

STATE OF NEW YORK

5062

2025-2026 Regular Sessions

IN SENATE

February 18, 2025

Introduced by Sen. MARTINEZ -- 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, in relation to producer responsibility

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

1 Section 1. Article 27 of the environmental conservation law is amended
2 by adding a new title 34 to read as follows:

TITLE 34

AFFORDABLE WASTE REDUCTION ACT

3 Section 27-3401. Short title.

4 27-3403. Definitions.

5 27-3405. Establish program.

6 27-3407. Registration of producer responsibility organizations
7 and service providers.

8 27-3409. Establishment of producer responsibility advisory
9 board.

10 27-3411. Department responsibilities.

11 27-3413. Producer responsibility advisory board responsibil-
12 ities.

13 27-3415. Producer responsibility organization responsibilities.

14 27-3417. Producer responsibilities.

15 27-3419. Service provider responsibilities.

16 27-3421. Needs assessments.

17 27-3423. Stewardship plan.

18 27-3425. Recyclable or compostable covered materials lists;
19 exempt materials list.

20 27-3427. Producer fees.

21 27-3429. Service provider; reimbursement.

22 27-3431. Reporting.

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

LBD09046-02-5

1 27-3433. Producer responsibility organization websites.

2 27-3435. Anticompetitive conduct.

3 27-3437. Rulemaking.

4 27-3439. Providing information.

5 27-3441. Deposit return system.

6 27-3443. Enforcement.

7 27-3445. Packaging product stewardship account.

8 § 27-3401. Short title.

9 This title shall be known and may be cited as the "affordable waste
10 reduction act".

11 § 27-3403. Definitions.

12 As used in this title, unless context otherwise requires:

13 1. "Advisory board" or "board" means the producer responsibility advi-
14 sory board established under section 27-3409 of this title.

15 2. "Brand" means a name, symbol, word, or mark that identifies a prod-
16 uct and attributes the product and its components, including packaging,
17 to the brand owner.

18 3. "Brand owner" means a person that owns or licenses a brand or that
19 otherwise has rights to market a product under the brand, whether or not
20 the brand's trademark is registered.

21 4. "Collection rate" means the amount of a covered material by covered
22 materials type collected by service providers and transported for recy-
23 cling or composting divided by the total amount of the type of a covered
24 material by covered materials type sold or distributed into the state by
25 the relevant unit of measurement established in section 27-3423 of this
26 title.

27 5. "Compostable material" means a covered material that:

28 (a) Has a third-party certification to ASTM D6400, ASTM D6868, or ASTM
29 D8410, and is labeled accordingly; or

30 (b) Is demonstrated to be comprised of only wood without any coatings
31 or additives.

32 6. "Composting" means the process to create a product manufactured
33 through the controlled aerobic, biological decomposition of biodegrada-
34 ble materials. The product has undergone mesophilic and thermophilic
35 temperatures, which significantly reduces the viability of pathogens and
36 weed seeds, and stabilizes the carbon such that it is beneficial to
37 plant growth. Compost is typically used as a soil amendment, but may
38 also contribute plant nutrients.

39 7. "Composting rate" means the amount of compostable covered material
40 that is managed through composting, divided by the total amount of
41 compostable covered material sold or distributed into the state by the
42 relevant unit of measurement established in section 27-3423 of this
43 title.

44 8. "Covered entity" means a person or location that receives covered
45 services for covered materials in accordance with the requirements of
46 this title, including:

47 (a) A single-family residence;

48 (b) A multi-family residence;

49 (c) A public, nonpublic, or approved private school or higher educa-
50 tion and postsecondary institutions as such terms are used in the educa-
51 tion law; child care institution as defined in subdivision two of
52 section four thousand one of the education law; and any other location
53 where education or child care is provided;

54 (d) A not-for-profit corporation with annual revenue of less than
55 thirty-five million dollars; and

1 (e) A state agency, office, agency, or institution of the state, a
2 political subdivision, a public area, the legislature, the courts, a
3 county, a statutory or home rule charter city, a town, a school
4 district, a special district, or other governmental unit.

5 9. "Covered material" means packaging and paper products. Covered
6 material does not include exempt materials.

7 10. "Covered materials type" means a singular and specific type of
8 covered material, such as paper, plastic, metal, or glass that:

9 (a) Can be categorized based on distinguishing chemical or physical
10 properties, including properties that allow a covered materials type to
11 be aggregated into a discrete commodity category for purposes of reuse,
12 recycling, or composting; and

13 (b) Is based on similar uses in the form of a product or package.

14 11. "Covered services" means collecting, transferring, transporting,
15 sorting, processing, recovering, preparing, or otherwise managing for
16 purposes of waste reduction, reuse, recycling, or composting. Covered
17 services does not mean any management method according to paragraphs (c)
18 and (d) of subdivision one of section 27-0106 of this article.

19 12. "De minimis producer" means a person that in their most recent
20 fiscal year:

21 (a) Introduced less than five tons of covered material into this
22 state; or

23 (b) Earned global gross revenues of less than five million dollars.

24 13. "Drop-off collection site" means a physical location where covered
25 materials are accepted from the public and that is open a minimum of
26 twelve hours weekly throughout the year.

27 14. "Disadvantaged communities" shall have the same meaning as subdi-
28 vision five of section 75-0101 of this chapter.

29 15. "Exempt materials" means materials, or any portion of materials,
30 that:

31 (a) Are packaging for infant formula, as defined in United States
32 Code, Title 21, Section 321(z);

33 (b) Are packaging for medical food, as defined in United States Code,
34 Title 21, Section 360ee(b)(3);

35 (c) Are packaging for a fortified oral nutritional supplement used by
36 persons who require supplemental or sole source nutrition to meet nutri-
37 tional needs due to special dietary needs directly related to cancer,
38 chronic kidney disease, diabetes, malnutrition, or failure to thrive, as
39 those terms are defined by the International Classification of Diseases,
40 Tenth Revision;

41 (d) Are packaging for a product regulated as a drug or medical device
42 by the United States Food and Drug Administration, including associated
43 components and consumable medical equipment;

44 (e) Are packaging for medical equipment or products used in medical
45 settings that is regulated by the United States Food and Drug Adminis-
46 tration, including associated components and consumable medical equip-
47 ment;

48 (f) Are drugs, biological products, parasiticides, medical devices, or
49 in vitro diagnostics that are used to treat, or that are administered
50 to, animals and are regulated by the United States Food and Drug Admin-
51 istration under the federal food, drug, and cosmetic title, United
52 States Code, Title 21, Section 301 et seq., by the United States Depart-
53 ment of Agriculture under the Federal Virus-Serum-Toxin Title, United
54 States Code, Title 21, Section 151 et seq.;

1 (g) Are packaging for products regulated by the United States Environ-
2 mental Protection Agency under the Federal Insecticide, Fungicide, and
3 Rodenticide Title, United States Code, Title 7, Section 136 et seq.;

4 (h) Are packaging used to contain liquefied petroleum gas and are
5 designed to be refilled;

6 (i) Are paper products used for a newspaper's print publications,
7 including supplements or enclosures, that has a circulation of less than
8 ninety-five thousand that include content derived from primary sources
9 related to news and current events;

10 (j) Are paper products used for a magazine's print publication that
11 has a circulation of less than ninety-five thousand and that primarily
12 includes content derived from primary sources related to news and
13 current events;

14 (k) Are packaging used to contain hazardous or flammable products
15 regulated by the 2012 Federal Occupational Safety and Health Adminis-
16 tration Hazard Communication Standard, Code of Federal Regulations,
17 Title 29, Section 1910.1200, that prevent the packaging from being waste
18 reduced or made reusable, recyclable, or compostable, as determined by
19 the commissioner;

20 (l) Are packaging that is being collected and properly managed through
21 a paint stewardship plan approved under section 27-2003 of this article;

22 (m) Are exempt materials, as determined by the department under subdi-
23 vision six of section 27-3425 of this title; or

24 (n) Are covered materials that are:

25 (i) Packaging materials used solely in transportation or distribution
26 to nonconsumers;

27 (ii) Packaging materials used solely in business-to-business trans-
28 actions where a covered material is not intended to be distributed to
29 the end consumer;

30 (iii) Packaging materials that are not sold or distributed to covered
31 entities; and

32 (iv) Packaging materials that are used for products sold or distrib-
33 uted outside the state;

34 (o) Are beverage containers subject to a returnable container deposit
35 under title ten of this article; and

36 (p) Are non-packaging paper products made with more than seventy
37 percent newly harvested wood pulp fiber that has not been previously
38 used or recycled.

39 16. "Government data" means all data collected, created, received,
40 maintained or disseminated by any government entity regardless of its
41 physical form, storage media or conditions of use.

42 17. "Independent auditor" means an independent and actively licensed
43 certified public accountant that is:

44 (a) Retained by a producer responsibility organization;

45 (b) Not otherwise employed by or affiliated with a producer responsi-
46 bility organization; and

47 (c) Qualified to conduct an audit under state law.

48 18. "Infrastructure investment" means an investment by a producer
49 responsibility organization that funds or reimburses a person for:

50 (a) Equipment or facilities in which covered materials are prepared
51 for reuse, recycling, or composting; or

52 (b) Equipment or facilities used for waste reduction, reuse, recycl-
53 ing, or composting of covered materials.

54 19. "Introduce" means to sell, offer for sale, distribute, or use to
55 ship a product within or into this state.

1 20. "Needs assessment" means an assessment conducted pursuant to
2 subdivision four of section 27-3421 of this title. Except where the
3 context requires otherwise, needs assessment means the most recently
4 completed needs assessment.

5 21. "Nonpublic data" means data not on individuals made by statute or
6 federal law applicable to the data:

7 (a) Not accessible to the public; and

8 (b) Accessible to the subject, if any, of the data.

9 22. "Packaging" means:

10 (a) "Package" as defined in section 37-0203 of this chapter; and

11 (b) "Packaging component" as defined in section 37-0203 of this chap-
12 ter. Packaging does not include exempt materials.

13 22. "Paper product" means a product made primarily from wood pulp or
14 other cellulosic fibers, but does not include bound books or products
15 that recycling or composting facilities will not accept because of the
16 unsafe or unsanitary nature of the paper product. Paper product does not
17 include exempt materials.

18 23. "Post consumer material" means the materials that have served
19 their intended end use as consumer items and that have been separated or
20 diverted from the waste stream for the purposes of collection and recy-
21 cling as a secondary material feedstock. Such materials may also include
22 returns of material from the distribution chain. Post-consumer recycled
23 manufacturer content does not include waste material generated by a
24 manufacturer during or after the completion of a manufacturer process.

25 24. "Post consumer recycled content" means the amount of postconsumer
26 material used by a producer in the production of a covered materials
27 type, divided by the total amount of that covered materials type used
28 for products sold or distributed by the producer in that same calendar
29 year.

30 25. "Private data on individuals" means data made by statute or feder-
31 al law applicable to the data:

32 (a) Not public; and

33 (b) Accessible to the individual subject of the data.

34 26. "Producer" means the following person responsible for compliance
35 with requirements under this title for a covered material introduced:

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

38 (i) If the item is sold in or with packaging under the brand of the
39 item manufacturer or is sold in packaging that lacks identification of a
40 brand, the producer is the person that manufactures the item;

41 (ii) If there is no person to which subparagraph (i) of this paragraph
42 applies, the producer is the person that is licensed to manufacture and
43 sell or offer for sale to consumers in this state an item with packaging
44 under the brand or trademark of another manufacturer or person;

45 (iii) If no person described in subparagraph (i) or (ii) of this para-
46 graph applies, the producer is the brand owners of the item;

47 (iv) If there is no person described in subparagraph (i), (ii) or
48 (iii) of this paragraph within the United States, the producer is the
49 person who is the importer of record for the item into the United States
50 for use in a commercial enterprise that sells, offers for sale, or
51 distributes the item in this state; or

52 (v) If no person described in subparagraph (i), (ii), (iii) or (iv) of
53 this paragraph applies, the producer is the person that first distrib-
54 utes the item in or into this state;

55 (b) For items sold or distributed in packaging in or into this state
56 via e-commerce, remote sale, or distribution:

1 (i) For packaging used to directly protect or contain the item, the
2 producer of the packaging is the same as the producer identified under
3 paragraph (a) of this subdivision; and

4 (ii) For packaging used to ship the item to a consumer, the producer
5 of the packaging is the person that packages the item to be shipped to
6 the consumer;

7 (c) For packaging that is a covered material and is not included in
8 paragraphs (a) and (b) of this subdivision, the producer of the packag-
9 ing is the person that first distributes the item in or into this state;

10 (d) For paper products that are magazines, catalogs, telephone direc-
11 tories, or similar publications, the producer is the publisher;

12 (e) For paper products not described paragraph (d) of this subdivi-
13 sion:

14 (i) If the paper product is sold under the manufacturer's own brand,
15 the producer is the person that manufactures the paper product;

16 (ii) If there is no person to which subparagraph (i) of this paragraph
17 applies, the producer is the person that is the owner or licensee of a
18 brand or trademark under which the paper product is used in a commercial
19 enterprise, sold, offered for sale, or distributed in or into this
20 state, whether or not the trademark is registered in this state;

21 (iii) If there is no person to which subparagraph (i) or (ii) of this
22 paragraph applies, the producer is the brand owner of the paper product;

23 (iv) If there is no person described in subparagraph (i), (ii) or
24 (iii) of this paragraph within the United States applies, the producer
25 is the person that imports the paper product into the United States for
26 use in a commercial enterprise that sells, offers for sale, or distrib-
27 utes the paper product in or into this state; or

28 (v) If there is no person described in subparagraph (i), (ii), (iii)
29 or (iv) of this paragraph applies, the producer is the person that first
30 distributes the paper product in or into this state; and

31 (f) A person is the producer of a covered material sold, offered for
32 sale, or distributed in or into this state, as defined in paragraphs
33 (a), (b), (c), (d) and (e) of this subdivision, except:

34 (i) Where another person has mutually signed an agreement with a
35 producer as defined in paragraphs (a), (b), (c), (d) and (e) of this
36 subdivision that contractually assigns responsibility to the person as
37 the producer, and the person has joined a registered producer responsi-
38 bility organization as the responsible producer for that covered materi-
39 al under this title. In the event that another person is assigned
40 responsibility as the producer under this subdivision, the producer
41 under paragraphs (a), (b), (c), (d) and (e) of this subdivision shall
42 provide written certification of that contractual agreement to the
43 producer responsibility organization; and

44 (ii) If the producer described in paragraphs (a), (b), (c), (d) and
45 (e) of this subdivision is a business operated wholly or in part as a
46 franchise, the producer is the franchisor if that franchisor has fran-
47 chisees that have a commercial presence within the state.

48 (g) "Producer" does not include:

49 (i) A state, a federal or state agency, a political subdivision, or
50 other governmental unit;

51 (ii) A registered 501(c)(3) charitable organization or 501(c)(4)
52 social welfare organization;

53 (iii) A de minimis producer;

54 (iv) A mill that uses any virgin wood fiber in the products it produc-
55 es; or

1 (v) A paper mill that produces container board derived from one
2 hundred percent postconsumer recycled content and non-postconsumer recy-
3 clcd content.

4 27. "Producer responsibility organization" means a nonprofit corpo-
5 ration that is tax exempt under chapter 501(c)(3) of the Federal Inter-
6 nal Revenue Code and that is created by a group of producers to imple-
7 ment activities under this title.

8 28. "Recycling" means a series of activities by which discarded or
9 used materials are collected, sorted, processed and/or converted into
10 feedstock and are used in the manufacture of new products.

11 29. "Recycling rate" means the amount of recyclable covered material,
12 in aggregate or by individual covered materials type, recycled in a
13 calendar year divided by the total amount of recyclable covered materi-
14 als sold or distributed into the state by the relevant unit of measure-
15 ment established in section 27-3423 of this title.

16 30. "Refill" means the continued use of a covered material by a
17 consumer through a system that is:

18 (a) Intentionally designed and marketed for repeated filling of a
19 covered material to reduce demand for new production of the covered
20 material;

21 (b) Supported by adequate logistics and infrastructure to provide
22 convenient access for consumers; and

23 (c) Compliant with all applicable federal, state, and local statutes,
24 rules, ordinances, and other laws governing health and safety.

25 31. "Responsible market" means a materials market that:

26 (a) Reuses, recycles, composts, or otherwise recovers materials and
27 disposes of waste and contaminants in a manner that protects the envi-
28 ronment and minimizes risks to public health and worker health and safe-
29 ty;

30 (b) Complies with all applicable federal, state, and local statutes,
31 rules, ordinances, and other laws governing environmental, health, safe-
32 ty, and financial responsibility;

33 (c) Possesses all requisite licenses and permits required by a federal
34 or state agency or political subdivision;

35 (d) If the market operates in the state, manages waste according to
36 the waste management goal and priority order of waste management prac-
37 tices stated in section 27-0106 of this article; and

38 (e) Minimizes adverse impacts to disadvantaged communities as defined
39 in this section.

40 32. "Return rate" means the amount of reusable covered material in
41 aggregate or by individual covered materials type, collected for reuse
42 by a producer or service provider in a calendar year, divided by the
43 total amount of reusable covered materials sold or distributed into the
44 state by the relevant unit of measurement established in section 27-3423
45 of this title.

46 33. "Reusable" means capable of reuse.

47 34. "Reuse" means the return of a covered material to the marketplace
48 and the continued use of the covered material by a producer or service
49 provider when the covered material is:

50 (a) Intentionally designed and marketed to be used multiple times for
51 its original intended purpose without a change in form;

52 (b) Designed for durability and maintenance to extend its useful life
53 and reduce demand for new production of the covered material;

54 (c) Supported by adequate logistics and infrastructure at a retail
55 location, by a service provider, or on behalf of or by a producer, that
56 provides convenient access for consumers; and

1 (d) Compliant with all applicable federal, state, and local statutes,
2 rules, ordinances, and other laws governing health and safety.

3 35. "Reuse rate" means the share of units of a reusable covered mate-
4 rial sold or distributed into the state in a calendar year that are
5 demonstrated and deemed reusable in accordance with an approved steward-
6 ship plan under section 27-3423 of this title.

7 36. "Service provider" means an entity that provides covered services
8 for covered materials. A political subdivision that provides or that
9 contracts or otherwise arranges with another party to provide covered
10 services for covered materials within its jurisdiction may be a service
11 provider regardless of whether it provided, contracted for, or otherwise
12 arranged for similar services before the approval of the applicable
13 stewardship plan.

14 37. "Third-party certification" means certification by an accredited
15 independent organization that a standard or process required by this
16 title, or by a stewardship plan approved under this title, has been
17 achieved.

18 38. "Toxic substance" means a high-priority chemical added to the list
19 of prohibited high-priority chemicals by the department under subdivi-
20 sion two of section 37-0905 of this chapter and is used in packaging.

21 39. "Trade secret information" means government data, including a
22 formula, pattern, compilation, program, device, method, technique or
23 process:

24 (a) That was supplied by the affected individual or organization;

25 (b) That is the subject of efforts by the individual or organization
26 that are reasonable under the circumstances to maintain its secrecy; and

27 (c) That derives independent economic value, actual or potential, from
28 not being generally known to, and not being readily ascertainable by
29 proper means, by other persons who can obtain economic value from its
30 disclosure or use.

31 40. "Waste reduction" or "source reduction" (a) means an activity that
32 prevents generation of waste or the inclusion of toxic substances in
33 waste, including:

34 (i) Reusing a product in its original form;

35 (ii) Increasing the life span of a product;

36 (iii) Reducing material or the toxicity of material used in production
37 or packaging; or

38 (iv) Changing procurement, consumption, or waste generation habits to
39 result in smaller quantities or lower toxicity of waste generated.

40 (b) Waste reduction or source reduction does not include reuse, but
41 does include refill, as defined in this title.

42 § 27-3405. Establish program.

43 Producers shall implement and finance a statewide program for packag-
44 ing and paper products in accordance with this title that encourages
45 redesign to reduce the generation of covered materials waste through
46 waste reduction, reuse, recycling, and composting and by providing for
47 the collection, transportation, and processing of used covered materials
48 for reuse, recycling, and composting.

49 § 27-3407. Registration of producer responsibility organizations and
50 service providers.

51 1. (a) Within six calendar months following the effective date of this
52 section, producers shall appoint a producer responsibility organization.
53 The producer responsibility organization shall register with the commis-
54 sioner by July first of the second year following the effective date of
55 this title, and each January first thereafter by submitting the follow-
56 ing:

1 (i) Contract information for a person responsible for implementing an
2 approved stewardship plan;

3 (ii) A list of all member producers that have entered into written
4 agreements to operate under an approved stewardship plan administered by
5 the producer responsibility organization and, for each producer, a list
6 of all brands of the producer's covered materials introduced;

7 (iii) A list of current board members and the executive director of
8 the producer responsibility organization if different from the person
9 responsible for implementing an approved stewardship plan; and

10 (iv) Documentation demonstrating adequate financial responsibility and
11 financial controls to ensure proper management of funds and payment of
12 the registration fee required under subdivision two of this section.

13 (b) Following the approval of the initial producer responsibility
14 organization and the initial stewardship plan, if more than a single
15 producer responsibility organization is established, the producers and
16 producer responsibility organizations shall establish a coordinating
17 body and process to prevent redundancy. The coordinating body shall
18 integrate:

19 (i) Stewardship plans of all producer responsibility organizations
20 into a single stewardship plan that implements all requirements of this
21 title and encompasses all producers when submitted to the commissioner
22 for approval; and

23 (ii) Annual reports of all producer responsibility organizations into
24 a single annual report that covers all requirements of this title and
25 encompasses all producers when submitted to the commissioner.

26 2. (a) Beginning on January first of the fourth year following the
27 effective date of this section, as part of its annual registration with
28 the commissioner, a producer responsibility organization shall submit to
29 the commissioner a registration fee, as determined by the commissioner.
30 By October first of the third year following the effective date of this
31 section, and annually thereafter, the commissioner shall provide written
32 notice to registered producer responsibility organizations in writing of
33 the amount of the registration fee. If there is more than one registered
34 producer responsibility organization, the coordinating body described in
35 paragraph (b) of subdivision one of this section, shall equitably appor-
36 tion payment of the registration fee between all registered producer
37 responsibility organizations. The registration fee shall be set at an
38 amount anticipated to in the aggregate meet but not exceed the commis-
39 sioner's estimate of the costs required to perform the commissioner's
40 duties as described in section 27-3411 of this title and to otherwise
41 administer, implement, and enforce this title.

42 (b) The commissioner shall annually reconcile the fees paid by a
43 producer responsibility organization under this subdivision with the
44 actual costs incurred by the department by means of credits or refunds
45 to or additional payments required of a producer responsibility organ-
46 ization, as applicable.

47 3. (a) Within six calendar months following the effective date of this
48 section, producers shall appoint a producer responsibility organization.
49 The producer responsibility organization shall register within six
50 calendar months following the effective date of this section, with the
51 commissioner by submitting the following:

52 (i) Contract information for a person responsible for implementing an
53 approved stewardship plan;

54 (ii) A list of current member producers that have entered into written
55 agreements to operate under an approved stewardship plan administered by
56 the producer responsibility organization;

1 (iii) A plan for identifying producers and executing written agree-
2 ments confirming producers will operate under an approved stewardship
3 plan administered by the producer responsibility organization;

4 (iv) A list of current board members and the executive director of the
5 producer responsibility organization if different than the person
6 responsible for implementing approved stewardship plans; and

7 (v) Documentation demonstrating adequate financial responsibility and
8 financial controls to ensure proper management of funds and payment of
9 the implementation fee required under paragraph (c) of this subdivision.

10 (b) Notwithstanding the other provisions of this section, the commis-
11 sioner may not allow registration of more than one producer responsibil-
12 ity organization under this section before the first stewardship plan
13 approved by the commissioner expires. If more than one producer respon-
14 sibility organization applies to register under this section before the
15 first stewardship plan is approved by the commissioner, the commissioner
16 shall select the producer responsibility organization that will repre-
17 sent producers until the first stewardship plan expires and, if applica-
18 ble, shall return the fee paid by applicants who are not selected. When
19 selecting a producer responsibility organization, the commissioner shall
20 consider whether the producer responsibility organization:

21 (i) Has a governing board consisting of producers that represent a
22 diversity of covered materials introduced; and

23 (ii) Demonstrates adequate financial responsibility and financial
24 controls to ensure proper management of funds.

25 (c) Within seven calendar months following the effective date of this
26 title, and annually until February fifteenth of the fourth calendar year
27 following the effective date of this title, the commissioner shall
28 provide written notice to the producer responsibility organization of
29 the commissioner's estimates of the cost required to perform the commis-
30 sioner's duties as described in section 27-3411 of this title. The
31 producer responsibility organization shall remit payment in full for
32 these costs to the commissioner within forty-five days of receipt of
33 such notice. The producer responsibility organization may charge each
34 member producer a fee according to each producer's unit-, weight-,
35 volume-, or sales-based market share or by another method it determines
36 to be an equitable determination of each producer's payment obligation,
37 so that the aggregate fees charged to member producers is sufficient to
38 pay the commissioner's estimated costs in full.

39 4. After the first stewardship plan approved by the commissioner
40 expires, the commissioner may allow registration of more than one
41 producer responsibility organization if:

42 (a) Producers of a covered materials type or a specific covered mate-
43 rial appoint a producer responsibility organization; or

44 (b) Producers organize under additional producer responsibility organ-
45 izations.

46 5. Within six calendar months following the effective date of this
47 section, and annually thereafter, a service provider seeking reimburse-
48 ment for services provided under an approved stewardship plan according
49 to section 27-3423 of this title shall register with the commissioner by
50 submitting the following information:

51 (a) The contract information for a person representing the service
52 provider;

53 (b) The address of the service provider; and

54 (c) If applicable to services provided, a report of the total amount
55 billed for collection for covered entities, processing services, and
56 transfer station operations provided during the preceding calendar year

1 and, when possible, values shall be separated for collection, transfer,
2 and processing.

3 6. All fees received under this section shall be deposited in the
4 state treasury and credited to the packaging product stewardship account
5 under section 27-3445 of this title.

6 § 27-3409. Establishment of producer responsibility advisory board.

7 1. The producer responsibility advisory board is established to review
8 all activities conducted by producer responsibility organizations under
9 this title and to advise the commissioner and producer responsibility
10 organizations regarding the implementation of this title.

11 2. (a) Within six calendar months following the effective date of this
12 title, the commissioner shall establish and appoint the initial member-
13 ship of the advisory board. The membership of the board shall consist of
14 the following:

15 (i) Two members representing manufacturers of covered materials or a
16 statewide or national trade association representing such manufacturers;

17 (ii) Two members representing recycling facilities that manage covered
18 materials;

19 (iii) One member representing a waste hauler or a statewide associ-
20 ation representing waste haulers;

21 (iv) One member representing retailers of covered materials or a
22 statewide trade association representing those retailers;

23 (v) One member representing a statewide nonprofit environmental organ-
24 ization;

25 (vi) One member representing a community-based nonprofit environmental
26 justice organization;

27 (vii) One member representing a waste facility that receives and sorts
28 covered materials and transfers them to another facility for reuse,
29 recycling, or composting;

30 (viii) One member representing a facility that receives compostable
31 materials for composting or a statewide trade association that repres-
32 ents such facilities;

33 (ix) Two members representing an entity that develops or offers for
34 sale covered materials that are designed for reuse or refill and main-
35 tained through a reuse or refill system or infrastructure or a statewide
36 or national trade association that represents such entities;

37 (x) Three members representing organizations of political subdivi-
38 sions, with at least one member representing a political subdivision
39 with a population of more than one million;

40 (xi) Two members representing other interested parties or additional
41 members of interests represented under subparagraphs (i), (ii), (iii),
42 (iv), (v), (vi), (vii), (viii), (ix) and (x) of this paragraph as deter-
43 mined by the commissioner; and

44 (xii) One member representing the commissioner.

45 (b) In making appointments pursuant to paragraph (a) of this subdivi-
46 sion, the commissioner:

47 (i) May not appoint members who are employees of a producer required
48 to be members of a producer responsibility organization in this state
49 under this title; and

50 (ii) Shall endeavor to appoint members from all regions of the state.

51 3. A member of the advisory board appointed under subparagraph (xii)
52 of paragraph (a) of subdivision two of this section serves at the pleas-
53 ure of the commissioner. All other members serve for a term of four
54 years. After the initial stewardship plan is approved, subsequent
55 appointments for nine of the initial appointees shall be two years so
56 that membership terms are staggered. Members may be reappointed but may

1 not serve more than eight consecutive years. A member may be removed by
2 the commissioner at any time at the pleasure of the commissioner. The
3 chair of the advisory board shall inform the commissioner of a member
4 missing three consecutive meetings. After the second consecutive missed
5 meeting and before the next meeting, the chair of the advisory board
6 shall notify the member in writing that the member may be removed for
7 missing the next meeting. In the case of a vacancy on the advisory
8 board, the commissioner shall appoint a person to fill the vacancy for
9 the remainder of the unexpired term.

10 4. (a) Members of the advisory board may be compensated at the rate of
11 fifty-five dollars per day spent on advisory board activities, when
12 authorized by the advisory board, plus actual expenses necessarily
13 incurred in the discharge of members' official duties. Members who, as a
14 result of time spent attending advisory board meetings, incur child care
15 expenses that would not otherwise have been incurred, may be reimbursed
16 for those expenses upon authorization by the advisory board.

17 (b) Members who are state employees or employees of political subdivi-
18 sions shall not receive the daily compensation for activities that occur
19 during working hours for which they are compensated by the state or
20 political subdivision. However, a state or political subdivision employ-
21 ee may receive the daily payment if the employee uses vacation time or
22 compensatory time accumulated in accordance with a collective bargaining
23 agreement or compensation plan for advisory board activity. Members who
24 are state employees or employees of political subdivisions of the state
25 may receive the expenses provided for in this section unless the
26 expenses are reimbursed by another source. Members who are state employ-
27 ees or employees of political subdivisions of the state may be reim-
28 bursed for child care expenses only for time spent on advisory board
29 activities that are outside their working hours.

30 (c) The advisory board shall adopt internal standards prescribing what
31 constitutes a day spent on advisory board activities for purposes of
32 making daily payments under this subdivision.

33 5. Two-thirds majority of the voting board members constitutes a
34 quorum. If there is a vacancy in the membership of the board, a majori-
35 ty of the remaining voting members of the board constitutes a quorum.

36 6. Action by the advisory board requires a quorum and a majority of
37 those present and voting. All members of the advisory board, except the
38 member appointed under subparagraph (xii) of paragraph (a) of subdivi-
39 sion two of this section are voting members of the board.

40 7. The advisory board shall meet at least two times per year and may
41 meet more frequently upon ten days' written notice at the request of the
42 chair or a majority of its members.

43 8. Meetings of the board shall comply with article seven of the public
44 officers law.

45 9. At its initial meeting, and every two years thereafter, the advi-
46 sory board shall elect a chair and vice-chair from among its members.

47 10. The commissioner shall provide administrative and operating
48 support to the advisory board, including compensation in accordance with
49 subdivision four of this section, and may contract with a third-party
50 facilitator to assist in administering the activities of the advisory
51 board, including establishing a website or landing page on the depart-
52 ment's website.

53 11. The commissioner shall assist the advisory board in developing
54 policies and procedures governing the disclosure of actual or perceived
55 conflicts of interest that advisory board members may have as a result
56 of their employment or financial holdings with respect to themselves or

1 family members. Each advisory board member is responsible for reviewing
2 the conflict of interest policies and procedures. An advisory board
3 member shall disclose any instance of actual or perceived conflicts of
4 interest at each meeting of the advisory board at which recommendations
5 regarding stewardship plans, programs, operations, or activities are
6 made by the advisory board.

7 § 27-3411. Department responsibilities.

8 The department shall:

9 1. Appoint the initial membership of the advisory board within six
10 calendar months following the effective date of this section, as
11 required under section 27-3409 of this title;

12 2. Provide administrative and operating support to the advisory board,
13 as required pursuant to subdivision ten of section 27-3409 of this
14 title;

15 3. Complete a preliminary assessment by December thirty-first of the
16 first calendar year after the effective date of this title, and complete
17 an initial needs assessment by December thirty-first of the second
18 calendar year after the effective date of this title, and update the
19 needs assessment every five years thereafter, as required pursuant to
20 section 27-3421 of this title;

21 4. Approve stewardship plans and amendments to stewardship plans
22 pursuant to section 27-3423 of this title;

23 5. Provide lists established pursuant to the requirements of section
24 27-3425 of this title to all producer responsibility organizations;

25 6. Post on the department's website:

26 (a) The most recent registration materials submitted by producer
27 responsibility organizations, including all information submitted pursu-
28 ant to subparagraphs (i), (ii) and (iv) of paragraph (a) of subdivision
29 one of section 27-3407 of this title;

30 (b) A list of registered service providers;

31 (c) The most recent needs assessments;

32 (d) Any stewardship plan or amendment submitted by a producer respon-
33 sibility organization under section 27-3423 of this title that is in
34 draft form during the public comment period;

35 (e) The most recent lists established as required pursuant to section
36 27-3425 of this title;

37 (f) The list of exempt materials and covered materials exempt from
38 performance targets and statewide requirements as approved in the
39 stewardship plan;

40 (g) Links to producer responsibility organization websites;

41 (h) Comments of the public, advisory board, and producer responsibil-
42 ity organizations on the documents listed in paragraphs (c), (d), (e)
43 and (f) of this subdivision, and, if any, the responses of the commis-
44 sioner to such comments; and

45 (i) Links to adopted rules implementing this title;

46 7. Provide producer responsibility organizations with information
47 regarding New York and federal laws that prohibit toxic substances in
48 covered materials, and best practices to reduce intentionally added
49 toxic substances as identified in the needs assessment;

50 8. Approve the selection of independent auditors to perform an annual
51 financial audit of each producer responsibility organization; and

52 9. Consider and respond in writing to all written comments received
53 from the advisory board.

54 § 27-3413. Producer responsibility advisory board responsibilities.

55 The producer responsibility advisory board shall:

1 (a) Convene its initial meeting within eight calendar months following
2 the effective date of this title;

3 (b) Consult with the commissioner regarding the scope of the needs
4 assessments and provide written comments on needs assessments, as
5 required pursuant to subdivision two of section 27-3421 of this title;

6 (c) Advise on the development of stewardship plans and amendments to
7 stewardship plans under section 27-3423 of this title;

8 (d) Submit comments to producer responsibility organizations and to
9 the commissioner on any matter relevant to the administration of this
10 title;

11 (e) Provide written comments to the commissioner during any rulemaking
12 process undertaken by the commissioner pursuant to section 27-3437 of
13 this title; and

14 (f) Comply with all other applicable requirements of this title.

15 § 27-3415. Producer responsibility organization responsibilities.

16 A producer responsibility organization shall:

17 (a) Register with the commissioner, as required under section 27-3407
18 of this title;

19 (b) Submit a stewardship plan to the commissioner by October first of
20 the third year following the effective date of this section, and every
21 five years thereafter, as required under section 27-3423 of this title;

22 (c) Implement stewardship plans approved by the commissioner under
23 section 27-3423 of this title;

24 (d) Forward upon receipt from the commissioner the lists established
25 under section 27-3425 of this title to all service providers that
26 participate in a stewardship plan administered by the producer responsi-
27 bility organization;

28 (e) Collect producer fees as required under section 27-3427 of this
29 title;

30 (f) Submit the reports required under section 27-3431 of this title;

31 (g) Ensure that producers operating under a stewardship plan adminis-
32 tered by the producer responsibility organization comply with the
33 requirements of the stewardship plan and with this title;

34 (h) Expel a producer from the producer responsibility organization if
35 efforts to return the producer to compliance with the plan or with the
36 requirements of this title are unsuccessful;

37 (i) Notify the commissioner when a producer has been expelled;

38 (j) Consider and respond in writing to comments received from the
39 advisory board, including justifications for not incorporating board
40 recommendations;

41 (k) Provide producers with information regarding state and federal
42 laws that prohibit substances in covered materials, including sections
43 37-0205, 37-0901 to 37-0917 of this chapter, and all laws prohibiting
44 toxic substances in covered materials;

45 (l) Maintain a website under section 27-3433 of this title;

46 (m) Notify the commissioner within thirty days of a change made to the
47 contract information for a person responsible for implementing the
48 stewardship plan, to board membership, or to the executive director of
49 the producer responsibility organization;

50 (n) Assist service providers to identify and use responsible markets;

51 (o) Reimburse registered service providers in a timely manner using
52 applicable reimbursement rates; and

53 (p) Comply with all other applicable requirements of this title.

54 § 27-3417. Producer responsibilities.

1 1. (a) After one year following the effective date of this title, a
2 producer shall be a member of a producer responsibility organization
3 registered in this state.

4 (b) After January first of the fifth year following the effective date
5 of this title, no producer may introduce covered materials, either sepa-
6 rately or when used to package another product, unless the producer
7 enters into a written agreement with a producer responsibility organiza-
8 tion to operate under an approved stewardship plan.

9 (c) After January first of the eighth year following the effective
10 date of this title, no producer may introduce covered materials unless
11 covered services are provided for the covered materials through a
12 program in a stewardship plan approved by the commissioner and the
13 covered materials are:

14 (i) Included on the list established under subdivision one of section
15 27-3425 of this title; or

16 (ii) Included on the list established under subdivision two of section
17 27-3425 of this title.

18 (d) A producer responsibility organization may petition the commis-
19 sioner for a two-year extension to comply with the requirements of para-
20 graph (c) of this subdivision. The commissioner may approve the exten-
21 sion if the petition demonstrates that market or technical issues
22 prevent a specific covered material from being considered reusable or
23 included on the lists established under section 27-3425 of this title.
24 The producer responsibility organization may petition the commissioner
25 for additional annual extensions until January first of the sixteenth
26 year following the effective date of this title, if the producer respon-
27 sibility organization demonstrates that market or technical issues
28 preventing compliance persist.

29 2. A producer shall:

30 (a) Implement the requirements of the stewardship plan under which the
31 producer operates;

32 (b) Pay producer fees under section 27-3427 of this title; and

33 (c) Comply with all other applicable requirements of this title.

34 § 27-3419. Service provider responsibilities.

35 A service provider receiving reimbursement or funding under an
36 approved stewardship plan shall:

37 1. Provide covered services for covered materials included on the
38 lists established under section 27-3425 of this title, covered services
39 for a refill system, or covered services for reusable covered materials,
40 as applicable to the services offered by and service area of the service
41 provider;

42 2. Register with the commissioner under section 27-3407 of this title;

43 3. Submit invoices to the producer responsibility organization for
44 reimbursement for services rendered as provided in sections 27-3423 and
45 27-3429 of this title;

46 4. Meet performance standards established in an approved stewardship
47 plan under section 27-3423 of this title;

48 5. Ensure that covered materials are sent to responsible markets;

49 6. Provide documentation to the producer responsibility organization
50 on the amounts, covered materials types, and volumes of covered materi-
51 als by covered service method. The producer responsibility organization
52 will include in the stewardship plan when the document shall be period-
53 ically submitted to the producer responsibility organization.

54 7. Display the service provider's price, minus the reimbursement from
55 the producer responsibility organization as determined in subdivision

1 four of section 27-3429 of this title, when invoicing customers. The
2 balance is what the service provider may charge the customer; and

3 8. Comply with all other applicable requirements of this title.
4 § 27-3421. Needs assessments.

5 1. (a) By December thirty-first of the first calendar year after the
6 effective date of this title, the commissioner shall complete a prelimi-
7 nary assessment according to this section.

8 (b) By December thirty-first of the second calendar year after the
9 effective date of this title, and every five years thereafter, the
10 commissioner shall complete a needs assessment according to this
11 section. The commissioner may adjust the required content in a specific
12 needs assessment to inform the next stewardship plan.

13 2. In conducting a needs assessment, the commissioner shall:

14 (a) Initiate a consultation process to obtain recommendations from the
15 advisory board, political subdivisions, service providers, producer
16 responsibility organizations, and other interested parties regarding the
17 type and scope of information that should be collected and analyzed in
18 the needs assessment required by this section;

19 (b) Contract with a third party who is not a producer, a producer
20 responsibility organization, or a member of the advisory board to
21 conduct the needs assessment; and

22 (c) Prior to finalizing the needs assessment, make the draft needs
23 assessment available for comment by the advisory board, producer respon-
24 sibility organizations, and the public. The commissioner shall respond
25 in writing to the comments and recommendations of the advisory board and
26 producer responsibility organizations.

27 3. A preliminary assessment shall be completed for a preceding period
28 of no less than twelve months and no more than thirty-six months, that
29 includes:

30 (a) Identification of currently or recently introduced covered materi-
31 als and covered materials types;

32 (b) Tons of collected covered materials;

33 (c) The characteristics of recycling and composting programs, includ-
34 ing a description of single-stream and dual-stream recycling systems
35 offered in the state and prevalence of their use, average frequency of
36 collection of covered materials for recycling and composting, types of
37 collection containers used, commonly accepted materials for recycling
38 and composting, and total costs by type of covered entity;

39 (d) Processing capacity at recycling facilities, including total tons
40 processed and sold, composition of tons processed and sold, the tons and
41 composition of materials disposed of, if any, and the cost of such
42 disposal, current technologies utilized, and facility processing fees
43 charged to collectors delivering covered materials for recycling, this
44 includes proceeds from material sales and volume of source separate
45 materials and any disposal costs;

46 (e) Capacity of, technology used by, and characteristics of compost
47 facilities to process and recover compostable covered materials;

48 (f) Capacity and number of drop-off collection sites;

49 (g) Capacity and number of transfer stations and transfer locations;

50 (h) Average term length of residential recycling and composting
51 collection contracts issued by political subdivisions and an assessment
52 of contracts cost structures;

53 (i) An estimate of total annual collection and processing service
54 costs based on registered service provider costs;

55 (j) Available regional markets for covered materials and the capacity
56 of those markets; and

1 (k) Covered materials sales by volume, weight, and covered materials
2 types introduced by producers.

3 4. A needs assessment shall include, but not be limited to:

4 (a) An evaluation of:

5 (i) Existing waste reduction, reuse, recycling, and composting, as
6 applicable, for each covered materials type, including collection rates,
7 recycling rates, composting rates, reuse rates, and return rates, as
8 applicable, for each covered materials type;

9 (ii) Overall recycling rate, composting rate, reuse rate, and return
10 rate for all covered materials; and

11 (iii) The extent to which postconsumer recycled content, by the best
12 estimate, is or could be incorporated into each covered materials type,
13 as applicable, including a review of market and technical barriers to
14 incorporating postconsumer materials into covered materials;

15 (b) An evaluation of covered materials in the disposal, recycling, and
16 composting streams to determine the covered materials types and amounts
17 within each stream, using new studies conducted by the commissioner or
18 publicly available and applicable studies;

19 (c) Proposals for a range of outcomes for each covered materials type
20 to be accomplished within a five-year time frame in multiple units of
21 measurement, including but not limited to unit-based, weight-based, and
22 volume-based, for each of the following:

23 (i) Waste reduction;

24 (ii) Reuse rate and return rates;

25 (iii) Recycling rates;

26 (iv) Composting rates; and

27 (v) Postconsumer recycled content, if applicable;

28 (d) Proposals for a range of outcomes for the categories established
29 in subdivision seven of section 27-3423 of this title, that consider:

30 (i) Information contained in or used to prepare a needs assessment
31 according to this subdivision;

32 (ii) Goals and requirements of the waste management title;

33 (iii) Statewide requirements for greenhouse gas emission limits under
34 section 75-0107 of this chapter;

35 (iv) The need for continuous progress toward overall reduction in the
36 generation of covered materials waste and the complete reuse, recycling,
37 or composting of covered materials;

38 (v) A preference for statewide requirements that accomplish and
39 further the goals and requirements in subparagraphs (ii), (iii) and (iv)
40 of this paragraph as soon as practicable and to the maximum extent
41 achievable; and

42 (vi) Information from packaging and paper product producer responsi-
43 bility programs operating in other jurisdictions;

44 (e) An evaluation of the factors for each covered material collected
45 for recycling or composting as established in subdivision four of
46 section 27-3425 of this title;

47 (f) Recommended collection methods by covered materials type to maxi-
48 mize collection efficiency, maximize feedstock quality, and optimize
49 service and convenience for collection of covered materials to be
50 considered or that are included on lists established in section 27-3425
51 of this title;

52 (g) Proposed plans and metrics for how to measure progress in achiev-
53 ing performance targets and statewide requirements;

54 (h) An evaluation of options for third-party certification of activ-
55 ities to meet obligations of this title;

56 (i) An inventory of the current system, including:

1 (i) Infrastructure, capacity, performance, funding level, and method
2 and sources of financing for the existing covered services for covered
3 materials operating in the state;

4 (ii) An estimate of total annual costs of covered services based on
5 registered service provider costs; and

6 (iii) Availability and cost of covered services for covered materials
7 to covered entities and any other location where covered materials are
8 introduced, including identification of disparities in the availability
9 of these services in disadvantaged communities compared with other areas
10 and proposals for reducing or eliminating those disparities;

11 (j) An evaluation of investments needed to increase waste reduction,
12 reuse, recycling, and composting rates of covered materials according to
13 the range of proposed performance targets and statewide requirements,
14 including investments in existing and new infrastructure that would
15 also:

16 (i) Maintain or improve operations of existing infrastructure and
17 accounts for waste reduction, reuse, recycling, and composting of
18 covered materials statewide;

19 (ii) Expand the availability and accessibility of recycling collection
20 services for recyclable covered materials to all covered entities to
21 optimize service and convenience; and

22 (iii) Establish and expand the availability and accessibility of reuse
23 services for reusable covered materials;

24 (k) A recommended methodology for applying criteria and formulas to
25 establish reimbursement rates as described in section 27-3429 of this
26 title;

27 (l) An assessment of the viability and robustness of markets for
28 recyclable covered materials and the degree to which these markets can
29 be considered responsible markets;

30 (m) An assessment of the level and causes of contamination of source-
31 separated recyclable materials, source-separated compostable materials
32 and collected reusables, and the impacts of contamination on service
33 providers, including the cost to manage this contamination;

34 (n) An assessment of current best practices to increase public aware-
35 ness, educate, and complete outreach activities accounting for
36 culturally responsive materials and methods and an evaluation of the
37 efficacy of these efforts, including assessments and evaluations of
38 current best practices and efforts on:

39 (i) Using product or packaging labels as a means of informing consum-
40 ers about environmentally sound use and management of covered materials;

41 (ii) Increasing public awareness of how to use and manage covered
42 materials in an environmentally sound manner and how to access waste
43 reduction, reuse, recycling, and composting services; and

44 (iii) Encouraging behavior change to increase participation in waste
45 reduction, reuse, recycling, and composting programs;

46 (o) Recommendations for meeting the criteria for an alternative
47 collection program as established in subdivision eight of section
48 27-3423 of this title; and

49 (p) Other items identified by the commissioner that shall aid the
50 creation of the stewardship plan, its administration, and the enforce-
51 ment of this title.

52 5. When determining the extent to which any statewide requirement or
53 performance target under this title has been achieved, information
54 contained in a needs assessment shall serve as the baseline for that
55 determination, when applicable.

1 6. (a) A service provider or other person with data or information
2 necessary to complete a needs assessment shall provide the data or
3 information to the commissioner and the producer responsibility organ-
4 ization upon request.

5 (b) A service provider or other person providing the data or informa-
6 tion may submit a written request to the commissioner that the data or
7 information be classified as nonpublic data. The request shall set forth
8 the statutory grounds and the reasons that justify the classification of
9 the data or information as not public data. The commissioner shall
10 approve the request if the commissioner determines:

11 (i) The data or information constitutes trade secret information as
12 defined in section 27-3403 of this title, or sales information;

13 (ii) Disclosure of the data or information would tend to adversely
14 affect the competitive position of the service provider or other person,
15 including but not limited to data related to profits, service rates,
16 fees, or business expenses; or

17 (iii) The data or information is otherwise nonpublic data with regard
18 to data not on individuals, or private data on individuals, as defined
19 in section 27-3403 of this title.

20 (c) The contractor conducting the needs assessment shall aggregate and
21 anonymize the not public data or information, excluding location data
22 necessary to assess needs, received from all parties under this subdivi-
23 sion and shall then include the aggregated anonymized data in the needs
24 assessment.

25 § 27-3423. Stewardship plan.

26 1. By October first of the third year following the effective date of
27 this title, and every five years thereafter, a producer responsibility
28 organization shall submit a stewardship plan to the commissioner that
29 describes the proposed operation by the organization of programs to
30 fulfill the requirements of this title and that reflects the findings of
31 the needs assessments. Once approved, a stewardship plan remains in
32 effect for five years, as amended, or until a subsequent stewardship
33 plan is approved.

34 2. A producer responsibility organization shall submit a draft
35 stewardship plan or draft amendment to the advisory board at least sixty
36 days prior to submitting the draft plan or draft amendment to the
37 commissioner to allow the advisory board to submit comments and shall
38 address advisory board comments and recommendations prior to submission
39 of the draft plan or draft amendment to the commissioner.

40 3. A draft stewardship plan shall include, but not be limited to:

41 (a) Performance targets established under subdivision five of this
42 section as applicable to each covered materials type to be accomplished
43 within a five-year period;

44 (b) A description of the methods of collection, how collection service
45 convenience metrics will be met, and processing infrastructure and
46 covered services to be used for each covered materials type at covered
47 entities, at a minimum, and how these will meet the statewide require-
48 ments established in subdivision seven of this section for covered mate-
49 rials:

50 (i) Included on the list established in subdivision one of section
51 27-3425 of this title;

52 (ii) Included on the list established in subdivision two of section
53 27-3425 of this title;

54 (iii) That are reusable covered materials managed through a reuse
55 system; and

56 (iv) That are capable of refill and managed through a refill system;

1 (c) Proposals for exemptions from performance targets and statewide
2 requirements for covered materials that cannot be waste reduced or made
3 reusable, recyclable, or compostable due to federal or state health and
4 safety requirements, identifying the specific federal or state require-
5 ments and their impact on the covered materials;

6 (d) A description of how, for each covered materials type, the produc-
7 er responsibility organization will measure recycling, waste reduction,
8 reuse, composting, and the inclusion of postconsumer recycled content,
9 in accordance with subdivision six of this section;

10 (e) Third-party certifications that will be accepted by the producer
11 responsibility organization;

12 (f) A budget identifying funding needs for each of the plan's five
13 calendar years, producer fees, a description of the process used to
14 calculate the fees, and an explanation of how the fees meet the require-
15 ments of section 27-3427 of this title;

16 (g) A description of infrastructure investments, including goals and
17 outcomes and a description of how the process to offer and select oppor-
18 tunities will be conducted in an open, competitive, and fair manner; how
19 it will address gaps in the system not met by service providers; and
20 potential financial and legal instruments to be used;

21 (h) An explanation of how the program will be paid for by the producer
22 responsibility organization through fees from producers, without any new
23 or additional consumer-facing fee to members of the public, businesses,
24 service providers, the state or any political subdivisions, or any other
25 person who is not a producer, unless the fee is:

26 (i) A deposit made in connection with a product's refill, reuse, or
27 recycling that can be redeemed by a consumer; or

28 (ii) A charge for service by a service provider, regardless of whether
29 registered;

30 (i) A description of activities to be undertaken by the producer
31 responsibility organization during each year to:

32 (i) Foster the improved design of covered materials, as under para-
33 graph (c) of subdivision one of section 27-3427 of this title;

34 (ii) Provide funding to expand and increase the convenience of waste
35 reduction, reuse, collection, recycling, and composting services to
36 covered entities, at a minimum, according to the order of the waste
37 management hierarchy under section 27-0106 of this article;

38 (iii) Provide for reimbursement rates under section 27-3429 of this
39 title to service providers for statewide coverage of covered services at
40 an optimal level of convenience and service for covered materials on the
41 list established in subdivision one of section 27-3425 of this title, to
42 covered entities, at a minimum; and

43 (iv) Monitor to ensure that postconsumer materials are delivered to
44 responsible markets.

45 (j) A description of how the producer responsibility organization will
46 promote the opportunity for all service providers to register with the
47 commissioner and to submit invoices for reimbursement with the producer
48 responsibility organization;

49 (k) A description of how the program will reimburse service providers
50 under an approved stewardship plan, including but not limited to a
51 description of how the program shall establish:

52 (i) A methodology to calculate differentiated reimbursement rates as
53 provided in subdivision four of section 27-3429 of this title;

54 (ii) A process for service providers to submit invoices and be reim-
55 bursed for covered services provided to covered entities;

1 (iii) Clear and reasonable timelines for reimbursement, at intervals
2 no longer than monthly unless agreed to by a service provider and a
3 producer responsibility organization; and

4 (iv) A process that utilizes a third-party mediator to resolve
5 disputes that arise between the producer responsibility organization and
6 a service provider regarding the determination of reimbursement rates
7 and payment of reimbursements;

8 (l) Performance standards for service providers as applicable to the
9 service provided, including but not limited to:

10 (i) Requirements that service providers shall accept all covered mate-
11 rials on the list established by the commissioner under subdivision one
12 of section 27-3425 of this title; and

13 (ii) Applicable federal and state labor and safety standards;

14 (m) A description of how the producer responsibility organization will
15 treat and protect nonpublic data submitted by service providers;

16 (n) A description of how the producer responsibility organization will
17 provide technical assistance to:

18 (i) Service providers in order to assist them in delivering covered
19 materials to responsible markets; this includes performance feedback
20 data and contamination data;

21 (ii) Producers regarding toxic substances in covered materials; best
22 practices identified in the needs assessment that producers can take to
23 reduce intentionally added toxic substances in covered materials; and
24 best practices for verifying reduction through suppliers certificates of
25 compliance, testing, or other analytical and scientifically demonstrated
26 methodology; and

27 (iii) Producers to make changes in product design that increase the
28 recoverability or marketability of covered materials for reuse, recycl-
29 ing, or composting;

30 (o) A description of how the producer responsibility organization will
31 increase public awareness, educate, and complete outreach practices that
32 include culturally responsive materials and methods and evaluate the
33 efficacy of these efforts, including how the producer responsibility
34 organization will:

35 (i) Assist producers in improving product labels as a means of inform-
36 ing consumers about refilling, reusing, recycling, composting, and other
37 environmentally sound methods of managing covered materials;

38 (ii) Increase public awareness of how to use and manage covered mate-
39 rials in an environmentally sound manner and how to access waste
40 reduction, reuse, recycling, and composting services; and

41 (iii) Encourage behavior change to increase participation in waste
42 reduction, reuse, recycling, and composting programs;

43 (p) Proposed alternative collection programs as required under subdi-
44 vision eight of this section;

45 (q) A description of how producers can purchase postconsumer materials
46 from service providers at market prices if the producer is interested in
47 obtaining recycled feedstock to achieve minimum postconsumer recycled
48 content performance targets and statewide requirements; and

49 (r) A summary of consultations held with the advisory board and other
50 interested parties to provide input to the stewardship plan, a list of
51 recommendations that were incorporated into the stewardship plan as a
52 result, and a list of rejected recommendations and the reasons for
53 rejection.

54 4. (a) The commissioner shall review and approve, deny, or request
55 additional information for a draft stewardship plan or a draft plan
56 amendment no later than one hundred twenty days after the date the

1 commissioner receives such plan from a producer responsibility organiza-
2 tion. The commissioner shall post the draft plan or draft amendment on
3 the department's website and allow public comment for no less than
4 forty-five days before approving, denying, or requesting additional
5 information on the draft plan or draft amendment.

6 (b) If the commissioner denies or requests additional information for
7 a draft plan or draft amendment, the commissioner shall provide the
8 producer responsibility organization with the reasons, in writing, that
9 the plan or plan amendment does not meet the plan requirements of subdivi-
10 vision three of this section. The producer responsibility organization
11 has sixty days from the date that the rejection or request for addi-
12 tional information is received to submit to the commissioner any addi-
13 tional information necessary for the approval of the draft plan or draft
14 amendment. The commissioner shall review and approve or disapprove the
15 revised draft plan or draft amendment no later than sixty days after the
16 date the commissioner receives it.

17 (c) A producer responsibility organization may resubmit a draft plan
18 or draft amendment to the commissioner on not more than two occasions.
19 If after the second resubmission, the commissioner determines that the
20 draft plan or draft amendment does not meet the plan requirements of
21 this title, the commissioner shall modify the draft plan or draft amend-
22 ment as necessary for it to meet the requirements of this title and
23 approve it.

24 (d) Upon recommendation by the advisory board, or upon the commission-
25 er's own initiative, the commissioner may require an amendment to a
26 stewardship plan if the commissioner determines that an amendment is
27 necessary to ensure that the producer responsibility organization main-
28 tains compliance with the requirements of this title. A producer respon-
29 sibility organization may also submit a plan amendment for approval.

30 5. (a) The producer responsibility organization shall propose perform-
31 ance targets based on the needs assessment that meet the statewide
32 requirements in subdivision seven of this section that shall be included
33 in a stewardship plan approved under this section. Performance targets
34 shall include reuse rates, return rates, recycling rates, and composting
35 rates and targets for waste reduction and postconsumer recycled content
36 by covered materials type, as applicable, that are to be achieved by the
37 end of the stewardship plan's term. The producer responsibility organ-
38 ization shall select the unit that is most appropriate to measure each
39 performance target as informed by the needs assessment.

40 (b) The commissioner, in consultation with the advisory board, may
41 require that a producer responsibility organization obtain third-party
42 certification of any activity or achievement of any standard required by
43 this title if a third-party certification is readily available, deemed
44 applicable, and of reasonable cost. The commissioner shall provide a
45 producer responsibility organization with notice of at least one year
46 prior to requiring use of third-party certification under this para-
47 graph.

48 6. (a) For purposes of determining whether recycling performance
49 targets are being met, except as modified by the commissioner, a
50 stewardship plan shall provide a methodology for measuring the amount of
51 recycled material.

52 (b) For purposes of determining whether waste reduction performance
53 targets are being met, a stewardship plan shall provide a methodology
54 for measuring the amount of waste reduction of covered materials in a
55 manner that can be used to determine the extent to which the amount of
56 material used for a covered material can be reduced to what is necessary

1 to efficiently deliver a product without damage or spoilage, or other
2 means of covered material redesign to reduce overall use and maintain
3 recyclability, compostability, or reusability.

4 (c) For purposes of determining whether reuse performance targets are
5 being met, a stewardship plan shall provide a methodology for measuring
6 the amount of reusable covered materials at the point at which reusable
7 covered materials meet the following criteria as demonstrated by the
8 producer and approved by the commissioner:

9 (i) Whether the average minimum number of cycles of reuses within a
10 recognized reuse system has been met based on the number of times an
11 item shall be reused for it to have lower environmental factors than the
12 single-use versions of those items; and

13 (ii) Whether the demonstrated or research-based anticipated return
14 rate of the covered material to the reuse system has been met.

15 (d) For purposes of determining whether postconsumer recycled content
16 performance targets are being met, a stewardship plan shall provide a
17 methodology for measuring postconsumer recycled content across all
18 producers for a covered materials type where producers may determine
19 their postconsumer recycled content based on their United States market
20 territory if state-specific postconsumer recycled content is impractical
21 to determine.

22 (e) For other performance targets, the producer responsibility organ-
23 ization shall propose methodologies for review and approval as part of
24 the stewardship plan based on findings from the needs assessment.

25 7. (a) A producer responsibility organization shall implement an
26 alternative collection program for covered materials included on an
27 alternative collection list established pursuant to subdivision two of
28 section 27-3425 of this title, that:

29 (i) Provides year-round, convenient, statewide collection opportu-
30 nities, including at least one drop-off collection site located in each
31 county;

32 (ii) Provides tiers of service for collection, convenience, number of
33 drop-off collection sites, and additional collection systems based on:

34 (A) County population size;

35 (B) County population density; and

36 (C) Each class of town pursuant to section ten of the town law, and
37 the size city as such term is used in the general city law and as
38 defined in section two of the second class cities law;

39 (iii) Ensures materials are sent to responsible markets;

40 (iv) Uses education and outreach strategies that can be expected to
41 significantly increase consumer awareness of the program throughout the
42 state; and

43 (v) Accurately measures the amount of each covered material collected
44 and the applicable performance target and statewide requirement.

45 (b) A proposal for an alternative collection program shall include:

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

47 (ii) A description of how each of the program requirements established
48 in paragraph (a) of this subdivision will be met; and

49 (iii) Performance targets for each covered material, as applicable, to
50 be managed through an alternative collection program.

51 (c) Every subsequent needs assessment after the initial needs assess-
52 ment shall include a review of existing alternative collection programs
53 for each covered material listed under subdivision two of section
54 27-3425 of this title, to determine if the program is meeting the crite-
55 ria established in paragraph (a) of this subdivision.

1 § 27-3425. Recyclable or compostable covered materials lists; exempt
2 materials list.

3 1. By July first of the fourth calendar year after the effective date
4 of this title, the commissioner shall develop a list of covered materi-
5 als determined to be recyclable or compostable statewide through systems
6 where covered materials are commingled into a recyclables stream and a
7 separate compostables stream. Such covered materials shall be collected
8 at an optimal level of service and convenience for covered entities, at
9 a minimum, wherever collection services for mixed municipal solid waste
10 are available.

11 2. By July first of the fourth calendar year after the effective date
12 of this title, the commissioner shall complete a list of covered materi-
13 als determined to be recyclable or compostable and collected statewide
14 through systems other than the system required for covered materials on
15 the list established in subdivision one of this section.

16 3. The commissioner shall consult with the advisory board, producer
17 responsibility organizations, service providers, political subdivisions,
18 and other interested parties to develop or amend the recyclable or
19 compostable covered materials lists and shall review any requests by
20 interested parties for addition or removal of covered materials from the
21 lists created under this section.

22 4. In developing the lists under subdivisions one and two of this
23 section, the commissioner may consider the following criteria:

24 (a) Current availability of recycling and composting collection
25 services;

26 (b) Recycling and composting processing infrastructure;

27 (c) Capacity and technology for sorting covered materials;

28 (d) Whether a covered material is of a type and form that is regularly
29 sorted and aggregated into defined streams for recycling processes or is
30 included in a relevant institute of scrap recycling industries specifi-
31 cation or its successors;

32 (e) Availability of responsible markets;

33 (f) Presence and amount of processing residuals and contamination;

34 (g) Quantity of covered material estimated to be available and recov-
35 erable;

36 (h) Projected future conditions for the criteria in paragraphs (a),
37 (b), (c), (d), (e), (f) and (g) of this subdivision; and

38 (i) Other criteria or factors, as determined by the commissioner.

39 5. The commissioner may amend a list completed under this section at
40 any time and shall provide amended lists to producer responsibility
41 organizations within a reasonable amount of time after adopting an
42 amendment. Producer responsibility organizations shall provide amended
43 lists to service providers after receiving the amendment and work to
44 incorporate changes in relevant service provider reimbursement rates
45 within a year.

46 6. (a) A producer may request the commissioner, on a form prescribed
47 by the commissioner, to classify as an exempt material one or more types
48 of packaging. The commissioner shall submit the request to the advisory
49 board for review and comment before approving or denying the request.

50 (b) The commissioner may approve the request only if the commissioner
51 determines that a specific federal or state health and safety require-
52 ment prevents the packaging from being waste reduced or made reusable,
53 recyclable, or compostable.

54 (c) The commissioner shall review and approve, deny, or request addi-
55 tional information for a request to classify packaging as an exempt

1 material no later than one hundred twenty days after the date the
2 commissioner receives the request.

3 (d) The commissioner shall post on the department's website a list of
4 materials exempted under this subdivision.

5 (e) An exemption granted under this subdivision expires two years
6 after the date a request was approved by the commissioner. A material
7 classified as exempt under this subdivision becomes a covered material
8 immediately upon expiration of the exemption. A producer may reapply
9 according to this subdivision.

10 § 27-3427. Producer fees.

11 1. A producer responsibility organization shall annually collect a fee
12 from each member producer that shall:

13 (a) Vary based on the total amount of covered materials each producer
14 introduces in the prior year calculated on a per-unit basis, such as per
15 ton, per item, or another unit of measurement;

16 (b) Within accounting constraints allocate costs by material and pack-
17 aging type pursuant to the statements on management accounting. This
18 allocation and corresponding revenue shall be included in the notes to
19 the financial statements;

20 (c) Incentivize using materials and design attributes that reduce the
21 impacts of covered materials by reducing the amount of:

22 (i) Packaging per individual covered material that is necessary to
23 efficiently deliver a product without damage or spoilage and without
24 reducing its ability to be recycled;

25 (ii) Paper used to manufacture individual paper products;

26 (iii) Increasing the amount of covered materials managed in a reuse
27 system;

28 (iv) Increasing the proportion of postconsumer material in covered
29 materials;

30 (v) Enhancing the recyclability or compostability of a covered materi-
31 al; and

32 (vi) Increasing the amount of inputs derived from renewable sources;

33 (d) Discourage using materials and design attributes in covered mate-
34 rials whose impacts can be reduced by the methods listed under paragraph
35 (c) of this subdivision;

36 (e) Prioritize reuse by charging covered materials that are managed
37 through a reuse system only once, upon initial entry into the market-
38 place; and

39 (f) Generate revenue sufficient to pay in full:

40 (i) The fee required under section 27-3407 of this title;

41 (ii) Financial obligations to complete activities described in an
42 approved stewardship plan and to reimburse service providers under
43 section 27-3429 of this title;

44 (iii) The operating costs of the producer responsibility organization;
45 and

46 (iv) For establishment and maintenance of a financial reserve that is
47 sufficient to operate the program in a fiscally prudent and responsible
48 manner.

49 2. Revenue collected under this section that exceeds the amount needed
50 to pay the costs described in paragraph (f) of subdivision one of this
51 section shall be used to improve or enhance program outcomes or to
52 reduce producer fees according to provisions of an approved stewardship
53 plan.

54 3. Fees collected under this section may not be used for lobbying, as
55 defined in subdivision (c) of section one-c of the legislative law.

56 § 27-3429. Service provider; reimbursement.

1 1. The reimbursements provided for covered services to covered enti-
2 ties, at a minimum, under an approved stewardship plan shall only be
3 provided to service providers that meet the performance standards estab-
4 lished under an approved stewardship plan.

5 2. If a covered entity does not have access to collection services for
6 covered materials on the list established pursuant to subdivision one of
7 section 27-3425 of this title, where collection services for mixed
8 municipal solid waste are being provided, the producer responsibility
9 organization shall ensure that collection services are available to the
10 covered entity through a service provider at an optimal level of service
11 and convenience.

12 3. For infrastructure investments included in an approved stewardship
13 plan, a producer responsibility organization shall use the formal
14 competitive process as set forth in the stewardship plan, and publicly
15 post bid opportunities, except that preference shall be given to exist-
16 ing facilities, providers of services, and holders of service accounts
17 in the state for waste reduction, reuse, collection, recycling, and
18 composting of covered materials. The producer responsibility organiza-
19 tion may include an alternative bidding process in the stewardship plan.

20 4. (a) An approved stewardship plan shall provide a methodology for
21 reimbursement rates for covered services for covered materials, exclu-
22 sive of exempt materials. The methodology for reimbursement rates shall
23 consider estimated revenue received by service providers from the sale
24 of covered materials based upon relevant material indices and incorpo-
25 rate relevant cost information identified by the needs assessment.
26 Reimbursement rates shall be annually updated and reflect the net costs
27 for covered services for covered materials from covered entities, at a
28 minimum. Reimbursement rates shall be established equivalent to net
29 costs as established by a methodology in an approved plan as follows:

30 (i) No less than fifty percent of the net cost by February first of
31 the fifth calendar year following the effective date of this title;

32 (ii) No less than seventy-five percent of the net cost by February
33 first of the sixth calendar year following the effective date of this
34 title; and

35 (iii) No less than ninety percent of the net cost by February first of
36 the seventh calendar year following the effective date of this title,
37 and each year thereafter.

38 (b) Reimbursement rates shall be based on the following, as applicable
39 by the service provided:

40 (i) The cost to collect covered material for recycling, a proportional
41 share of composting, or reuse adjusted to reflect conditions that affect
42 those costs, varied by region or jurisdiction in which the covered
43 services are provided, including but not limited to:

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

45 (B) Population density;

46 (C) Collections methods employed;

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

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

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

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

1 (ii) The cost to transfer collected covered materials from consol-
2 idation or transfer facilities to reusing, processing, recycling, or
3 composting facilities or to responsible markets;

4 (iii) The cost to:

5 (A) Sort and process covered materials for sale or use and remove
6 contamination from covered materials by a recycling or composting facil-
7 ity, less the average fair market value for that covered material based
8 on market indices for the region; and

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

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

13 (v) The costs of covered services for a refill system or covered
14 services provided for reusable covered materials and management of
15 contamination.

16 (c) A service provider retains all revenue from the sale of covered
17 materials. Nothing in this title may restrict a service provider from
18 charging a fee for covered services of covered materials to the extent
19 that reimbursement from a producer responsibility organization does not
20 cover all costs of services, including continued investment and inno-
21 vation in operations, operating profits, and returns on investments
22 required by a service provider to provide sustainability of the
23 services.

24 (d) Reimbursement rates may be calculated per ton, by household, or by
25 another unit of measurement under an approved stewardship plan.

26 5. (a) Nothing in this section shall be construed to require a poli-
27 tical subdivision to agree to operate under a stewardship plan, nor does
28 it restrict the authority of a political subdivision to provide waste
29 management services to residents or to contract with any entity to
30 provide waste management services. Any political subdivision that is
31 also a service provider is eligible to be registered with the commis-
32 sioner and reimbursed per the rates and schedule established in accord-
33 ance with subdivision four of this section.

34 (b) Nothing in this title restricts the authority of a political
35 subdivision to provide waste management services to residents, to
36 contract with any entity to provide waste management services, or to
37 exercise its authority granted under section one hundred twenty-w of the
38 general municipal law. A producer responsibility organization may not
39 restrict or otherwise interfere with a political subdivision exercising
40 its authority pursuant to section one hundred twenty-w of the general
41 municipal law to organize collection of solid waste, including materials
42 collected for recycling or composting, or to extend, renew, or otherwise
43 manage any contracts entered into as a result of exercising such author-
44 ity or otherwise resulting from a competitive procurement process. A
45 producer responsibility organization shall not be required to reimburse
46 a service provider outside the scope of a stewardship plan. Muni-
47 cipalities may not impose a mandate for covered materials or activities
48 covered by this title.

49 6. A producer responsibility organization shall establish a dispute
50 resolution process utilizing third-party mediators for disputes related
51 to reimbursements.

52 § 27-3431. Reporting.

53 1. (a) By April first of the fifth calendar year following the effec-
54 tive date of this title, and annually thereafter, a producer responsi-
55 bility organization shall submit a written report to the commissioner

1 that contains, at a minimum, the following information for the previous
2 calendar year:

3 (i) The amount of covered materials introduced, by each covered mate-
4 rials type, reported in the same units used to establish fees pursuant
5 to paragraph (a) of subdivision one of section 27-3427 of this title;

6 (ii) Progress made toward the performance targets reported in the same
7 units used to establish producer fees pursuant to paragraph (a) of
8 subdivision one of section 27-3427 of this title, and reported statewide
9 and for each county, including:

10 (A) The amount of covered materials successfully waste reduced,
11 reused, recycled, and composted by covered materials type and the strat-
12 egies or collection method used; and

13 (B) Information about third-party certifications obtained;

14 (iii) The total cost to implement the program and a detailed
15 description of program expenditures by category, including:

16 (A) The total amount of producer fees collected;

17 (B) A description of infrastructure investments made; and

18 (C) A breakdown of reimbursements by covered services, covered enti-
19 ties, and regions of the state;

20 (iv) A copy of a financial audit of program operations conducted by an
21 independent auditor approved by the commissioner that meets the require-
22 ments of the financial accounting standards board's accounting standards
23 update 2016-14, not-for-profit entities (topic 958), as amended;

24 (v) A description of program performance problems that emerged in
25 specific locations and efforts taken or proposed by the producer respon-
26 sibility organization to address them;

27 (vi) A discussion of technical assistance provided to producers
28 regarding toxic substances in covered materials and actions taken by
29 producers to reduce intentionally added toxic substances in covered
30 materials beyond compliance with prohibitions already established in
31 law;

32 (vii) A description of public awareness, education, and outreach
33 activities undertaken, including any evaluations conducted of their
34 efficacy, plans for next calendar year's activities, and an evaluation
35 of the process established by the producer responsibility organization
36 to answer questions from consumers regarding collection, recycling,
37 composting, waste reduction, and reuse activities; the producer respon-
38 sibility organization shall not be required to provide a service under
39 this subdivision already provided by a state agency;

40 (viii) A summary of consultations held with the advisory board and how
41 any feedback was incorporated into the report as a result, together with
42 a list of rejected recommendations and the reasons for rejection;

43 (ix) A list of producers found to be out of compliance with this title
44 and actions taken by the producer responsibility organization to return
45 producers to compliance, and notification of any producers that are no
46 longer participating in the producer responsibility organization or have
47 been expelled due to their lack of compliance;

48 (x) Proposed amendments to the stewardship plan to improve program
49 performance or reduce costs, including changes to producer fees, infras-
50 tructure investments, or reimbursement rates;

51 (xi) Recommendations for additions or removal of covered materials to
52 or from the recyclable or compostable covered materials lists developed
53 under section 27-3425 of this title; and

54 (xii) Information requested by the commissioner to evaluate the effec-
55 tiveness of the program as it is described in the stewardship plan and
56 to assist with determining compliance with this title.

1 (b) Every fourth year after a stewardship plan is approved by the
2 commissioner, a performance audit of the program shall be completed by
3 the producer responsibility organization. The performance audit shall
4 conform to audit standards established by the United States government
5 accountability office; the national association of state auditors, comp-
6 trollers, and treasurers; or another nationally recognized organization
7 approved by the commissioner.

8 2. A producer responsibility organization that fails to meet a
9 performance target approved in a stewardship plan shall, within ninety
10 days of filing an annual report under this section, file with the
11 commissioner an explanation of the factors contributing to the failure
12 and propose an amendment to the stewardship plan specifying changes in
13 operations that the producer responsibility organization will make that
14 are designed to achieve the performance targets. If a performance target
15 is unmet due to lack of political subdivision participation in the
16 program, the commissioner may revise the statewide requirements devel-
17 oped pursuant to subdivision seven of section 27-3423 of this title. If
18 a revision to the statewide requirements is completed by the commission-
19 er, the producer responsibility organization may revise the performance
20 targets at the same time. An amendment filed under this subdivision
21 shall be reviewed by the advisory board and reviewed and approved by the
22 commissioner in the manner specified in subdivisions two and four of
23 section 27-3423 of this title.

24 3. By October fifteenth of the seventh calendar year following the
25 effective date of this title, and every two years thereafter, the
26 commissioner shall submit a report to the governor and to the chairs and
27 ranking minority members of the legislative committees with jurisdiction
28 over solid waste. The report shall contain:

29 (a) A summary of the operations of this title during the previous
30 years;

31 (b) A summary of the needs assessment;

32 (c) A link to reports filed under subdivisions one and two of this
33 section;

34 (d) Recommendations for policy, statutory, or regulatory changes to
35 the program;

36 (e) An analysis of the impacts of exempting certain materials from the
37 definition of covered materials and of exempting certain persons from
38 the definition of producer;

39 (f) A list of efforts undertaken by the commissioner to enforce and
40 secure compliance with this title; and

41 (g) Any other information the commissioner deems to be relevant.

42 4. Service providers shall provide producer responsibility organiza-
43 tions with data necessary to complete the reports required by this
44 section upon request.

45 § 27-3433. Producer responsibility organization websites.

46 A producer responsibility organization shall maintain a website that
47 uses best practices for accessibility and contains, including, but not
48 limited to:

49 (a) Information regarding a process that members of the public can use
50 to contact the producer responsibility organization with questions;

51 (b) A directory of all service providers operating under the steward-
52 ship plan administered by the producer responsibility organization,
53 grouped by location or political subdivision, and information about how
54 to request service;

55 (c) Registration materials submitted to the commissioner under section
56 27-3407 of this title;

1 (d) The draft and approved stewardship plan and any draft and approved
2 amendments;

3 (e) Information on how to manage materials included in lists estab-
4 lished under section 27-3425 of this title;

5 (f) The list of exempt materials as defined in this title and covered
6 materials exempt from performance targets and statewide requirements as
7 approved in the stewardship plan;

8 (g) Current and all past needs assessments;

9 (h) Annual reports submitted to the commissioner by the producer
10 responsibility organization;

11 (i) A link to administrative rules implementing this title;

12 (j) Comments of the advisory board on the documents listed in subdivi-
13 sions (d), (e), (f) and (g) of this section and the responses of the
14 producer responsibility organization to such comments;

15 (k) The names of producers and brands that are not in compliance with
16 section 27-3417 of this title;

17 (l) A list, updated at least monthly, of all member producers that
18 will operate under the stewardship plan administered by the producer
19 responsibility organization and, for each producer, a list of all brands
20 of the producer's covered materials; and

21 (m) Education materials on waste reduction, reuse, recycling, and
22 composting for producers and the general public.

23 § 27-3435. Anticompetitive conduct.

24 A producer responsibility organization that arranges collection, recy-
25 cling, composting, waste reduction, or reuse services under this title
26 may engage in anticompetitive conduct to the extent necessary to plan
27 and implement collection, recycling, composting, waste reduction, or
28 reuse systems to meet the obligations under this title, and is immune
29 from liability under state laws relating to antitrust, restraint of
30 trade, and unfair trade practices.

31 § 27-3437. Rulemaking.

32 The commissioner may adopt any rules and regulations necessary for the
33 implementation of this title.

34 § 27-3439. Providing information.

35 Upon request of the commissioner for purposes of determining compli-
36 ance with this title, or for purposes of implementing this title, a
37 person shall furnish to the commissioner any information that the person
38 has or may reasonably obtain.

39 § 27-3441. Deposit return system.

40 This title shall not apply to containers subject to title ten of this
41 article.

42 § 27-3443. Enforcement.

43 The commissioner shall enforce the provisions of this title as
44 provided under this section.

45 1. Any person who violates any of the provisions of, or who fails to
46 perform any duty imposed by, this title or any rule or regulation
47 promulgated pursuant thereto, or any final determination or order of the
48 commissioner made pursuant to this title shall be liable for a civil
49 penalty not to exceed seven thousand five hundred dollars for each such
50 violation and an additional penalty of not more than one thousand five
51 hundred dollars for each day during which such violation continues, to
52 be assessed by the commissioner after an opportunity to be heard pursu-
53 ant to the provisions of section 71-1709 of this chapter, or by the
54 court in any action or proceeding pursuant to section 71-2727 of this
55 chapter, and, in addition thereto, such person may by similar process be
56 enjoined from continuing such violation.

1 § 27-3445. Packaging product stewardship account.

2 1. The packaging product stewardship account is established as a sepa-
3 rate account in the special revenue fund in the state treasury. Appro-
4 priations and transfers to the account and fees collected under section
5 27-3407 of this title shall be credited to the account. Earnings, such
6 as interest, dividends, and any other earnings arising from assets of
7 the account, shall be credited to the account. Money remaining in the
8 account at the end of a fiscal year does not cancel to the general fund
9 but remains in the account until expended.

10 2. Money from the account is appropriated to the commissioner to pay
11 the reasonable costs of the department's to administer the provisions of
12 this title.

13 § 2. This act shall take effect on the first day of the second calen-
14 dar month following the date on which it shall have become a law.