STATE OF NEW YORK

6191

2025-2026 Regular Sessions

IN ASSEMBLY

February 26, 2025

Introduced by M. of A. JACKSON -- read once and referred 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:

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

TITLE 34
AFFORDABLE WASTE REDUCTION ACT
Section 27-3401. Short title.
27-3403. Definitions.
27-3405. Establish program.
27-3407. Registration of producer responsibility organizations and service providers.
27-3409. Establishment of producer responsibility advisory board.
27-3411. Department responsibilities.
27-3413. Producer responsibility advisory board responsibilities.
27-3415. Producer responsibility organization responsibilities.
27-3417. Producer responsibilities.
27-3419. Service provider responsibilities.
27-3421. Needs assessments.
27-3423. Stewardship plan.
27-3425. Recyclable or compostable covered materials lists; exempt materials list.
27-3427. Producer fees.
27-3429. Service provider; reimbursement.
27-3431. Reporting.

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

LBD09046-02-5

27-3433. Producer responsibility organization websites.
27-3435. Anticompetitive conduct.
27-3437. Rulemaking.
27-3439. Providing information.
27-3441. Deposit return system.
27-3443. Enforcement.
27-3445. Packaging product stewardship account.

§ 27-3401. Short title.

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

§ 27-3403. Definitions.

As used in this title, unless context otherwise requires:

1. "Advisory board" or "board" means the producer responsibility advisory board established under section 27-3409 of this title.

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

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

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

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

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

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

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

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

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

(a) A single-family residence;

(b) A multi-family residence;

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

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

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

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

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

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

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

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

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

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

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

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

14. "Disadvantaged communities" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

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

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

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

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

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

(e) Are packaging for medical equipment or products used in medical settings that is regulated by the United States Food and Drug Administration, including associated components and consumable medical equipment;

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

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

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

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

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

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

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

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

(n) Are covered materials that are:

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

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

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

(iv) Packaging materials that are used for products sold or distributed outside the state;

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

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

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

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

(a) Retained by a producer responsibility organization;

(b) Not otherwise employed by or affiliated with a producer responsibility organization; and

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

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

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

(b) Equipment or facilities used for waste reduction, reuse, recycling, or composting of covered materials.

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

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

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

(a) Not accessible to the public; and

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

22. "Packaging" means:

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

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

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

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

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

25. "Private data on individuals" means data made by statute or federal law applicable to the data:

(a) Not public; and

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

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

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

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

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

(iii) If no person described in subparagraph (i) or (ii) of this paragraph applies, the producer is the brand owners of the item;

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

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

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

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

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

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

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

(e) For paper products not described paragraph (d) of this subdivision:

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

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

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

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

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

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

(i) Where another person has mutually signed an agreement with a producer as defined in paragraphs (a), (b), (c), (d) and (e) of this subdivision that contractually assigns responsibility to the person as the producer, and the person has joined a registered producer responsibility organization as the responsible producer for that covered material under this title. In the event that another person is assigned responsibility as the producer under this subdivision, the producer under paragraphs (a), (b), (c), (d) and (e) of this subdivision shall provide written certification of that contractual agreement to the producer responsibility organization; and

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

(g) "Producer" does not include:

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

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

(iii) A de minimis producer;

(iv) A mill that uses any virgin wood fiber in the products it produces; or

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

27. "Producer responsibility organization" means a nonprofit corporation that is tax exempt under chapter 501(c)(3) of the Federal Internal Revenue Code and that is created by a group of producers to implement activities under this title.

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

29. "Recycling rate" means the amount of recyclable covered material, in aggregate or by individual covered materials type, recycled in a calendar year divided by the total amount of recyclable covered materials sold or distributed into the state by the relevant unit of measurement established in section 27-3423 of this title.

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

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

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

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

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

(a) Reuses, recycles, composts, or otherwise recovers materials and disposes of waste and contaminants in a manner that protects the environment and minimizes risks to public health and worker health and safety;

(b) Complies with all applicable federal, state, and local statutes, rules, ordinances, and other laws governing environmental, health, safety, and financial responsibility;

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

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

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

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

33. "Reusable" means capable of reuse.

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

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

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

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

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

35. "Reuse rate" means the share of units of a reusable covered material sold or distributed into the state in a calendar year that are demonstrated and deemed reusable in accordance with an approved stewardship plan under section 27-3423 of this title.

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

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

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

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

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

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

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

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

(i) Reusing a product in its original form;

(ii) Increasing the life span of a product;

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

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

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

§ 27-3405. Establish program.

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

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

1. (a) Within six calendar months following the effective date of this section, producers shall appoint a producer responsibility organization. The producer responsibility organization shall register with the commissioner by July first of the second year following the effective date of this title, and each January first thereafter by submitting the following:

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

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

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

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

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

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

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

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

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

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

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

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

(iii) A plan for identifying producers and executing written agreements confirming producers will operate under an approved stewardship plan administered by the producer responsibility organization;

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

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

(b) Notwithstanding the other provisions of this section, the commissioner may not allow registration of more than one producer responsibility organization under this section before the first stewardship plan approved by the commissioner expires. If more than one producer responsibility organization applies to register under this section before the first stewardship plan is approved by the commissioner, the commissioner shall select the producer responsibility organization that will represent producers until the first stewardship plan expires and, if applicable, shall return the fee paid by applicants who are not selected. When selecting a producer responsibility organization, the commissioner shall consider whether the producer responsibility organization:

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

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

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

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

(a) Producers of a covered materials type or a specific covered material appoint a producer responsibility organization; or

(b) Producers organize under additional producer responsibility organizations.

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

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

(b) The address of the service provider; and

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

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

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

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

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

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

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

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

(iii) One member representing a waste hauler or a statewide association representing waste haulers;

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

(v) One member representing a statewide nonprofit environmental organization;

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

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

(viii) One member representing a facility that receives compostable materials for composting or a statewide trade association that represents such facilities;

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

(x) Three members representing organizations of political subdivisions, with at least one member representing a political subdivision with a population of more than one million;

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

(xii) One member representing the commissioner.

(b) In making appointments pursuant to paragraph (a) of this subdivision, the commissioner:

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

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

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

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

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

(b) Members who are state employees or employees of political subdivisions shall not receive the daily compensation for activities that occur during working hours for which they are compensated by the state or political subdivision. However, a state or political subdivision employee may receive the daily payment if the employee uses vacation time or compensatory time accumulated in accordance with a collective bargaining agreement or compensation plan for advisory board activity. Members who are state employees or employees of political subdivisions of the state may receive the expenses provided for in this section unless the expenses are reimbursed by another source. Members who are state employees or employees of political subdivisions of the state may be reimbursed for child care expenses only for time spent on advisory board activities that are outside their working hours.

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

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

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

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

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

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

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

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

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

§ 27-3411. Department responsibilities.

The department shall:

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

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

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

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

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

6. Post on the department's website:

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

(b) A list of registered service providers;

(c) The most recent needs assessments;

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

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

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

(g) Links to producer responsibility organization websites;

(h) Comments of the public, advisory board, and producer responsibility organizations on the documents listed in paragraphs (c), (d), (e) and (f) of this subdivision, and, if any, the responses of the commissioner to such comments; and

(i) Links to adopted rules implementing this title;

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

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

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

§ 27-3413. Producer responsibility advisory board responsibilities.

The producer responsibility advisory board shall:

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

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

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

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

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

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

§ 27-3415. Producer responsibility organization responsibilities.

A producer responsibility organization shall:

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

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

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

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

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

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

(g) Ensure that producers operating under a stewardship plan administered by the producer responsibility organization comply with the requirements of the stewardship plan and with this title;

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

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

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

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

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

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

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

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

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

§ 27-3417. Producer responsibilities.

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

(b) After January first of the fifth year following the effective date of this title, no producer may introduce covered materials, either separately or when used to package another product, unless the producer enters into a written agreement with a producer responsibility organization to operate under an approved stewardship plan.

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

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

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

(d) A producer responsibility organization may petition the commissioner for a two-year extension to comply with the requirements of paragraph (c) of this subdivision. The commissioner may approve the extension if the petition demonstrates that market or technical issues prevent a specific covered material from being considered reusable or included on the lists established under section 27-3425 of this title. The producer responsibility organization may petition the commissioner for additional annual extensions until January first of the sixteenth year following the effective date of this title, if the producer responsibility organization demonstrates that market or technical issues preventing compliance persist.

2. A producer shall:

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

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

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

§ 27-3419. Service provider responsibilities.

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

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

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

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

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

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

6. Provide documentation to the producer responsibility organization on the amounts, covered materials types, and volumes of covered materials by covered service method. The producer responsibility organization will include in the stewardship plan when the document shall be periodically submitted to the producer responsibility organization.

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

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

8. Comply with all other applicable requirements of this title.

§ 27-3421. Needs assessments.

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

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

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

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

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

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

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

(a) Identification of currently or recently introduced covered materials and covered materials types;

(b) Tons of collected covered materials;

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

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

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

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

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

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

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

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

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

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

(a) An evaluation of:

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

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

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

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

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

(i) Waste reduction;

(ii) Reuse rate and return rates;

(iii) Recycling rates;

(iv) Composting rates; and

(v) Postconsumer recycled content, if applicable;

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

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

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

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

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

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

(vi) Information from packaging and paper product producer responsibility programs operating in other jurisdictions;

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

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

(g) Proposed plans and metrics for how to measure progress in achieving performance targets and statewide requirements;

(h) An evaluation of options for third-party certification of activities to meet obligations of this title;

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

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

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

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

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

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

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

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

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

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

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

(n) An assessment of current best practices to increase public awareness, educate, and complete outreach activities accounting for culturally responsive materials and methods and an evaluation of the efficacy of these efforts, including assessments and evaluations of current best practices and efforts on:

(i) Using product or packaging labels as a means of informing consumers about environmentally sound use and management of covered materials;

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

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

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

(p) Other items identified by the commissioner that shall aid the creation of the stewardship plan, its administration, and the enforcement of this title.

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

6. (a) A service provider or other person with data or information necessary to complete a needs assessment shall provide the data or information to the commissioner and the producer responsibility organization upon request.

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

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

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

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

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

§ 27-3423. Stewardship plan.

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

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

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

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

(b) A description of the methods of collection, how collection service convenience metrics will be met, and processing infrastructure and covered services to be used for each covered materials type at covered entities, at a minimum, and how these will meet the statewide requirements established in subdivision seven of this section for covered materials:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A process for service providers to submit invoices and be reimbursed for covered services provided to covered entities;

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

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

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

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

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

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

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

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

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

(iii) Producers to make changes in product design that increase the recoverability or marketability of covered materials for reuse, recycling, or composting;

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

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

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

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

(p) Proposed alternative collection programs as required under subdivision eight of this section;

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

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

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

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

(b) If the commissioner denies or requests additional information for a draft plan or draft amendment, the commissioner shall provide the producer responsibility organization with the reasons, in writing, that the plan or plan amendment does not meet the plan requirements of subdivision three of this section. The producer responsibility organization has sixty days from the date that the rejection or request for additional information is received to submit to the commissioner any additional information necessary for the approval of the draft plan or draft amendment. The commissioner shall review and approve or disapprove the revised draft plan or draft amendment no later than sixty days after the date the commissioner receives it.

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

(d) Upon recommendation by the advisory board, or upon the commissioner's own initiative, the commissioner may require an amendment to a stewardship plan if the commissioner determines that an amendment is necessary to ensure that the producer responsibility organization maintains compliance with the requirements of this title. A producer responsibility organization may also submit a plan amendment for approval.

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

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

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

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

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

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

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

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

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

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

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

(i) Provides year-round, convenient, statewide collection opportunities, including at least one drop-off collection site located in each county;

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

(A) County population size;

(B) County population density; and

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

(iii) Ensures materials are sent to responsible markets;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Recycling and composting processing infrastructure;

(c) Capacity and technology for sorting covered materials;

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

(e) Availability of responsible markets;

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

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

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

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

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

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

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

(c) The commissioner shall review and approve, deny, or request additional information for a request to classify packaging as an exempt

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

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

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

§ 27-3427. Producer fees.

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

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

(b) Within accounting constraints allocate costs by material and packaging type pursuant to the statements on management accounting. This allocation and corresponding revenue shall be included in the notes to the financial statements;

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

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

(ii) Paper used to manufacture individual paper products;

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

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

(v) Enhancing the recyclability or compostability of a covered material; and

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

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

(e) Prioritize reuse by charging covered materials that are managed through a reuse system only once, upon initial entry into the marketplace; and

(f) Generate revenue sufficient to pay in full:

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

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

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

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

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

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

§ 27-3429. Service provider; reimbursement.

1. The reimbursements provided for covered services to covered entities, at a minimum, under an approved stewardship plan shall only be provided to service providers that meet the performance standards established under an approved stewardship plan.

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

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

4. (a) An approved stewardship plan shall provide a methodology for reimbursement rates for covered services for covered materials, exclusive of exempt materials. The methodology for reimbursement rates shall consider estimated revenue received by service providers from the sale of covered materials based upon relevant material indices and incorporate relevant cost information identified by the needs assessment. Reimbursement rates shall be annually updated and reflect the net costs for covered services for covered materials from covered entities, at a minimum. Reimbursement rates shall be established equivalent to net costs as established by a methodology in an approved plan as follows:

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

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

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

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

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

(A) The number and type of covered entities;

(B) Population density;

(C) Collections methods employed;

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

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

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

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

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

(iii) The cost to:

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

(B) Manage contamination removed from collected covered material;

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

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

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

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

5. (a) Nothing in this section shall be construed to require a political subdivision to agree to operate under a stewardship plan, nor does it restrict the authority of a political subdivision to provide waste management services to residents or to contract with any entity to provide waste management services. Any political subdivision that is also a service provider is eligible to be registered with the commissioner and reimbursed per the rates and schedule established in accordance with subdivision four of this section.

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

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

§ 27-3431. Reporting.

1. (a) By April first of the fifth calendar year following the effective date of this title, and annually thereafter, a producer responsibility organization shall submit a written report to the commissioner

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

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

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

(A) The amount of covered materials successfully waste reduced, reused, recycled, and composted by covered materials type and the strategies or collection method used; and

(B) Information about third-party certifications obtained;

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

(A) The total amount of producer fees collected;

(B) A description of infrastructure investments made; and

(C) A breakdown of reimbursements by covered services, covered entities, and regions of the state;

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

(v) A description of program performance problems that emerged in specific locations and efforts taken or proposed by the producer responsibility organization to address them;

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

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

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

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

(x) Proposed amendments to the stewardship plan to improve program performance or reduce costs, including changes to producer fees, infrastructure investments, or reimbursement rates;

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

(xii) Information requested by the commissioner to evaluate the effectiveness of the program as it is described in the stewardship plan and to assist with determining compliance with this title.

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

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

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

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

(b) A summary of the needs assessment;

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

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

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

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

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

4. Service providers shall provide producer responsibility organizations with data necessary to complete the reports required by this section upon request.

§ 27-3433. Producer responsibility organization websites.

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

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

(b) A directory of all service providers operating under the stewardship plan administered by the producer responsibility organization, grouped by location or political subdivision, and information about how to request service;

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

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

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

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

(g) Current and all past needs assessments;

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

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

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

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

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

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

§ 27-3435. Anticompetitive conduct.

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

§ 27-3437. Rulemaking.

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

§ 27-3439. Providing information.

Upon request of the commissioner for purposes of determining compliance with this title, or for purposes of implementing this title, a person shall furnish to the commissioner any information that the person has or may reasonably obtain.

§ 27-3441. Deposit return system.

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

§ 27-3443. Enforcement.

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

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

§ 27-3445. Packaging product stewardship account.

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

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

§ 2. This act shall take effect on the first day of the second calendar month following the date on which it shall have become a law.