 als that pose challenges for the recycling of discarded carpet.

31 5. The independent auditor, as described in the stewardship plan,
32 shall verify that the amount added to each unit of carpet will cover the
33 costs of implementing the stewardship plan.

34 6. The amounts so collected shall be deposited in a bank chartered in
35 New York and shall be expended only for the purposes of compliance with
36 this title.

37 § 27-3219. Administrative fee.

38 A stewardship organization shall pay the department the following
39 fees, which shall be adequate to cover the department's full costs of
40 administering and enforcing the stewardship program and shall not exceed
41 the amount necessary to recover costs incurred by the department in
42 connection with the administration and enforcement of the requirements
43 of this title:

44 1. a one-time fee of ten thousand dollars for a plan upon submission
45 of an initial stewardship plan; and

46 2. an annual administrative fee to be established by the department in
47 regulations to be paid one year after the effective date of this title a
48 reimbursement fee to the commissioner for the costs of administering
49 this title.

50 § 27-3221. Producer responsibilities.

51 1. By the first of January of the year following the effective date of
52 this title, each producer shall, through a stewardship organization,
53 implement and finance a statewide stewardship program that:

54 (a) manages carpet by reducing its waste generation;

55 (b) promotes carpet recycling and reuse; and

1 (c) provides for negotiation and execution of agreements to collect,
2 transport, process, and market the producer's discarded carpet for end-
3 of-life recycling, reuse, or disposal.

4 2. No producer may sell or offer for sale carpet in the state unless
5 the producer is part of a stewardship organization in compliance with
6 the provisions of this title.

7 3. The stewardship program shall be free to the consumer, convenient
8 and adequate to serve the needs of businesses and residents in all areas
9 of the state on an ongoing basis.

10 4. On and after the first of March of the year following the effective
11 date of this title, no carpet shall be sold or offered for sale in the
12 state that is not the subject of an approved stewardship plan as
13 provided in this title.

14 5. Each producer shall submit a plan to the department through partic-
15 ipation in a certified stewardship organization that meets the require-
16 ments of section 27-3211 of this title.

17 § 27-3223. Retailer and distributor responsibilities.

18 1. Beginning two years after the effective date of this title, no
19 retailer or distributor may sell or offer for sale carpet in the state
20 unless the producer of such carpet is participating in a stewardship
21 program.

22 2. Any retailer or distributor may participate, on a voluntary basis,
23 as a designated collection point pursuant to a product stewardship
24 program and in accordance with applicable law.

25 3. No retailer or distributor shall be found to be in violation of
26 this section if, on the date the carpet was ordered from the producer or
27 its agent, the producer was listed as compliant with this title on the
28 department's website.

29 § 27-3225. Requirements for program collectors.

30 A program collector:

31 1. May not charge for the acceptance of carpet at points of
32 collection.

33 2. Shall accept all types and brands of carpet.

34 3. Shall abide by the best management practices for collection of
35 discarded carpet that are provided by the stewardship organization with
36 an approved plan.

37 4. Shall submit an annual report to the stewardship organization with
38 an approved plan.

39 § 27-3227. Requirement for recycling.

40 All carpet that is removed by installers and to be discarded is
41 required to be transported to a program collection site for recycling.

42 § 27-3229. Department responsibilities.

43 1. Upon stewardship plan approval, the department shall post informa-
44 tion on its website about the stewardship organization and its partic-
45 ipating producers that are in compliance with this title, including the
46 brands of such producers.

47 2. Beginning the first of January of the year following the effective
48 date of this title, the department shall post on its website the
49 location of all collection sites identified to the department by the
50 stewardship organization in its plans and annual reports.

51 3. The department shall post on its website the stewardship plan
52 approved by the department.

53 4. The department shall deposit the fees collected pursuant to this
54 title into the stewardship organization fund as established pursuant to
55 section ninety-two-kk of the state finance law.

1 5. The department shall select one stewardship organization per five
2 year operating period.

3 6. The department shall meet with the stewardship organization with an
4 approved plan at least annually to review the functioning of the plan
5 and identify components of the plan that need improvement.

6 7. Starting six years after the effective date of this title, the
7 department shall impose a penalty of twenty-five cents per pound to be
8 assessed on the stewardship organization for each pound of carpet beyond
9 the amount actually recycled that is missing to achieve the goals speci-
10 fied in the approved stewardship plan. All penalties collected pursuant
11 to this section shall be paid over to the commissioner for deposit to
12 the environmental protection fund established pursuant to section nine-
13 ty-two-s of the state finance law.

14 § 27-3231. Rules and regulations.

15 The department is authorized to promulgate any rules and regulations
16 necessary to implement this title.

17 § 27-3233. Annual audit and report.

18 1. The stewardship organization shall appoint an independent auditor
19 who shall, at the end of each calendar year in which a stewardship plan
20 is in effect, review the implementation of such plan and assess whether
21 stewardship assessments provided for in such plan are sufficient to fund
22 the costs of compliance with this title, and whether they exceed such
23 costs. The results of such audit shall be submitted to the commissioner
24 together with the annual report provided for in this section.

25 2. Starting with year two of the approved plan, the stewardship organ-
26 ization shall demonstrate to the auditor that a financial reserve exists
27 that will finance the organization's activities for at least six months.

28 3. At the close of each calendar year in which a stewardship plan is
29 in effect, the stewardship organization shall submit a report to the
30 commissioner and stewardship advisory board containing the following
31 information:

32 (a) a detailed description of the methods used to collect, transport,
33 and recycle discarded carpet in the state;

34 (b) an evaluation of the convenience of the collection process for
35 consumers;

36 (c) the weight of discarded carpet collected, recycled, and otherwise
37 disposed of;

38 (d) the amount of carpet sold in the state during the reporting peri-
39 od;

40 (e) an estimate of the amount of discarded carpet that has been
41 collected for reuse and an evaluation of what the stewardship organiza-
42 tion can do to increase the amount of discarded carpet that is reused;

43 (f) a description of the collection infrastructure and listing of
44 collection sites;

45 (g) a description and evaluation of the education and outreach
46 program, samples of educational materials provided to consumers and
47 carpet installers, and an evaluation of the effectiveness of the materi-
48 als and methods used to disseminate the materials;

49 (h) information on progress made towards recycling targets and an
50 explanation of why performance goals were not met, if applicable;

51 (i) an evaluation of the effectiveness of methods and processes used
52 to achieve performance goals; and

53 (j) recommendations for any changes to the program.

54 § 27-3235. Enforcement and penalties.

55 1. Except as otherwise provided in this section, any person or entity
56 that violates any provision of or fails to perform any duty imposed

1 pursuant to this title or any rule or regulation promulgated pursuant
2 thereto, or any term or condition of any registration or permit issued
3 pursuant thereto, or any final determination or order of the commission-
4 er made pursuant to this article or article seventy-one of this chapter
5 shall be liable for a civil penalty not to exceed five hundred dollars
6 for each violation and an additional penalty of not more than five
7 hundred dollars for each day during which such violation continues.

8 2. Any retailer or distributor who violates any provision of or fails
9 to perform any duty imposed pursuant to this title or any rule or regu-
10 lation promulgated pursuant thereto, or any term or condition of any
11 registration or permit issued pursuant thereto, or any final determi-
12 nation or order of the commissioner made pursuant to this article or
13 article seventy-one of this chapter shall be liable for a civil penalty
14 not to exceed one thousand dollars for each violation and an additional
15 penalty of not more than one thousand dollars for each day during which
16 such violation continues.

17 3. Any producer or stewardship organization who violates any provision
18 of or fails to perform any duty imposed pursuant to this title or any
19 rule or regulation promulgated pursuant thereto, or any term or condi-
20 tion of any registration or permit issued pursuant thereto, or any final
21 determination or order of the commissioner made pursuant to this article
22 or article seventy-one of this chapter shall be liable for a civil
23 penalty not to exceed five thousand dollars for each violation and an
24 additional penalty of not more than one thousand five hundred dollars
25 for each day during which such violation continues. For a second
26 violation committed within twelve months of a prior violation, the
27 producer or stewardship organization shall be liable for a civil penalty
28 not to exceed ten thousand dollars and an additional penalty of not more
29 than three thousand dollars for each day during which such violation
30 continues. For a third or subsequent violation committed within twelve
31 months of any prior violation, the producer or stewardship organization
32 shall be liable for a civil penalty not to exceed twenty thousand
33 dollars and an additional penalty of six thousand dollars for each day
34 during which such violation continues.

35 4. All producers participating in a stewardship organization shall be
36 jointly and severally liable for any penalties assessed against the
37 stewardship organization pursuant to this title and article seventy-one
38 of this chapter.

39 5. Civil penalties under this section shall be assessed by the depart-
40 ment after an opportunity to be heard pursuant to the provisions of
41 section 71-1709 of this chapter, or by the court in any action or
42 proceeding pursuant to section 71-2727 of this chapter, and in addition
43 thereto, such person or entity may by similar process be enjoined from
44 continuing such violation and any permit, registration or other approval
45 issued by the department may be revoked or suspended or a pending
46 renewal denied.

47 6. The department and the attorney general are hereby authorized to
48 enforce the provisions of this title and all monies collected shall be
49 deposited to the credit of the environmental protection fund established
50 pursuant to section ninety-two-s of the state finance law.

51 § 27-3237. State preemption.

52 Jurisdiction in all matters pertaining to carpet recycling is, by this
53 title, vested exclusively in the state. Any provision of any local law
54 or ordinance, or any rule or regulation promulgated thereto, governing
55 carpet recycling shall, upon the effective date of this title, be
56 preempted; provided however, that nothing in this section shall preclude

1 a person from coordinating, for recycling or reuse, the collection of
2 carpet.

3 § 27-3239. Procurement.

4 State procurement guidelines shall specify a requirement to purchase a
5 certain amount of carpet with a minimum post-consumer recycled content.

6 § 27-3241. Anti-competitive conduct.

7 1. A stewardship organization that organizes the collection, trans-
8 port, and processing of discarded carpets, in an action to increase the
9 recycling of discarded carpets by a producer, stewardship organization,
10 or retailer that affects the types and quantities being recycled or the
11 cost and structure of any return program shall not be liable for any
12 claim of a violation of anti-trust, restraint of trade, or unfair trade
13 practice arising from conduct undertaken in accordance with the program
14 pursuant to this section, including setting and collection of a steward-
15 ship charge.

16 2. Provided however, subdivision one of this section shall not apply
17 to any agreement establishing or affecting the output or production of
18 carpet or any agreement restricting the geographic area or customers to
19 which carpet will be sold.

20 § 27-3243. Severability.

21 The provisions of this title shall be severable and if any phrase,
22 clause, sentence or provision of this title, or the applicability there-
23 of to any person or circumstance shall be held invalid, the remainder of
24 this title and the application thereof shall not be affected thereby.

25 § 3. The state finance law is amended by adding a new section 92-kk to
26 read as follows:

27 § 92-kk. Carpet administrative fund. 1. There is hereby established in
28 the joint custody of the state comptroller and the commissioner of taxa-
29 tion and finance a special fund to be known as the "carpet administra-
30 tive fund".

31 2. The carpet administrative fund shall consist of all revenue
32 collected from administrative fees pursuant to title thirty-two of arti-
33 cle twenty-seven of the environmental conservation law and any cost
34 recoveries, or other revenues collected pursuant to title thirty-two of
35 article twenty-seven of the environmental conservation law, and any
36 other monies deposited into the fund pursuant to law.

37 3. Moneys of the fund, following appropriation by the legislature,
38 shall be used for execution of carpet program administration pursuant to
39 title thirty-two of article twenty-seven of the environmental conserva-
40 tion law, and expended for the purposes as set forth in title thirty-two
41 of article twenty-seven of the environmental conservation law.

42 § 4. This act shall take effect on the one hundred eightieth day after
43 it shall have become a law. Effective immediately, the addition, amend-
44 ment and/or repeal of any rule or regulation necessary for the implemen-
45 tation of this act on its effective date are authorized to be made and
46 completed on or before such effective date.